

7 January 2022

Committee Secretary  
State Development and Regional Industries Committee  
Parliament House  
George Street  
Brisbane QLD 4000

Via email: [sdric@parliament.qld.gov.au](mailto:sdric@parliament.qld.gov.au)

Dear Committee Secretary

Thank you for the opportunity to comment on the *Health and other Legislation Amendment Bill 2021*.

My role as Public Advocate is to advocate for systemic reform in relation to adults with impaired decision-making ability. I wish to provide feedback regarding an aspect of the Bill that proposes changes to the *Mental Health Act 2016* (the MHA) and affects the treatment of those with impaired decision-making ability.

I support the proposed changes to how electroconvulsive therapy (ECT) is approved by the Mental Health Review Tribunal (MHRT) for patients with impaired decision-making ability and those on involuntary treatment orders under the MHA. Specifically, the changes will require the MHRT to take into consideration the views, wishes and preferences the adult has towards ECT, and to create further safeguards in relation to adults who are currently subject to involuntary treatment to ensure that they have the ability to give informed consent to ECT.

The first change, requiring the MHRT to take into consideration the adult's views, wishes and preferences, expands upon the current requirement of the MHA. The MHA currently only requires the MHRT to take into consideration what has been expressed in an adult's advance health directive. The proposed changes recognise that, although an adult may lack the ability to provide informed consent when an application to approve ECT is being made, the adult's views, wishes and preferences should still be taken into consideration. This is in line with other legislation that pertains to people with impaired decision-making ability such as the *Guardianship and Administration Act 2000*, which recognises the right of everyone to express their position and encourages supported rather than substitute decision-making.

It is also positive to see that the concept of 'best interests' is being removed from the MHRT's consideration set for ECT approvals. The replacement of the 'best interests' test with one that considers the views, wishes and preferences of the adult is illustrative of a more rights-based and individual-focused approach that is in line with a person's human rights.

The second change, requiring the MHRT to determine and approve an adult's ability to provide informed consent if they are subject to involuntary treatment under the MHA (a treatment authority, forensic order, or treatment support order) is also welcomed. This requirement provides further safeguards for people under involuntary treatment orders, who may be in a position, either because of their illness or simply a misunderstanding, where they perceive that they must agree to any treatment proposed under the order.

Thank you again for the opportunity to comment on the Bill. I would be happy to speak further with the Committee if required.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'John Chesterman', with a long horizontal flourish extending to the right.

John Chesterman (Dr)  
**Public Advocate**