QAIHC

Queensland Aboriginal and Islander Health Council

Position Statement

Mental Health Bill 2015 and
Mental Health (Recovery Model) Bill 2015

February 2016

Mental Health Bills before Queensland Parliament

We would like to thank you for taking the time to meet with Queensland Aboriginal and Islander Health Council (QAIHC) to discuss the two Mental Health Bills before Queensland Parliament.

About Queensland Aboriginal and Islander Health Council (QAIHC)

QAIHC was established in 1990 by dedicated and committed Aboriginal and Torres Strait Islander leaders within the community controlled health sector.

Originally established as QAIHF (Queensland Aboriginal and Islander Health Forum), the organisation provided a voice for the community controlled health sector in Queensland. This organisation was self-funded until 1996, when the Commonwealth Department of Health commenced funding support.

QAIHC has experienced considerable growth in membership and the scope of services provided to those members since its establishment.

In 2004, the organisation was reconstituted under the Australian Investment and Securities Commission (ASIC) and assumed its current form as QAIHC.

Today, QAIHC represents 26 community-controlled health services and 13 associate members who share a passion and commitment to addressing the unique health care needs of their communities through specialised, comprehensive and culturally-appropriate primary health care.

QAIHC is the peak body representing the Aboriginal and Torres Strait Islander Community Controlled Health Sector in Queensland at both a state and national level. Its membership comprises of Aboriginal and Torres Strait Islander Community Controlled Health Organisations (AICCHOs) located throughout Queensland. Nationally, QAIHC represents the Community Controlled Health Sector through its affiliation and membership on the board of the National Aboriginal Community Controlled Health Organisation (NACCHO) and is regarded as an expert in its field.

Mental Health Bills

There are currently two Mental Health Bills before Queensland Parliament, one introduced by the Government, the other introduced by the Opposition. Both Bills are similar, but there are some important differences. The Parliamentary Committee has completed its inquiry and produced a report on both bills.[1]

The Parliamentary Committee is made up equally of Government Members of Parliament (MPs) and Opposition MPs. In general, there was agreement between both Government and Opposition MPs on most elements of the Bill. However, there was a disagreement over the GPS provisions.

> *Government members do not support the provisions in the Private Member's Bill (clause 217) which allow the Chief Psychiatrist to amend a forensic order to impose a monitoring condition which requires a patient to wear an electronic tracking device. Government members consider the authority to impose and review monitoring conditions which require a patient to wear an electronic tracking device should be restricted to the Mental Health Court and Mental Health Review Tribunal, where the person who is or may be subject to the device is able to seek legal representation and be properly represented.*
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> *Opposition members support the provisions in the Private Member's Bill (clause 217) which allow the Chief Psychiatrist to amend a forensic order to impose a monitoring condition,*

[1] Mental Health Bill 2015 and Mental Health (Recovery Model) Bill 2015 Report No., Report No. 9, 55th Parliament Health and Ambulance Services Committee November 2015. A copy can be located here: http://www.parliament.qld.gov.au/documents/committees/HASC/2015/B1-MH-RM-B2015/rpt-009-24Nov2015.pdf

> *which requires a patient to wear an electronic tracking device. Opposition members consider the Chief Psychiatrist appropriately qualified to exercise this power.*[2]

The expectation is that both Bills will be debated and voted on in the first sitting back in Parliament on February 16. It is highly likely that the Opposition will try and seek to have their GPS tracking provision incorporated into the Act.

The Queensland Law Society (QLS) in its submission[3] highlighted that the proposed amendments 'will effect indiscriminate and inconsistent application of the criminal law at the State's convenience and will diminish the liberty of a person involuntary treatment on account of the person's health, but not protect that person's liberty on account of their health.'[4]

The QLS further provided in its testimony during the public hearing the importance of the impact of people's liberty and the right to procedural fairness.

> *On my understanding of the 2015 bill, the decision for tracking devices is a decision for the Mental Health Review Tribunal. That is an improvement in terms of procedural fairness, because it is an extreme impact on people's liberty so, in our view, it needs to be done through a legal process rather than strictly clinical. My understanding is that the Mental Health Review Tribunal, the Mental Health Court and the various forensic liaison officers within each district can become very good at monitoring conditions and imposing strict conditions on mental health orders.*[5]

Queensland Aboriginal and Islander Health Council (QAIHC) as the Peak Aboriginal and Islander Health Organisation of Queensland shares the concern of QLS, and on behalf of our state-wide members express our collective concerns with the current proposed Mental Health Bill.

QAIHC's view is that the allocation of the responsibility of the decision making to impose a condition, requiring a person to wear an electronic (GPS) tracking devices should be held with an independent body such as the Mental Health Court or Mental Health Review Tribunal to ensure procedural fairness is paramount.

Through several planning forums and other research that QAIHC has been involved with, we are aware that Aboriginal and/or Torres Strait Islander people are more likely to enter mental health treatment via hospital Emergency Departments and or court/prison. Our people have higher Involuntary Treatment Order rates than non-Indigenous people, are 50% more likely to be secluded while in acute care, have higher rates of hospitalisation for intentional self-harm and also have higher rates of suicide, particularly amongst 0-14 year olds.

Data contained in *The burden of disease and injury in Queensland's Aboriginal and Torres Strait Islander people 2014*[6] reinforces:

- In 2007, mental disorders was the leading broad cause group and caused almost one-fifth of the total burden of disease and injury of Aboriginal and Torres Strait Islander people in Queensland.

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[2] Ibid at p114
[3] Submission 53, page 5 see: https://www.parliament.qld.gov.au/documents/committees/HASC/2015/B1-MH-RM-B2015/submissions/053.pdf
[4] ibid
[5] Committee's Report at page 113
[6] https://www.health.qld.gov.au/atsihealth/documents/burden_of_disease.pdf

- Anxiety and depression caused 10.2 per cent of the total burden of disease and injury, and was the specific cause responsible for the largest proportion of overall and female burden of disease.

- In females, anxiety and depression caused 15.1 per cent of burden while in males it caused only 5.6 per cent of the burden and was the third leading cause.

Research conducted in Queensland found that 73% of male and 86% of female Aboriginal and Torres Strait people in custody in high security prisons suffered a mental disorder.[7] The researchers concluded that 'the prevalence of mental disorder among Indigenous adults in Queensland custody is very high compared with community estimates' and 'there remains an urgent need to develop and resource culturally capable mental health services for Indigenous Australians in custody.'[8]

The higher incidence of disability amongst Aboriginal and Torres Strait Islander peoples combined with the over-representation of Aboriginal and Torres Strait Islander peoples in the criminal justice system suggests that there is a significant number of Aboriginal and Torres Strait Islander peoples with disability who are in contact with that system. Which will mean that our people will be significantly affected by the proposed amendments and further diminish the liberty of Aboriginal and Torres Strait Islanders experiencing mental illnesses and/or drug and alcohol misuse issues.

Recommendation

QAIHC recommends that :

- Support is provided to the Governments Bill as the authority to impose and review monitoring conditions which require a patient to wear an electronic tracking device should be restricted to the Mental Health Court and Mental Health Review Tribunal, allowing a person who is or may be subject to the device access to seek legal representation and be properly represented.
- Due to the very high prevalence of mental disorder among Aboriginal & Torres Strait Islander Queenslanders in custody, there remains an urgent need to resource, develop and provide culturally capable mental health services for our people in custody in conjunction with Aboriginal & Torres Strait Islander Peak Organisations.
- The Mental Health Review Tribunal work collaboratively and in an ongoing way with key stakeholders such as QAIHC and Queensland Aboriginal and Islander Legal Services (QAILS) to ensure wider reach, transparency and accountability in the development, provision and quality assurance of culturally safe and appropriate responses in its mandated contact with Aboriginal and Torres Strait Islander Queenslanders with mental health conditions.

[7] Heffernan, E.B, Andersen, K.C., Dev, A., and Kinner, S., *Prevalence of mental illness among Aboriginal and Torres Strait Islander people in Queensland Prisons,* Medical Journal Australia 2012; 197(10) 37-41

[8] Heffernan, E.B, Andersen, K.C., Dev, A., and Kinner, S., *Prevalence of mental illness among Aboriginal and Torres Strait Islander people in Queensland Prisons,* Medical Journal Australia 2012; 197(10)