

COMMUNITY LEGAL CENTRES TASMANIA

7 June 2018

Department of Justice
Office of the Secretary
GPO Box 825
Hobart TAS 7001
attn: Director

via email: HaveYourSay@justice.tas.gov.au

To Brooke Craven,
Re: *Mental Health Amendment Bill 2018*

Community Legal Centres Tasmania (CLC Tas) welcomes the opportunity to provide comment on the *Mental Health Amendment Bill 2018*.¹

CLC Tas is the peak body representing the interests of nine community legal centres (CLCs) located throughout Tasmania. We are a member-based, independent, not-for-profit and incorporated organisation that advocates for law reform on a range of public interest matters aimed at improving access to justice, reducing discrimination and protecting and promoting human rights.

We do not support the intent of the Bill. We strongly believe that any amendment to the *Mental Health Act 2013* (Tas) must comply with the *Convention on the Rights of Persons with Disabilities*.² Relevantly, article 12 of the Convention provides for the equal recognition of persons with disabilities before the law by ensuring that all measures that relate to the exercise of legal capacity provide for appropriate and effective safeguards, including:³

- respect the rights, will and preferences of the person; and
- are free of conflict of interest and undue influence; and
- are proportional and tailored to the person's circumstances; and
- apply for the shortest time possible; and

¹ CLC Tas would like to acknowledge Suddathcharige Manoj Fernando and an anonymous referee who assisted in the preparation of this response.

² *Convention on the Rights of Persons with Disabilities*, opened for signature 30 March 2007, (2008) 2515 UNTS 3 (entered into force 3 May 2008). Australia ratified the treaty on 17 July 2008.

³ Article 12(4) of the *Convention on the Rights of Persons with Disabilities*.

- are subject to regular review by a competent, independent and impartial authority or judicial body.

Currently, section 181(1)(d) of the *Mental Health Act 2013* (Tas) mandates that the Mental Health Tribunal must review a treatment order within three days of being notified of the patient's admission in circumstances where:

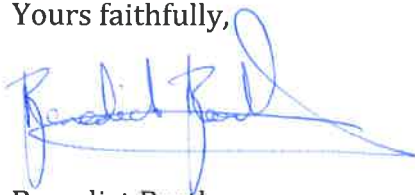
- the patient has failed to comply with a treatment order;⁴ or
- the patient has complied with a treatment order but the treating medical practitioner believes that they should be admitted to prevent possible harm.⁵

We acknowledge that the proposed amendment will continue to provide the Tribunal with the capacity to review a treatment order at any time either on its own motion or on the application of the patient or any person with standing.⁶ Nevertheless, we believe that the current mandatory review within three days of being notified of the patient's admission is an important safeguard, even in circumstances where the patient has complied with the treatment order. This is because the Tribunal is required to consider whether the treatment is appropriate and effective for the patient and cannot be adequately given except under a treatment order.⁷

Involuntary detention in a locked hospital ward must be an option of last resort, particularly when less onerous options such as treatment in a community setting may be available. We strongly believe that administrative convenience should not prevail over the patient's right to least restrictive treatment setting. In our opinion, having an independent Tribunal review the order provides an additional level of protection to the patient and provides reassurance that the order will be proportional, best tailored to the patient's circumstances and apply for the shortest time possible.

If we can be of any further assistance, please do not hesitate to contact us.

Yours faithfully,



Benedict Bartl
Policy Officer

Community Legal Centres Tasmania

⁴ Section 47 of the *Mental Health Act 2013* (Tas).

⁵ Section 47A of the *Mental Health Act 2013* (Tas).

⁶ Section 181(1)(e) of the *Mental Health Act 2013* (Tas).

⁷ Section 40 of the *Mental Health Act 2013* (Tas).