

12 June 2018



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

Attention: Brooke Craven

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

Dear Ms Craven

Mental Health Amendment Bill 2018

Thank you for your letter inviting comment on the Mental Health Amendment Bill 2018 ('the Bill').

The Tasmanian Human Rights Act Campaign Committee supports the adoption of a Human Rights Act in Tasmania consistent with the recommendations of the Tasmanian Law Reform Institute (TLRI) in its report of October 2007, *A Charter of Rights for Tasmania*. In line with those recommendations, all new policies would be developed in a manner that takes human rights into account. New legislation would be accompanied by a statement of human rights compatibility prepared by the responsible Minister, and Parliament would evaluate the new legislation taking into account human rights considerations.

We have prepared this submission in light of the TLRI's recommendations, and to urge the Department of Justice to ensure that the proposed amendments fulfil Australia's obligations as a State Party to various international human rights treaties.

In evaluating the compatibility of the Mental Health Amendment Bill 2018 with fundamental human rights, a relevant instrument is the United Nations' *Convention on the Rights of Persons with Disabilities* ('the CRPD'). Australia is a State Party to the CRPD, having signed and ratified it. The CRPD requires that States Party to the CRPD promote, protect and fulfill the right of all persons with disabilities and, specifically, under Article 3(c) 'To take into account the protection and promotion of the human rights of persons with disabilities in all policies and programmes'. Specific articles oblige States Party to the CRPD to ensure that people with disability:

- 'enjoy legal capacity on an equal basis with others in all aspects of life': Article 12; and
- when 'deprived of their liberty through any process ... [enjoy] on an equal basis with others ... guarantees in accordance with international human rights law': Article 14.
- 'has a right to respect for his or her physical and mental integrity on an equal basis with others': Article 17

Australia is also a State Party to the *International Covenant on Economic, Social and Cultural Rights*, which includes in Article 12 the right to the highest attainable standard of health. The content of the right is considered in detail in the Committee on Economic, Social and Cultural Rights' General Comment No. 14. Paragraph 34 of that General Comment also references the UN *Principles for the protection of persons with mental illness and the improvement of mental health care*. There are a number of those Principles that appear relevant to the proposed amendments.

The mandatory review procedures are an important safeguard, even where patients have complied with treatment orders, because they ensure that the treatment is appropriate and effective for the patient and test whether or not the treatment could not be provided adequately except under a treatment order. The involuntary detention of a patient should only be considered a last resort. Other options, such as treatment in a community setting, should always be considered first.

Tasmania, as a state within the Commonwealth of Australia, is obliged to comply with Australia's obligations as a State Party to international human rights treaties.

It is not entirely clear how the proposed Bill will affect people who are admitted to a hospital or other approved facility and the extent to which it fails to promote, protect and fulfil the rights of persons with disability under international human rights law.

We note that the Mental Health Tribunal has advised that in certain circumstances there may not be compliance issues that warrant a mandatory Tribunal hearing. We recommend, however, that in submitting this Bill to Parliament, any explanatory memorandum or ministerial speeches make clear:

- whether any measures in the Bill negatively affect the human rights of patients, and specifically the provisions of the Convention outlined above, and if so why;
- whether any measures in the Bill serve to improve the protection of the human rights of patients and, if so, how;
- if it is true that the procedures that would be removed under the Bill serve no useful purpose, whether, instead of scrapping those procedures completely, they could instead be revised to deliver better protection of the human rights of patients.

In taking forward this Bill, we recommend that the interests of the patient and the protection of their human rights be the prime consideration, not administrative convenience or cost savings.

Yours sincerely

Robin Banks
Spokesperson, Tasmanian Human Rights Act Campaign Committee

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