Queensland Alliance for Mental Health

First Independent Review of the Human Rights Act 2019 for Queensland – QAMH Submission

June 2024

Who is QAMH?

The Queensland Alliance for Mental Health (QAMH) is the peak body for the Community Mental Health and Wellbeing Sector and people with experiences of psychosocial disability in Queensland. We represent more than 100 organisations and stakeholders involved in the delivery of community mental health and wellbeing services across the state. Our role is to reform, promote and drive community mental health and wellbeing service delivery for all Queenslanders, through our influence and collaboration with our members and strategic partners. We provide information about services, work to build community awareness, education and training to influence attitudes and remove barriers to inclusion and advise government on issues affecting people with experiences of psychosocial challenges. At a national level, we have a formal collaboration with Community Mental Health Australia and provide input and advice to the work of Mental Health Australia and the National Mental Health Commission where appropriate. Locally, we work alongside our members, government, the Queensland Mental Health Commission and other stakeholders to add value to the sector and act as a strong advocate on issues that impact their operations in Queensland communities.

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Acknowledgement of Country

QAMH acknowledges the Traditional Custodians of the land on which we live, learn, and work and recognises their continuing connection to land, waters and community. We pay our respects to them and their cultures; and to Elders past, present and emerging.

Recognition of Lived Experience

QAMH recognises that the Community Mental Health and Wellbeing Sector exists because of people with Lived Experience of mental distress, their families, carers and support people. We acknowledge the expertise and the courage of people with Lived Experience, and we commit to work with and alongside people with Lived Experience in all we do.

Background

The Queensland Alliance for Mental Health (QAMH) is pleased to contribute to the Independent Review of Queensland's Human Rights Act 2019 (the Act). We recognise the State's leadership in this area as one of only three states in Australia where a Human Rights Act has been passed. QAMH welcomes the opportunity to provide recommendations to improve the impact of this important piece of legislation especially for people with lived and/or living experience of mental health challenges, their families and carers.

It is widely accepted that respect for human rights is the cornerstone of strong communities in which everyone can contribute and feel included. The relationship between human rights and mental health is complex and two-way[1]. Respecting human rights can improve mental health as much as human rights violations can harm mental health. People with mental health challenges often face stigma which in turn can lead to discrimination[2]. For example, people with mental health challenges find it harder to secure appropriate housing, access education, employment and health services compared to people without[3]. Given the significant impact of human rights on mental health, and the potential for human rights violations to harm mental wellbeing, the public sector must prioritise creating a community that upholds human rights principles. This includes fostering inclusivity, actively rejecting discrimination, and supporting recovery for those experiencing mental health challenges.

Adopting a Human Rights Act lens to critique both public service provision and the compatibility of legislation before being passed in parliament is pivotal to achieving this. It is this oversight mechanism of the Human Rights Act that creates the ability to hold government services and the legislative process to account, and which ultimately makes it a significant piece of legislation.

It should be noted that in Queensland, human rights are also reflected in other legislation, for example the Mental Health Act 2016 from which regulatory frameworks and professional guidelines are mandated. These include for example, guidelines for involuntary treatment in

[1] Porsdam Mann, S., Bradley, V.J., Sahakian, B.J. (2016) Human Rights-Based Approaches to Mental Health: A Review of Programs. Health Hum Rights.18(1):263-276. PMID: 27781015; PMCID: PMC5070696.

[2] Behavioural Economics Team of the Australian Government. (2022). National Survey of Mental Health-Related Stigma and Discrimination. https://behaviouraleconomics.pmc.gov.au/sites/default/files/projects/stigma-survey-report.pdf

[3]

mental health care. Human rights are also covered under the Disability Services Act 2006 and the Anti-discrimination Act 1991 which makes unfair discrimination, sexual harassment, vilification and victimisation unlawful in Queensland. At the federal level Australia is a party to the seven major human rights treaties which include the international Covenant on Civil and Political Rights and several conventions including the Convention on the Rights of the Child and the Convention on the Rights of Persons with Disabilities.

The National Study of Mental Health and Wellbeing estimates that 43.7 percent of the population aged 16-85 from 2020-22 had experienced a mental illness at some time in their life[4]. A staggering 4.2 million, or 21.4 per cent of the Australian population had experienced a mental illness in the previous 12 months. The percentage of adults experienced high or very high psychological distress was similar in Queensland (14 percent) and Australia (13 percent), based on standardised prevalence data. The significant prevalence and profound effects of mental ill health on our society cannot be ignored.

Despite inquiries such as the National Inquiry into the Human Rights of People with Mental Illness (1993) and the emergence of a new human rights-based narrative for mental health, changes in service provision have not kept pace[5]. Many of the findings reported in 1993 remain relevant today. For example, over 30 years ago they reported that "the rights of people with mental illness to inpatient care in a safe, therapeutic environment are not being respected. Violations and abuse continue, and the universal right to treatment with humanity, respect and dignity is frequently disregarded"[6]. Systemic stigma within government entities towards people with lived and living experience of mental health challenges and institutional trauma associated with treatment services persist in our community today. The past decade and a half have, however, seen some important changes away from a predominantly biomedical approach to mental health towards a person-centered, recovery-oriented, and rights-based approach. Two transformative shifts underpin this:

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[4] Australian Bureau of Statistics. (2020-2022). *National Study of Mental Health and Wellbeing*. ABS. https://www.abs.gov.au/statistics/health/mental-health/national-study-mental-health-and-wellbeing/latest-release

[5] Human Rights & Mental Illness. Report of the National Inquiry into the Human Rights of People with Mental Illness. (1993). https://humanrights.gov.au/our-work/disability-rights/publications/inquiry-human-rights-people-mental-illness-report

[6] Human Rights & Mental Illness. Report of the National Inquiry into the Human Rights of People with Mental Illness. Inpatient Care and Treatment (Chapter 8). (1993). https://humanrights.gov.au/our-work/disability-rights/publications/inquiry-human-rights-people-mental-illness-report

1. The increasing understanding that there is multiple ways of being, thinking, sensing, expressing, and interpreting the world and that there is no normal or right way to be. Many people experience voices, visions, or unusual states of consciousness positively, with no need to recover or receive treatment[7]. Likewise, distress or trauma can sometimes prove meaningful and provide an opportunity for growth and change[8,9].

2. A greater focus on people's empowerment, recovery, respect for their legal capacity, and on supporting rather than coercing/forcing them. This approach takes a whole-of-life perspective that aims to change the social and structural determinants that contribute to poor mental health. It's important to note that this does not invalidate or diminish the importance of access to health care and treatment: rather, it questions many prevalent practices within the health sector that undermine human rights and inclusion[10].

The Community Mental Health and Wellbeing Sector encompasses a broad range of non-government organisations (NGOs) that primarily deliver psychosocial, and wellbeing supports in the community. Operating from a person-led and trauma-informed framework, our sector works with people to build their natural resources and personal agency. As such, our services provide a valuable alternative to clinical care in which people's human rights are front and centre. For example, Community Mental Health and Wellbeing Sector services:

- Uphold a human rights approach which values least restrictive practice, prioritises consensual practice and operates from a social justice framework, that can empower individuals and communities to take charge of their wellbeing and work towards redressing structural inequalities.
- Help people to identify their wellbeing goals and develop a plan – essentially a co-designed social prescription - to engage with appropriate supports that can help them to achieve this.

[7] Parker I, Schnackenberg J, Hopfenbeck M, editors. (2021).The practical handbook of hearing voices: therapeutic and creative approaches.: Monmouth: PCCS Books; p13–23.
[8] Aeon and PSYCHE. The helpful delusion. https://aeon.co/essays/evidence-grows-that-mental-illness-is-more-than-dysfunction . Accessed 13/06/2024
[9] Mead, S. (2014) Crisis as an opportunity for growth and change. In: Intentional Peer Support [website]. Chesterfield: Intentional Peer Support n.d. IPS An Alternative Approach 2014 (intentionalpeersupport.org)
[10] United Nations Children's Fund (UNICEF) 2021 Discussion paper. A rights-based approach to disability in the context of mental health; p 13. New York A Rights-Based Approach to Disability in the Context of Mental Health | UNICEF,accessed 13/06/2024.

- Use recovery-oriented, trauma-informed skills and knowledge when working with people to re-establish their lives beyond illness.
- Draw on "community" at the heart of their work providing opportunities for people to reengage with their relationships and natural community, reducing social isolation and loneliness – key determinants for mental wellbeing.
- Reduce social determinants for mental health by taking a whole of life approach and supporting people to navigate and respond to their broader needs including housing, employment, legal issues, family support and alcohol and drug challenges.
- May draw upon their personal journey of mental health challenges, service use and recovery to coach others on their recovery journey if working in lived experience peer worker roles.

Despite many advocating for increased and recurring funding to meet the increasing demand for support services that address the social determinants of health, the mental health eco-system remains acutely underfunded[11]. People continue to be denied access to appropriate community-based treatment services as a result. In addition, funding to move from a crisis-response model to one that proactively supports wellbeing, is person-led rather than service-led, and responds early to distress within communities is yet to be realised. As many human rights organisations have stated, there are still significant human rights challenges associated with mental health and psychosocial support. Better use of the Human Rights Act framework should help guide and enhance decision making in this area. The following comments pertain to how the Act can be strengthened and the practical implementation of the Act, how well known, accessible and understood the Act is and how it works to provide protection for people with lived or living experience of mental health challenges.

[11] Queensland Alliance for Mental Health. (2024). 2024-2925 Queensland Budget Submission. 2024-2025-Queensland-Budget-QAMH-Arafmi-MHLEPQ-Submission.pdf

Extent to which the Act has helped to build a culture of human rights in the Queensland Public Sector

What's been working well?

Queensland's Human Rights Act has undoubtedly made a difference in enhancing human rights protections and improving government decision-making since its introduction in 2019. Specific examples in mental health include:

- In late 2022, following the introduction of the Act, the Office of the Chief Psychiatrist (OCP) in collaboration with Authorised Mental Health Services (AMHS) commenced a collaborative external review to consider how seclusion, mechanical and physical restraint are used across the service system and to identify key themes, lessons, and actions to support improvement in clinical practice to reduce, and where possible, eliminate seclusion and restraint over time[12]. This review led to a wide ranging policy response within Queensland Health incorporating a stronger role for Lived Experience, and review of risk management processes, training and models of care[13].
- The Act has been instrumental in the decision to remove the blanket "Locked Ward Policy" – unique to Queensland - which requires all entry and exit doors on adult public acute mental health inpatient units in public hospitals to be locked, regardless of whether patients are there voluntarily. The change will not eliminate locked wards however: Queensland Health has advised inpatient units will move to discretionary locking on mental health wards from July 1, 2024, which means that staff can choose whether to lock or unlock a ward.
- With the introduction of the Act, all complaints made to the Office of Chief Psychiatrist are now recorded and individually assessed to determine if human rights have been engaged or limited, regardless of whether human rights issues are raised in the complaint. To this end, the Office of the Chief Psychiatrist is currently engaging in

[12] Queensland Health Office of Chief Psychiatrist. (2023). *Mental Health Act 2016 Report Review into the use of Seclusion, Mechanical Restraint and Physical Restraint under the Queensland Mental Health Act 2016* https://www.health.qld.gov.au/__data/assets/pdf_file/0030/1287642/The-Mental-Health-Act-2016-Report.pdf

[13] Queensland Health. (2023). *Queensland Health Response to Mental Health Act 2016 Report: Review into the use of Seclusion, Mechanical Restraint and Physical Restraint under the Queensland Mental Health Act 2016.* https://www.health.qld.gov.au/__data/assets/pdf_file/0029/1288019/Queensland-Health-Response-to-Mental-Health-Act-2016-Report_Nov23.pdf

education of staff, development of assessment tools and development of a feedback management framework[14].

- The Queensland Human Rights Commission (QHRC) reports that the Health and Other Legislation Amendment Bill 2022 (the Bill) proposed changes to the Recording of Evidence Act 1962 to facilitate the electronic recording of evidence before the Mental Health Review Tribunal (MHRT). In its submission regarding the Bill, QHRC suggested further amendments to this Act were needed to ensure that the MHRT is legislatively obliged to accurately record its proceedings, for example, by way of electronic audio recording. This would ensure its practices were compatible with obligations under the right to fair hearing and right to equality before the law. While the Committee did not recommend amendments to the Bill, it did recommend that resources for technical and/or administrative support be provided to the MHRT to make recordings and/or transcriptions of proceedings. In its response, the government indicated support for this recommendation[15].
- The *Progress and Pitfalls: Human Rights Act Annual Report 2022-2023* identifies one case (in total) appeared before the Mental Health Court Queensland during 2022-2023 in which the Human Rights Act was considered. This case involved an application to approve involuntary electro convulsive therapy (ECT) under the Mental Health Act 2016 under the premise that the person did not have capacity to consent. While the Court found that the principles of the Mental Health Act were consistent with the Human Rights Act 2019, the treatment was refused on the basis the Court was not satisfied that it was appropriate in the circumstances, given there remained alternatives to ECT to be explored[16].
- The Office of the Chief Psychiatrist is currently undertaking a three-year project (July 2023 - June 2026) to review all the Chief Psychiatrist Policies with the Human Rights Act in mind. Chief Psychiatrist policies are mandatory for anyone performing a function under the Mental Health Act 2016 such as authorised mental health service

[14] Office of the Chief Psychiatrist. (2023). Annual Report of the Office of the Chief Psychiatrist 2022-2023. Chief Psychiatrist Annual Report 2022-2023 (health.qld.gov.au)

[15] Queensland Human Rights Commission. (2023). Progress and Pitfalls: Human Rights Act Annual Report 2022-2023
https://www.qhrc.qld.gov.au/__data/assets/pdf_file/0009/46089/QHRC_ProgressAndPitfalls_HumanRightsActAnnualReport2022-23.pdf

[16] Queensland Human Rights Commission. (2023). *Progress and Pitfalls: Human Rights Act Annual Report 2022-2023*
https://www.qhrc.qld.gov.au/__data/assets/pdf_file/0009/46089/QHRC_ProgressAndPitfalls_HumanRightsActAnnualReport2022-23.pdf

administrators, authorised doctors and authorised mental health practitioners. These policies have been formally made by the Chief Psychiatrist and reflect their responsibility to protect the rights of all patients receiving involuntary (or voluntary) treatment and care in authorised mental health services[17].

QAMH welcomes this progress and agree that it is pleasing to see growth in human rights jurisprudence and increased engagement across state and local government entities as reported in the fourth annual report on the operation of Queensland's Human Rights Act 2022-23[18].

Areas for improvement

Our comments below point to areas in which we are yet to see real progress within the Queensland Public sector in relation to the human rights enshrined within the Act. It's important to note that the following examples are not an exhaustive list; rather, they illustrate some of the challenges in realising human rights for people experiencing mental distress and mental health and wellbeing challenges.

Consensual practice over coercion

Reporting on numbers of people subject to involuntary assessment, treatment, care, and detention in Queensland shows that there is still a long way to go to achieve a more consensual approach to mental health care that is consistent with human rights. Figures from the Office of Chief Psychiatrist Annual Report 2022-2023 (Table 1 below) indicate that restraint events have increased since the introduction of the Act, rather than decreased.

[17] Queensland Health. (2024). *Chief Psychiatrist Policies (Webpage).* Chief Psychiatrist policies: Mental Health Act 2016 | Queensland Health | Queensland Health Accessed: 13/06/2024.

[18] Queensland Human rights Commission. (2023). Progress and Pitfalls. The fourth Annual report on the operation of Queensland's Human rights Act.
https://www.qhrc.qld.gov.au/__data/assets/pdf_file/0009/46089/QHRC_ProgressAndPitfalls_HumanRightsActAnnualReport2022-23.pdf

Table 1: Queensland Restraint Events 2018 – 2023

Indicator	2018-2019	2020-2021	2022-2023
Physical restraint events in acute episodes	5,538	9,104	6,648
Mechanical restraint events in acute episodes	20	26	102

Seclusion events per 1,000 acute bed days remain approximately the same at 7.2 events in 2022-2023 compared to 7.3 in 2018-2019[19]. Statewide, the number of people subject involuntary assessment, treatment, care or detention overall has increased over 11 percent from 6,689 in June 2020[20] to 7,451 at 30 June 2023[21].

Coercive practices including involuntary admission and involuntary treatment continue to be used pervasively in mental health services in Queensland. Nationally, Australia has one of the highest rates of involuntary admissions in the world despite its use being under increasing scrutiny globally. As the Mental Health Lived Experience Peak Queensland (MHLEPQ) note in their 2023 report on coercive control within Queensland's mental health system, *Shining a Light*, all forms of coercive practices are inconsistent with human rights-based mental healthcare[22]. And while our hospital and health system policies have shown movement in this regard, it appears we are yet to see this filter through to practice.

[19] Office of the Chief Psychiatrist. (2023). *Annual Report 2022-2023.* https://www.health.qld.gov.au/__data/assets/pdf_file/0026/1267154/chief-psychiatrist-annual-report-2022-23.PDF

[20] Office of the Chief Psychiatrist. (2023). *Annual Report 2019-2020.* https://www.health.qld.gov.au/__data/assets/pdf_file/0026/1267154/chief-psychiatrist-annual-report-2022-23.PDF

[21] Office of the Chief Psychiatrist. (2023). *Annual Report 2022-2023.* https://www.health.qld.gov.au/__data/assets/pdf_file/0026/1267154/chief-psychiatrist-annual-report-2022-23.PDF

[22] Mental Health Lived Experience Peak Queensland. (2023). *Shining a Light: Eliminating Coercive Practices in Queensland Mental Health Services*. https://mhlepq.org.au/wp-content/uploads/2023/12/MHLEPQ-CP-report_Shining-a-light-FINAL.pdf

The issue extends far beyond our hospital and health systems alone: a recent study from New South Wales showed that being brought to hospital via legal means, such as by police or via a court order, was strongly linked to involuntary treatment[23]. The use of force to respond to people in mental distress through coercion in its various guises is deeply embedded in our response to mental ill-health, and – as Sashidharan, Mezzina and Puras (2019) note - "legitimised, approved and routinely employed as part of mental healthcare in rich and poorer countries and in hospitals and community settings"[24]. These issues are magnified for People from Multicultural and Diverse Backgrounds and Connections with one study finding that people who spoke a language other than English were 11 percent more likely to receive involuntary treatment compared to those who spoke English as their first language[25].

Safety and protection from institution-related trauma

Research[26] [27] shows that common access points for mental health care such as GP clinics and emergency departments may be experienced as traumatising for people who have experienced trauma. Invasive procedures, coercive practices (e.g. removal of choice regarding treatment, judgmental attitudes following a disclosure of abuse), and a lack of available and acceptable services when accessing mental health support can trigger memories of traumatic experiences. In their 2001 study, Harris and Fallot[28] found that re-activation of traumatic experiences within health services can affect both service users and staff, with the latter experiencing vicarious trauma. Institutional settings can also be prime settings for harm caused by gender-based violence: while it's difficult to isolate figures for Queensland, a review of international research indicates that 40 percent of community mental health outpatients

[23] Parliament of New South Wales Legislative Council: Portfolio Committee No 2. (2024). *Equity, accessibility and appropriate delivery of outpatient and community mental health care in New South Wales*. apo-nid327046.pdf

[24] Sashidharan SP, Mezzina R, Puras D, (2019). *Reducing coercion in mental healthcare. Epidemiology and Psychiatric Sciences 28*, p.605. https://doi.org/10.1017/S2045796019000350

[25] Corderoy, A., Large, M., Ryan, C., and Sara, G. (2024). Factors Associated with Involuntary Mental Healthcare in New South Wales, Australia. *British Journal of Psych Open*. https://www.cambridge.org/core/journals/bjpsych-open/article/factors-associated-with-involuntary-mental-healthcare-in-new-south-wales-australia/622E67D17D22C8F9CAC4677A01897209

[26] Dawson S, Bierce A, Feder G, Macleod J, Turner KM, Zammit S, Lewis NV. (2021). *Trauma-informed approaches to primary and community mental health care: protocol for a mixed-methods systematic review*. https://pubmed.ncbi.nlm.nih.gov/33602707/

[27] Figley CR, Kleber RJ. (1995). Beyond the "Victim". In: Kleber RJ, Figley CR, Gersons BPR, eds. *Beyond trauma. The Plenum series on stress and coping*. Boston, MA: Springer, 1995.

[28] Harris M, Fallot R. (2001). *Using trauma theory to design service systems. San Francisco, CA: Jossey-Bass, 2001*. https://psycnet.apa.org/record/2001-00826-000

have experienced sexual assault at some point during their adulthood, and between five to forty-five percent of mental health inpatients have experienced sexual violence during an inpatient admission[29].

Access to health services

People with mental health challenges experience disproportionate difficulty in accessing medical help, compared to the general population. When interviewed about experiences of discrimination and stigmatisation, people with psychiatric diagnoses usually mention physical health care as one of the main problematic areas. In particular, many report not being taken seriously once the doctor knows about their psychiatric diagnosis[30] [31]. People diagnosed with severe mental illnesses have a median reduction in life expectancy of about 10 years which can only partly be explained by elevated suicide rates, and it has been estimated that about 60% of the excess mortality in people with severe mental illness is due to physical illness[32].

Investment in Community Mental Health and Wellbeing Services, Including Supports for Carers

Community Mental Health and Wellbeing Services provide a valuable alternative to clinical care in which people's human rights are front and centre. Often peer-led, they are more likely to adopt a human rights approach which values least restrictive practice and consensual practice, to work with the person to develop and implement their own recovery plan. In addition, facilitating broad access to community based mental health services has also been shown to provide less traumatic entry into the system, by creating "safe" initial access points

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[29] Betterly, H., Musselman, M. and Sorrentino, R. (2023). Sexual assault in the inpatient psychiatric setting, *General Hospital Psychiatry*, Volume 82, 2023, Pages 7-13. https://www.sciencedirect.com/science/article/pii/S0163834323000270

[30] Ewart, S. B., Bocking, J., Happell, B., Platania-Phung, C., & Stanton, R. (2016). *Mental Health Consumer Experiences and Strategies When Seeking Physical Health care: A Focus Group Study*. Global Qualitative Nursing Research, 3, 2333393616631679.

[31] Brämberg, B. E., Torgerson, J., Norman Kjellström, A., Welin, P., & Rusner, M. (2018). *Access to primary and specialized somatic healthcare for persons with severe mental illness: a qualitative study of perceived barriers and facilitators in Swedish healthcare*. BMC Family Practice, 19:12.

[32] De Hert, M., Correll, C. U., Bobes, J., et al. (2011). *Physical illness in patients with severe mental disorders. I. Prevalence, impact of medications and disparities in health care*. World Psychiatry, 10(1), 52–77.

with specialised support away from GP clinics, emergency departments or other settings that may be traumatising to the person experiencing distress[33] [34] [35].

QAMH believe two key changes are required to improve implementation of the Human Rights Act for people with mental health challenges:

- Shifting care and support from institutions to communities by investing in high quality, broadly accessible foundational psychosocial supports, including carer supports.
- Transforming mental health services from a biomedical model (with a focus on diagnosis, symptom reduction and medication) towards a person-led, recovery-oriented and rights-based approach.

These changes are consistent with the literature. Internationally, the World Health Organisation (WHO) has strongly articulated the need to shift away from institutionally delivered care towards community-based, peer-led and peer-run services in the community in its 2023 guidance on *Mental Health, Human Rights and Legislation*[36].

Here in Australia, a recently released report by the Legislative Council in NSW into the equity, accessibility and appropriate delivery of outpatient and community mental health care in New South Wales (NSW) provides evidence for the critical role that the Community Mental Health and Wellbeing Sector plays in supporting human rights for people with mental health challenges. The report found that - in the context of an under-resourced community mental health system - community treatment orders have the capacity to be overused or misused to involuntarily facilitate engagement in care[37]. Alongside measures such as enabling

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[33] Dawson S, Bierce A, Feder G, Macleod J, Turner KM, Zammit S, Lewis NV. (2021). Traumainformed approaches to primary and community mental health care: protocol for a mixed-methods systematic review. https://pubmed.ncbi.nlm.nih.gov/33602707/

[34] Figley CR, Kleber RJ. (1995). *Beyond the "Victim". In: Kleber RJ, Figley CR, Gersons BPR, eds. Beyond trauma. The Plenum series on stress and coping*. Boston, MA: Springer, 1995

[35] Harris M, Fallot R. (2001). *Using trauma theory to design service systems*. San Francisco, CA: Jossey-Bass, 2001. https://psycnet.apa.org/record/2001-00826-000

[36] World Health Organisation and United Nations Human Rights office of the High Commissioner. (2023). *Mental Health, Human Rights and Legislation: Guidance and Practice.* https://www.who.int/publications/i/item/9789240080737

[37] Parliament of New South Wales Legislative Council: Portfolio Committee No 2. (2024). *Equity, accessibility and appropriate delivery of outpatient and community mental health care in New South Wales*. apo-nid327046.pdf

practitioners to work to full scope of practice, the report recommends that the NSW Government immediately commit to increase and maintain funding across the entire mental health system to support both the workforce and consumers, with a priority investment in community-based mental health services in order to "reduce community treatment orders and support more people to have choice and autonomy over their mental health care"[38]. Indeed, in their landmark 2020 report, the Productivity Commission highlighted the importance of community mental health and wellbeing services as a critical part of the mental health system, saying there has been a "disproportionate focus on clinical services".

Yet Queensland's Community Mental Health and Wellbeing Sector continues to be drastically short-changed.

Work to determine the full extent of unmet need for psychosocial supports outside the NDIS is currently underway via the Psychosocial Project Group established by the Department of Health and Aged Care and state and territory governments under the National Mental Health and Suicide Prevention Agreement. It is due for completion in 2024 and is likely to have significant funding implications for governments at all levels[39]. However early resource projections completed by Queensland Health show that the Sector is receiving less than a third of the support it needs to meet demand for non-clinical supports for people experiencing severe and complex mental distress. In the 2022 Queensland Health submission[40] to the Mental Health Select Committee Inquiry into the Opportunities to Improve Mental Health Outcomes for Queenslanders, the Department stated that service gap analysis completed using the National Mental Health Service Planning Framework (NMHSPF) tool showed that Queensland delivers just 29.6 percent of the projected need for mental health community support services (psychosocial supports). This gap is only expected to increase as NDIS reforms lead to a move away from NDIS delivery of psychosocial support services; people who previously accessed these services via NDIS packages will also need to be able to access support via foundational supports and state-delivered services in the future.

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[38] Parliament of New South Wales Legislative Council: Portfolio Committee No 2. (2024). *Equity, accessibility and appropriate delivery of outpatient and community mental health care in New South Wales*. apo-nid327046.pdf

[39] Queensland Alliance for Mental Health. (2024). 2024-2925 Queensland Budget Submission. 2024-2025-Queensland-Budget-QAMH-Arafmi-MHLEPQ-Submission.pdf

[40] Queensland Health. (2022). Submission: Inquiry into the Opportunities to Improve the Mental Health Outcomes for Queenslanders. 150 Queensland Health.pdf (parliament.qld.gov.au)

The lack of adequate funding for the Community Mental Health and Wellbeing Sector, which is best placed to support human rights, has significant implications for the realisation of these rights for people experiencing mental distress and mental health challenges. Despite the sector's crucial role in providing person-led, recovery-oriented, and rights-based approaches to mental health care, it remains chronically underfunded. This funding deficit hinders the sector's ability to meet the growing demand for community-based mental health services and limits its capacity to promote and protect the human rights of individuals seeking support.

Broad investment in NGO delivered psychosocial supports that benefits a broad cross section of people experiencing severe mental illness, their families and informal/unpaid carers is required, not just specialised funding for specific groups. Without broad and adequate access to psychosocial supports in the community, unpaid carers – including children - are being left to fill the gap, with Arafmi Ltd aware that there are a large number of individuals who do not identify as carers, a situation which severely limits their ability to access essential support services[41]. The findings of the 2022 Carer Wellbeing Survey[42] paint a concerning picture, revealing that more than half of the carers felt compelled into their caregiving roles, with profound implications for their personal wellbeing and economic stability. Importantly, the role of a mental health carer often extends beyond the provision of practical support to encompass complex advocacy and navigation through the mental health care system. The survey highlights the need for tailored services that effectively alleviate the burden on carers, allowing them to resume their roles as parents, children, partners, or friends. Likewise, resources that enhance the support infrastructure for carers are required, that recognise their dual needs as individuals and as crucial participants in the management of mental health care.

Additional Human Rights to be Considered

The Human Rights Act 2019 consolidates and establishes statutory protections for certain rights recognised under international law, including those drawn from the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant in Economic, Social and Cultural Rights (ICESCR). QAMH have reviewed the human rights protected under the Human Rights Act 2019 and compared these with rights protected under other Conventions and Covenants. We also make our own suggestions below.

[41] Queensland Alliance for Mental Health. (2024). 2024-2925 Queensland Budget Submission. 2024-2025-Queensland-Budget-QAMH-Arafmi-MHLEPQ-Submission.pdf

[42] Carers Australia. (2022). *Caring for Others and for Yourself 2022 Carer Wellbeing Survey: Full Data Report*. CARING FOR YOURSELF AND OTHERS (carersaustralia.com.au)

- **Rights to social determinants of health** e.g. housing, adequate standard of living that supports mental wellbeing, relationship with nature (currently included for First Nations, but could be extended to all), exercise, social interaction.
- **Right to self-determination** e.g. ability to choose a service model that is appropriate to own circumstances (culturally appropriate, peer-led, community based, medical etc.).
- **Right to early intervention and preventative health care** to attain the highest level of physical and mental health (as an extension of existing rights to health services).
- **Right to choose to participate in paid employment** as an extension of existing right to *Freedom from Forced Work*. This is relevant for mental health carers who currently face situations where they are obliged to undertake caring responsibilities without fair choice or consideration given to how they can maintain their employment while caring, due to lack of support services for the people they care for. This is becoming more common with increase of Hospital in the Home and is especially important as we transition towards greater community-based care.
- **Right to be treated with empathy and compassion** when engaging with service systems, from a trauma-informed perspective (as an extension of existing rights to safety/freedom from torture and cruel, inhumane, or degrading treatment).

Effectiveness and need for reform of provisions of the Act in relation to the obligations of Public Entities

QAMH supports the following changes to improve implementation of the Act by public sector entities.

Remove the override provision

It is disappointing to note that the Queensland government suspended its Human Rights Act twice in quick succession in 2023. In both situations the absence of normal parliamentary scrutiny enabled the state government to act in ways incongruent to the Act. Both situations involved children. Mental illness often appears for the first-time during adolescence. Those involved in the youth justice system are a population at increased risk for developing serious

and chronic mental illness[43]. Recent research shows that childhood maltreatment accounts for 35 percent of cases of self-harm and 21 percent of depression cases in Australia[44]. While acknowledging that this was a unique and difficult situation, removing the protection afforded to children under the Human Rights Act should not have been waivered.

The override provision (Section 43 of the Act) diminishes Queensland's Human Rights Act as it provides a pathway for the government to remove human rights protections. The original intent of Section 43 was to accommodate exceptional circumstances. These include such instances as a state of emergency, war, or exceptional crisis. The Act requires amendment to return to the original intent so that it can only be overridden in *genuine* exceptional circumstances.

Ensure human rights are considered throughout the parliamentary process

There is intuitive trust that Parliament will actively consider the human rights impacts of decisions they make. However, this trust can be undermined when last-minute amendments to Bills are made. Sometimes such amendments are passed into law without going back through the parliamentary committee processes. Currently, Bills may be passed despite knowledge of compliance problems between proposed Bills and the Human Rights Act 2019. To improve transparency and accountability, all major amendments to Bills should be referred back to the relevant committee to ensure human rights issues are adequately considered before passing legislation.

Participation duty

Although the state of Queensland has a Human Rights Act in place, work on a national act is advancing and a draft Bill is available[45]. Importantly, the draft Bill includes a 'participation duty'. To improve transparency and accountability a 'participation duty' should be considered for Queensland's Human Rights Act. People with lived or living experience of mental health

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[43] Australian Institute of health and Welfare. (2016-17) National data on the health of justice-involved young people. A feasibility study. https://www.aihw.gov.au/getmedia/4d24014b-dc78-4948-a9c4-6a80a91a3134/aihw-juv-125.pdf.aspx?inline=true.

[44] Grummitt, L., Baldwin, J.R., Lafoa'I, J., Keyes, K.M., Barrett, E.L. (2024) Burden of Mental Disorders and Suicide Attributable to Childhood Maltreatment. *JAMA Psychiatry.* Published online May 08, 2024. doi:10.1001/jamapsychiatry.2024.0804 https://jamanetwork.com/journals/jamapsychiatry/article-abstract/2818229

[45] Parliamentary Joint Committee on Human Rights, Parliament of Australia, Inquiry into Australia's Human Rights Framework (Report, 2024), Appendix 5: Example Human Rights Bill 2024 cl 39

challenges have a right to be involved in making decisions that directly or disproportionately affect their rights[46]. People with lived experience in mental health are perfectly positioned to inform the sector about what needs to change[47].

To drive cultural change, lived experience leadership and decision-making weight is required in the health system. QAMH, MHLEPQ and Arafmi have previously jointly advocated that the Queensland Government establish the office of Chief Lived Experience Officer. The Chief Lived Experience Officer would be the Queensland Government's principal advisor on all matters relating to peer-work, collaboration, and co-design. Furthermore, people of lived experience should advise at all levels of policymaking, organisational design, governance, and service priority setting. Their unique expertise is critical to advancing, leading, and advising on all matters that promote a person-led approach to mental health services in Queensland.

Improve the dispute resolution process - 'no rights without remedy'

Complaining directly to a public entity about an alleged contravention of the Act and then to the Queensland Human Rights Commission can work well for complaints that are easily resolved. For more complex cases however, the current process provides limited options beyond the Human Rights Commission. The requirement to wait 45 business days following a complaint to a public entity may also deter some people from following through with their complaint, particularly people who are experiencing mental ill-health and emotional issues, who may lack other support to pursue a legal matter.

Currently it is difficult to follow a human rights complaint through the court system and no compensation system is in place. Strengthening the existing complaints process by adopting a 'no rights without remedy' framework is one way to better encourage a culture of human rights and ensure public entities abide by a human rights framework. The fact that the rate of resolution of complaints through conciliation is lower for Human Rights Act complaints compared with Anti-Discrimination Act only complaints where compensation is an option

[46] Australian human rights Commission (2022). Free and Equal: A Human Rights Act For Australia (Position Paper, December 2022), 198-199

[47] Mental Health Lived Experience Peak (MHLEP). (2023). Shining a light. Eliminating Coercive Practices in Queensland Mental health Services. https://mhlepq.org.au/wp-content/uploads/2023/12/MHLEPQ-CP-report_Shining-a-light-FINAL.pdf

supports this[48]. From a public entity perspective, improving the process by which entities identify, and track complaints initially is also required.

Strengthening informal supports to help people provide the information required to pursue a complaint with the Queensland Human Rights Commission is also an area that requires attention. Advocacy services that assist people to advocate for their human rights need to be sustainably funded in the community to enable the complaints process to work optimally and drive systemic improvements. Data from the most recent report on the operation of the Human Rights Act reveals a significant disparity in the level of advocacy support accessed for different types of complaints. For human rights only complaints, the level of legal or advocacy representation was notably low at just seven percent, compared to around thirty percent for complaints solely related to the Anti-Discrimination Act. This suggests that individuals bringing forward human rights complaints may face barriers in accessing necessary advocacy support, potentially hindering their ability to effectively navigate the complaint process and achieve a satisfactory resolution [49]. Likewise, stigma, prejudice, and discrimination against people with mental health challenges can impact someone's decision to bring a complaint in the first place. The 2022-23 report Progress and Pitfalls shows that of the Human Rights Act only complaints, a significant proportion involved prisons, health, and police[50]. These are all public entities where people with lived or living experience of mental health challenges have historically had reason to complain[51].

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[48] Queensland Human rights Commission. (2023). Progress and Pitfalls. The fourth Annual report on the operation of Queensland's Human rights Act. https://www.qhrc.qld.gov.au/__data/assets/pdf_file/0009/46089/QHRC_ProgressAndPitfalls_HumanRightsActAnnualReport2022-23.pdf

[49] Queensland Human rights Commission. (2023). Progress and Pitfalls. The fourth Annual report on the operation of Queensland's Human rights Act. https://www.qhrc.qld.gov.au/__data/assets/pdf_file/0009/46089/QHRC_ProgressAndPitfalls_HumanRightsActAnnualReport2022-23.pdf

[50] Queensland Human rights Commission. (2023). Progress and Pitfalls. The fourth Annual report on the operation of Queensland's Human rights Act. https://www.qhrc.qld.gov.au/__data/assets/pdf_file/0009/46089/QHRC_ProgressAndPitfalls_HumanRightsActAnnualReport2022-23.pdf

[51] Human Rights & Mental Illness. Report of the National Inquiry into the Human Rights of People with Mental Illness. (1993). https://humanrights.gov.au/our-work/disability-rights/publications/inquiry-human-rights-people-mental-illness-report

More tailored training

There is a need for more investment, and further tailored training for public entities including specific training related to improved understanding of human rights for people with mental health challenges. If public officials do not fully understand their obligations to respect and protect human rights, it is unlikely, as recently highlighted by the Robodebt Royal Commission, they will always do so[52]. Ensuring public authorities act compatibly with human rights requires substantial and specific understanding of the Act by front line workers.

Recommendations:

QAMH make the following recommendations to improve the Human Rights Act 2019 and its implementation by public sector entities for people with lived and living experiences of mental health challenges, their families and carers:

> **Recommendation 1:** That Government funds the Community Mental Health and Wellbeing Sector adequately to provide a high quality, human rights-based approach to mental health care. This includes family/carer supports that protects social relationships as well as supports that enable carers to not have to choose between support for the person they love and being able to support their family's wellbeing and financial stability.

> **Recommendation 2:** Establish a participation duty within the Act to enable people with lived or living experience of mental health challenges to be involved in making decisions that directly or disproportionately affect their rights. This includes that the Queensland Government establishes and resources a Chief Lived Experience Officer – of equal standing to the Chief Psychiatrist – to be the Queensland Government's principal advisor on all matters relating to peer-work, collaboration and co-design with people of lived experience at all levels of policymaking, organisational design, governance, and service priority setting with a particular authority and expertise in

[52] Commonwealth of Australia. (2023). Royal Commission into the Robodebt scheme. https://robodebt.royalcommission.gov.au/system/files/2023-09/rrc-accessible-full-report.PDF

advancing, leading and advising on matters that promote a person-led approach to mental health services in Queensland.

Recommendation 3: Consider new human rights for Queensland that protect all Queenslanders, including people with Lived and Living Experience of mental distress, their carers and families:

a) Rights to social determinants of health

b) Right to self-determination

c) Right to early intervention and preventative health care

d) Right to choose to participate in paid employment

e) Right to be treated with empathy and compassion when engaging with service systems to minimise system-related trauma

Recommendation 4: Amend the current override provision to ensure that the Act can only be overridden in *genuine* exceptional circumstances.

Recommendation 5: Ensure human rights are considered through parliamentary processes by requiring all major amendments to Bills be referred back to the relevant committee so that human rights issues can be adequately considered before being passed into legislation.

Recommendation 6: Improve the dispute resolution process by:

a) adopting a “no rights without remedy” framework that enables unresolved complaints to be able to be referred on to a tribunal for determination and possible compensation if unable to reach agreement through conciliation processes; and

b) reviewing current complaints and advocacy data to identify whether there are vulnerable cohorts, such as people in mental distress, who are currently not easily able to bring a complaint to resolution under current processes.

Recommendation 7: Provide specialised training to frontline practitioners that includes case examples to help workers better understand how to practically implement the Act in their work setting. This includes strengthening training on the need to ensure that all decisions by public entities should be put through the reasonable and necessary test in Section 13. Within the hospital and health system, and police first responder services, consideration should be given to the provision of

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training and implementation of policies that support better referral pathways into Community Mental Health and Wellbeing Sector services which are designed to work from a human rights-centred approach for people in mental distress.

Recommendation 8: That the Queensland Human Rights Commission explore ways to introduce a requirement for public entities to demonstrate evidence of implementation of human rights in practice settings as part of their obligations under the Act.

Recommendation 9: That the role and reporting relationships of Independent Patient Rights Advisors within the Hospital and Health System be independently reviewed to ensure that this role is able to serve a strong independent advisory function within the system.

Thank you for the opportunity to contribute to this consultation process. We look forward to continuing to work with the Queensland Government to better the lives of people with Lived and/or Living experience of mental distress, their families, and carers. Please do not hesitate to contact QAMH should you require any further information.