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PO Box 668 Rozelle NSW 2039
T 02 9555 8388
E info@mhcc.org.au
W www.mhcc.org.au

The Regulatory Services Team
Mental Health Branch at MOH
E: MOH-MentalHealthBranchConsultation@health.nsw.gov.au

Subject: Language in reference to policy and standard communications re forensic policy directive

The Mental Health Coordinating Council (MHCC) thanks the Mental Health Branch for inviting us to provide comment on the issue of language in reference to the recommendations made by the Review of the Mental Health Review Tribunal (2017) in considering how the NSW Health policy and standard communications might be more victim-inclusive and sympathetic.

We understand that the Review recommended that NSW Health policy and Mental Health Review Tribunal guidelines and communications should be amended to change the term 'index event' to 'unlawful act'. We note index event is defined in the NSW Health Forensic Mental Health Services Policy Directive (PD2012_50) and that at this point in time the Tribunal refers to the offence (or alleged offence) as an 'index event' or 'index offence.'

MHCC understand that from a victim's perspective the proposed term is considered more accurate and balanced, and recognises the gravity and impact of the offence, as well communicating the matter in those terms. Nevertheless, MHCC does not support the use of 'unlawful act'. From a forensic human rights perspective the change suggested, in our view does imply criminal responsibility and detracts from an acquittal on the basis of NGMI. The term 'unlawful act' stigmatises a forensic patient's illness which is likely to be detrimental to treatment and rehabilitation.

Our preference is to use the term 'index offence' or 'the proven conduct' as these are less euphemistic than 'index event'. The term 'proven conduct' also more appropriately indicates the seriousness of the act in a forensic context whilst leaving aside the moral inference; and is preferable since it has the benefit of being consistent with the way terminology concerning the verdict terminology is likely to be used in the future amendments to the legislation.

For any further information regarding our comments please contact Corinne Henderson, Principal Advisor/ Policy and Legislative Reform. T: 02 9555 8388 #101 E: corinne@mhcc.org.au

A handwritten signature in blue ink that reads 'Carmel Tebbutt'. The signature is written in a cursive, flowing style.

Carmel Tebbutt
Chief Executive Officer | Mental Health Coordinating Council
E: carmel@mhcc.org.au

Cc Amy Wyndham
Acting Executive Director | Mental Health Branch
E: amy.wyndham@health.nsw.gov.au