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Submission: Mental Health and Cognitive Impairment Forensic Provisions Bill 2018 (NSW): Second Draft Proposals

The Mental Health Coordinating Council (MHCC) is the peak body representing mental health community managed organisations (CMOs) in NSW. Our members deliver a range of psychosocial support programs and services including housing, employment and social inclusion activities, in addition to clinical and peer supported services with a focus on trauma-informed recovery oriented practice. MHCC members also include Primary Health Networks and organisations that provide advocacy, education, training and professional development and information services. The MHCC is also a founding member of Community Mental Health Australia (CMHA) the alliance of eight state and territory community sector mental health peak bodies. Together we represent more than 800 CMOs delivering mental health and related services nationally.

MHCC provided an earlier submission to the Hon Antony Whealy QC.'s [NSW Health Review of the Mental Health Tribunal in Respect of Forensic Patients: Discussion Paper](#) and we thank the NSW Government for providing us with the opportunity to comment on the second draft of the Bill. We are pleased to see that many of the NSW Law Reform Commission's recommendations have been incorporated into the draft Bill and it only remains for us to provide a few comments where we have some concerns.

We understand the purpose of simplifying complex terms and renaming the 'not guilty by reason of mental illness' to 'conduct proven but not criminally responsible due to mental health or cognitive impairment' (not criminally responsible), which seeks to utilise more contemporary terminology that focuses on a person's functional difficulties by recognising a person's mental and cognitive impairment. We comment that whilst the language does not sit very comfortably within a 'recovery oriented approach' we appreciate its aim to ensure that people living with mental health and cognitive impairments will be more appropriately understood as two distinct groups that are both covered by the Act; and that this helps courts to identify defendants and to make decisions that will better assist defendants receive appropriate treatment and support earlier. We therefore support this change as well as the tests for determining fitness to stand trial and the defence of mental health and/or cognitive impairment as described in the Bill.

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We would however like to recommend that under 4 (2) that the list should include a mental health impairment related to Post Traumatic Stress Disorder (PTSD) to acknowledge the impact of trauma (specifically interpersonal abuse) on the mental and cognitive impairments that many people involved in the criminal justice system experience, which is often misunderstood or remains unrecognised.

We also make the recommendation that the word 'suffering' from a mental health or cognitive impairment which is used frequently throughout the draft Bill, be amended to 'experiencing' in line with contemporary terminology.

The Background Paper asks in relation to Question 1: Are there any practical issues for courts or court processes in the drafting of the Bill?

Under section 94 (1-4) - **Registered victims may make submissions to the Tribunal on review of forensic patients**. This section significantly expands the role and rights of victims to intervene in any review of forensic patients and decisions at any point. In the criminal justice system generally victims do not have the right to make submissions at any point where decisions are being made about an accused or convicted person. MHCC does not support a different standard because a person has a mental illness. In our view, the forensic patient and their recovery is important because by keeping people well in the community, safety is maximised for all concerned. It is also important to bear in mind that people with mental health and cognitive impairments are more likely to be victims than perpetrators of violence.

The Background paper also asks in relation to Question 2: Are there any additional considerations for people with cognitive and mental health impairment, their families and carers that need to be taken into account in finalising the Bill?

Under section 65 (1) (e) – **in the case of the proposed release of a forensic patient subject to a limiting term, whether or not the patient has spent sufficient time in custody**. The Tribunal has to determine that the person has spent enough time in custody, before they can be conditionally released. MHCC agrees with the NSW LRC that the 'subject to a limiting term' should not be included as this significantly delays a person's discharge planning. It is in society's interest that discharge planning happens early and that people are safely housed and continue to be supported under conditional release orders, because that ensures a safer transition back into the community rather than simply discharging people at the end of their time.

Under section 66 (l) **Conditions that may be imposed by the Tribunal** – there is a new possibility where the tribunal can make orders requiring specific monitoring and compliance to be included in the conditions of release. Since there are a number of requirements that may be imposed when a person is released into the community, we propose these are adequate and that this section which is open to interpretation should be clarified.

MHCC express our willingness to be further consulted on any matters related to this Bill. We hope that this Bill with some small revisions will be approved and expect much improved outcomes for people with mental health and cognitive impairments diverted back into the community.

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



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