

24 June 2019



PO Box 668 Rozelle NSW 2039

T 02 9555 8388

F 02 9810 8145

E info@mhcc.com.au

W www.mhcc.org.au

ABN 59 279 168 647

Legal & Regulatory Services Branch
NSW Ministry of Health
Locked Bag 961
North Sydney NSW 2059

Attn: Gemma Broderick
Principal Legal Officer
E: NSWH-LegalMail@health.nsw.gov.au

Subject: NSW Mental Health Regulation 2019

The Mental Health Coordinating Council (MHCC) is the peak body representing mental health non-government community managed organisations (NGO/CMOs) in NSW. MHCC is also a founding member of Community Mental Health Australia (CMHA), the alliance of eight state and territory mental health peak bodies, which together represent more than 800 CMOs delivering mental health and related services nationally.

MHCC thanks the NSW Ministry of Health for giving us the opportunity to comment on the draft Mental Health Regulation.

- *Re 4 Examination by audio visual link*
For the purposes of sections 19A (3) and 27A (5) of the Act, if an audio visual link is being used at a mental health facility to enable a medical practitioner or accredited person to carry out an examination or observation under section 19 or 27A, the medical superintendent of that facility must take reasonable steps to ensure that:
 - (a) any interference with the dignity and privacy of the person being examined or observed is kept to the minimum necessary in the circumstances, and*
 - (b) the examination or observation is conducted when the person being examined or observed, and the medical practitioner or accredited person, are in a private area.*

MHCC propose that an additional subheading c) be included that: where reasonably practicable, the examination or observation of a person may be conducted with the inclusion of a carer, other support person and/or peer worker, if the subject person so requests.

This will necessitate the inclusion of a definition of support person and peer worker in the regulations.

- *Re 9 Orders that may be made on appeal in relation to community treatment orders*
On the hearing of an appeal under section 67 of the Act, the Tribunal may make an order revoking, varying or confirming the order the subject of the appeal.

Suggest including in the last sentence, the words which is – *the order which is the subject of the appeal.*

- *Re 12 Register of information relating to electro convulsive therapy*
The register to be kept under section 97 of the Act in relation to treatments by electro convulsive therapy must:
 - (a) be in writing and in a form that is readily available for inspection, and
 - (b) contain the information required or permitted to be set out by Form 6 in relation to each patient or other person undergoing the treatment.

MHCC would like to see more public information available about the use of ECT, subject to appropriate privacy and other conditions.

- *Re 13 Additional qualified persons*
For the purposes of section 129 (2) (c) of the Act, a person may be appointed as an official visitor if the person has any of the following qualifications:
 - (a) the person is a registered nurse

We suggest that clarification be added that explains that a registered nurse should be a mental health nurse or a nurse with experience and knowledge of the public mental health system.

We also recommend that other qualified mental health practitioners such as mental health and psychosocial support and rehabilitation workers and peer workers be considered as appropriately qualified persons. (These roles will also require definitions).

Re 14 Visits to mental health facilities

For the purposes of section 131(1) of the Act, 2 or more official visitors must visit a mental health facility as follows:

- (b) in the case of a mental health facility that is not also an emergency department in a hospital:
 - (i) if the facility treats patients on an in-patient basis only or on both an in-patient and out-patient basis—once a month, or
 - (ii) if the facility treats patients on an out-patient basis only—once every 6 months.

MHCC assume that subsection b) refers to visits to public Community Mental Health service settings.

- *Re 39 Term of nominations of designated carers*
For the purposes of section 72 (5) of the Act, a nomination of a designated carer remains in force for 12 months.

Carers and support persons may be unaware of this limitation, and the need to be renominated after this period. If this fact does not appear on the nomination form, we urge public mental health inpatient, outpatient and CMO/NGO services be alerted to this limitation and emphasise that Designated Carers will need to be renominated, and their attention specifically drawn to this fact when the forms are first signed.

- *Re 40 Information as to follow-up care after discharge*
Without limiting section 79 of the Act, the appropriate information as to the availability of follow-up care includes:
 - (a) a description of patient support groups and community care groups operating in the vicinity of the mental health facility, including a description of the services provided by the groups, and the method of contacting each group, and
 - (b) a description of any out-patient or other services available at the mental health facility that are available to the patient, and
 - (c) a description of the purpose and method of obtaining community treatment orders, and
 - (d) a description of other similar follow-up services available in the vicinity of the mental health facility.

MHCC acknowledges that this section does not apply to voluntary patients discharged back into the community, including those discharged without orders. However, when a voluntarily patient is discharged, carers would argue that they reasonably have a “need to know”, and it is best practice to inform both the patient and their Designated and Principal Care Providers where appropriate. We therefore suggest that a further clause (e) be included that similarly informs voluntary community outpatients and their carers of the follow-up services available to them.

- 66 *Revocation by director of community treatment (cf 1990 Act, s 149)*
 - (1) *The director of community treatment of a declared mental health facility implementing a treatment plan under a community treatment order may revoke a community treatment order if of the opinion that the affected person is not likely to benefit from a continuation of the order.*
 - (2) *Before revoking a community treatment order, the director must consult the affected person and, if it is reasonably practicable to do so, any designated carer and the principal care provider of the affected person (if the principal care provider is not a designated carer).*
 - (3) *The director must notify the Tribunal in writing if the director revokes a community treatment order or decides not to apply to the Tribunal for a further order.*

When a person is voluntarily treated as an inpatient or outpatient, some further clarification is necessary so that a Designated or Principal Care Provider understands the rights of the person with whom they have a role and the obligations of the treating team when a person is not, or is no longer under the Act.

For any questions in relation to this submission, please contact Corinne Henderson, Principal Advisor/ Policy & Legislative Reform at corinne@mhcc.org.au.



Carmel Tebbutt
CEO, Mental Health Coordinating Council