



The peak organisation representing the non-government mental health sector in Tasmania at a state and national level

Submission

A charter of human rights and responsibilities for Tasmania



The Mental Health Council of Tasmania has a vision for a vibrant and effective mental health sector in Tasmania.

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The Mental Health Council of Tasmania (MHCT) is the peak body representing the interests of consumer, carer and community mental health sector organisations, providing a public voice for people affected by mental illness and the organisations in the community sector that work with them.

The MHCT advocates for effective public policy on mental health for the benefit of the Tasmanian community as a whole and has a strong commitment to participating in processes that contribute to the effective provision of mental health services in Tasmania.

The MHCT welcomes the opportunity to comment on the document *“A charter of human rights and responsibilities for Tasmania”*.

The MHCT congratulates the Tasmanian Government on prioritising a charter of human rights and responsibilities for Tasmania. This charter provides a fantastic opportunity for the state government to demonstrate that it is not only progressive and socially aware, but also committed to the full participation of all Tasmanian citizens in social and economic life.

Tasmanians assume many aspects of society as a right. Even so, the MHCT believes the charter of human rights will strengthen this social contract by delivering a range of positive outcomes. The first and most important of these outcomes is universality; the charter will be available and applicable to every Tasmanian. The second key outcome is that the charter will also ensure that Government is more accountable, responsible and transparent in the way it performs its business functions. By providing means by which legislation can be subjected to intense formal human rights scrutiny, the charter mechanism reduces the likelihood that laws will be incompatible with basic human rights and thus has the potential to minimise harm and maximise civic good.

The MHCT endorses all the rights listed in the charter, including the proposed additional rights which include:

- A person has a freedom to work and right to just conditions of work
- A person has the right to have equal access to services that assist the person to achieve adequate food, clothing and housing
- A person has the right to have equal access to health services to assist the person to achieve a reasonable standard of physical and mental health
- A person has the right to education

- A person has the right to have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures
- A person living with a disability has the right to respect for his or her physical and mental integrity on an equal basis with others
- A person living with a disability has the right to exercise the full extent of their legal capacity in all aspects of life
- A person living with a disability has the right to live independently and to be involved in the community

In addition to these rights, we would like to see the following item: ‘a person has the right to have equal access to health services to assist the person to achieve a reasonable standard of physical and mental health’, strengthened by replacing the words *a reasonable*, with ‘an excellent’. If this recommendation is endorsed the item would read as follows:

- A person has the right to have equal access to health services to assist the person to achieve *an excellent* standard of physical and mental health

The additional rights outlined in the charter have important points of consonance with the *Fourth National Mental Health Plan*¹ and it is encouraging that the charter is not articulated in a philosophical and policy vacuum.

Priority area one of the *Fourth National Mental Health Plan* identifies social inclusion and recovery; ensuring people with mental health problems and mental illness have improved outcomes in relation to housing, employment, income and overall health and are valued and supported by their communities.

Priority area three of the Fourth National Mental Health Plan identifies service access, coordination and continuity of care. This will be achieved through improved access to appropriate care, continuity of care and reduced rates of relapse and re-presentation to mental health services.

Priority area five identifies accountability, with the aim of consumers and carers having access to information about the performance of services responsible for their care across the range of health quality domains.

The MHCT notes Social Inclusion Commissioner David Adams’ *Social Inclusion Strategy for Tasmania*² which also links closely with the identified additional rights.

¹ Commonwealth of Australia, *Fourth National Mental Health Plan, 2009-2014*

² Adams, D. 2009. A social inclusion strategy for Tasmania. Available here: http://www.dpac.tas.gov.au/_data/assets/pdf_file/0005/109616/Social_INclusion_Strategy_Report.pdf

The *Tasmania Together*³ standards also support the additional rights as outlined in the charter:

- Standard 9.1 “Increase the number of secure, flexible and well-paid jobs” is linked to “a person has a freedom to work and a right to just conditions of work”. Work is a vital part of achieving full social inclusion for people with a lived experience of mental illness. If the right to work is enshrined in a charter, people with a lived experience of mental illness who have been excluded from work for extended periods may well feel more optimistic about their chances of securing employment in the future.
- Standard 4.4 “Improve the health and wellbeing of the Tasmanian community through the delivery of coordinated and timely services” is linked to “a person has the right to have equal access to health services to assist the person to achieve a reasonable standard of physical and mental health. Inpatients in care for mental health issues often have trouble securing appropriate physical health care during their stays in hospital and during the recovery process. We are encouraged by the proposal to enshrine the right to appropriate physical *and* mental health care for all Tasmanians.
- Standard 3.3 “Access to and participation in life-long learning that is responsive to individual and community needs” is linked to “a person has the right to education”.
- Standard 5.6 “Foster an inclusive society that acknowledges and respects our multicultural heritage, values diversity and treats everyone with compassion and respect” is linked to “a person living with a disability has the right to respect for his or her physical and mental integrity on an equal basis with others”.
- Standard 8.1 “Provide an opportunity for all Tasmanians to participate in decisions that affect their lives” is linked to “a person living with a disability has the right to exercise the full extent of their legal capacity in all aspects of life.”
- Standard 5.1 “Tasmania has inclusive and supportive communities” links to “a person living with disability has the right to live independently and to be involved in the community”.

The common focus of these important policy and planning documents shows how timely the human rights proposal for Tasmania is. As long as it conforms to the model detailed in the Directions Paper, the charter for human rights in Tasmania has great potential to respond to and realise some of the key goals of *Tasmania*

³ Source: www.tasmaniatogether.com.au

Together, the *Fourth National Mental Health Plan* and the *Social Inclusion Strategy* by enabling all Tasmanians to reach their optimal capacity and participate in a full and vibrant life.

The additional rights as outlined will act as an advocacy tool for Tasmanians. In order for this tool to be effective, community advocate positions need to be resourced appropriately. This is an important step towards full protection of individual rights, through giving people the opportunity to assert their rights.

The MHCT sees the charter as implementing significant cultural change. At a service provision level, all State Government funded service providers will have to examine their work practice to ensure they are not breaching individual's rights. This not only ensures a continuous improvement environment, but also safeguards a focus on consumers, carers and families. The MHCT urges the Tasmanian Government to progress towards the inclusion of private sector organisations in this arrangement.

The proposed charter of human rights mirrors the MHCT's vision of "A vibrant and effective community mental health sector in Tasmania". We will achieve this by contributing to a community based on human rights principles in which mental health and wellbeing are supported. The beliefs which underpin the MHCT's work include:

- Every person has the right to achieve their full potential and be able to participate meaningfully in their community
- The collective efforts of individuals and organisations working together to improve mental health across the whole of community are more effective than isolated efforts
- All people have the right to make decisions about their health and wellbeing
- Recovery of mental health is possible. This is assisted by a positive recovery-focussed approach by all those involved
- Effective public policy and its implementation will foster pathways to social inclusion for those living with mental illness

The MHCT supports the establishment of a Human Rights Advisory Council comprising independent membership, whose role would be to advise parliament on proposed legislation. This would ensure that all proposed legislation would be scrutinised against the charter of human rights to ensure it does not breach any of the named rights.

The MHCT also endorses the establishment of a Human Rights Commission and agrees with the proposed functions outlined in section 8.2.1.1 pp 42 of the document. The MHCT would ask government to adequately resource the Commission to ensure it can perform all of its duties.

From a consumer perspective, human rights often come into play in debates and discussions around treatment and hospitalisation. It could be argued that involuntary patients in mental health settings on continuing care orders for example, might find themselves in a situation where their proposed 'right to liberty' is infringed. The Mental Health Act (currently under review) articulates the means by which this liberty can be suspended, normally in situations where a patient is a potential harm to themselves or others. Even if the legal framework surrounding the retention of patients in in-patient care is deemed to be legally and morally acceptable, the fact remains that human rights discourse continues to provide content for remonstrations, resistance and resentment amongst patients in in-patient settings. Our misgivings in this regard also extend to the proposed rights to 'privacy and reputation', 'freedom of movement', 'freedom of expression' and 'the right not to be deprived of property except on fair and just terms'.

A second right that might be seen to be incompatible with current medical practice in Tasmania is the right 'to humane treatment when detained'. In its current form, the Mental Health Act sets out a mechanism whereby patients can and cannot refuse medication prescribed to them by a psychiatrist. The details of this mechanism are not at issue here, but rather, the hard fact that in certain circumstances, patients can be 'forced' to take medication that they do not want to take.

These concerns have another dimension when we consider whether the proposed charter will bind organisations that operate within the private sector. Patients with lived experience of mental illness who are seeing private psychiatrists or are in-patients in private hospitals may not be protected by the charter. It seems possible too that they might not have the right to appeal to an independent Human Rights Commissioner for human rights if they think their rights have been breached in a private sector setting.

Of course, all of these potential incompatibilities are immaterial when the object of our concern is the *current* legislative framework that persists in Tasmania. We understand that incompatibilities between primary legislation and the human rights charter will not annul or disqualify the primary legislation. The proper and historical function of government as overriding the kind of human rights charter being proposed is shown here to be problematic in instances when an act infringes or violates a basic human right. We are not asking, however, that the charter be vested with greater authority. We merely wish to note that, for the reasons we have spelled out, mental health policy and treatment protocols are contested fields when considered from a human rights perspective.

In any case, we are pleased that the new Mental Health Act is set to be subjected to the more rigorous human rights scrutiny outlined in the charter document. A detailed statement of compatibility that focuses on the human rights implications of the act will be of real value in identifying areas of policy and practice that could be

reviewed and revised to bring them in line with international human rights good practise, even if it cannot *stop* Parliament from enacting the legislation at issue.

In conclusion the MHCT believes this to be an exciting opportunity for the Tasmanian Government to lead the way in progressive legislation with '*A charter of human rights and responsibilities for Tasmania*'.