



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

## **Response**

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### **Safety and Quality Unit of the Department of Health and Human Services**

### **Consultation on the Draft Clinical Consent Policy**

**November 2011**



**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 appreciates the opportunity to respond to the *Consultation on the Draft Clinical Consent Policy* compiled by the Safety and Quality Unit of the Department of Health and Human Services (DHHS).

Overall the MHCT commends the document as it vital that service users and service providers of clinical services within DHHS are aware of processes associated with obtaining consent to treatment.

The MHCT would like to make specific comment on several aspects of the document.

Throughout the document the term 'patient/client' is used. The MHCT would suggest changing this term to say 'person'. This aligns with contemporary practice.

On page 4 of the document it outlines the **Principles**. The MHCT notes these principles align with the Tasmanian Homelessness Charter 2011, and suggests DHHS cross reference this document with the Charter.

The MHCT would like to draw DHHS' attention to **principle 5** on page 4 of the document, which reads:

*"Consent should be sought directly from the person to receive the proposed healthcare, whenever possible, or through substitute decision-makers such as the 'person responsible' or the Guardianship and Administration Board."*

The MHCT suggests that the term 'Guardianship and Administration Board' needs to be replaced with 'Mental Health Tribunal' to align with the proposed Tasmania's Mental Health Act 2011.

On pages 4 and 5 of the document it refers to obtaining written consent on a standard proforma and a copy placed in the person's clinical file. The MHCT would like to see included "a copy of the completed form also be given to the individual."

On page 6 of the document it outlines the **Requirements for valid consent**, which reads:

*"An individual may be judged to have the required capacity to make a healthcare intervention decision if he or she has:*

- *the capacity to understand and retain relevant information*
- *the ability to consider the relevant information*
- *the ability to reflect and make a judgement based on personal values and the situation*
- *the consent has not been withdrawn*
- *the capacity to freely communicate a decision."*

The MHCT recommends this document needs to align with the proposed Tasmania's Mental Health Act 2011. This can be located in Part 1, Division 2, Section 7 – Meaning of “informed consent” to assessment and treatment.

On page 6 the document sites examples of people not being competent to make decisions/give consent. One of these examples may include persons currently affected by a mental illness. The MHCT disputes this example as it implies that if a person has a mental illness they are not able to make an informed decision regarding their health care. This is an example of discrimination/stigma for people living with a mental illness.

On page 7 the document outlines the **information that should be given to people**. It currently states:

*“The information must be in terms that the person can understand.”*

The MHCT would like to see this sentence expanded to read:

*“The information must be in terms **and language** that the person can understand”.*

On pages 8 and 9 of the document it outlines **how a person can be informed about material risks**. The last dot point in this section states:

*“Wherever possible full information should be provided – the provision of less information may be justified for immediately life threatening or urgent interventions rather than for interventions that can be delayed.”*

The MHCT believes the term ‘urgent interventions’ is subjective, thus the MHCT recommends the document needs to provide examples of urgent interventions. This will guide the health professionals using this policy and protect the public being subjected to this policy.

In the section outlining the **provision of information to people where communication is difficult** the document mentions delivering the information via the media. The MHCT recommends the document needs to expand on what type of media, and how this would occur. Some examples would be required to demonstrate this example.

On page 9 the document outlines the **role of the interpreter**. It currently states:

*“If an interpreter is required.....”*

The MHCT recommends this be changed to read:

*“**When** an interpreter is required.....”*

Page 10 of the document outlines the **pre-preparation information given to people**. It states:

*“Regular review of any information sheets used to assist the consent process must be undertaken to ensure that they are up to date, accurate, clear and concise and relevant to the persons’ needs.”*

The MHCT endorses this important feature, however questions who is responsible for these tasks. The MHCT recommends the section needs expansion to outline who is responsible for this area.

On page 21 **Appendix 2** outlines the **consent under the Mental Health Act 1996**. The MHCT recommends this will need to be updated to align with the proposed Mental Health Act 2011.

The MHCT congratulates the Safety and Quality Unit of DHHS on the *Draft Clinical Consent Policy* and looks forward to the release of the policy.