Queensland Mental Health Commission

Submission to the Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee

Inquiry into the performance of the Queensland Health Ombudsman's functions pursuant to section 179 of the *Health Ombudsman Act 2013*

The Queensland Mental Health Commission (the Commission) is pleased to make a submission to the Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee in relation to this Inquiry. This submission relates to the issue being considered by the Committee '*ways in which the health service complaints management system might be improved*' particularly from the point of view of people with mental health problems[1] and/or mental illness[2], their families and/or carers.

The Commission was established to drive ongoing reform towards a more integrated, evidence-based, recovery-oriented mental health and substance misuse system. Importantly, the Commission brings together personal experience and professional expertise with community, government and industry across a range of areas. The Queensland Mental Health and Drug Advisory Council also provides advice to the Commission and a number of members have provided input to this submission.

Through these partnerships the Commission seeks to find solutions and guide action to improve the systems and services that support Queenslanders at risk of, or affected by, mental illness or problematic alcohol and other drug use, and that of their families, carers and support persons.

While the Commission does not have a formal role in individual complaints or concerns about services it does hear from consumers of mental health services, people impacted by suicide and clients of alcohol and other drug services, and their families and carers about their experience of complaints handling. The Commission will refer people to an appropriate agency; however, these interactions are important in terms of developing an understanding of the lived experience of mental health service provision. The Commission acknowledges that the careful analysis of complaints is one important avenue available for identifying systemic issues within the mental health sector, which is important in supporting the Commission to advocate for systemic improvements.

The types of issues that the Commission hears about in relation to making a complaint include:

- not knowing how to make a complaint
- confusion and frustration associated with the number of agencies with different roles and responsibilities in relation to complaints
- the length of time complaints handling can take.

[1] Mental health problems are defined as a disruption in the interaction between the individual, the group and the environment, producing a diminished state of mental health. (National Mental Health Standards 2010)

[2] Mental illness is defined as a clinically diagnosable disorder that significantly interferes with an individual's cognitive, emotional or social abilities. (National Mental Health Standards 2010)

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The Commission recognises that these issues are unlikely to be unique and that any person experiencing ill health, their families and/or carers may experience difficulty in making a complaint about a health service. We also recognise that not all these matters are in the control of the Health Ombudsman but in the broader complaints management process.

Given that mental health comprises approximately 10 per cent of the health budget, the Commission uses a rule of thumb that if mental health consumers are equally likely to complain, then this should comprise approximately 10 per cent of total complaints received by the Health Ombudsman.

The 2014/15 Annual Report (p91) of the Office of the Health Ombudsman identifies 61 of 1198 (i.e. five per cent) complaints that completed the assessment process related to mental health services. Of these, 23 related to professional performance and 10 to communication and information.

A report by the former Health Quality and Complaints Commission (HQCC) in 2013, based on 681 complaints received about mental health services over the period 2009-2012, found that[3]:

- they account for only four per cent of all health complaints received by the HQCC
- 58 per cent related to services provided in the public sector and 40 per cent in the private sector
- one in ten were rated as having a major or serious impact
- in six per cent suicide or attempted suicide was the patient outcome reported by the complainant
- 21 per cent were about information and communication.

In complaints about communication and information, concerns related to the healthcare provider's attitude and manner, which was perceived as being rude, discourteous, negative, insensitive, patronising or overbearing, as well as there being a lack of information, including for families and carers.

From both the reports received by the Commission, and reports of community consultation in Victoria and Western Australia, the following issues were raised in relation to these difficulties:

- a power imbalance between consumers, families and carers and the mental health care service/service providers
- a feeling that the service providers/complaint agencies perceived their credibility was reduced due to a diagnosis of mental illness
- disempowerment caused by a person's current situation (e.g. receiving treatment in an inpatient setting, receiving involuntary treatment)
- the fear or threat of retribution (e.g. being placed on an involuntary treatment order if a complainant is considered 'difficult'; having privileges taken away such as leave, contact with family and friends)
- the potential withdrawal of what limited services are available, especially in rural and remote areas.

Lodging a complaint about a mental health service can be more complex because of the additional bodies involved due to the interaction with the provisions of the Mental Health Act 2000. In addition to the standard health complaints processes, the Chief Psychiatrist, the Mental Health Review Tribunal or the Mental Health Court may have a role. The Community Visitors established under the Public Guardian Act 2014 also have a role in assisting people to make a complaint. A particular complexity for a number of individuals who have contacted the Commission is the different roles of the Health Ombudsman, the Queensland Ombudsman, and the Mental Health Court for people who are unhappy with the proceedings of the Mental Health Review Tribunal. With the rollout of the National Disability Insurance Scheme, which will have an impact on many people living with a mental illness, there will also

[3] A report by the former health Quality and Complaints Commission available at https://www.qmhc.qld.gov.au/wp-content/uploads/2014/02/Report-mental-health-PUBLICATION-22-January-FINAL.pdf

be a separate complaints process managed in the first instance by the National Disability Insurance Agency and escalated through the Commonwealth Ombudsman.

For example, the Commission has heard from someone whose complaint involves:

> *Five private health service providers, two public authorised mental health services, the Queensland Ambulance Services, the Chief Psychiatrist, the Mental Health Review Tribunal, the Queensland Police Service, and the Mental Health Court. Resolution of the complaint involves the Health Ombudsman, the Queensland Ombudsman and the Australian Health Practitioners Agency.*

In such a situation, the Commission supports the statement in the Western Australian Mental Health Complaints Partnership Agreement that when complex complaints involve multiple government agencies, a mechanism must be established to identify a lead agency and a resolution process[4].

In recognition of these issues, on 21 March 2016 the Commission held a forum to examine the 'virtue of complaint' (that is, seeing complaints as an opportunity for service improvement), to demystify Queensland's complaint system and explore how existing mechanisms to make a complaint can be made more accessible for Queensland consumers, clients, families and carers.

To assist consumers, families and carers to understand the complaints process the Commission provides easy-to-access information on its website about making a complaint and lists the organisations involved in complaint management and their individual roles and responsibilities[5 and 6] . The Commission has also developed a wallet card that organisations can use to provide advice to consumers, families and carers in relation to making a complaint (See Figure 1).

Figure 1 – Wallet Card – ***Be heard: making a complaint about mental health, alcohol and other drugs services in Queensland***

The wallet card has been distributed to Hospital and Health Services, Primary Health Networks, and a range of organisations across Queensland that may support people with a mental problem or illness, their families and carers to make complaints. In addition to those distributed initially, a further 850 have been distributed on request.

While the Commission has undertaken this work, we firmly believe that mental health service providers and complaint management and review agencies are responsible for ensuring that information on how to express a complaint or concern and how they are managed is available. This information must be easily accessed and understood irrespective of the circumstances under which the complaint is being made (for example if the complainant is receiving treatment as an inpatient or in the community) or by whom (consumer, family or carer).

From time to time people will contact the Commission with concerns about access to or the nature of treatment for mental illness and we are able to direct them to the public health system through the

[4] More information on the principles outlined in this agreement can be found at https://www.collaborateandlearn.hadsco.wa.gov.au/cal/MHPA/Shared%20Documents/Mental%20Health%20Complaints%20Partnership%20Agreement_web.pdf

[5] https://www.qmhc.qld.gov.au/work/effective-governance/system-complaints/making-complaint-service/

[6] https://www.qmhc.qld.gov.au/work/effective-governance/system-complaints/complaint-handling-agencies-support/

Office of the Chief Psychiatrist, who can access patient records and liaise with the appropriate service provider where necessary. Better accessibility to the Office of the Chief Psychiatrist through the Queensland Health website may provide a more direct route to assistance. The Chief Psychiatrist Fact Sheet[7] does not include any contact details; however, they are on the Commission's website.

It is well accepted that the easiest and quickest way to resolve a problem is to have the complainant/s talk directly to the relevant service. While the Commission recognises that health services, particularly public hospital and health services, have formal complaints systems and patient liaison officers who can assist people with the complaints process, the 'independence' of these systems and staff can be seen to be compromised by their being part of or employed by the service that the complaint is about.

The following example relayed to the Commission indicates the need for complaint mechanisms that are sufficient for ensuring a complaint is being actioned and that processes are appropriate for the differing circumstances of complainants. In this example:

> *The person was on a locked ward of an authorised mental health facility and did not have access to their personal mobile phone and there was no other access to the internet to enable an on-line complaint to be made. Instead this person was provided with a form to fill in which was to be provided to the head nurse. This form reportedly had no provision for the person to provide contact details and the person was not provided with evidence that the complaint was acknowledged or actioned. While the person liaised with two community visitors they were unable to assist in resolving the complaint. When this person was granted leave, a complaint was lodged on line to which feedback was received immediately and the complaint was subsequently resolved.*

The Commission notes that under the *Mental Health Act 2016* (MHA 2016), which has been passed but not enacted, there are two changes that hopefully would have enabled a different response to the example provided above.

The first change involves the establishment of Independent Patient Rights Advisors (IPRAs). The IPRAs will support communication between consumers, families and carers and other support persons with health practitioners and other members of public mental health services. The Commission expects that these positions will support, in the first instance, the raising of issues so resolution could be sought without resorting to a formal complaint submission. Where this was not possible the Commission expects the IPRAs to support access to the mechanisms to make a complaint (e.g. information on making a compliant, contact telephone numbers, forms), especially where the complainant is a person receiving in-patient treatment.

In our discussions about the implementation of the MHA 2016, the Commission continues to assert the importance of the IPRAs liaising with Community Visitors.

Importantly, the IPRAs will need to be empowered to and capable of appropriately supporting people from culturally and linguistically diverse backgrounds and Aboriginal people and Torres Strait Islanders who may have limited language, literacy, understanding of the health system and other cultural or historical experiences that impact on their ability to effectively engage with service providers and complaint agencies. This would demonstrate the support of publicly funded mental health services in Queensland to the fourth requirement under the Multicultural Queensland Charter, enacted under the *Multicultural Recognition Act 2016,* which states 'equal rights and responsibilities under the law and

[7] https://www.health.qld.gov.au/publications/clinical-practice/guidelines-procedures/clinical-staff/mental-health/act/implementation/chief-psychiatrist-fact.pdf

equitable access to the services provided or funded by the Government for all people of Queensland helps build a fair community'.

While the Commission notes the intent of the IPRAs to act independently and impartially, the Commission believes that implementation of the scheme will need to be carefully monitored to ensure their independence is achieved and maintained. It is also noted that IPRAs will relate only to the public mental health service providers. We note and commend that interest among health providers in accessing the IPRAs from a non-government provider as opposed to direct employment is currently being canvassed by Queensland Health. Irrespective of the actual mechanism used the Commission hopes that all mental health services will invest appropriate time and resources to ensure that consumers, families, carers and other support persons understand their rights and have the issues they raise responded to in a respectful, open and timely manner.

The second change under the MHA 2016 argued for by the Commission that may reduce barriers to inpatients making timely complaints about mental health services is better access, subject to certain circumstances, to mobile telephones and electronic communication devices. While not necessarily the intent of this change, it will enable better access to online complaint systems, therefore overcoming the barrier of a person who is currently an inpatient of a mental health service and therefore under current policy on a locked ward having to directly approach a member of the treatment team to raise a complaint (see the MHA 2016 Part 3 – Rights of Patients Clause 284 (c)).

As outlined above the Commission hears that the length of time taken to get an adequate response to a complaint is problematic. It is understood by the Commission that the length of time it takes to achieve a complaint resolution is compounded when the complaint raised directly with a service does not achieve the desired response and the complainant then involves one or more complaints agencies, all of which will then have their own processes, competing priorities, demands and limitations that impact on the timely manner in which they handle and resolve a complaint. The Commission strongly encourages all stakeholders in complaints processes to be open and transparent about timeframes and factors that will impede progress, and provide appropriately timed updates on the consideration of a person's complaint.

Both Victoria and Western Australia have taken steps to improve complaints management for people with mental health issues. Victoria established a dedicated Mental Health Complaints Commission (MHCC) on 1 July 2014. Western Australia has extended the role of the Health and Disability Services Complaints Office (HaDSCO) in managing and resolving mental health services complaints.

The Commission supports an approach which strengthens the focus on the particular needs of the consumers with mental health issues/illnesses and their families and/or carers. However, to separate the functions in line with the Victorian model runs the risk of reinforcing the gap that already exists in addressing the mental, physical and oral health issues of individuals in a more integrated way.

A stronger focus could be incorporated into the Office of the Health Ombudsman of Queensland. However, the learnings from other jurisdictions indicate that appropriate resourcing is necessary to address what are often very complex matters from very vulnerable people.

Regardless of the model much can be learnt from the Victorian experience, which Ms Lynne Coulson Barr, the Mental Health Complaints Commissioner in Victoria, summarised at the Virtue of Complaints Forum[8]. Feedback from community consultation in Victoria recommended that the MHCC's complaints processes needed to be:

- accessible
- supportive

[8] A recording of the Virtue of Complaint forum can be found on the Queensland Mental Health's Commission's website.

- responsive
- timely.

This feedback also suggested that the MHCC should support early direct resolution with services where possible, have powers to address breaches of rights and be proactive about service and system improvements. In resolving complaints community members were looking for acknowledgement (of their issues); answers (to their questions); action (from the services so the issues would be unlikely to reoccur); and an apology (for what has occurred).

Commissioner Coulson Barr noted that the MHCC also recognised that its complaints resolution processes approach needed to support people's recovery, minimise risk of mental health deterioration or mental illness relapse, and lead to service improvement. Commissioner Coulson Barr also stated that the MHCC, while protecting the application of the rights and principles under the Victorian *Mental Health Act (2014)*, also has a role in education and engagement to ensure that Victorian public mental health services develop accessible and responsive resolution approaches to deal with people's concerns and complaints.

In expanding the role of the Western Australian HaDSCO into mental health complaints an exploration of consumer, carer and family perspectives of making complaints in relation to mental health identified the need for:

- respectful engagement with consumers and carers, families and advocates who make complaints
- timely and responsive engagement with complainants
- transparency and accountability in complaints management processes
- clarity around the roles and responsibilities of different agencies in managing mental health complaints[9].

Because not all complaints are received by a Health Ombudsman and not all people with a complaint come forward, it is difficult to know if the known complaints:

- truly reflect consumer, family and carer experience of mental health services
- can identify and support the resolution of continuing systemic issues within mental health services.

According to the OECD Best Practice Principles for the Governance of Regulators, bodies such as the Office of the Health Ombudsman are generally accountable to parliament, regulated entities and the public. Good regulators would be expected to have mechanisms for engagement with stakeholders and as such, it may be appropriate for the Office to embed specific engagement mechanisms with people with mental health issues as it matures as an organisation, to ensure it understands the types of issues they are having with mental health services.

As implementation of the MHA 2016 progresses, the Commission supports the continued and expanded efforts by the mental health services sector and complaints agencies to conduct further research into current complaints recording and analysis mechanisms to support continuous improvements in both the complaints mechanisms and in service delivery itself. The Minister for Health has made a commitment to review the effectiveness of the oversight provisions in the MHA 2016 after two years. This provides an opportunity to review both the legislative as well as administrative frameworks in which complaints specifically about mental health are managed. The Commission intends to commence research in the coming year to ensure informed input from people with professional expertise and lived experience to this review.

[9] See *Making a Mental Health Complaint: A consumer, carer and family perspective*, Health and Disability Service Complaints Office available at www.collaborateandlearn.hadsco.wa.gov.au/cal/Shared%20Documents/MH_Consumer_Forum_Report.pdf.

The physical environment in mental health wards is a further area of concern about mental health facilities that is raised from time to time with the Commission. Noting that many people with mental illness may be in-patients for extended periods of time, this can be a major concern to their wellbeing. In the Commission's report *Moving Towards a More Recovery Oriented Least Restrictive Approach*[10] it was noted that reducing the custodial feel of mental health wards is one strategy that promotes recovery and reduces stigma. Indeed the Commission has been able to influence the decision of a Hospital and Health Service to install 'prison standard' toilets in a mental health ward in response to concerns raised by a consumer consultant that the proposal was stigmatising. While the Commission does not have authority about hospital environments, the cooperation of the Chief Executive in changing the specifications is appreciated. Concerns such as this are outside the province of the Health Ombudsman and are indicative of the broader nature of concerns and complaints that arise in the mental health environment.

Finally, the Commission notes that the all Queensland Hospital and Health Services have agreed to participate in the forthcoming "Your Experience of Service" (YES) survey that is designed to gather information from consumers about their experiences of care. Responses to the question "You believe that you would receive fair treatment if you made a complaint" will be useful to inform the ongoing development of consumer friendly complaints mechanisms that take into account individual perceptions of the existing opportunities to lodge a complaint. Interstate comparisons will be possible.

In summary, the Commission recommends that:

- mental health services have open and clear lines of communication that enable consumers, families and/or carers to raise issues about their mental health service experience
- mental health services continue to develop their ability and responsiveness to the issues that consumers, families and carers raise in relation to service provision
- there is clear information about a mental health service's internal complaints processes and mechanisms which is easily accessible regardless of a person's circumstances, taking into account the current situation where people in in-patient facilities will generally be in locked wards with limited or no access to on-line facilities to lodge complaints
- mental health services invest appropriate time and resources to respond in a respectful, open and timely manner to complaints
- there is clear and easily available information about the role and responsibility of different complaints agencies, including how they manage and respond to complaints
- complaints agencies support ongoing education to inform and support consumers, families and carers in making complaints, complaint handing, outcomes and expectation management
- complaints agencies work with the mental health service sector to ensure that there is clear understanding of the value that can be obtained from complaints in the pursuit of continuous improvement in service delivery
- there is appropriate investment in the Office of the Health Ombudsman to ensure appropriate support for people with concerns about mental health services in relation to complaints management
- consideration is given to the development of a mental health complaints partnership agreement between major public entities (e.g. Office of the Health Ombudsman, Department of Health, Public Guardian, and the Queensland Mental Health Commission) similar to that developed in Western Australia.

The Commission thanks the Committee for the opportunity to provide a submission to this Inquiry and looks forward to its final report.

[10] https://www.qmhc.qld.gov.au/work/research/least-restrictive-practice/