

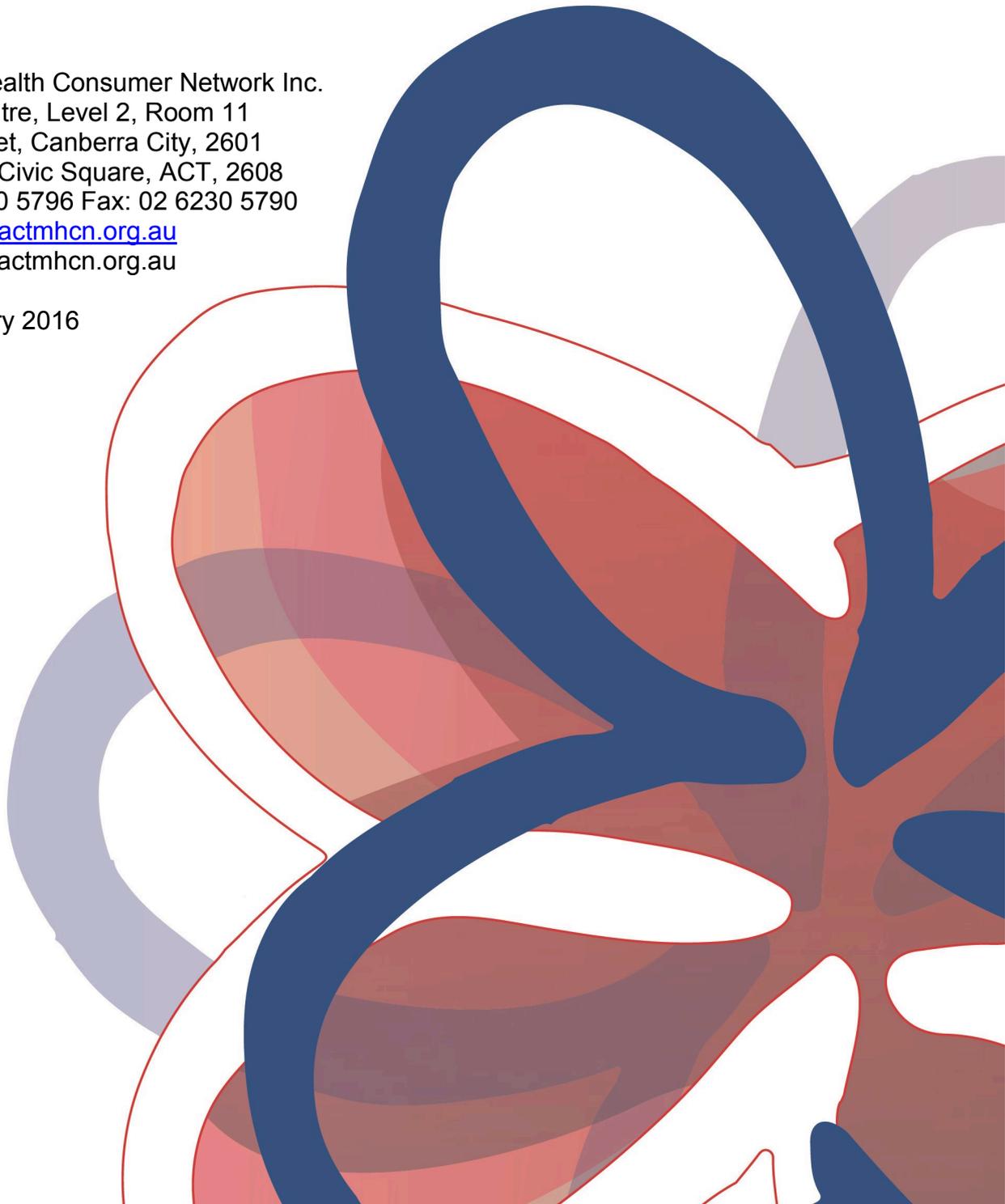
ACT
Mental Health
Consumer Network

Response to the Inquiry into the Mental Health (Facilities) Bill 2016

Submitted via email to: jon.ord@act.gov.au

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Response to the Inquiry into the Mental Health (Facilities) Bill 2016

This submission has been prepared by the ACT Mental Health Consumer Network in response to the *Mental Health (Facilities) Bill 2016* Exposure Draft prepared by Parliamentary Counsel's Office.

The ACT Mental Health Consumer Network is a consumer-led peak organisation representing the interests of mental health consumers in the ACT in policy and decision-making forums. The Network is committed to social justice and the inclusion of people with experience of mental illness. Run by consumers for consumers, our aim is to advocate for services and supports for mental health consumers which better enable them to live fuller, healthier and more valued lives in the community.

The Network hosted a forum for members to discuss the *Mental Health (Facilities) Bill 2016* Exposure Draft; the comments below are drawn from the forum and from previous consultations.

General comments

The Network is very concerned that legislation has been drafted to apply to all mental health facilities, but not other health facilities. We accept that legislation is required to govern the operation of the Secure Mental Health Unit (SMHU), particularly in relation to consumers who are in that facility because of their contact with the criminal justice system. However, we do not accept that all mental health facilities require legislation that is not required for other health facilities.

We note that there are beneficial provisions proposed. We support the inclusion of a provision regarding rights to health care and timely treatment, Section 72, however it is both curious and troubling that healthcare is relegated to the last section under 'Miscellaneous'. We suggest, though, that a general provision to this effect would be better contained in the *Mental Health Act 2015* (ACT).

We are very concerned that the proposed legislation would provide powers in relation to all mental health facilities, to:

- limit visitors;
- search visitors and their possessions;
- search consumers, including by using force;
- prevent a consumer from contacting people outside the facility;
- open, search and prevent delivery of correspondence and packages to the consumer; and
- prevent 'contraband' entering the facility, without expressly providing an exhaustive statement of what constitutes 'contraband'.

The Network believes that the Exposure Draft is inherently discriminatory and takes an unnecessarily restrictive and punitive approach to mental health facilities. If these powers are necessary for the safety and good order of mental health facilities, then they are also necessary for the safety and good order of all health facilities.

The Exposure Draft is also highly stigmatising. It would provide a legislative basis for a start point of assuming that mental health consumers, and their families and friends, are dangerous, dishonest and must be regulated, whereas other patients in health facilities, and their families and friends, are apparently trustworthy.

Any provisions that relate to the care and treatment of mental health consumers, including provisions relating to the operation of health facilities, should refer to the Objects and Principles set out in the *Mental Health Act 2015* (ACT).

We are also concerned that having these directions only for mental health facilities would make it difficult to rely on common law powers for the same actions in other health facilities. The power to prevent contraband, for example, is important for the good order and safety of all health facilities, and it would be an unfortunate result if the fact of providing legislative power in one area simply highlights the risk of relying on common law powers in another area.

Specific comments:

Part 2 section 9(1): As written, implies the legislation would authorise the Director-General to publish any directions for any individual facility, without limitation. There should be a range of limitations on this power.

Section 35: The reason for requiring visitors to mental health facilities, but not other health facilities, to subject themselves to searches suggests that only visitors to mental health facilities pose a risk to those at approved mental health facilities and/or may disrupt the good order at the facility. This appears to discriminate against individuals on the basis of the disability of the person they are visiting.

Similarly, it appears that contraband objects, such as weapons and drugs, would be prohibited in a mental health facility, but not prohibited in any other health facility.

The Network is also concerned that involuntary searches would be carried out by an authorised health practitioner who might be part of the treating team. We are concerned that this would destroy the therapeutic relationship between the member of the treating team and the consumer. We argue that the treating team should take all reasonable steps to have the consumer agree to have their bag/other item searched by the member of the treating team but that involuntary searches should be completed by security staff so that the treating team can remain in a therapeutic role throughout and following. 'All reasonable steps' should include, for example, the treating team/nurse making clear that if the consumer does not consent to having the item searched security will be brought in to search it against their wishes.

The Bill proposes limiting the number of visitors a mental health consumer can have (Section 26 (2)(a)) but the same limits do not apply to health consumers in other health facilities. We accept that there might be a place for limiting the number of visitors to the secure mental health facility but we do not accept that other approved mental health facilities should have limitations that do not apply to other health facilities.

The original paper, for the Roundtable on 26 November 2014, indicated that the background

to the development of legislation was advice received from the Government Solicitor's Office that it would be dangerous to rely on common law powers to support the operation of the SMHU. We do not know whether advice has been sought on whether powers such as those proposed could be legislated solely for mental health facilities in a way that complies with the right to equality, ACT discrimination legislation and the *Disability Discrimination Act 1992* (Cth). It appears to us that enacting a strict and fairly punitive regime for mental health facilities, but not legislating for other health facilities, risks a finding that the legislation is discriminating on the ground of disability and therefore overridden by the *Disability Discrimination Act 1992* (Cth).

In conclusion, our members strongly feel that having this legislation only for mental health facilities is stigmatising and highly discriminatory - we recognise that legislation is needed for the secure unit, however; the Network recommends that instead of the drafted legislation being a Mental Health (Facilities) Bill, that has special provisions for the Secure Mental Health unit, it should be a *Health* (Facilities) Bill that has special provisions for the secure unit.