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Tasmanian national preventive mechanism

Via email: enquiries@npm.tas.gov.au

Mental Health Council of Tasmania (MHCT)

Response to Consultation Paper 1 - Approach to Optional Protocol to the Convention against Torture (OPCAT) Article 4: identifying places of detention

MHCT welcomes the opportunity to provide a response to the Tasmanian National Preventative Mechanism's (NPM) consultation paper 1 – Approach to OPCAT Article 4: identifying places of detention.

MHCT would like to emphasise the importance of identifying people with mental ill-health as a particularly vulnerable cohort within detention settings. Evidence demonstrates that people in places of detention have poorer mental health than the general population.¹ Rates of mental illness (including alcohol and other drug use) amongst Australian prison entrants, for example, is almost double the rate of the general population.²

Maintaining the dignity and rights of people with mental illness is observed in both the Convention on the Rights of People with Disability (CRPD)³ and the current Mental Health Act, Tasmania (2013).⁴ The Mental Health Act stipulates a schedule of mental health service delivery principles which provide a basis of treatment for people with mental illness. The first principle being, 'to respect, observe and promote the inherent rights, liberty, dignity, autonomy, and self-respect of persons with mental illnesses'. The CRPD fundamentally promotes and protects the human rights of all persons with a disability, including individuals with a mental illness. These principles should apply to all Tasmanians with mental ill health, including those in detention.

Research suggests that people with mental illness have poorer outcomes in detention settings than their counterparts without mental illness. Within prisons, they are more likely to be at risk of suicide and self-harm, to be physically and sexually victimised, and to be disciplined using segregation techniques.⁵

- ▷ **MHCT recommends that the NPM identifies people with mental ill-health as a vulnerable group and prioritises investigating their treatment across all detention settings.**

Certain cohorts are more likely to experience stigma and/or discrimination within detention settings, impacting on their treatment and ultimately their health and wellbeing. These populations include women, Tasmanian Aboriginal people, culturally and linguistically diverse (CALD) people and LGBTIQ+ people.^{6,7} For example, the loss of access to culturally safe care for Tasmanian Aboriginal people upon entering prison can have a significant negative impact on their physical and mental health.⁸

- ▷ **MHCT recommends that the NPM identifies cohorts across all detention settings that are particularly vulnerable to stigma and discrimination and prioritises investigating treatment of these cohorts.**

All Tasmanians, including those in detention, have the right to access adequate mental health assessment and treatment supports and services, free from stigma or discrimination.

Within prisons, the 'equivalence of care' principle requires that prisoners have access to the equivalent quality of care as that received by the general Australian community. However, evidence suggests that most prisoners have limited access to mental health supports such as counselling and individual therapies, particularly those used for the treatment of common mental health disorders.⁹ A recent mapping of mental health services in Australian prisons found that when compared to international recommendations only the ACT was funded to provide mental health services at a level equivalent to that available in the community.¹⁰ This lack of adequate mental health support contributes to people with mental illness in custody having poorer outcomes than their counterparts without mental illness.¹¹

Providing early access to mental health services and ensuring 24 hour access to mental health assessment, has been identified as key strategy in preventing the need for restrictive practices such as restraint or seclusion (see more on these practices below).¹²

- ▷ **MHCT recommends that the NPM has authority to investigate, evaluate and report on equality of access to mental health services across all detention settings.**

MHCT supports the inclusion of closed psychiatric facilities as a place where Tasmanians are or may be deprived of their liberty. We believe these locations should be visited by the NPM as a matter of priority. The use of restrictive practices (including seclusion, mechanical restraint and physical restraint) within inpatient psychiatric facilities has been recognised by the United Nations and the Australian Government as a restriction on a person's human rights.^{13,14} Experiences of restrictive practices can be traumatising and result in emotional and physical harm for the people receiving care, support persons and the workforce.^{15,16} These practices have no therapeutic value and also reinforce stigma and fear. All Australian governments are working towards the reduction of, if not the elimination of, the use of seclusion and restraint.¹⁷ While it is recognised that there are situations

where the use of restraint and/or seclusion may be required, this should only ever be a safety measure of last resort after all other interventions have been tried or considered and excluded.¹⁸

Evidence from a Rapid Review Report conducted for the National Mental Health Commission identifies that individuals within the forensic mental health system may be particularly vulnerable to a lack of autonomy with regard to mental health treatment decisions and may be subject to restrictive practices including seclusion, restraint and administration of enforced medication.¹⁹ They may be detained for longer periods of time than the prison sentence they would otherwise have received, or even detained indefinitely.²⁰ In Tasmania, Wildred Lopes Centre provides specialist forensic mental health inpatient treatment, while Ashley Detention Centre currently provides forensic mental health facilities for young people.

The current Tasmanian Mental Health Act (2013), allows for involuntary patients to be secluded or restrained to facilitate treatment, ensure health and safety, ensure the safety of other, ensure continued safe operation of the facility. If you are a forensic patient the same reasons apply, as well as to prevent damage to property, to prevent escape and potentially during transfer to another facility.²¹

In 2021-22, 6.3 seclusion events per 1000 bed days were reported in public specialised mental health acute inpatient units in Tasmania, down from 9.4 the previous year but still higher than the national average of 6.1.²² The average duration of these events in Tasmania was 2 minutes, less than the national average of 6.2 minutes.²³ In 2021-22, 0.6 mechanical restraint events and 7.9 physical restraint events were reported per 1,000 bed days in public specialised mental health acute inpatient units in Tasmania, both below the national average.²⁴ While some of these statistics suggest improvement, they also demonstrate that these events continue to occur in Tasmanian facilities.

- ▷ **MHCT recommends that closed psychiatric facilities (including those within the forensic mental health service) are visited by the NPM as a matter of priority.**
- ▷ **MHCT recommends that the NPM has the authority to investigate and report on seclusion and restraint events to strengthen accountability and transparency within detention settings.**

To assist in the reduction and elimination of restrictive practices, and to support the mental health and wellbeing of inpatients, all mental health facilities should provide human-rights based, person-centred, recovery-oriented, culturally safe, and trauma-informed care.²⁵

There is a need to ensure trauma-informed approaches to care across all places of detention. Research suggests that, compared with the general population, people in places of detention are more likely to be currently experiencing trauma and to have experienced traumatic life events.^{26,27} Further, detention itself can exacerbate and create trauma.²⁸ A trauma-informed approach prioritises the physical, emotional and psychological safety of survivors and providers and emphasises empowerment and rebuilding a person's sense of control.²⁹

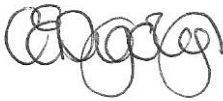
The new Tasmanian Youth Justice Blueprint, for example, outlines the need to ensure a therapeutic and trauma-informed approach in youth justice settings, which requires building and supporting a highly qualified and trained workforce, skilled in evidence based and trauma informed practice.³⁰

MHCT emphasises that processes developed by the NPM should be culturally safe and trauma-informed and that all staff should be trained in trauma-informed principles prior to accessing places of detention and/or interviewing detainees.

- ▷ **MHCT recommends that the NPM reviews and reports on the application of trauma informed processes and policies within detention settings.**
- ▷ **MHCT recommends that the NPM takes a trauma-informed and culturally safe approach to all of its work within Tasmanian detention settings, including providing staff with appropriate training.**

For further discussion on any elements of this response, please contact MHCT.

Yours sincerely,



Connie Digolis
CEO
Mental Health Council of Tasmania

References

- ¹ Australian Institute of Health and Welfare (2019) *The Health of Australia's prisoners 2018*, available: <https://www.aihw.gov.au/reports/prisoners/health-australia-prisoners-2018/summary>
- ² *ibid*
- ³ United Nations (2006) *Convention on the Rights of People with Disabilities*, <https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities.html>
- ⁴ Tasmanian Government (2013) *Mental Health Act, 2013*
<https://www.legislation.tas.gov.au/view/html/inforce/current/act-2013-002>
- ⁵ Dean K, Browne C, Dean N (2022) *Stigma and discrimination experience amongst those with mental illness in contact with the criminal justice system. Rapid review report or the Australian National Mental Health Commission*, available: [https://haveyoursay.mentalhealthcommission.gov.au/72951/widgets/363554/documents/224742#:~:text=An%20even%20higher%20proportion%20\(44,et%20al.%2C%202010\)](https://haveyoursay.mentalhealthcommission.gov.au/72951/widgets/363554/documents/224742#:~:text=An%20even%20higher%20proportion%20(44,et%20al.%2C%202010))
- ⁶ LGBTQI+ Health Australia (2021) *Snapshot of mental health and suicide prevention statistics for LGBTQI+ people*, available: <https://www.lgbtiqhealth.org.au/statistics/>
- ⁷ Dean K, Browne C, Dean N (2022) *Stigma and discrimination experience amongst those with mental illness in contact with the criminal justice system. Rapid review report or the Australian National Mental Health Commission*, available: [https://haveyoursay.mentalhealthcommission.gov.au/72951/widgets/363554/documents/224742#:~:text=An%20even%20higher%20proportion%20\(44,et%20al.%2C%202010\)](https://haveyoursay.mentalhealthcommission.gov.au/72951/widgets/363554/documents/224742#:~:text=An%20even%20higher%20proportion%20(44,et%20al.%2C%202010))
- ⁸ Kendall S, Lighton S, Sherwood J *et al* (2020) Incarcerated Aboriginal women's experiences of accessing healthcare and the limitations of the 'equal treatment' principle, *Int J Equity Health*, 19(48), available: <https://doi.org/10.1186/s12939-020-1155-33>
- ⁹ Plueckhahn TM, Kinner SA, Sutherland G, Butler TG (2015) Are some more equal than others? Challenging the basis for prisoners' exclusion from Medicare, *Medical Journal of Australia*, 203(9):359-361.
- ¹⁰ Davidson F, Clugston B, Perrin M, Williams M, Heffernan E, Kinner, SA (2020) Mapping the prison mental health service workforce in Australia, *Australasian Psychiatry*, 28(4), 442-447.
- ¹¹ Dean K, Browne C, Dean N (2022) *Stigma and discrimination experience amongst those with mental illness in contact with the criminal justice system. Rapid review report or the Australian National Mental Health Commission*, available: [https://haveyoursay.mentalhealthcommission.gov.au/72951/widgets/363554/documents/224742#:~:text=An%20even%20higher%20proportion%20\(44,et%20al.%2C%202010\)](https://haveyoursay.mentalhealthcommission.gov.au/72951/widgets/363554/documents/224742#:~:text=An%20even%20higher%20proportion%20(44,et%20al.%2C%202010))
- ¹² National Mental Health, Drug and Alcohol Principal Committee (2016) *National Principles to Support the Goal of Eliminating Restraint*, available: <https://www.mentalhealthcommission.gov.au/getmedia/3af43496-8826-4dcc-b6cc-302c9204e9a0/National-Principles-to-Support-the-Goal-of-Eliminating-Restraint>
- ¹³ Australian Government (2014) *National Framework for Reducing and Eliminating the Use of Restrictive Practices in the Disability Service Sector*, available: <https://www.dss.gov.au/our-responsibilities/disability-and-carers/publications-articles/policy-research/national-framework-for-reducing-and-eliminating-the-use-of-restrictive-practices-in-the-disability-service-sector>
- ¹⁴ UN Human Rights Council (2013) *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, available: https://www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/RegularSession/Session22/A.HRC.22.53_English.pdf
- ¹⁵ Kinner SA, Harvey C, Hamilton B, *et al* (2017) Attitudes towards seclusion and restraint in mental health settings: findings from a large, community-based survey of consumers, carers and mental health professionals, *Epidemiology and psychiatric sciences*, 26(5):535-44.
- ¹⁶ Askew, L, Fisher, P, Beazley, P (2019) What are adult psychiatric inpatients' experience of seclusion: A systematic review of qualitative studies, *J Psychiatr Ment Health Nurs*, 26: 274– 285, available: <https://doi.org/10.1111/jpm.12537>
- ¹⁷ National Mental Health Commission (2022) *Reducing Restrictive Practices*, available: <https://www.mentalhealthcommission.gov.au/lived-experience/contributing-lives,-thriving-communities/reducing-restrictive-practices>
- ¹⁸ RANZCP (2021) *Position Statement 61: Minimising and, where possible, eliminating the use of seclusion and restraint in people with mental illness*, available: <https://www.ranzcp.org/news-policy/policy-and-advocacy/position-statements/minimising-use-of-seclusion-and-restraint>
- ¹⁹ Dean K, Browne C, Dean N (2022) *Stigma and discrimination experience amongst those with mental illness in contact with the criminal justice system. Rapid review report or the Australian National Mental Health Commission*, available:

[https://haveyoursay.mentalhealthcommission.gov.au/72951/widgets/363554/documents/224742#:~:text=An%20even%20higher%20proportion%20\(44,et%20al.%2C%202010\)](https://haveyoursay.mentalhealthcommission.gov.au/72951/widgets/363554/documents/224742#:~:text=An%20even%20higher%20proportion%20(44,et%20al.%2C%202010))

²⁰ *ibid*

²¹ Tasmanian Government (2021) *Statement of Rights: Seclusion and Restraint*, available:

<https://www.health.tas.gov.au/publications/statement-rights-seclusion-and-restraint>

²² Productivity Commission (2023) *Report on Government Services – Services for mental health*, available:

<https://www.pc.gov.au/ongoing/report-on-government-services/2023/health/services-for-mental-health>

²³ *ibid*

²⁴ *ibid*

²⁵ National Mental Health Consumer & Carer Forum (2021) *Advocacy Brief: Restrictive practices in mental health services*, available: <https://nmhccf.org.au/our-work/advocacy-briefs/restrictive-practices-in-mental-health-services>

²⁶ Honorato B, Caltabiano N and Clough AR (2016) From trauma to incarceration: exploring the trajectory in a qualitative study in male prison inmates from north Queensland, Australia, *Health Justice*, 4 (3), available:

<https://doi.org/10.1186/s40352-016-0034-x>

²⁷ Newman L (2013) Seeking Asylum—Trauma, Mental Health, and Human Rights: An Australian Perspective, *Journal of Trauma & Dissociation*, 14(2):213-223, available: <https://www.tandfonline.com/doi/abs/10.1080/15299732.2013.724342>

²⁸ Hansen A, Hazelton M, Rosina R and Inder K (2022) What do we know about the experience of seclusion in a forensic setting? An integrative literature review, *International journal of mental health nursing*, 31(5):1109–1124, available:

<https://doi.org/10.1111/inm.13002>

²⁹ Hopper EK, Bassuk EL and Olivet J (2010) Shelter from the storm: Trauma-informed care in homeless service settings, *The Open Health Services and Policy Journal*, 3:80-100, available: <http://dx.doi.org/10.2174/1874924001003020080>

³⁰ Department for Education, Children and Young People (2022) *Final Draft: Youth Justice Blueprint 2022*, available:

<https://publicdocumentcentre.education.tas.gov.au/library/Shared%20Documents/Youth-Justice-Blueprint.pdf>