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PO Box 668 Rozelle NSW 2039

T 02 9555 8388

F 02 9810 8145

E info@mhcc.com.au

W www.mhcc.org.au

ABN 59 279 168 647

The Director
Standing Committee on Law & Justice
Parliament House
Macquarie St
Sydney NSW 2000

Subject: Inquiry into the consolidation of Tribunals in NSW

The Mental Health Coordinating Council (MHCC) is the peak body representing community managed organisations (CMOs) in NSW. CMOs provide a range of clinical, psychosocial, education and information resources and services with a focus on recovery orientated practice. MHCC's membership consists of over 250 CMOs whose business or activity is wholly or in part related to the promotion and/or delivery of services for the wellbeing and recovery of people affected by mental health problems.

Working in partnership with both State and Commonwealth governments to promote recovery and social inclusion for people affected by mental illness, we participate extensively in mental health policy and sector development and facilitate linkages between government, non-government and private sectors. MHCC consult widely in order to respond to legislative reform and sit on national and state committees and boards in order to affect systemic change. MHCC also manage and conduct research projects, and develop collaborative programs on behalf of the sector. We are a Registered Training Organisation delivering nationally accredited mental health training and professional development to the workforce.

MHCC welcome the opportunity to make a submission on the Inquiry into the potential consolidation of Tribunals in NSW. However, we wish to comment on the fact that we were not approached directly to make a submission. Indeed we only were made aware of the inquiry as a consequence of our close working relationship with the NSW Mental Health Review Tribunal (MHRT).

1. One of the primary issues in the issues paper relates to the surplus of lawyers because of: "the current and forecast workload for the Industrial Relations Commission (including the Commission in Court Session) as a result of recent changes such as National OHS legislation and the Commonwealth Fair Work Act." MHCC are concerned that people with expertise whose contracts are about to end will not be reinstated and people with current contracts from other Tribunals (without the specific expertise) will be asked to fill the gap. Those who come to the Tribunals have an expectation that the presiding member will be an expert in the jurisdiction. Implications with regards to training new members in jurisdictions outside of their expertise should also be taken into consideration.

2. An amalgamation seems to be primarily motivated by potential cost savings when there is little or no evidence from literature, research or data gathering showing what are the likely outcomes, therefore making a judgement on merits (best practice) impossible when to our mind this should be the primary consideration.

We are concerned about loss of expertise in the process of 'back of office' cost saving which will inevitably impact on administrative aspects of work undertaken. Many tribunals such as the CTTT have a statutory obligation to assist the public, and therefore need to have expertise in the area in which they are operating registry services.

3. "An obvious question is whether or not an amalgamated tribunal model is more effective than a series of smaller, specialised tribunals in delivering administrative justice, in other words, whether there is any net gain to be had from a government's decision to amalgamate" (Bacon , 2006) .

There is a perception that amalgamation may lead to greater political interference. Justice Murray Kellam (2001) refers to this leading up to the creation of Victorian Civil and Administrative Tribunal (VCAT) when he wrote: "it was not uncommon for there to be a perception of political interference with tribunals by the appointment of members who were known by the government of the day to have a viewpoint of a particular type." MHCC are keen to see the independence of Tribunals maintained.

How will an amalgamated tribunal ensure appropriate independence, powers, processes, membership and structure? For example, might a President be appointed to oversee a group of Tribunals which currently have experts in each Tribunal? This might lead to situations where some aspects of the consolidated Tribunal might suffer as a result of a new leader having less commitment to areas other than their own area of expertise.

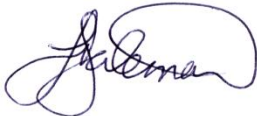
4. With regards specifically to the suggested grouping under Option 3 that includes the Mental Health Review Tribunal we strongly recommend that with the establishment of the NSW Mental Health Commission considerations should be evaluated by the Commission first with regards to the complex nature of the MHRT's work rather than push the amalgamation through before the Commission is up and running (particularly in view of the Law Reform Commission's deliberations re MH Courts and Diversionary alternatives, as this might affect the role and workload for the MHRT).
5. In relation to the MHRT, Option 3 – We ask, on what basis have the groupings been chosen? Whilst there may be some commonality for the amalgamation of the MHRT with the Guardianship Tribunal, the other tribunals, i.e., Vocational Training Tribunal, Local Government Pecuniary Interests and Workers Compensation seem unrelated. In our view, such a proposal lacks synergy and purpose.
6. It has been suggested that the number of Tribunals run by the professional associations are less than independent and perform inconsistently. We would like to see data to support such criticism which if well founded would clearly make an independent structure a preferable reform.

7. Whilst MHCC support the creation of more independent and transparent Tribunals, we are concerned that the approach described in Option 1 which transfers functions from several Tribunals, will lead to a loss in expertise. Where particular professional ethical and disciplinary issues arise requires specialist understanding of the particulars of a profession, and in our view to consolidate tribunals may lead to assumptions that matters are clear cut, or the same across various jurisdictions, when reality they are far less defined.

In our view issues of public interest matters concerning professional discipline may also suffer, and public concerns fall through the gap.

We thank you for your interest and look forward to hearing about the results of your deliberations.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Jenna Bateman', with a large, stylized flourish at the end.

Jenna Bateman
Chief Executive Officer