



24 June 2019

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NCAT Statutory Review
Director, Courts Strategy
Department of Justice
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Re: 5 Year Statutory Review - NSW Civil and Administrative Tribunal Act 2013

The Mental Health Coordinating Council (MHCC) is the peak body representing mental health non-government community managed organisations (NGO/CMOs) in NSW. Our members deliver a range of psychosocial disability support and rehabilitation programs and services including housing, employment and community inclusion activities. MHCC is also a founding member of Community Mental Health Australia (CMHA), the alliance of eight state and territory mental health peak bodies, which together represent more than 800 CMOs delivering mental health and related services nationally.

MHCC thanks the NSW Department of Justice for giving us the opportunity to comment on the review of the *NSW Civil and Administrative Tribunal Act 2013* (the NCAT Act).

With regards to schedule 6 of the NCAT Act which relates to the Guardianship Division, we maintain the position we strongly advocated during the establishment of NCAT - that the multidisciplinary three member tribunals featuring legal, professional and community members is best practice for ensuring that the Tribunal is accessible and responsive to the needs of all of its users. In the past there have been proposals to conduct one member hearings and use legal members from across the various divisions. We are concerned that some members from other divisions may not have the specialist knowledge and expertise of communicating with people experiencing complex mental health and coexisting conditions including cognitive impairment and may not sufficiently understand the challenges a hearing may present for some people. We are thankful that to date, NSW has not followed the way of Super Tribunals in other jurisdictions, and we urge the Department to maintain this important feature of NSW Guardianship Division hearings.

MHCC also strongly urge the continuation of an investigative approach prehearing and during hearings to better enable a non-adversarial and conciliatory approach that fosters accessibility for people living with developmental and cognitive disabilities.

Likewise, we urge the continuance of substantive matters being dealt with in hearings rather than on the papers – so that the person concerned has the opportunity to participate and present their view.

Similarly, we urge the continuance of written reasons for decisions. We propose that this provides information which the subject person may wish to use if appealing the decision. Whereas reasons provided only during the hearing may be difficult to assimilate at what is often a stressful time for the person and their support persons.

Most of these features have been dropped out of hearing in guardianship divisions in other state CATs. MHCC commend the Department for having retained these aspects to NSW hearings which we believe are critical to better enabling people with complex conditions, their families and support persons to participate in the hearing process; supported by tribunal members who have the skills to make appropriate guardianship and administrative orders.

For any questions in relation to this submission, please contact Corinne Henderson, Principal Advisor/ Policy & Legislative Reform at corinne@mhcc.org.au.

A handwritten signature in blue ink that reads "Carmel Tebbutt". The signature is fluid and cursive, with "Carmel" on the first line and "Tebbutt" on the second line.

Carmel Tebbutt
CEO, Mental Health Coordinating Council