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Dear Dr Mitchell and Khami,

RE; Submission to the Exposure Draft Mental Health Bill 2024

The Northern Territory (NT) Community Visitor Program and the NT Anti-Discrimination Commission welcome the opportunity to provide the enclosed submission in relation to the Exposure Draft Mental Health Bill 2024.

I welcome the opportunity to discuss this submission.

Yours sincerely,



Jeswynn Yogaratnam

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Northern Territory Exposure Draft Mental Health Bill 2024

Community Visitor Program Submission

June 2024

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The Community Visitor Program acknowledges the traditional custodians of the lands on which we live and work

The Community Visitor Program would also like to acknowledge persons of lived experience



1. Introduction

The Northern Territory (NT) Community Visitor program (CVP) welcomes the consultation process to the Exposure Draft Mental Health Bill 2024 (the 'Bill').

The CVP acknowledges the importance of this legislative reform to improve the effectiveness and accessibility of mental health services that are person-centred and culturally responsive. The strength of such a reform is reflected in the mandatory framework¹ for a mental health system that promotes and protects the rights of persons receiving treatment and care.

Public mental health is an essential specialist service that is established to provide treatment and care for some of the most vulnerable Territorians. The NT community relies on tertiary mental health services to be accessible and provide high quality services throughout the NT.

The CVP notes that the first consultation of the *Mental Health and Related Services Act 1998* (NT) (the Act) commenced in 2020, and that there are significant alterations and structural changes from the current Act to this Exposure Bill. There has been a three-year gap since the discussion paper commenced in 2020 and this consultation paper was released. The exposure draft was released with a three week period for public review and comment. This was not an adequate timeframe to consider and provide meaningful feedback on the Bill. CVP is of the view that this consultation process lacks procedural rigour due to the short timeframe for public consultation, which impacts the quality and quantity of submissions, and wider public participation in such a significant reform. Whilst further consultation may be required to ensure the full representation of the mental health sector to provide comment, the CVP recognises and supports certain salient additions to the Bill, including:

- Person-centred terminology, through the use of the term 'person' that has replaced the use of the terms 'patient' or 'consumer'.
- The inclusion of guiding principles that are clear statements of intent, which expand upon the purpose and meaning.

¹ Australian Institute of Health and Welfare's [National Mental Health Service Planning Framework](#)

- Introducing the presumption of decision making capacity.
- The extension of clearer information and regulation on restrictive practices and seclusion.
- Chief Psychiatrist's roles and responsibilities.
- Moving the responsibility for appointing Community Visitor's from the Minister, to the Principal Community Visitor.

The earliest this Bill can be tabled in NT Parliament for passing is October 2024. CVP support that an updated Mental Health Act is required and support this process to continue with bi-partisan agreement. CVP are of view that this current consultation process should be continued, rather than restarted, should there be a change of Government at the August 2024 General Election. Positive progress has been made, and should be continued with further consultation undertaken for the very important final stage of this process. CVP notes that this Bill does not address Mental Health supports for persons under forensic mental health. CVP believes that a forensic mental health Act, inclusive of a therapeutic model of supports should be tabled alongside this Bill to ensure that all Territorians with a mental illness, regardless of their forensic status, are afforded the same standard of legislated protection, treatment and care.

The CVP thanks all persons and organisations who were involved in our consultation process – most especially to persons that the CVP work with when carrying out weekly visits to the NT's mental health inpatient wards. Persons who are receiving NT Health mental health services provide excellent insights into their treatment and care that assists the CVP to navigate our advocacy work. It is these person to person interactions that have been the basis for the themes in our submission. Thanks also to all CVP sessional visitors, panel members and CVP staff who have assisted with developing this submission and providing feedback.



2. Executive Summary

This submission focuses on the following key areas of reform:

- protection of rights
- least restrictive practices
- monitoring.

Protection of Persons Rights

Healthcare rights² typically encompass a range of entitlements and protections that individuals have in relation to their health and healthcare. This should not be any different for person's who receive mental health treatment and care.

The relationship between healthcare rights and legal rights in health legislation is interrelated and complementary. By aligning healthcare practices with legal rights and protections, the Bill can promote person-centred care, respect for individual autonomy and dignity, and further uphold the legal requirements in the mental healthcare setting. This integration of healthcare and legal rights is essential for ensuring that individuals receive equitable, ethical, and high-quality mental healthcare services while also safeguarding the person's legal rights and freedoms.

The CVP is very pleased that the rights of a person are reflected in the Bill. However, it is unclear how these rights have been revised and what are the current legal rights under the Bill, and whether any existing rights have been eroded. This is particularly concerning considering that there is considerable evidence from CVP weekly reporting from the mental health inpatient ward visits, demonstrating that a person's rights are not being systematically implemented. Without this clarity, the concept and effect to explain and operationalise rights, cannot be fully realised.

A Statement of Rights is welcomed and should be developed with persons with lived experience and other key stakeholders. However, this development should not be a separate process, and should be clearly articulated within the Bill. The development

² The broader health care rights may include the right to access healthcare services without discrimination, the right to receive timely and appropriate care, the right to privacy and confidentiality in line with the relevant Information or Privacy Acts, and the right to participate in decisions about their healthcare.



of the Statement of Rights should be led by the Chief Psychiatrist, alongside key stakeholders, including persons with lived experience.

CVP recommends that a Statement of Rights is enshrined within the Bill that clearly identifies a person's rights. This should be similar in format to the current Act but expanded with updated information of areas that have been added in the Bill. This will allow easier navigation for persons who it will effect and the authority for their rights to be upheld. When compared to the current Act, the Bill in its current form is difficult for persons to navigate their rights.

Least restrictive practices

The CVP supports the references throughout the Bill to 'least restrictive practices'. The CVP supports expanded definitions and regulation regarding restrictive practices in the proactive efforts to reduce and eliminate restrictive practices in general. In particular, chemical restraint, seclusion, and search and seizure practices.

Monitoring

It is welcomed and acknowledged that the CVP and the Office of the Chief Psychiatrist have monitoring functions retained and introduced in the Bill.

Areas omitted in the Exposure Bill

The CVP consider that the following areas are omitted from the bill and recommend their inclusion;

- **Rights of Persons**: a specific section outlining all of a person's rights – it is difficult for persons subject to the Bill to be able to navigate what their rights are.
- **Forensic Mental Health**: this is critical area is missing from the Bill with no indication of works to develop legislation for persons under Forensic Mental Health Care. There is also no reference to the Complex Behaviour Support Unit (CBSU) at the Darwin Correctional Centre. The CVP understands that the function of the CBSU is provide appropriate secure treatment and care for persons under forensic mental health conditions.



- **Intersection with the NDIS legislation**: reference or mention to the interface and intersection of the *National Disability Insurance Scheme Act 2013 (CTH)*³, rules, supports or practice and the Bill.
- Reference and intersection in the Bill with *Monitoring of Places of Detention (Optional Protocol to the Convention Against Torture) Act 2018 (NT)*⁴. **OPCAT**.
- Inclusion or acknowledgment of persons with **lived experience**.
- Inclusion of **Recovery-orientated** focused practice or principals.
- **Telehealth**: recognition of the use or engagement of telehealth resources.
- **United Nations Convention on the rights of the child**: referenced or acknowledged within mental health service delivery.

Other Considerations

Terminology

There is inconsistent terminology around **staff**, e.g. staff are referred interchangeably throughout the Bill as, Persons, Practitioners, Clinicians, Workers and Services.

Wellbeing is also used interchangeably with ‘Care’ and does not have a large presence in the bill. The CVP recommend that such terminology is clearly defined, and used consistently.

Changes Requested

- CVP recommends that the Bill defines ‘care’. We suggest that it is expanded in terms of wellbeing and psycho-social wellbeing.
- “as soon as practicable” is not the language of rights. This terminology is subjective and does not support the main objects of the Bill and in particular section 3 (a) & (b). The CVP recommend that this language is replaced or is contextually defined in relation to section 3 (a) & (b)

³ https://www8.austlii.edu.au/cgi-bin/viewdb/au/legis/cth/consol_act/ndisa2013341/

⁴ [Legislation Database \(nt.gov.au\)](https://www.legislation.gov.au/)



Consumer Guide

It is recommended that definitions are contained within the Bill. However, as a minimum, it is recommended that the Consumer Guide is renewed and updated alongside the Bill, to provide further information and navigation for persons who the Bill will affect.

CVP Recommendations

CVP's focused consultation group have developed the following recommendations. The context for the reasoning of these recommendations can be found in Part 4 of the submission below.

Recommendation 1

Part 1; Preliminary Matters – Division 2 Guiding Principles

Lived Experience and Recovery Focused models be added to the guiding principles of the Bill.

A person's Wellbeing be acknowledged and referenced as a guiding principles of the Bill.

Recommendation 2

Part 1; Preliminary Matters - Division 2 Guiding Principles – Section 13 Communication under the Act.

This definition be expanded to reflect the importance of communication in what might be complex situations.

Recommendation 3

Part 3; Protection of Rights - Division 2 - Section 33 Statement of Rights

People's explicit rights be enshrined within the Bill.

Recommendation 4

Part 3; Protection of Rights - Division 3 Rights to communicate – Section 40 Explanation on right to communication

This be further expanded to state that the communication attempts will be in a form a person is able to understand, similar to Recommendation 2.

Recommendation 5



*Part 3; Protection of Rights - Division 4 Communication about a person - Section 45
Communication with a Parent*

Further definition about the concern of the wellbeing and “best interests of the child” be expanded in the Bill.

Include a provision that if a decision is made not to contact parent/carer the Mental Health Service must contact the Principle Community Visitor or the Office of the Children’s Commissioner.

Recommendation 6

Part 4; Examination and Assessment

The Bill specifically identify a person’s right to:

- early NTCAT tribunal review
- a second psychiatric opinion
- medication review

Recommendation 7

*Part 4 ; Assessment orders Division 2 Assessment Orders - Subdivision 1
Assessment order for person not admitted to approved mental health facility - Section
57 How is examination to be conducted*

The inclusion of “where possible Telehealth be an option for examination”.

Recommendation 8

*Part 4; Assessment orders - Division 2 Assessment Orders - Subdivision 1
Assessment order for person not admitted to approved mental health facility - Section
62 Extending order made outside major population centre and Section 63 Detention
of a person for Transport*

The increased period of detention be reduced to align with more equitable time frames for persons in a major population centre.

Recommendation 9

*Part 4 ; Assessment orders - Division 3 - Order for compulsory examination - Section
82 What does order for compulsory examination authorise?*

And;

Section 87 Assessment of Aboriginal or Torres Strait Islander person

Social emotional wellbeing framework be identified and referred to in the assessment process.



Recommendation 10

Part 5; Treatment orders - Division 2 Temporary treatment orders – Section 99 Information for persons to whom order applies

Provision expanded to include *(b) all reasonable steps are taken to explain to the person (in a manner they understand) the purpose and effect of the order.*

Recommendation 11

Part 5; Treatment orders - Division 5 Variation and revocation of temporary treatment orders and treatment orders – Subdivision 2 Variation of temporary treatment orders and treatment orders – change to type of order - Subdivision 119 ; Variation of temporary treatment order or treatment order – inpatient to community

Additional provision that persons have the right to apply to NTCAT to review the variation of a temporary treatment order (known as an “early review” under the Act) as is allowed for in Part 5, Division 2, Section 103 Application to NTCAT to review temporary treatment order.

Recommendation 12

Part 5; Treatment orders – Division 6 Leave of absence from approved Mental Health facility - Section 129 Leave of absence

Additional provision for leave to be considered “where appropriate with a supervising person.”

Recommendation 13

Part 6; Correctional Patients - Division 3; Psychiatric Assessment - Section 154 How is a psychiatric assessment to be conducted

The absence of any reference in the Bill to Forensic Mental Health and the Complex Behaviour Unit is further explained and/or referred to in this section.

Recommendation 14

Part 7; Care and Control and Transport - Division 5; Powers of authorised persons Division 4; Search and seizure - Section 193 Authorised person may search a person This must be conducted by a trained and authorised person supported by legislated instructions and standards.

Section 194 (1) (c) (iv) Conduct of search of person (where the person searched is a child)



“another adult” be further defined as an independent persons not from the agency/Health Service unless requested by the person being searched.

*Section 196 Record of search and seizure
the reason **‘why’** the search was conducted be recorded on a register that is accessible and subject to review.*

Section 196 Record of search and seizure

the reason **‘why’** the search was conducted be recorded

Recommendation 15

*Part 8; Treatment and Care - Division 2 Treatment decision - Subdivision 1 - Making treatment decisions - Section 202; other matters to be considered
c) any second psychiatric opinion given to the practitioner*

Clarify whom the second opinion is offered to. The current exposure draft does not define if this is a second opinion for the person or if it’s a second opinion for practitioners.

Recommendation 16

Part 10; Restrictive Intervention - Section 238 Use of restrictive intervention must be authorised (3) (b) if the restrictive intervention is for a child – any relevant plan approved under section 247

Further consideration should be referenced to avoid seclusion of a child. The Bill should outline the severity and caution of seclusion of a child.

Recommendation 17

Part 10; Restrictive Interventions - Section 240 Record of use of restrictive intervention

“Debriefing with the persons following the restraint (or seclusion)” be added.

Recommendation 18

Part 10; Restrictive interventions; Section 243 Monitoring of a person’s mechanical restraint

A record of Mechanical restraint be included in the report to the Chief Psychiatrist.

Recommendation 19

Part 10; Restrictive Interventions - Section 244 Monitoring of persons kept in seclusion



A medical practitioner must examine the person at least every 4 hours
Seclusion of a child should always be avoided.

Recommendation 20

Part 11; Security at approved mental health facility - Division 2; Search of persons detained at or admitted to approve mental Health facility - Section 257 Conduct of search of person

“A support persons / independent / nominated persons / guardian” be offered to the person to also attend or be present.

Recommendation 21

Part 11 ; Security at approved Mental Health Facility – Division 2 - Search of persons detained at or admitted to approve mental health facility – Section 262 Record of search and seizure d) to develop, publish and promote statement of rights pf persons under this act

A requirement to record what the reasonable grounds were, e.g. the serious risk to health or safety, to the person or anyone at the facility.

Recommendation 22

Part 13; Administration - Division 2; Chief Psychiatrist - Subdivision 5; Advisory Committees - Section 309 Establishment of Advisor committees and Section 310 Membership of advisory Committees

Inclusion of persons who do not sit within ‘The Agency’ be appointed to the advisory committee. Similar to [APQAC](#) there be nominated positions for;

- Persons with lived experience
- CVP or an advocacy organisation
- Cultural representation (reflecting the cultural demographics of persons accessing NTG Mental Health Services)

Terms of reference for the advisory committee be made publically available.

Recommendation 23

Part 13 ; Administration - Division 2 - Chief Psychiatrist - Subdivision 6 - Annual Report - Section 312 Annual report

the Chief Psychiatrist’s Annual report be provided to the public.



Recommendation 24

Part 14; Community Visitors - Subdivision 2 Functions and powers of community visitors - Section 335 - Functions of Principal Community Visitor

Addition of “the principal community visitor can delegate works to appointed Community Visitors.

Recommendation 25

Part 14; Community Visitors – Division 3 Community Visitors – Subdivision 2 Functions and powers of Community Visitors - Section 342 Powers of inspection A community visitor may, when at an approved mental health facility or the premises of an approved mental health service:

(c) Inspect any document (other than a medical record) located at, or accessible from, the facility or the premises that:

(d) With the consent of a person receiving treatment and care at the facility of from the service

Remove reference to ‘other than medical records’ and add where possible..

Recommendation 26

Part 20 ; Consequential amendments - Division 2 - Transition matters for Mental Health Act 2024 Section 405 Transitional Regulations

A legislative commitment to reassess the implementation implications of this act at a designated time e.g. 5 years review.

Recommendation 27

Part 20; Consequential amendments

CVP recommend the consideration of the following pieces of legislation to be added to the Bill as intersecting legislation;

[National Disability Insurance Scheme \(Authorisation\) Act 2019](#)

[Monitoring of places of detention \(Optional protocol to the convention against Torture Act 2018\)](#); in the assumption it will be commence

[NT Forensic ACT](#); in the presumption of its development.



3. CVP Recommendations and feedback on the Exposure Draft of the Mental Health Act 2024

Part 1: Primary Matters

CVP support the inclusion of the section on guiding principles, specifically sections 5 to 11.

CVP enquire of the use of self-determination principal but the lack of the use of the term and acknowledgement of Lived Experience. In other legislation ⁵it is expressed as 'lived experience rights'.

Lived experience terminology is not referenced in this Bill at all. The lived experience of a person with mental illness or psychological distress and their carers, families and supporters is to be recognised and valued as experience that makes them valuable leaders and active partners in the mental health and wellbeing service system.

[The NT Mental Health Lived Experience Engagement Framework 2024](#)⁶ states that the following engagement principles:

- Be purposeful
- Be prepared
- Be genuine
- Be inclusive
- Use open communication

CVP would now like to see these Lived Experience Engagement Framework principles recognised in the Bill.

CVP believe that the absence of a definition of the term “wellbeing” in the Bill limits the scope and potential works within NT Mental Health Services. The World Health Organisation suggest that “Mental health is a state of well-being in which an individual realizes his or her own abilities, can cope with the normal stresses of life, can work productively and is able to make a contribution to his or her community.” Wellbeing is a critical piece of a person’s recovery journey.

Recommendation 1

Part 1; Preliminary Matters – Division 2 Guiding Principals

Lived Experience and Recovery Focused models be added to the guiding principles of the Bill.

⁵ The Victorian *Mental Health and Wellbeing Act 2022 - Part 1.5 Mental Health and Wellbeing principles - Section 21 Lived experience principle states;*

⁶ On 20 July 2024 the NT Government Minister for Mental Health and Suicide Prevention announced a new NT Mental Health Lived Experience Framework.



A person's Wellbeing be acknowledged, defined and referenced as a guiding principle of the Bill.

Effectively communicating with persons who receive services under the Mental Health Act is essential.

The current *Mental Health and Related Services Act 1998* (the Act) summary suggests that:⁷

As far as possible information given must be given both orally and in writing, in a language and form which the person to whom it is given both orally and in writing, in a language and form in which the person to whom it is given is used to communicating in and in a culturally appropriate manner including, where necessary, through the use of interpreters

In giving information to a person under this section, regard must be had to the age, culture, disability, impairment and any other factor of the person that may influence the person understanding the information.

On a number of occasions between 2023 and 2024, CVP have received enquiries and complaints of persons receiving medication and treatment and that the person simply does not understand what is happening to them. There have been requests from persons receiving treatment to clinical staff for information to be delivered to them in a manner that they understand. This has included requests for easy English or pictorial definitions i.e.: medication administration of tablets or injections. It was stated that this would assist with their navigation of their treatment journey.

The updated definition in *Section 13 Communication under the Act* in the Bill has taken away the further emphasis of explaining information to people. The CVP continue to advocate for accessible information about a person's rights and treatment and for this information to be repetitiously explained to a person over the course of their treatment and care.

Recommendation 2

Part 1; Preliminary Matters - Division 2 Guiding Principles – Section 13 Communication under the Act.

This definition be expanded to reflect the importance of communication in what might be complex situations.

Part 3: Protection of Rights

CVP believe the Bill should entrench the Statement of rights of a persons within the Bill Similar in format to the current Act Part 12, expanded with updated information of areas that have been introduced in the Bill. This will ensure the Bill will be easier to navigate for persons who it will effect. As acknowledged in the Guide to the Exposure Draft that there is a "wide range of users of mental health legislation [and the] aims, [are] therefore, to enhance readability...".

⁷ NT Mental Health and Related Services Act 1998 Part 12 – Rights of the Patients and carers section 2



The development of the Statement of Rights should be led by the Chief Psychiatrist, in consultation with persons with lived experience.

Recommendation 3

Part 3; Protection of Rights - Division 2 - Section 33 Statement of Rights

People's explicit rights be enshrined within the Bill.

Recommendation 4

*Part 3; Protection of Rights - Division 3 Rights to communicate – Section 40
Explanation on right to communication*

This be further expanded to state that the communication attempts will be in a form a person is able to understand, similar to Recommendation 2.

CVP believe further explanation of “best interests of the child” needs to be explained for *Section 45 Communication with a Parent* to be viable.

Section 45 Communication with a parent

- (1) If a provision of the Act requires a person to communicate with a child's parent about a decision relating to the child, the person may decide not to communicate with the parent about the decision if the person considers that the communication is not in the best interest of the child*

The guiding principle *Part 1 Section 10 Best interests of child principle* in the Bill does not provide enough context to exclude a parent or guardian receiving information.

Consideration needs to be given to circumstances where there is immediate safety concerns for a child or it would be unhealthy to communicate with the parent or care giver OR if a child presented to Mental Health Services and family were unable to be contacted would need to be considered.

If a clinician decides not to communicate with the parent of a child about a decision, the decision and the reason for not communicating with the parent of a child should be formally required recorded.

If the parent/carer is not contacted, some other independent body needs to be made aware of the child's treatment and Mental Health Service delivery and decision making i.e.: the Principle Community Visitor or the Office of the Children's Commissioner NT.

Recommendation 5

*Part 3; Protection of Rights - Division 4 Communication about a person - Section 45
Communication with a Parent*

Further definition about the concern of the wellbeing and “best interests of the child” be expanded in the Bill.

Include a provision that if a decision is made not to contact parent/carer the Mental Health Service must contact the Principle Community Visitor or the Office of the Children's Commissioner NT.



Part 4: Examination and Assessment

A person’s right to an early tribunal hearing of an order made under the Act by an authorised psychiatric practitioner; a second opinion; and/or a medication review has been removed from this section in the Bill.

Given the time constraints to provide feedback on the Bill, CVP had some difficulty locating in which sections these critical rights may have been relocated to.

It appears that in the Bill, section **103 Application to NTCAT to review temporary treatment order** is intended to address a person’s current right to an “early tribunal”.

Reference to a second opinion is located *in Part 8; Treatment and care - Division 1 Treatment decisions - Subdivision 1 making treatment decisions - Section 202 Other matters to be considered*

(c) any second psychiatric opinion given to the practitioner.

This clause is vague and ambiguous and lacking context. The clause implies that a person can receive a second psychiatric opinion however the CVP could not locate in the Bill where a person has a right to receive a second psychiatric opinion. It should be made clear that it is a person’s right for a second clinical opinion. The CVP are also of a view that such second opinions should be provided by a clinician who has not been involved in the person’s current treatment and care.

To remove any ambiguity the CVP recommends that a person’s rights to an early review of order, or variation of an order to the NTCAT Tribunal be provided for, along with a second psychiatric opinion, and/or a medical review.

Recommendation 6

Part 4; Examination and Assessment

The Bill specifically identify a person’s right to:

- early NTCAT tribunal review of an order
- a second psychiatric opinion
- medication review

There is no mention throughout the exposure draft of the use or access to telehealth services.

Recommendation 7

Part 4 ; Assessment orders Division 2 Assessment Orders - Subdivision 1 Assessment order for person not admitted to approved mental health facility - Section 57 How is examination to be conducted

The inclusion of “where possible Telehealth be an option for examination”.

Due to a lack of services and Thin Markets in remote locations of the NT, persons who may need immediate access to Mental Health Services can be further disadvantaged.



[The Northern Territory Social Outcomes Framework](#) suggested all *Territorians have the best physical and mental health throughout their lives*, this is regardless of where they live. Having alternative processes for persons, living remote is not fair or adequate.

The Bill introduces the authority to increase the period to detain a person for an additional 96 hours. CVP is concerned with this significant increased period of time.

CVP are aware that considerations under the current Act would include weather, public holidays and transportation issues. Doubling the time a person can be detained is unfair. CVP do not support an increase to detention times as proposed in the Bill and seek clarification on the policy behind this proposed reform, specifically as to why this population group can be legally detained for another 6 days?

Recommendation 8

Part 4; Assessment orders - Division 2 Assessment Orders - Subdivision 1 Assessment order for person not admitted to approved mental health facility - Section 60 Extending order made outside major population centre and Section 63 Detention of a person for Transport

The increased period of detention be reduced to align with more equitable time frames for persons in the more populated areas.

The Bill has not referenced social and emotional wellbeing practices when supporting persons who identify as Aboriginal and Torres Strait Islander. CVP stress the importance of this inclusion in the Bill considering the high percentage of persons in NT public hospitals are Aboriginal or Torres Strait Islander.

Recommend 9

Part 4 ; Assessment orders - Division 3 - Order for compulsory examination - Section 82 What does order for compulsory examination authorise?

and

Section 87 examination of Aboriginal or Torres Strait Islander person

Social emotional wellbeing framework be identified and referred to in the assessment process.

Part 5: Treatment Orders

Further information is needed around statements made in the Bill e.g. *(b) all reasonable steps are taken to explain to the person*. Further safeguards are required to ensure information is delivered “in a manner they understand”.

Recordation 10

Part 5; Treatment orders - Division 2 Temporary treatment orders – Section 99 Information for persons to whom order applies

Provision expanded to include *(b) all reasonable steps are taken to explain to the person (in a manner they understand) the purpose and effect of the order*.



The current Exposure draft does not describe or provide information on person's right to have the decision of their community treatment order reviewed.

Recommendation 11

Part 5; Treatment orders - Division 5 Variation and revocation of temporary treatment orders and treatment orders – Subdivision 2 Variation of temporary treatment orders and treatment orders – change to type of order - Subdivision 119 ; Variation of temporary treatment order or treatment order – inpatient to community

Additional provision that persons have the right to apply to NTCAT to review the variation of a treatment order (known as an “early review” under the Act) as is allowed for in the Bill under Part 5, Division 2, s.103 Application to NTCAT to review temporary treatment order.

Recommendation 12

Part 5; Treatment orders – Division 6 Leave of absence from approved Mental Health facility - Section 129 Leave of absence

Additional provision for leave to be considered “where appropriate with a supervising person.”

Part 6: Correctional Patients

Due to time constraints CVP do not feel the submission has adequately reviewed this section. There is no reference throughout the Bill to Forensic Mental health or the Complex Behaviour Unit.

Recommendation 13

Part 6; Correctional Patients - Division 3; Psychiatric Assessment - Section 154 How is a psychiatric assessment to be conducted

The absence of any reference in the Bill to Forensic Mental Health and the Complex Behaviour Unit is further explained and/or referred to in this section.



Part 7: Care and Control and Transport

CVP supports the inclusion of legislated instructions and standards around search and seizure information and the training an authorised person must have before conducting searches.

It is understood that section 16 defines the classes of authorised persons who will conduct the search.

For a person's safety, CVP suggest there should be a recorded offer for an independent party to attend the search and the reasoning for the search to be recorded on a register

Recommendation 14

*Part 7; Care and Control and Transport - Division 5; Powers of authorised persons
Division 4; Search and seizure - Section 193 Authorised person may search a person*
This must be conducted by a trained and authorised person supported by legislated instructions and standards.

Section 194 (1) (c) (iv) Conduct of search of person (where the person searched is a child)

“another adult” be further defined as an independent persons not from the agency/Health Service unless requested by the person being searched.

Section 196 Record of search and seizure

the reason **‘why’** the search was conducted be recorded on a register that is accessible and subject to review.

Part 8: Treatment and Care

As mentioned in Recommendation 6, this section is vague and does not define if this is a second opinion for the person or if it's a second opinion for practitioners. To remove any ambiguity the CVP recommends that in keeping with Recommendation 6 that, s.202(c) should clarify that a second psychiatric opinion of/for the person is given to the practitioner, who must consider the second opinion.

Recommendation 15

*Part 8; Treatment and Care - Division 2 Treatment decision - Subdivision 1 - Making treatment decisions - Section 202; other matters to be considered
c) any second psychiatric opinion given to the practitioner*

Clarify whom the second opinion is offered to. The current exposure draft does not define if this is a second opinion for the person or if it's a second opinion for practitioners.



Part 10: Restrictive Interventions

CVP support the inclusion of legislated instructions for restrictive interventions.

Seclusion of a child should always be avoided. Further legislation should outline the severity and caution of seclusion of a child.

The current NT Approved Procedures for Seclusion⁸ of children states:

The seclusion of a patient under the age of 18 years is a serious decision. Seclusion is known to be a traumatic event, and for a child (or adult) it may compound trauma and lead to avoidance of mental health services in the future.

Patients under the age of 18 will be observed continuously/constantly to ensure that seclusion can be ceased at the earliest possible opportunity.

Every effort will be made to eliminate the use of seclusion on patients under the age of 18. In recognition of this, the following additional procedures are to put in place: Unless imminent danger exists to the patient or another person, a patient under the age of 18 is to spend no longer than a maximum period of four (4) hours in seclusion.

Recommendation 16

Part 10; Restrictive Intervention - Section 238 Use of restrictive intervention must be authorised (3) (b) if the restrictive intervention is for a child – any relevant plan approved under section 247

Further consideration should be referenced to avoid seclusion of a child. The Bill should outline the severity and caution of seclusion of a child.

There is no obligation for Mental Health Services to offer a debrief with the persons following a seclusion or restraint event.

Recommendation 17

Part 10; Restrictive Interventions - Section 240 Record of use of restrictive intervention

“Debriefing with the persons following the restraint (or seclusion)” be added.

Most areas of restraint are required to be reported to the Chief Psychiatrist. For consistency CVP believe all forms of restraint should be recorded and reported to the Chief Psychiatrist.

Recommendation 18

Part 10; Restrictive interventions; Section 243 Monitoring of a person’s mechanical restraint

A record of Mechanical restraint be included in the report to the Chief Psychiatrist.

⁸ Source: [AP11-seclusion-approved-procedure.docx \(live.com\)](#)



Recommendation 19

Part 10; Restrictive Interventions - Section 244 Monitoring of persons kept in seclusion

A medical practitioner must examine the person at least every 4 hours

Seclusion of a child should always be avoided.

CVP were pleased to see the inclusion of section 248 for the monitoring of Chemical Restraint.

Part 11: Security at Approved Mental Health Facility

CVP support the inclusion of legislated instructions for search and seizure.

CVP suggest that a support persons / independent / nominated persons / guardian be considered to be added to attend a search.

Recommendation 20

Part 11; Security at approved mental health facility - Division 2; Search of persons detained at or admitted to approved mental Health facility - Section 257 Conduct of search of person

“A support persons / independent / nominated persons / guardian” be offered to the person to also attend or be present.

There is no requirement to record the reasoning for search and seizure. This appears to be deficient as there is no requirement to record what were the reasonable grounds, the serious risk to health or safety, to the person or anyone at the facility as described in clause 273(1)(a)or(b) for example.

Recommendation 21

Part 11 ; Security at approved Mental Health Facility – Division 2 - Search of persons detained at or admitted to approved mental health facility – Section 262 Record of search and seizure d) to develop, publish and promote statement of rights of persons under this act

A requirement to record what the reasonable grounds were, e.g. the serious risk to health or safety, to the person or anyone at the facility.

Part 13: Administration

Recommendation 22

Part 13; Administration - Division 2; Chief Psychiatrist - Subdivision 5; Advisory Committees - Section 309 Establishment of Advisor committees and Section 310 Membership of advisory Committees

Inclusion of persons who do not sit within 'The Agency' be appointed to the advisory committee, (should the Chief Psychiatrist choose to develop advisory committees). Similar to [APQAC](#) there be nominated positions for;

- Persons with lived experience
- CVP or an advocacy organisation
- Cultural representation (reflecting the cultural demographics of persons accessing NTG Mental Health Services)

Terms of reference for the advisory committee be made publically available

Recommendation 23

Part 13 ; Administration - Division 2 - Chief Psychiatrist - Subdivision 6 - Annual Report - Section 312 Annual report

The Chief Psychiatrist's Annual report be provided to the public.

Part 14: Community Visitors

CVP acknowledge that Community Visiting Program functions were maintained within the Exposure Draft.

Further direction is required about the functions of the community visitors to act on behalf of the PCV for example, developing and sending reports.

Recommendation 24

Part 14; Community Visitors - Subdivision 2 Functions and powers of community visitors - Section 335 - Functions of Principal Community Visitor

Addition of "the principal community visitor can delegate works to appointed Community Visitors.

CVP would like to comment on the alteration to;

Section 342 Powers of inspection

A community visitor may, when at an approved mental health facility or the premises of an approved mental health service:

(c) inspect any document (other than a medical record) located at, or accessible from, the facility or the premises that:

(d) with the consent of a person receiving treatment and care at the facility of from the service



This deviates and is a significant change from the current act and has the potential to limit the operational functionality of the CVP. This is particularly for Approved Treatment Agency visits, and Seclusion reports as the person is not at the service at the time of the visit.

CVP is an oversight body and the purpose is related to the broader safety and quality function. The reasoning of the proposal to limit access to medical records is unclear and contradictory to the CVP operational functionality.

With respect, the Chief Psychiatrist is not independent of the service. The CVP supports NT Legal Aid Commission's submission regarding this point.

The National Law related to health practitioners, empowers own motion investigations to ensure the protection of the public – and therefore the premise that permission is sought for patient file access is not always the case if within the law and for valid objectives. This is particularly relevant given this cohort of persons are particularly vulnerable by virtue of their mental illness and disorder and that they are being detained due to reduced capacity to give consent. Therefore oversight mechanisms need to be strengthened in recognition of this.

There is a mechanism for files accessed by CVP to have that access reviewed and audited electronically. CVP support any reviews of their practice and file reviews.

Over the 24 years the CVP has been in operation, there has not been issues or complaints raised regarding this. A CVP practice principle is to support lowest level resolution through direct access, verification and communication of treatment details. Current practice enhances efficiency of CVP and scope of collaboration with Mental Health Services.

CVP acknowledge that this is a person centred approach, of which we should always have the consent and best intentions of the persons we visit.

In regards to requesting consent - there needs to be an added clause for CVP to access medical records/files if 'consent is unable to be accessed' e.g – historical seclusion and restraint records, persons is unable to provide personal consent but there has been an enquiry made on account of their rights and wellbeing being affected or the introduced review of the search and seizure register.

The PCV's inspection of the register and a spot check of such related records enables a more transparent protection of consumer's rights being met and demonstrates the IPU meeting their legislative obligations. This change would also assist the IPU when responding to consumer complaint.

Recommendation 25

Part 14; Community Visitors – Division 3 Community Visitors – Subdivision 2 Functions and powers of Community Visitors - Section 342 Powers of inspection A community visitor may, when at an approved mental health facility or the premises of an approved mental health service:

(c) Inspect any document (other than a medical record) located at, or accessible from, the facility or the premises that:

CVP recommend removing (other than medical records).



(d) with the consent of a person receiving treatment and care at the facility of from the service

CVP recommends adding where possible and practicable.

Part 20: Consequential Amendments

CVP encourages the Bill to acknowledge and refer to legislation that has or is to be introduced.

As always with legislative reforms, it is impossible to see the material effect of all changes and whether unintended negative consequences occur. It is therefore important to reassess this in the transitional provisions in clause 405.

Recommendation 26

Part 20 ; Consequential amendments - Division 2 - Transition matters for Mental Health Act 2024 Section 405 Transitional Regulations

CVP recommend to a legislative commitment to reassess the implementation implications of this Bill at a designated time e.g. 5 years review.

Recommendation 27

Part 20 ; Consequential amendments

CVP recommend the consideration of the following pieces of legislation to be added to the Bill

[National Disability Insurance Scheme \(Authorisation\) Act 2019](#)

[Monitoring of places of detention \(Optional protocol to the convention against Torture Act 2018 ;](#) in the assumption it will be commence

[NT Forensic Act;](#) in the presumption of its development