



MENTAL HEALTH **ADVOCACY** SERVICE

**Response to discussion paper – An office for advocacy and
accountability in Aboriginal affairs in Western Australia.**

SUBMISSION BY

THE CHIEF MENTAL HEALTH ADVOCATE OF WESTERN AUSTRALIA

September 2018

Background:

Part 20 of the *Mental Health Act 2014 WA* (the Act) requires that mental health advocacy services be provided to certain classes of mental health patients with a view to ensuring that their rights are protected. The Chief Mental Health Advocate (the Chief Advocate), who is appointed by the Minister for Mental Health, is charged under the Act with ensuring such services are provided by people engaged by the Chief Advocate as Mental Health Advocates (the Advocates). Collectively they are the Mental Health Advocacy Service (MHAS). One of the Advocates holds a specialist role as Aboriginal Advocate and this person has been consulted as part of this submission preparation.

Individuals of Aboriginal or Torres Strait Islander descent have additional rights under the Act. For example when referred for a psychiatric assessment the practitioner must try to involve an Aboriginal or Torres Strait Islander mental health worker and significant members of the community (such as traditional healers and elders). The Advocates inform individuals of such rights and assist them in exercising them.

The Advocates have a number of investigation and inquiry functions and powers and the Chief Advocate must provide an annual report for Parliament. Extracts from the 2016-17 Annual Report relating to work with Aboriginal and Torres Strait Islander people are attached as annexure one .

A. Function of the new office

MHAS agrees with the system-level advocacy approach and notes with approval the reference to working collaboratively with bodies like MHAS which conduct individual advocacy. MHAS would welcome the opportunity of working collaboratively with the new office proposed in this discussion paper.

Individual advocacy and the issues raised from that need to be a key component and driver of systemic advocacy, however, or the systemic advocacy will be incomplete. Given the broad nature of the functions proposed, it does not seem feasible to include individual advocacy but MHAS proposes a legislative requirement to collaborate and report on such collaboration.

The Aboriginal Advocate stated that monitoring and reporting on government implementation of previous reviews and recommendations was a particularly important function of the office, with a view to this resulting in greater adherence to recommendations. Assessing the evidence base for government decisions and policies was also seen as particularly important.

B. Business of the new office

MHAS agrees that the business of the new office should be determined by Aboriginal people. In relation to overlap with other accountability agencies, MHAS proposes legislative

provisions relating to sharing of data with mutual amendments to the legislation of the other agencies.

C. Structure and powers of the new office

The Aboriginal Advocate felt that the powers and structure outlined had merit. He agreed strongly that the office should be independent from government and that the holder of the office should be an Aboriginal person.

The Aboriginal Advocate also raised concerns around the need for all agencies to be compliant with the proposed framework in order for it to be productive and valuable for Aboriginal people. The suggestion was made that fines for non-compliance with the associated legalisation should be proposed as is the case with the Act. MHAS assumes that the legislation will provide enforceable powers in relation to the conduct of inquiries and ability to obtain evidence.

Based on MHAS experience, we would suggest that the legislation allow for the appointment of people with specific expertise or background. For example, under the Act the Chief Advocate must appoint at least one Youth Advocate with relevant qualifications and experience. The Chief Advocate may also appoint other specialists (not identified).

Also based on MHAS experience we would recommend a permanent deputy office holder. It would appear that the new organisation would have enough work to warrant such an appointment at least on a part-time basis. Many accountability agencies struggle with this issue.

D. Name of the new office

MHAS strongly agrees that the name of the office should be determined in consultation with Aboriginal people.

The MHAS Aboriginal Advocate advised that utilising the language of “First Nations” in the naming of the new office would be of utmost importance, for example “First Nations Advocate.”

He stated “the non-Indigenous power structure in Australia is beginning to acknowledge our First Nations identity. This language is important in recognising, respecting and validating the experience of Aboriginal people and it provides a progressive platform by which we can move forwards together.”

He further noted that this name may go some way in addressing some of the barriers to Aboriginal people trusting and engaging with such an office, in that it would immediately set out a distinction of the office, as compared to previous government roles and reports that some feel have failed to make a tangible difference to the lives of Indigenous people.

E. Appointment process

MHAS referred this question to the Aboriginal Advocate who acknowledged the breadth of potential Aboriginal input with regard to the appointment process of the new office. He referred to State and Commonwealth organisations that are reputable and well-known as well as Aboriginal communities. He further commented that the Indigenous voices could come from representatives of:

- determined Native Title claims across the state;
- Aboriginal Health Services across the state; and
- if the Commonwealth proceeds with a 'voice to parliament or Treaty' then this could become another level for Indigenous voices/representation.

MHAS notes that it is particularly important that rural and remote areas are not forgotten in the appointment process as they can often be the areas with greatest need and least consultation.

ANNEXURE 1 – EXTRACTS FROM THE 2016-17 MENTAL HEALTH ADVOCACY SERVICE ANNUAL REPORT

Aboriginal and Torres Strait Islander children

The rights of Aboriginal and Torres Strait Islander children have not been well met during the year. In several cases, the Advocacy Service's Aboriginal Advocate attended where the health service failed to provide access to an Aboriginal Liaison Officer (ALO), although the Act requires this:

- *Fiona Stanley Hospital told the Advocacy Service that, while the hospital had an ALO service, none of the staff had specialist mental health skills and knowledge. The issue was to be included on the risk register.*
- *At the BAU, the Youth Advocate was told that the ALO from PMH was not allowed to attend the unit. CAMHS later advised this was not correct but there was no ALO on site. This has since been rectified, with a part-time ALO now available.*

The Youth Advocate also raised the following issues during the year:

- the need for more culturally secure care when children are admitted as inpatients under the Act, including reviewing the treatment, support, and discharge planning process to be more individualised and culturally appropriate
- the paucity of culturally appropriate services for children once they return to their communities, and need for better supports for first episode psychosis and comorbid drug and alcohol issues in remote regions
- making Mental Health Tribunal hearings more culturally appropriate for Aboriginal and Torres Strait Islander children.

Cultural diversity rights

The Act requires that any communication under the Act must be in a language, form of communication and terms that the person is likely to understand, and use an interpreter if necessary. There are also provisions regarding the assessment and care of people of Aboriginal and Torres Strait Islander descent. The Charter of Mental Health Care Principles reiterates this and requires that a mental health service must recognise, and be sensitive and responsive to, diverse individual circumstances, including those relating to gender, sexuality, age, family, disability, lifestyle choices, and cultural and spiritual beliefs and practices.

Advocates are required by Advocacy Service protocols to:

- offer an interpreter to any person for whom English is not their native language
- attempt to find out if a consumer is, or identifies themselves as, an Aboriginal or Torres Strait Islander to ensure they know their rights under the Act and the Charter, and to ask if they would like to speak to the Advocacy Service's Aboriginal Advocate.

Aboriginal and Torres Strait Islander rights and issues

Advocacy Service data shows there were 160 people who identified themselves to the Advocate as Aboriginal or Torres Strait Islander on 284 involuntary orders.¹ This equated to 6.1% of the total number of people on inpatient treatment orders and 7.0% of all involuntary orders, a significant overrepresentation of Aboriginal and Torres Strait Islanders, who form 3.1% of the state's population (based on 2016 ABS figures).

Broome Hospital had the highest number of such cases (58 orders), followed by Midland (33 orders), Graylands (32 orders), Frankland (21), and Albany, Armadale, Bunbury and Rockingham hospitals (with 10 orders each).

Cases of concern included the following:

- *An Aboriginal consumer was turned away from a hospital mental health triage. The clinicians involved were of the view that the person was really only interested in a bed for the night and the suicidal risk was low. The person was told to go to a different hospital (in another catchment area), given the bus fare, and escorted from the hospital by security guards. The consumer never made it to the other hospital and the Advocacy Service called police due to concerns for the consumer's wellbeing. A complaint was made to the mental health service about the treatment, including that the consumer had been discriminated against and that the service failed to offer an Aboriginal Support Officer. The hospital denied the allegations and said it did not employ an Aboriginal or Torres Strait Islander mental health worker. The complaint has gone to HaDSCO.*
- *A female Aboriginal consumer from the country was very distressed and wanted a healer to come and 'block off her head to get rid of the voices'. The Advocate liaised with the Statewide Specialist Aboriginal Mental Health Service for a further opinion and they organised (and paid) for a healer to visit the consumer. The result was that the consumer's mental health quickly stabilised and she was able to return home. The healer was male and the consumer said it would have been better to have a female healer.*

Also see *Aboriginal and Torres Strait Islander children* earlier in this report.

The Advocacy Service has one Aboriginal Advocate, who worked primarily across three hospitals – Joondalup, Graylands and Midland - as well as with children when requested by the Youth Advocate, and provided telephone advice to other Advocates, especially in regional areas. He was often the only Aboriginal contact for Aboriginal consumers, particularly at those hospitals that do not have ready access to ALOs.

The Aboriginal Advocate has highlighted a number of ongoing issues:

- the need for culturally appropriate treatment, support and discharge planning by treating teams, including the ongoing training of psychiatrists in Indigenous spiritual and cultural beliefs

¹ The figure includes people on a 6A, 6B and CTO, and relies on the Advocate and the entry by them of the information into the Advocacy Service database, so may be an underestimate.

- the need for culturally appropriate Mental Health Tribunal hearings for Aboriginal consumers, particularly for those consumers who have been regularly placed on inpatient treatment orders for more than five years. The Aboriginal Advocate reports there is a perception the tribunal is using its functions under the Act to merely rubber stamp reviews. He suggests that members of the Aboriginal and Torres Strait Islander community should be encouraged to apply to sit on the tribunal as community members
- suitable subsidised accommodation closer to the BAU for parents of young people from regional and remote areas of the state.