

MEDIA RELEASE

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THE PUBLIC ADVOCATE CALLS FOR GREATER TRANSPARENCY IN THE QUEENSLAND MENTAL HEALTH SYSTEM

Queensland's Public Advocate, Mary Burgess, has called on the State Government to make the operations of the Mental Health Review Tribunal (MHRT) more transparent amid concerns for the long-term safety of some mental health patients.

Mary Burgess has several serious concerns with the MHRT and the mental health system in general.

She is worried for the long-term safety of patients due to some questionable treatment practices within the system, is frustrated that advocates are unable to discuss tribunal matters in any forum, and questions why the MHRT does not record its proceedings in accordance with usual court and tribunal practice.

Ms Burgess has put her concerns firmly on the record, explaining them in detail in the Public Advocate's annual report, which was tabled in Parliament on 6 December 2018.

"I have been monitoring aspects of the operation of the mental health system and the Mental Health Review Tribunal, in relation to the treatment of involuntary patients, for some time, and I am convinced that we need change," she said.

Ms Burgess cited the instance of an involuntary mental health patient who was subjected to eight months of seclusion while receiving electroconvulsive therapy (ECT) twice weekly. She commenced proceedings in the Supreme Court in an effort to have the involuntary regime of treatment the patient was receiving examined in another legal forum.

"Large numbers of ECT treatments can cause harm to patients. I became concerned about not only the long period of seclusion that this patient was subjected to, but the frequency of the ECT treatments and its potential impact on the patient's cognitive function," Ms Burgess said.

"It is critical that when these very intrusive treatments are being imposed on patients — often against their will — that they are based on strong objective medical research and evidence, and that the potential benefits to the patients are carefully weighed against the risks associated with the treatments. In my experience, this is not happening in all cases," Ms Burgess said.

In Ms Burgess' view, there should be a stronger framework for professional oversight of psychiatrists in the Queensland public health system, and more education for them about their legal responsibilities under Mental Health legislation.

“There are also inherent conflicts in having the Mental Health Review Tribunal operate under the auspices of Queensland Health,” Ms Burgess said. “It would be more appropriate for it to be under the umbrella of the Department of Justice and Attorney-General, as is the case with most other tribunals in Queensland.”

“I have a number of significant concerns about the way proceedings are being conducted in the Tribunal, but I am prevented from making comment about individual cases to demonstrate my point because of the very broad confidentiality provisions of the Mental Health Act,” she said.

Under the Act, it is an offence to publish any ‘report’ of a proceeding in the Tribunal. “The provisions impede my ability to fulfil my statutory functions to protect the rights and interests of people with impaired decision-making capacity,” Ms Burgess said. “These very restrictive confidentiality provisions appear to be unique to the Mental Health Act.”

Ms Burgess added that the provisions potentially prevent lawyers representing patients before the tribunal from making any comment about the proceedings, including from raising legitimate concerns with other agencies, herself or even the Minister for Health.

This unsatisfactory position is compounded by the fact the tribunal does not record its proceedings and make the record available in accordance with the requirements of the Recording of Evidence Act 1962.

“The Tribunal has significant powers to approve the continued detention of mental health patients as well as treatments such as ECT and other neurosurgical procedures. The exercise of these types of powers should occur in a transparent process, while protecting patient confidentiality,” Ms Burgess said. “However, the Tribunal is currently operating as a completely closed process that provides no record of what has occurred there and all persons are prevented from raising any concerns about its processes, except through an appeal to the Mental Health Court, which process is hampered by the unavailability of the record of the tribunal proceedings.”

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