Mental Health Carers NSW

Mental Health Carers NSW Inc.

Submission to

NSW Legislative Assembly Committee on Community Services

Inquiry into the Human Rights Bill 2025

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Mental Health Carers NSW

About Mental Health Carers NSW (MHCN)

Mental Health Carers NSW (MHCN) is the peak body for carers of people who experience mental health challenges in NSW. MHCN is a community managed organisation that provides systemic advocacy, capacity development and education for the carers, family, friends, and kin of those experiencing mental health challenges across NSW.

In Australia, there are approximately 354,000 mental health carers who, each year, provide 186 million hours of unpaid support.[1] Due to the demands of their caring role, carers are at a high risk of developing mental health issues, as well as experiencing loneliness and social isolation. MHCN supports mental health carers and advocates for services and systems that support them in their caring role. MHCN ensures the voices of mental health carers in NSW, and the people they care for, are represented in policy and service reform processes. We work to uphold the rights of carers and consumers to equitable, accessible, and adequately funded mental health services.

MHCN empowers mental health carers to become champions for mental health reform and advocacy. We engage regularly with carers so they can inform our policy priorities and advocacy; for example, every month we convene the *Carers of Forensic and Corrections Patients Network* meetings, and peer led *Mental Health Carer Connection* meetings.

MHCN also provides the Disability Advocacy Futures Program. This program engages in systemic advocacy on behalf of those who experience psychosocial disability. In this role MHCN advocates to non-Health state government services under the Disability Advocacy Futures Program.

MHCN is funded by the NSW Ministry of Health and the NSW Department of Communities and Justice. We are a foundation member of Mental Health Carers Australia.

[1] Diminic, S., Lee, Y. Y., Hielscher, E., Harris, M. G., Kealton, J., & Whiteford, H. A. (2021). Quantifying the size of the informal care sector for Australian adults with mental illness: Caring hours and replacement cost. *Social Psychiatry and Psychiatric Epidemiology, 56*(3), 387–400.

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Executive Summary

This submission fully supports the concept of a Human Rights Act for NSW.

We support the Human Rights Bill 2025 in principle, but we have identified several areas of the proposed Bill that we believe should be amended prior to submission to the Parliament for debate.

We have included a table of recommended amendments in relation to the several clauses. We believe the Bill should be strengthened in relation to the following areas:

- The protection of Families (clause 19) to recognise the rights of carers
- The rights of people detained under the Mental Health Act and subject to an inquiry or review by the Mental Health Review Tribunal (clause 26)
- The right to physical health, mental health, and disability services and emergency treatment (clause 39)
- The need for public authorities to establish mechanisms to put in place measures to monitor and protect people's rights dignity, authority and self-determination (clause 40)
- Ensuring that public authorities include people with lived experience of mental health concerns and their families and carers when taking actions or making decisions that may impact human rights (clause 49)
- Broadening the scope of the complaints considered by the Human Rights Commissioner to enable advocacy organisation to make complaints on behalf of a class of people.

Scope of this Submission

This submission addresses the following terms of references as published by the NSW Legislative Assembly Committee on Community Services:

That the Committee on Community Services inquires into and reports on the Human Rights Bill 2025.

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Introduction

MHCN welcomes the introduction of the Human Rights Bill 2025 and strongly supports the establishment of a Human Rights Act in New South Wales. We believe a Human Rights Act has the potential to strengthen accountability, improve decision-making by public authorities, and provide a clearer framework for protecting the dignity, autonomy, and wellbeing of people across NSW.

While much of the discussion surrounding human rights legislation focuses appropriately on the rights of individuals interacting with government systems and services, it is equally important to recognise that carers are rights holders in their own right. Carers are not simply extensions of service systems or supports around a person receiving care. They are individuals with their own human rights, wellbeing needs, responsibilities, and experiences. [1]

This principle is already recognised in a range of Australian legislation, policy frameworks, and mental health standards. The Commonwealth Carer Recognition Act 2010 and the NSW Carers (Recognition) Act 2010 acknowledge the significant contribution carers make to society and establish expectations that public sector agencies recognise and consider carers in the development and delivery of services. [2] [3] These frameworks recognise that carers should have the same rights, opportunities, and life chances as other members of the community and that caring responsibilities should not come at the expense of their health, wellbeing, participation, or inclusion. [2] [3] [4] Importantly, these legislative frameworks recognise carers not merely as contributors to service delivery, but as individuals whose rights, wellbeing, participation, and interests warrant independent consideration by governments and public authorities.

For mental health carers, these rights are particularly important. Mental health carers frequently provide substantial emotional, practical, financial, and advocacy support while navigating complex systems that can often overlook their role. Existing mental health legislation and policy frameworks recognise carers as important partners in care through mechanisms such as designated carer provisions, participation in treatment and discharge planning processes, and involvement in care decisions where appropriate. [5] National Standards for Mental Health Services similarly recognise carers as key partners in treatment, recovery, and service planning. [6]

Mental health carers also experience unique challenges that raise human rights considerations. Many report exclusions from decision-making, difficulties accessing information, impacts on their own physical and mental health, financial strain, workplace disadvantage, and barriers to participating in community life. Some carers themselves experience mental ill-health, trauma, or psychosocial disability while continuing to provide care for others.[14] As such, protections relating to dignity, participation, equality, family life, health, and access to services are not only relevant to consumers of mental health services but also to the carers who support them.

MHCN therefore supports the Human Rights Bill 2025 as an important step forward for NSW. However, we believe several provisions should be strengthened to ensure the rights, experiences, and contributions of carers are appropriately recognised and protected. This includes recognising carers within provisions relating to families, strengthening rights relating to mental health treatment and review processes, improving protections relating to health services, embedding lived experience participation in decision-making, and ensuring effective avenues exist for systemic human rights concerns to be raised on behalf of affected communities.

The recommendations contained within this submission seek to strengthen the Bill so that it better reflects the realities of people living with mental ill-health, their families, and the carers who provide ongoing support. A Human Rights Act should recognise that protecting the rights of individuals and protecting the rights of carers are not competing objectives. They are usually complementary and mutually reinforcing, contributing to better outcomes, stronger relationships, and more person-centred systems of care.

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Recommendations

The following table provides comments and makes recommendations in relation to several clauses within the Human Rights Bill 2025.

Table 1 Comments and recommendations in relation to specific clauses of the Human Rights Bill 2025

Clauses in current Bill	Comments	Recommendation
4 Objectives	Subclause (b) use the verb 'to help'. The objective 'to help' is inadequate and should the 'to ensure'	Change Subclause (b) to read 'To ensure a culture that respects, protects and promotes human rights is established and maintained in the public sector'
14 Right to recognition and equality	Subclause (6) states Individuals living with a disability have a right to access and use supports the individuals may require to make decisions that have legal effect.	This appears to limit the rights of individuals with disabilities to the right to **support** in making decision but not a right to supports for other than making decisions. Suggestion: "Individuals living with a disability have a right to access and use supports the individuals may require to participate in their community and to make decisions that have legal effect."
16 (b) Prohibition of torture and cruel, inhuman, or degrading treatment	An individual must not be subjected to medical or scientific experimentation or treatment without the individual's free consent. However, this does not take into consideration those situations where the person does not have the capacity to consent and others can make decisions about medical treatment such as those under the Mental	This clause should make it clear that other Acts provide for treatment when the person does not have the capacity to consent, such as those subject to detention under the Mental Health Act or where others have substitute decision making powers. Consider, "not have the capacity to consent and legislation provides others can make decisions about medical treatment such as those under

Clauses in current Bill	Comments	Recommendation
	Health Act or Guardianship Act.	the Mental Health Act or Guardianship Act. However, capacity should be presumed until otherwise assessed and the person's views and preferences must still be considered and capacity re-tested when appropriate.
19 Protection of families	This section should specifically include the rights of carers of people with physical and mental illness and disability	Insert a new sub-clause *(4) Carers of people with a physical or mental illness or disability have the right to be respected, recognised, consulted, and included in decision making about care planning and delivery unless excluded by the people they care for.*
21	This clause reads that 'Every individual lawfully within the State has the right to move freely within the State and to enter and leave the State and has the freedom to choose where to live.' But does not acknowledge those circumstances such as mental illness where those freedoms can be legally restricted.	This clause needs to acknowledge circumstances such as mental illness and disability where safe and responsible care and treatment require a restriction on freedom of movement.
26(7)	Right to liberty and security of individual Sub-section (7) refers to a court deciding without delay if the detention is lawful, but it is not clear if	This subsection should be clear that it covers detention under the Mental Health Act and that the term 'court' includes the Mental Health Review Tribunal so that the requirements to decide without delay include inquiries

Clauses in current Bill	Comments	Recommendation
	the term 'court' is limited in its meaning to the Supreme Court, as implied in the definition section, or includes other judicial and semi-judicial bodies. This section should be drafted to include detentions under the Mental Health Act where decisions made by an authorised medical officer must be reviewed by the Mental Health Review Tribunal and should be made 'without delay'.	and reviews of the decisions of the authorised medical practitioner under the Mental Health Act?
36(3)	For subsection (2), forced or compulsory labour does not include— (a) work or service required because of an emergency or calamity threatening the life or wellbeing of the community, or (b) work or service that forms part of normal civil obligations. "Normal civil obligations" is untethered to any limit of reasonableness, and this could mean unreasonable demands (such as families and carers having to take care of people with major and complex support needs without any or adequate assistance)	Change to "(b) work or service that forms part of normal ***and reasonable*** civil obligations." Introduce "(c) work that form part of normal and reasonable ***communal obligations".***

Clauses in current Bill	Comments	Recommendation
	could be justified if the abuse persisted long enough to be considered 'normal'. This also needs a third sub-clause to exclude tasks requested of individuals in closed communities such as Jails, Hospitals, religious organizations, community-based services etc., where the tasks are of a communal nature such as cleaning, food preparation, gardening, administration etc.,	
39 (1) Right to health	This clause only covers the right to access services. It should be retitled 'health and disability service' and the subclauses amended. The language of Article 12 of the UN's **International Covenant on Economic, Social and Cultural Rights** should be adopted, to address the evil where care is simply not funded to meet the access needs of all whom require it.	**39 Right to health and disability services** (1) Every individual has the right to access ***physical health, mental health and disability services,*** goods and facilities without discrimination to allow them to achieve the highest attainable standard of physical and mental health.
39 (2) Right to Health	(2) Every individual has the right to emergency ***medical treatment*** that is immediately necessary.	Change to be consistent with clause 30 (1) Change to (2) Every individual has the right to emergency ***physical and***

Clauses in current Bill	Comments	Recommendation
		mental health treatment that is immediately necessary.
49 (4)	This section on the ***obligations on public authorities*** does not include an obligation to put in place measures to protect people's rights to dignity, autonomy and self-determination as required by clause 32(1) and (2).	Include a new clause (4)(C) ***Must put in place mechanisms that monitor, safeguard, and report on measures to enact clause 3***2 (1) and ***(2)*** to ensure that people are treated with respect for their dignity, autonomy, right to self-determination and have access to support, assistance and other measures to safeguard them from violence, abuse, neglect and exploitation.
49 (4)(c)	The current wording of the Bill is (c) ensuring the participation of— (i) First Nations peoples in decisions that directly or disproportionately affect First Nations peoples, (ii) children in decisions that directly or disproportionately affect children, (iii) people with disability in decisions that directly or disproportionately affect people with disability, (iv) women and girls in decisions that directly or disproportionately affect women and girls,	Include the following. The participation of VIII. People with a lived experience of mental illness in decisions that directly or disproportionately affect people with a mental illness IX. Carers of people with a physical or mental illness or disability in decisions that directly or disproportionally affect people with a mental illness or disability or their carers

Clauses in current Bill	Comments	Recommendation
	(v) older people in decisions that directly or disproportionately affect older people, (vi) LGBTIQA+ people in decisions that directly or disproportionately affect LGBTIQA+ people, (vii) victim survivors in decisions that directly or disproportionately affect victims,' However, while this list includes people with a disability it does not include people with a lived experience of mental illness or their carers	
65 Who may make human rights complaints to Commissioner	The current draft does not appear to allow an organisation representing a class of people without the written authority of (what appears to be) all the persons in the class. This will prevent advocacy organisations from making complaints on behalf of individuals.	Insert a new sub-clause (5) ***A complaint may be made by an organisation on behalf of a class of persons without the written authority of the persons in the class where the organisation is recognised by the Commissioner as having the authority to represent those individuals.***

Mental Health Carers NSW

References

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7. International Covenant on Economic, Social and Cultural Rights | OHCHR