



SUBMISSION

To the Australian Law Reform
Commission's Inquiry into Equality,
Capacity and Disability in Commonwealth
Laws

June 2014

Mentally healthy people, mentally healthy communities

INTRODUCTION

This submission has been developed in response to the ALRC's Discussion Paper released in May 2014 through its Inquiry into Equality, Capacity and Disability in Commonwealth Laws (the Inquiry). It builds on three submissions by the MHCA to the Inquiry in late 2013 in response to the ALRC's earlier Issues Paper (November 2013). The MHCA's previous submissions respectively focussed on:

1. Access to insurance products for people with a diagnosed mental illness;
2. Eligibility for the National Disability Insurance Scheme for people with a psychosocial disability associated with mental illness; and
3. Supported decision-making and legal capacity (a joint submission with the National Mental Health Consumer and Carer Forum).

MENTAL ILLNESS AND ACCESS TO INSURANCE

The Issues Paper invited submissions on the availability of insurance products of people with disability, the operation of the insurance exemption under the *Disability Discrimination Act 1992* (Cth) (DDA) and the transparency and accessibility of the data used by insurers in relation to people with disability. In response, the MHCA made a submission outlining inequitable outcomes and apparent discrimination experienced by people with experience of mental illness in their dealings with insurance, and the limitations of the DDA in addressing these issues.

The MHCA is pleased that the current Discussion Paper has endorsed our suggestion that the findings of the ALRC's previous inquiry in relation to older Australians and insurance¹ could also apply to issues around insurance for people with disability (including mental illness). The MHCA continues to support the options outlined in that previous inquiry (and summarised in the current Discussion Paper) as providing promising avenues for progressing action to help improve transparency and fair access for mental health consumers to insurance cover – an essential service that most other Australians have little difficulty accessing.

However, the MHCA is disappointed that more specific recommendations about this important and long-standing issue are not presented in the Discussion Paper. The Issues Paper appeared to indicate that the Inquiry's scope would allow for more detailed examination of law reform options relating to discrimination in the insurance marketplace.

The MHCA acknowledges that the Inquiry has interpreted 'equal recognition' in specific ways which focus on 'equal recognition of people with disability as *people* before the law', legal capacity and decision-making. Nevertheless, we note that 'equality' is a framing principle of

¹ Australian Law Reform Commission, *Access All Ages – Older Workers and Commonwealth Laws*, Report No. 120 (2013), Chapter 6.

the Inquiry and – consistent with examples pointed to in the Issues Paper² – encompasses equal protection against discrimination and equal benefit of the law.

The MHCA continues to believe that the matters raised in our earlier submission have direct relevance to equality, capacity and disability in Commonwealth Laws. That reform has languished for many years, with little response from policy-makers or insurance providers, reinforcing the need for law reform. The Inquiry is therefore a timely opportunity to promote positive change to improve the equality of people with disability before the law in an important area of Commonwealth responsibility.

SUPPORTED DECISION MAKING AND THE NDIS

The MHCA is pleased that the ALRC has proposed the introduction of National Decision Making Principles, underpinned by the United Nations Declaration of Rights of Persons with a Disability (UNCRPD):

Principle 1

Every adult has the right to make decisions that affect their life and to have those decisions respected.

Principle 2

Persons who may require support in decision making must be provided with the support necessary for them to make, communicate and participate in decisions that affect their lives.

The MHCA proposes that a third principle should complement these by recognising that every adult may need support to make decisions at some point in their life. This is particularly important for people who are socially isolated and who may have greater need for decision support as a result. This third principle would strengthen the intent of Principle 1 by ensuring that a person's legal or perceived capacity to make decisions does not hinder their right to make decisions to the maximum extent possible.

The MHCA supports the ALRC's proposal that the *National Disability Insurance Scheme Act 2013* (Cth) be amended to include reference to Commonwealth Decision Making Principles, thus providing a more sound basis for the promotion of choice and control for people with disabilities under the NDIS.

² In discussing 'Equality' as a framing principle of the Inquiry, the Issues Paper refers to Article 5 of the *UN Convention on the Rights of Persons with Disabilities*, which provides that: 'all persons are equal before and under the law and are entitled without any discrimination to the equal protection and equal benefit of the law' and 'States Parties shall prohibit all discrimination on the basis of disability and guarantee to persons with disabilities equal and effective legal protection against discrimination on all grounds.' A similar emphasis is also found within the *Victorian Charter of Human Rights and Responsibilities* (Section 8: 'Every person is equal before the law and is entitled to the equal protection of the law without discrimination and has the right to equal and effective protection against discrimination'), to which the Issues Paper also points as illustrative of Equality as a framing principle of the Inquiry.

ABOUT THE MHCA

The MHCA is the peak, national non-government organisation representing and promoting the interests of the Australian mental health sector and committed to achieving better mental health for all Australians. It was established in 1997 as the first independent peak body in Australia to truly represent the full spectrum of mental health stakeholders and issues.

MHCA members include national organisations representing consumers, carers, special needs groups, clinical service providers, public and private mental health service providers, researchers and state/territory community mental health peak bodies.

The MHCA aims to promote mentally healthy communities, educate Australians on mental health issues, influence mental health reform so that government policies address all contemporary mental health issues, conduct research on mental health issues, and carry out regular consultation to represent the best interests of our members, partners and the community. These endeavours in education and policy reform are matched by our commitment to researching more innovative approaches to the provision of mental health care. In addition, the MHCA continues to focus on the human rights of people with a mental illness.