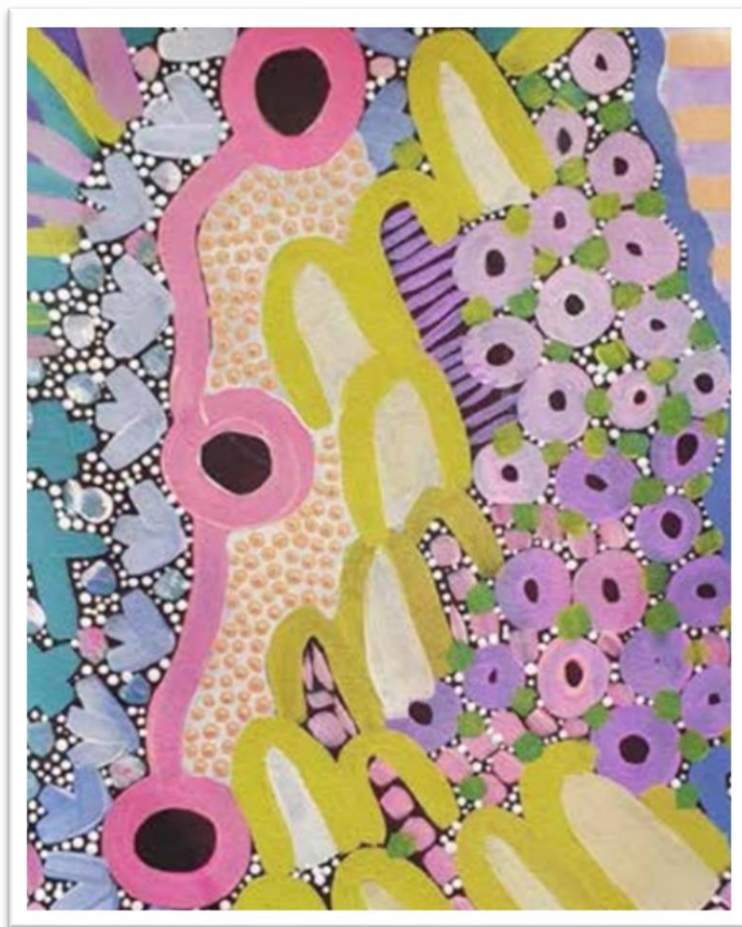


Balit Durn Durn Centre Response to the
Independent Review of Compulsory
Mental Health Assessment and
Treatment Criteria and Alignment of
Decision-making Laws consultation
paper



Acknowledging Aboriginal and/or Torres Strait Islander peoples living experience

We acknowledge all Traditional Owner's ongoing connection to these lands, waterways, and skies. We pay our respects to all Aboriginal and/or Torres Strait Islander peoples past and present. To the giants whose shoulders we stand on today and every day. And we acknowledge that sovereignty has never been ceded.

It is important that we hold space to acknowledge the living experiences of our Aboriginal and/or Torres Strait Islander Elders, brothers and brotherboys, sisters and sistergirls, and cousins from all Nations and language groups. Peoples who have breathed life into these lands, waterways, and skies, immersed with vibrant yet diverse cultures from the very beginning of time itself.

The ongoing impacts stemming from colonisation on the social and political determinants of Aboriginal peoples have been profound. Its impacts continue to reverberate across several generations. In Victoria, colonialism has been especially brutal. Colonial violence has been enduring and takes many forms. From various government policies intent of genocide, and those that led to the Stolen Generations – a form of cultural genocide in itself - to police brutality and the continuing torment of Black deaths in custody, to the trauma that is a product from unchecked, unchallenged racism and discrimination – whether structural, systemic, overt, casual, or “unconscious bias”. Inert, culturally unsafe service systems and models of care designed to cater to the majority are incapable of understanding our needs and ways of being. It needn't matter the form of violence, its impacts are felt deeply, the trauma compounding.

Despite all that colonisation has wrought in the last 235 years, our connection to Country, culture and kin remains enduring. It remains strong. Despite dislocation borne from colonial violence, we are healing. We are finding our voice, a voice that was so ruthlessly taken from and denied to our Ancestors. We are telling our stories, sharing our experiences with the belief that society, systems, and structures can learn from us and those who went before us – whose footsteps we follow. The belief that with our advocacy, systems and structures can evolve to place the social and emotional wellbeing model at the core of service design and delivery. A holistic model that recognises our mob's health and wellbeing as being influenced by cultural, historical, political, and social determinants.

Language

The term 'Aboriginal' in VACCHO documents is inclusive of Torres Strait Islander peoples and 'Aboriginal Victorian' includes all Aboriginal people living in Victoria. The terms 'Community' or 'Communities' in this document refers to all Aboriginal and/or Torres Strait Islander communities across Australia, representing a wide diversity of cultures, traditions, and experiences.

Story of the artwork – ‘Nyarri Yathuka’ (*Now we will no longer be without*)

Kenita-Lee McCartney is an Aboriginal woman from Swan Hill/Balarand. Her bloodlines run through Wemba Wemba, Wiradjuri, Wotjiboluk, Neri Neri, and Boon Wurrung Countries.

This piece, ‘Nyarri Yathuka’ (*Now we will no longer be without*), tells the story of bright futures, with Mobs flourishing and thriving. It signifies our path to a brighter future and the healing journey for our mob. With our Communities leading the way to create even brighter and self-determining futures for generations to come. The colours are vibrant and bright, invoking our past and its impacts that helped plant the seeds of resilience that our Mob have sown. The piece tells a story of the journey our Mobs continue on. We are alive. We have survived. We are healing. We are strong. We will thrive.

Background

The Balit Durn Durn Centre at the Victorian Aboriginal Community Controlled Health Organisation (VACCHO) welcomes the opportunity to provide feedback to Independent Review of Compulsory Mental Health Assessment and Treatment Criteria and Alignment of Decision-making Laws consultation paper. Across a wide range of intersecting factors, Aboriginal Victorians are still disproportionately exposed to intersecting risk factors that negatively impact on their mental health and social emotional wellbeing.

In Victorian Aboriginal Communities, the events of the 2020 bushfires and coronavirus pandemic have exacerbated the stress and health inequity for Communities. These events have significantly increased social, financial, emotional, and physical pressures and stressors, including widespread grief and loss, which can compound existing impacts from: the Stolen Generations and removal of children; unresolved trauma; separation from culture and associated identity issues; discrimination based on race or cultural identity; economic and social disadvantage; chronic disease; high incarceration rates; violence and substance use.

VACCHO

VACCHO is the peak body for Aboriginal health and wellbeing in Victoria – the only organisation of its kind - with 32 Aboriginal Community Controlled Organisations (ACCOs) as Members. VACCHO trains, supports, and advocates with and for our Members and their Communities across Victoria. ACCOs deliver a suite of culturally safe and responsive frontline health and community care services for Aboriginal Communities. ACCOs have a proud, long history as sustainable, grassroots organisations that assist in building Aboriginal self-determination. They hold Aboriginal health in Aboriginal hands.

The Balit Durn Durn Centre for Aboriginal Social and Emotional Wellbeing

The Balit Durn Durn Centre (the Centre) was launched in May 2022 as a response to the Royal Commission into Victoria's Mental Health System (the Royal Commission). Although the creation of the Centre is in its infancy, it is a result of the tireless advocacy of Aboriginal peoples across generations. The Centre fosters innovation and improvement in social and emotional wellbeing practice, policy, and research.

The language term *Balit Durn Durn* was gifted by Wurundjeri community to name our report in response to the Royal Commission's Interim Report. Further approval was sought to continue the use of Woi Wurrung language to name the Centre. The Centre acknowledges the generosity of Wurundjeri people for the continued use of their Woi Wurrung language. *Balit Durn Durn* translates in English to 'strong brain, mind, intellect and sense of self'.

Executive Summary

The current mental health system goes against Aboriginal ways of Knowing, being and doing

While there is greater understanding of the needs and aspirations of Aboriginal people, there remains significant disconnect in the translation of policy and regulation into the Aboriginal context, including the Mental Health and Wellbeing Act. Western terms, concepts and clinical models of care that are commonly described in policy are not aligned with Aboriginal ways of knowing (epistemology), being and doing (ontology).

This submission has been created in partnership with living experience workforce expertise. The Centre's response to the Consultation Paper is structured around key themes:

Part A of the consultation paper

- Aboriginal social and emotional wellbeing is complex and multidimensional
- The current mental health system goes against Aboriginal ways of knowing, being and doing
- De-identified case stories used to inform this submission expose several systemic failures
- Aboriginal cultural and social emotional wellbeing therapies need to be viewed by mainstream systems as a valid and legitimate approach to treatment, care and support
- There are exceptional circumstances where compulsory treatment might be appropriate with the purpose to address immediate safety concerns and risk

- Aligned efforts must prioritise reducing the over-representation of Aboriginal people in compulsory assessment and treatment
- Appropriate and adequate resourcing is needed to uphold rights, dignity and humanity in the exceptional circumstances where compulsory assessment and treatment might be appropriate.

Part B of the consultation paper

- Supported decision-making for Aboriginal people in mental health care must include cultural understanding and respect, inclusion of Aboriginal perspectives, collaborative decision-making, adequate support and resources, and ongoing review and flexibility
- Nominated support person for individuals undergoing mental health compulsory treatment is essential for advocacy, emotional and practical support, effective communication, continuity of care, and cultural considerations
- The lack of nominated support persons for compulsory patients can be attributed to a significant gap in awareness and understanding within the mental health system
- There is a need to establish substitute decision-making panels in the exceptional circumstances where compulsory assessment treatment is indicated.

Part C of the consultation paper

- The Will and Preferences framework needs to be revised to incorporate mechanisms that consider protective factors of connection to Country, Community, and kin for Aboriginal people
- The Mental Health Tribunal needs to be culturally safe, accountable and transparent.

Part A: Introduction

Aboriginal peoples Social and Emotional Wellbeing is complex and multidimensional

Aboriginal and Torres Strait Islander social and emotional wellbeing (SEWB) is a complex, multidimensional concept encompassing connections to land, culture, spirituality, ancestry, family, and community. Aboriginal SEWB is situated within a framework that acknowledges Aboriginal Australian worldviews and expressions of culture, including the individual self, family, kin, Community, traditional lands, ancestors, and the spiritual dimensions of existence.¹²³

¹ Wright, A., Davis, V. N., Brinckley, M. M., Lovett, R., Thandrayen, J., Yap, M., ... & Banks, E. (2022). Relationship of Aboriginal family wellbeing to social and cultural determinants, Central Australia: 'Waltja tjutangku nyakunyjaku'. *Family Medicine and Community Health*, 10(4), e001741.

² Bourke, S. C., Chapman, J., Jones, R., Brinckley, M. M., Thurber, K. A., Calabria, B., ... & Lovett, R. (2022). Developing Aboriginal and Torres Strait Islander cultural indicators: an overview from Mayi Kuwayu, the National Study of Aboriginal and Torres Strait Islander Wellbeing. *International Journal for Equity in Health*, 21(1), 109.

³ Gee, G., Dudgeon, P., Schultz, C., Hart, A., & Kelly, K. (2014). Aboriginal and Torres Strait Islander social and emotional wellbeing. Working together: Aboriginal and Torres Strait Islander mental health and wellbeing principles and practice, 2, 55-68.

The Aboriginal concept of 'healing' is an inclusive term that enables mental health to be recognised as part of a holistic and interconnected Aboriginal view of health. The concept of healing embraces social, emotional, physical, cultural, and spiritual determinants of health and wellbeing.

Many communities in Victoria and across Australia prefer the term 'social and emotional wellbeing' to 'mental health' as it is a holistic model reflecting a more strengths-based approach to health. Comparatively, the term 'mental health' is an individual negotiated state – often framed in the deficit – and the result of an interplay of factors, both internal and external to an individual rather than a community or collective.⁴⁵⁶⁷ While the importance of mental health cannot be understated, Aboriginal peoples "position [mental health] within the larger framework of SEWB – a framework that includes the domains of wellbeing that are unique and essential components of Aboriginal and Torres Strait Islander health" and wellbeing.⁸

The SEWB model (figure 1) emphasise concepts of health and wellbeing and balance rather than illness and symptom reduction. It includes protective factors that support good health and wellbeing for Aboriginal peoples and Communities. These include connection to body, mind and emotions, family and kinship, Community, culture, Country, spirit, spirituality, and ancestors. The outer wheel speaks to how these factors interact with social, historical, and political determinants of health and wellbeing, and the importance of each element in keeping well.⁹

These determinants of health and wellbeing are defined as:

- Social determinants - the impact of poverty, unemployment, housing, educational attainment, and racial discrimination
- Historical determinants - the historical context of colonisation and its ongoing impacts. The impact of past government policies and the extent of historical oppression and cultural displacement
- Political determinants - the unresolved issues of land rights, control of resources, cultural security, and the rights of self-determination and sovereignty.

⁴ Dudgeon, Patricia (Editor); Milroy, Helen (Editor); Walker, Roz (Editor). / Working Together: Aboriginal and Torres Strait Islander Mental Health and Wellbeing Principles and Practice. 2nd Edition ed. Canberra: Commonwealth of Australia, 2014

⁵ Calma, T., Dudgeon, P. and Bray, A. (2017), Aboriginal and Torres Strait Islander Social and Emotional Wellbeing and Mental Health. *Aust Psychol*, 52: 255-260.

⁶ Dudgeon, P., Bray, A., D'Costa, B. and Walker, R. (2017), Decolonising Psychology: Validating Social and Emotional Wellbeing. *Aust Psychol*, 52: 316-325.

⁷ Dudgeon, P., Alexi, J., Derry, K., Brideson, T., Calma, T., Darwin, L., Gray, P., Hirvonen, T., McPhee, R., Milroy, H., Milroy, J., Murray, D., & Sutherland, S. (2021) Mental health and well-being of Aboriginal and Torres Strait Islander peoples in Australia during COVID-19. *Australian Journal of Social Issues*, 56, 485– 502.

⁸ Kelly, K., Dudgeon, P., Gee, G., & Glaskin, B. (2009). Living on the edge: Social and emotional wellbeing and risk and protective factors for serious psychological distress among Aboriginal and Torres Strait Islander people. Darwin: Cooperative Research Centre for Aboriginal Health.

⁹ Victorian Aboriginal Community Controlled Health Organisation Inc. 2020, Balit Durn Durn, Victorian Aboriginal Community Controlled Health Organisation Inc., Melbourne



Figure 1. Aboriginal social and emotional wellbeing model ('SEWB wheel') adapted by the Balit Durn Durn Centre from Gee, Dudgeon, Shultz, Hart and Kelly, 2013

Additionally, there are significant risks in the conflation of stigma with racism. In Australia, stigma and discrimination is all too often racially based, though meets at innumerable intersections. It is important to make the distinction between racism and stigma explicit. Racism is often a trigger for compulsory assessment and treatment, long before presentation to hospital emergency departments. For example, homelessness, the use of Alcohol and other Drugs (AOD) and police contact have a very strong influence on people being taken, often involuntarily, to emergency departments.

The current mental health system goes against Aboriginal ways of knowing, being and doing

The current Victorian mental health system is misaligned with Aboriginal ways of knowing, being, and doing in several ways:

- *Fragmented and not holistic*: The system is often fragmented, focusing primarily on clinical approaches rather than embracing a holistic understanding of mental health. This approach fails to recognise the interconnectedness of social, emotional, and cultural factors that contribute to Aboriginal people's wellbeing. Aboriginal ways of knowing emphasise the importance of considering the whole person and their community in addressing mental health concerns.
- *Clinically centric and not encompassing of social and emotional wellbeing*: The system tends to prioritise clinical interventions, overlooking the broader social and emotional determinants of health. Aboriginal communities have unique historical, social, political, and cultural factors that significantly impact mental well-being. Ignoring these factors can limit the effectiveness of mental health services and hinder culturally appropriate care.

- *Culture is not valued as a protective factor:* Aboriginal culture and identity are essential protective factors for mental health and well-being. In the (rare) circumstances where consumers receive treatment plans, the plans themselves often fail to recognise and incorporate cultural practices, values, and beliefs. This lack of cultural understanding and sensitivity can contribute to feelings of disconnect, disempowerment, and even exacerbate mental health issues among Aboriginal individuals.
- *Racism, discrimination, and stigma:* The mental health system still harbours racism, discrimination, and stigma toward Aboriginal people, the Aboriginal community, and Aboriginal service systems. This systemic bias can lead to unequal access to services, misdiagnosis, and inappropriate treatment. Aboriginal people face barriers in seeking help due to fear of judgment, cultural insensitivity, or previous negative experiences within the system. This often leads to people accessing essential services late and at the crisis/tertiary continuum of care.

Addressing these concerns requires a comprehensive and culturally appropriate approach that recognises the importance of Aboriginal ways of knowing, being, and doing. This includes involving Aboriginal communities in decision-making processes, valuing and integrating cultural practices and knowledge into mental health care, and actively addressing racism, discrimination, and stigma within the system.

Efforts should aim to build a mental health system that respects and supports Aboriginal individuals' unique experiences and promotes their social and emotional wellbeing. This could include, for example, leveraging the significant expertise of the existing Aboriginal workforce (both clinical and cultural support roles) and/or the establishment of a panel of Aboriginal Leaders and Elders and trained professionals who collaboratively work together to develop treatment plans for Aboriginal people in the mental health system.

Living experience perspective used to inform this submission expose several systemic failures

There is a pressing need to move beyond isolated assessment and criteria considerations. It sheds light on several key issues:

- *Systemic failures:* The mental health system exhibits systemic deficiencies, such as a lack of transparency and oversight. The case stories reveal how individuals are admitted based on scant evidence of ongoing mental illness or psychosis. These shortcomings compromise the integrity of the assessment process and raise concerns about the appropriateness of involuntary admissions.
- *Human rights:* Fundamental human rights should serve as the foundation and guide decision-making within the mental health system. This principle should inform the assessment and treatment processes, ensuring that rights are respected and protected throughout their mental health journey. In addition to the Victorian Charter of Human Rights and Responsibilities, Aboriginal peoples have rights as

stipulated in the United Nations Declaration of Human Rights and the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).¹⁰

- *Challenges with compulsory assessment:* Compulsory assessment poses specific challenges. The timeframe for assessment, rarely extended to the full 72 hours, can create pressure and potentially result in quick decisions. Decision-makers responsible for compulsory assessments may lack a comprehensive understanding of the implications for the individual's well-being within the broader context. The current process predominantly aligns with a clinical, Western paradigm, potentially overlooking cultural safety considerations and exhibiting biases. Moreover, the absence of independent third-party support further exacerbates these challenges.
- *Challenges with compulsory treatment:* Compulsory treatment presents its own set of obstacles. The predominant treatment approach often relies heavily on high doses of pharmaceutical interventions, while disregarding the validity of Aboriginal therapies and alternative treatment options. This limited perspective undermines culturally appropriate care and neglects the potential benefits of a more comprehensive and inclusive approach to treatment.
- *Post-care concerns:* The case stories highlight the insufficient provision of a clear post-care plan. As a result, individuals frequently experience worsening conditions upon discharge, including job loss, housing instability, and the challenging process of regaining custody of their children from out-of-home care arrangements. This lack of comprehensive support undermines the effectiveness of the mental health system and perpetuates the cycle of disadvantage.

Addressing these issues requires a holistic approach to mental health care that recognises and rectifies systemic failures, prioritises human rights considerations, improves the process of compulsory assessment by incorporating cultural safety and independent support, broadens the range of treatment options, and provides robust post-care plans to ensure individuals are not left worse off after treatment.

Aboriginal cultural and social emotional wellbeing therapies need to be viewed by mainstream systems as a valid and legitimate approach to treatment, care and support

Aboriginal and Torres Strait Islander peoples maintain the oldest continuing cultures worldwide with estimates of cultural development and evolution occurring for at least the

¹⁰ The UNDRIP is the most comprehensive tool available to advance and protect the rights of Aboriginal peoples. UNDRIP covers all areas of human rights as they relate to all Indigenous peoples. This includes the fundamental and foundational human rights of Indigenous peoples categorised into four principles: self-determination; participation in decision-making; respect for and protection of culture; equality and non-discrimination.

past 65,000 years. 11 12 Across the continent there are hundreds of unique Aboriginal and Torres Strait Islander groups (sometimes referred to as mobs or nations) that have their own languages, cultures, traditions, and defined land areas.¹³

Colonisation in 1788 brought with it much destruction and dislocation. While many Aboriginal and Torres Strait Islander Communities are thriving, historical and ongoing social injustices, violence and discrimination continue to impact on the SEWB of Aboriginal peoples to this day. Colonisation is not an historical event and in the state of Victoria, colonisation was swift and brutal. It is an ongoing experience that manifests in ever evolving ways, imparting lasting impacts.

Despite the significant cultural knowledge and wisdom that informs the Aboriginal SEWB model, the model itself continues to be undervalued by mainstream systems and its legitimacy diminished. There are a multitude of reforms, frameworks, and strategies which – in theory – support Aboriginal ways of knowing, being and doing, however there remains inadequate recognition and minimal resourcing of the implementation of the Aboriginal SEWB model in service systems. The persistent minimising of the model and privileging of clinical Western medicine reveals systems-level stigma and discrimination. For example, culture from an Aboriginal perspective is a fundamental feature of SEWB yet it is frequently negotiated as a ‘nice-to-have’ or seen as ‘fluffy’ or ‘light’.

The primacy of clinical Western bio-medical models combined with the stigma associated with Aboriginal models of care leads to misdiagnosis and missed opportunities for appropriate culturally-informed treatment, care and support.

There are exceptional circumstances where compulsory treatment might be appropriate with the purpose to address immediate safety concerns and crisis

Involuntary treatment is a restrictive practice, along with seclusion, physical and chemical restraint. Aligned with The Royal Commission into Victoria’s Mental Health System Recommendation 55 ensures compulsory treatment is only used as a last resort, a revision to the language in the Mental Health and Wellbeing Act (the Act) should reflect this and could include in the preliminary statement: *compulsory assessment and treatment, along with seclusion and restraint, is a restrictive practice which is prohibited in the state of Victoria and is only permitted in exceptional circumstances where a determination is made on specific criteria by a panel of multi-disciplinary practitioners.*

¹¹ Clarkson, C., Jacobs, Z., Marwick, B., Fullagar, R., Wallis, L., Smith, M., ... & Pardoe, C. (2017). Human occupation of northern Australia by 65,000 years ago. *Nature*, 547(7663), 306-310.

¹² Rasmussen, M., Guo, X., Wang, Y., Lohmueller, K. E., Rasmussen, S., Albrechtsen, A., ... & Willerslev, E. (2011). An Aboriginal Australian genome reveals separate human dispersals into Asia. *Science*, 334(6052), 94-98.

¹³ Lovett, R., Brinckley, M. M., Phillips, B., Chapman, J., Thurber, K. A., Jones, R., ... & Wenitong, M. (2020). Marrathalpu mayingku ngiya kiyi. Minyawaa ngiyani yata punmalaka; wangaaypu kirrampili kara [Ngiyampaa title]; In the beginning it was our people's law. What makes us well; to never be sick. Cohort profile of Mayi Kuwayu: The National Study of Aboriginal and Torres Strait Islander Wellbeing [English title]. *Australian Aboriginal Studies*, (2), 8-30.

Compulsory mental health treatment may be considered in exceptional circumstances when an individual's mental health poses a significant risk to their own safety or the safety of others, and voluntary treatment options have been exhausted or are deemed inadequate. It should only be reserved for severe cases where there is a clear and immediate threat of harm. A revision within the Act should reflect this and could include in the section on balancing of harm principle: *compulsory assessment and treatment, along with seclusion and restraint, are prohibited unless in exceptional circumstances where the serious harm or deterioration to be prevented is likely to be more significant than the harm to the person that may result from their use.*

Compulsory mental health assessment and treatment that is clear and short-term are generally more effective and ethically sound. The duration of compulsory assessment and treatment should be kept to the minimum necessary to address immediate safety concerns and stabilise the individual's condition. Lengthy periods of involuntary confinement or treatment can lead to increased distress, reduced autonomy, and potential violations of human rights. It can also lead to institutionalisation where people become reliant on the system for respite or it becomes part of ongoing resilience to keep people safe and housed.

Shorter durations of compulsory interventions are associated with better outcomes. This approach allows for timely interventions, reducing the risk of escalation and harm. Short-term assessments and treatment plans can help identify the individual's immediate needs, provide crisis intervention, and facilitate the development of an appropriate care plan.

Furthermore, it is important that the process of compulsory assessment and treatment is clear and transparent. Clear guidelines and criteria for initiating and terminating compulsory interventions promote consistency, reduce the risk of arbitrary decisions, and safeguard against potential abuse of power. Transparency helps ensure accountability and allows individuals to understand the rationale behind the decisions made about their care.

The specific duration of compulsory assessment and treatment should be guided by individual circumstances and needs. Flexibility should be exercised to accommodate the complexity and variability of mental health conditions. Regular review processes should be in place to reassess the necessity and appropriateness of ongoing compulsory interventions, with the goal of transitioning individuals to less restrictive care options whenever possible.

In exceptional circumstances where compulsory treatment is indicated, clear and short-term treatment options are beneficial. The purpose of compulsory treatment – if meeting the requirements for 'exceptional circumstances' – should be to stabilise and reduce harm. Shorter durations of interventions are associated with improved outcomes and better protection of individual rights. Clear guidelines and transparent processes help ensure consistency and accountability. However, the duration of compulsory interventions should be based on individual needs and regularly reviewed to ensure ongoing appropriateness and the least restrictive care. Aligned with the recommendations in the Royal Commission into Victoria's Mental Health system, compulsory treatment should preferentially be undertaken in a community setting which equates to 'least restrictive'.

Compulsory assessment and treatment of Aboriginal children under the age of 18 years requires special considerations, recognising that this process involves making decisions on behalf of a child who may lack the capacity to provide informed consent. It is crucial to prioritise the best interests of the child and to take into account their unique developmental needs, vulnerabilities, and rights. Special consideration must include the involvement of parents or legal guardians in the decision-making process as well as understand the intersections with the child protection system. Child protection notifications and judgements on parenting and family supports can be made in these situations.

Trauma-informed care is of utmost importance when applying involuntary treatment and especially important when applied to children. Many children who require involuntary treatment may have experienced trauma, and the treatment process itself can potentially be retraumatising.

Aligned efforts must prioritise reducing the over-representation of Aboriginal people in compulsory assessment and treatment

In Australia, including the state of Victoria, Aboriginal people are disproportionately represented in the mental health system with 3.3 per cent receiving clinical mental health care compared with only 1 per cent of non-Indigenous Victorians receiving clinical mental health care. These trends mirror overrepresentation of Aboriginal people on compulsory assessment and treatment orders compared to non-Indigenous individuals.^{14 15} This overrepresentation reflects a broader issue of health and social disparities faced by Aboriginal communities.

Intersectional trauma factors contribute to this disparity, including historical trauma, social determinants of health, cultural differences, and systemic biases within the mental health and legal systems. These factors can impact access to appropriate mental health care, cultural sensitivity in treatment, and the understanding and recognition of culturally specific expressions of distress.

The over-representation of Aboriginal people in mental health treatment assessment and orders raises serious concerns about potential human rights violations. It is essential to uphold the principles of human rights and social justice by promoting equitable and fair access to mental health care and challenging any discriminatory practices or biases within the system.

The Royal Commission into Victoria's mental health system strongly recommended the need for and importance of police not positioned as first responders in mental health and behaviours associated with suspected drug use. Clinically trained professionals and paramedics should be the first responders in mental health crisis situations.

¹⁴ Victoria's Mental Health Service Annual Report 2020-2021, Page 26

¹⁵ MHVRC Vol 4, Page 370

Appropriate and adequate resourcing is needed to uphold rights, dignity and humanity in the exceptional circumstances where compulsory assessment and treatment meets the criteria

Appropriate and adequate resourcing is needed to uphold rights and dignity of consumers navigating exceptional circumstances where compulsory assessment and treatment might be appropriate. This includes adequate and appropriate resourcing of the following:

Places of safety

Appropriate and adequate resourcing is crucial in upholding rights, dignity, and humanity in the exceptional circumstances where compulsory assessment and treatment may be necessary. Firstly, ensuring sufficient resources allows for the establishment of *suitable places of safety*. These locations should prioritise a therapeutic environment that promotes healing, privacy, and respect for the individual's rights. Hospital emergency departments are not appropriate default settings. Adequate funding must enable the provision of comfortable and secure spaces that minimise the use of physical restraints, promote privacy and dignity, and facilitate access to support services, such as counselling and cultural support.

Incorporating cultural symbols and representations of Country within clinical spaces holds significant importance in mental health care. Firstly, it helps create an inclusive and culturally safe environment for individuals from diverse backgrounds, particularly Indigenous populations. By featuring cultural symbols, artwork, or representations of Country, clinical spaces become more welcoming, validating the cultural identities of patients and promoting a sense of belonging. This fosters trust and rapport between patients and healthcare providers, enhancing the therapeutic relationship and facilitating effective communication. It fosters a sense of belonging, and acknowledges the significance of culture in mental health care. This not only creates a more inclusive and welcoming environment but also supports a holistic approach to mental health that respects and values cultural diversity.

Communities of trust

Furthermore, resourcing plays a pivotal role in creating communities of trust. Adequate funding can support initiatives that foster collaborative relationships between mental health services, Aboriginal communities, and individuals. Building trust involves engaging with Aboriginal Elders, community leaders, and cultural advisors to shape policies, develop culturally appropriate care plans, and establish accountability mechanisms. By investing in community-based mental health services and culturally responsive initiatives, resourcing ensures that Aboriginal individuals have a voice in decisions affecting their mental health and are active participants in their care.

Competent staff

Another vital aspect of appropriate resourcing is the recruitment and retention of competent staff, including both Aboriginal workforce and non-Indigenous workforce.

Adequate funding allows for the training and professional development of mental health professionals, including psychiatrists, psychologists, nurses, and social workers, who possess cultural competence and understanding of the unique challenges faced by Aboriginal individuals. This training should encompass cultural safety, trauma-informed care, and an understanding of Aboriginal ways of knowing, being, and doing. Ongoing professional development should reinforce specifics including how to determine 'exceptional circumstances'; how to assess risk and application of 'least restrictive principles'. Well-supported and adequately trained staff members are better equipped to provide compassionate, culturally sensitive care, establish therapeutic relationships, and navigate complex situations, thereby upholding the rights and dignity of individuals during compulsory assessment and treatment.

Moreover, resourcing enables the provision of ongoing support services and continuity of care beyond compulsory assessment and treatment. This includes comprehensive discharge planning, access to community-based support, and coordination with relevant agencies to address social determinants of health. Adequate funding allows for the development and implementation of post-care plans that address housing stability, employment support, reintegration into the community, and the reunification of families. By ensuring continuity of care, appropriate resourcing mitigates the potential adverse consequences individuals may face after compulsory assessment and treatment, promoting their overall well-being and reducing the risk of further distress or disadvantage.

Appropriate and adequate resourcing is indispensable in upholding rights, dignity, and humanity in circumstances where compulsory assessment and treatment may be necessary. Sufficient resources contribute to the establishment of safe and therapeutic environments, promote trust and collaboration with Aboriginal communities, facilitate the recruitment and training of competent staff, and support comprehensive post-care services. By prioritising appropriate resourcing, mental health systems can ensure that individuals in these exceptional circumstances receive the respect, support, and care they deserve while upholding their rights and dignity.

Part B: Decision-making

Supported decision-making for Aboriginal people in mental health care must include cultural understanding and respect, inclusion of Aboriginal perspectives, collaborative decision-making, adequate support and resources, and ongoing review and flexibility

Supported decision-making is of paramount importance for Aboriginal people to ensure their rights, autonomy, and cultural values are respected within the context of mental health care. It recognises that individuals with mental health challenges have the capacity to make decisions about their own lives and encourages the provision of support to exercise that

capacity. When implementing supported decision-making for Aboriginal people, it must include the following key elements:

- *Cultural understanding and respect:* Supported decision-making must be grounded in a deep understanding and respect for Aboriginal culture, traditions, and ways of knowing, being, and doing. Mental health professionals and support persons should be culturally competent, knowledgeable about the specific needs and experiences of Aboriginal people, and capable of providing culturally safe care. This includes acknowledging and valuing the importance of kinship, community, and connection to country in decision-making processes.
- *Inclusion of Aboriginal perspectives:* Supported decision-making should actively involve Aboriginal individuals in decision-making processes related to their mental health care. It should recognise and prioritise their perspectives, aspirations, and preferences, allowing them to shape their own care plans. Aboriginal individuals should have the opportunity to express their views, beliefs, and cultural practices, and have those views considered in the decision-making process. This approach promotes self-determination, empowerment, and a more person-centred approach to mental health care.
- *Collaborative decision-making:* Supported decision-making requires collaboration and partnership between mental health professionals, support persons, and Aboriginal individuals. It should be a cooperative and respectful process that involves open and honest communication, active listening, and shared decision-making. Mental health professionals should work in partnership with Aboriginal individuals and their chosen support persons, ensuring that decisions are made together, based on a comprehensive understanding of the individual's needs, aspirations, and cultural context.
- *Adequate support and resources:* Supported decision-making necessitates providing Aboriginal individuals with the necessary support and resources to make informed decisions. This may include access to culturally appropriate information, advocacy services, and assistance in understanding the available options and potential consequences. Support persons, who may be family members, community members, or trusted individuals chosen by the individual, can play a crucial role in providing emotional support, facilitating communication, and ensuring the individual's views are heard and respected.
- *Ongoing review and flexibility:* Supported decision-making should be a dynamic and evolving process. Regular reviews of the individual's care plans should be conducted to ensure they remain aligned with their changing needs, preferences, and aspirations. The process should be flexible and responsive, allowing for adjustments and modifications as required. This ongoing review and flexibility support the individual's autonomy, recognising that their decisions and circumstances may change over time.

In summary, supported decision-making for Aboriginal people in mental health care must include cultural understanding and respect, inclusion of Aboriginal perspectives, collaborative decision-making, adequate support and resources, and ongoing review and flexibility. By adopting these principles, mental health systems can ensure that Aboriginal individuals receive culturally safe care, have their rights and autonomy respected, and are active participants in decisions affecting their mental health and well-being. Aboriginal Health Liaison Officers (AHLO) in hospitals are already very stretched and not readily available in emergency departments. New supports and resources to enable supported decision-making for Aboriginal people are urgently needed.

Nominated support person for individuals undergoing mental health compulsory treatment is essential for advocacy, emotional and practical support, effective communication, continuity of care, and cultural considerations

The Centre welcomes a move away from implementing assessment and treatment criteria in a vacuum with life-changing decisions made by one person with limited access to the full picture and move towards collaborative working arrangements. This could include multi-disciplinary teams and certainly would include Aboriginal workers as well as nominated support persons.

Having a nominated support person for Aboriginal people undergoing mental health compulsory treatment plays a crucial role in promoting their well-being, rights, and recovery. The importance of a nominated support person can be outlined in several ways:

- ***Advocacy and empowerment:*** A nominated support person serves as an advocate for the individual, ensuring their voice is heard and their rights are protected throughout the compulsory treatment process. They can provide valuable insights into the individual's needs, preferences, and cultural considerations, helping to shape and inform the development of their care plan. This advocacy empowers the individual, as they feel supported and have someone to speak on their behalf, especially in situations where they may feel vulnerable or unable to effectively communicate their wishes.
- ***Emotional and practical support:*** The presence of a nominated support person offers emotional support during what can be a challenging and distressing time for the individual. They can provide comfort, reassurance, and encouragement, helping to alleviate feelings of isolation and distress. Additionally, the support person can assist with practical matters, such as coordinating appointments, navigating the mental health system, and ensuring continuity of care, thus relieving some of the burdens and stress associated with the treatment process.

- *Communication and information sharing:* The nominated support person serves as a vital link between the individual, mental health professionals, and other relevant stakeholders. They can facilitate effective communication, ensuring that information about the individual's condition, treatment options, and progress is shared accurately and comprehensively. This promotes transparency and shared decision-making, allowing the individual to actively participate in their care and make informed choices about their treatment.
- *Continuity of care and discharge planning:* A nominated support person can play a crucial role in the individual's discharge planning and post-treatment support. They can collaborate with mental health professionals to ensure that appropriate support services, including community-based care, housing assistance, and follow-up appointments, are in place. This helps promote a smooth transition from compulsory treatment to ongoing care, reducing the risk of relapse, and supporting the individual's recovery journey.
- *Cultural and social considerations:* For individuals from culturally diverse backgrounds, and/or those identifying as Lesbian, Gay, Bisexual, Transgender, Intersex, Queer, having a nominated support person who understands their cultural, social and political context and values is essential. The support person can help ensure that cultural needs, practices, and sensitivities are considered in the treatment process, contributing to a more culturally responsive and respectful approach. This fosters trust, enhances engagement, and supports the individual's mental health recovery within a culturally safe environment.

In conclusion, having a nominated support person for individuals undergoing mental health compulsory treatment is essential for advocacy, emotional and practical support, effective communication, continuity of care, and cultural considerations. The support person's role empowers the individual, safeguards their rights, and promotes a person-centred approach to mental health care, ultimately enhancing their overall well-being and recovery. Where there is a nominated person identified, that person must be contacted immediately. In the absence of a nominated person, the panel of decision-makers should then be notified to make contact with the person for a welfare check.

The lack of nominated support persons for compulsory patients can be attributed to a significant gap in awareness and understanding within the mental health system

The lack of nominated support persons for compulsory patients can be attributed to a significant gap in awareness and understanding within the mental health system. Many individuals, including mental health professionals, patients, and their families, are not aware that having a nominated support person is an option or may not fully comprehend the potential benefits it can offer. This lack of awareness is a significant barrier that prevents the implementation of supported decision-making in mental health care.

To address this issue, it is crucial to improve education and raise awareness about the importance of nominated support persons in the mental health system. Mental health professionals and service providers should receive training and information about the role and significance of nominated support persons, particularly in the context of compulsory assessments and treatment. This training should emphasise the positive impact that a support person can have on an individual's mental health journey, including enhancing communication, empowerment, and cultural understanding.

In addition to professional education, efforts should be made to inform individuals and families about the option of having a nominated support person. This can be achieved through community engagement initiatives, culturally sensitive information campaigns, and partnerships with Aboriginal organisations and community leaders. It is essential to reach out to Aboriginal communities directly, ensuring that information is accessible, culturally relevant, and delivered in a manner that respects their cultural protocols and values.

Furthermore, mental health services should actively promote and facilitate the involvement of nominated support persons. This can be done by incorporating information about support persons into mental health assessment processes, treatment plans, and patient education materials. Mental health professionals should initiate conversations with patients and their families about the benefits of having a nominated support person and encourage them to explore this option.

To overcome the barriers of stigma and mistrust that may exist within the mental health system, efforts should be made to engage and collaborate with Aboriginal community organisations, Elders, and cultural advisors. These partnerships can help build trust, provide guidance on cultural protocols, and ensure that the nominated support person option is integrated in a way that is respectful and culturally safe.

By addressing the lack of awareness and understanding regarding nominated support persons, the mental health system can take significant strides toward ensuring that more compulsory patients have access to the support and advocacy they need. Enhanced education, awareness campaigns, and collaboration with Aboriginal communities can help empower individuals and their families, promote cultural safety, and foster the implementation of supported decision-making practices that align with Aboriginal values and ways of knowing, being, and doing.

There is a need to establish substitute decision-making panels in the exceptional circumstances where compulsory assessment treatment is indicated

A model of a substitute decision-making panel in mental health compulsory assessment and treatment should encompass several key elements to ensure fairness, transparency, and the protection of individual rights. While the specific details may vary based on setting and cultural context, the following outline provides a general framework for such a panel:

- *Composition and expertise:* The panel should consist of a diverse group of individuals with relevant expertise and experience in mental health, law, ethics, and cultural competence. This may include mental health professionals, legal experts, cultural advisors, and community representatives. It is crucial to have a panel that reflects the cultural diversity of the population it serves, particularly in the case of Aboriginal individuals, to ensure cultural safety and understanding. Including a child development expert on a decision-making panel for compulsory assessment and treatment for Aboriginal children ensures that the unique developmental needs and considerations of the child are taken into account.
- *Independence and impartiality:* The panel members should be independent from the mental health services involved in the compulsory assessment and treatment process. They should have no conflicts of interest that may compromise their objectivity or decision-making. The panel should operate with impartiality and fairness, considering all relevant information and perspectives in reaching decisions.
- *Procedural safeguards:* The model should include clear procedural safeguards to protect the rights of individuals subject to compulsory assessment and treatment. This may involve mechanisms for individuals to present their views and preferences to the panel, opportunities for representation and advocacy, and the right to be informed about the panel's decisions and the reasons behind them. Procedural fairness should be ensured, allowing individuals to challenge decisions and seek reviews if necessary.
- *Cultural safety:* The substitute decision-making panel must be culturally safe. Cultural safety needs to be embedded at all levels so that when Aboriginal people are going through this whole process there is cultural security. This requires the inclusion of cultural advisors or experts who can provide guidance on cultural protocols, traditions, and values. Panel members should receive appropriate training and education to enhance their cultural competence and understanding of Aboriginal ways of knowing, being, and doing.
- *Continuous review and accountability:* The panel should operate within a framework of ongoing review and accountability to ensure its effectiveness and adherence to best practices. Regular evaluations should be conducted to assess the panel's performance, identify areas for improvement, and address any concerns or issues that may arise. Transparent processes for reporting and addressing complaints should be established to maintain public trust and confidence in the panel's decisions. One type of mechanism that can be implemented is regular reporting requirements. This involves mandating the submission of detailed reports by the decision-making panel that outline the rationale behind their decisions, the evidence considered, and the steps taken to involve relevant stakeholders.

These reports can be reviewed by independent oversight bodies to assess the appropriateness and legality of the decisions made. Regular reporting promotes accountability, allows for the identification of any potential biases or errors, and enables monitoring of the panel's compliance with established guidelines and regulations.

- *Collaboration and communication*: The model should encourage collaboration and effective communication between the panel, mental health professionals, individuals subject to compulsory assessment and treatment, and their nominated support persons. This collaboration should ensure that relevant information is shared, decisions are adequately explained, and the perspectives and preferences of the individuals are considered in the decision-making process.
- *Ongoing education and professional development*: Panel members should receive ongoing education and training to enhance their knowledge and skills in mental health, law, ethics, cultural competence, and decision-making. This will help ensure their continued competency and ability to make informed and appropriate decisions.

By incorporating these elements, a model of a substitute decision-making panel can effectively balance the need for compulsory assessment and treatment with the protection of individual rights, cultural safety, and procedural fairness. The panel can play a crucial role in ensuring that decisions regarding compulsory assessment and treatment are made with expertise, accountability, and respect for the dignity and well-being of individuals experiencing mental health challenges.

Part C: Compulsory assessment and treatment

The Will and Preferences framework needs to be strengthened to incorporate mechanisms that consider protective factors of connection to country, community, and kin for Aboriginal people

In the context of the Will and Preferences framework in the Act, there is a need for key revisions to the current compulsory assessment criteria. The existing criteria tend to be overly paternalistic, disempowering individuals, and disproportionately assigning power to psychiatrists. To address these concerns, the criteria should be restructured to incorporate mechanisms that consider the protective factors of connection to country, community, and kin for Aboriginal people.

Under the revised framework, the criteria should align with the Will and Preferences framework, which emphasises the importance of respecting individuals' autonomy and preferences in their mental health care. This entails replacing paternalistic language and approaches with a more person-centred approach that empowers individuals to make decisions about their treatment.

The criteria should explicitly recognise and incorporate the significance of connection to country, community, and kin for Aboriginal people as protective factors that contribute to their well-being and recovery.

Additionally, the revised criteria should support and operationalise the Will and Preferences framework throughout the treatment process. This includes considering the purpose of treatment once someone is on an order, ensuring that the individual's will and preferences are respected and integrated into their care plan. This framework acknowledges that individuals have the right to participate in decisions about their treatment, including the type and goals of interventions, while also accounting for their cultural context, values, and beliefs.

By incorporating these revisions, the Will and Preferences framework within the Victorian Mental Health Act can provide a more empowering and culturally sensitive approach to compulsory assessment criteria. This revised framework would prioritise individuals' autonomy, recognise the protective factors of connection to country, community, and kin for Aboriginal people, and foster a collaborative treatment process that upholds the rights, dignity, and well-being of individuals experiencing mental health challenges.

The Mental Health Tribunal needs to be culturally safe, accountable and transparent

The need for a culturally safe Mental Health Tribunal (MHT) in Victoria is imperative to address the specific needs and challenges faced by Aboriginal people in the mental health system. By implementing a range of initiatives, such as a MHT Koori support team, a dedicated Koori List, Aboriginal Community Justice Reports, standardised policies on cultural safety, and improved legal representation, a culturally safe environment can be established to ensure fair and equitable treatment.

The presence of a Koori support team at the MHT would provide crucial support and guidance to Aboriginal people navigating the tribunal process. This team would be knowledgeable about cultural protocols, practices, and the specific challenges faced by the Aboriginal community, thereby enhancing the understanding and cultural safety within the tribunal. The team could also facilitate communication and advocate for the rights and needs of Aboriginal individuals, ensuring their voices are heard and respected throughout the process.

Establishing a dedicated Koori List within the MHT, with specially trained tribunal members, would further promote cultural safety. These tribunal members would possess a deep understanding of Aboriginal culture, history, and the impacts of colonisation, enabling them to make informed decisions that consider the unique circumstances and needs of Aboriginal individuals. Mandatory training on cultural safety would ensure that all tribunal members, regardless of their background, have the necessary knowledge and awareness to make culturally appropriate decisions.

Aboriginal Community Justice Reports can play a vital role in the mental health system. Aboriginal Community Justice Reports are comprehensive assessments that provide a holistic understanding of individuals within the mental health system who have been involved for an extended period. These reports go beyond the individual's immediate circumstances and examine cultural background, family connections, community support, and any historical or social factors that may have contributed to mental health challenges. The aim is to provide a broader context for understanding the individual's experiences and needs, recognising that the mental health issues faced by Aboriginal people are often intertwined with historical trauma, colonisation, and systemic injustices.

These reports are developed through collaborative efforts between mental health professionals, cultural advisors, community members, and the individual themselves. They draw upon culturally sensitive approaches to gather information, taking into account the unique cultural practices, beliefs, and values of the individual's Aboriginal community. By incorporating Aboriginal ways of knowing, healing, and community support, the reports provide a more comprehensive understanding of the individual's mental health challenges and inform culturally appropriate interventions and support strategies.

The Aboriginal Community Justice Reports serve several purposes. Firstly, they assist the MHT or relevant decision-making bodies in making informed and culturally sensitive decisions regarding the individual's treatment and care. By considering the broader context of the individual's life, these reports contribute to fair and just outcomes that recognise the cultural, social, and historical factors impacting their mental health. Secondly, the reports can also inform service providers, policymakers, and community organisations about the specific needs and challenges faced by Aboriginal people in the mental health system, leading to more targeted and culturally appropriate support services and interventions.

Standardised policies around cultural safety at the court would ensure that cultural considerations are embedded within the operations and decision-making processes of the MHT. This includes adopting culturally appropriate practices, protocols, and communication strategies to ensure that Aboriginal people feel respected, supported, and understood throughout their interactions with the MHT. These policies would provide clear guidelines for tribunal members, legal professionals, and support staff on how to create a culturally safe and inclusive environment for all individuals.

Lastly, ensuring access to culturally safe legal representation for Aboriginal individuals appearing at the MHT is crucial for achieving fair and just outcomes. Currently, a significant disparity exists in terms of legal representation, with only 13 per cent of people with matters at the MHT having a lawyer. Ongoing reform efforts should focus on increasing this representation to ensure that every Aboriginal person who appears at the MHT has the option to access culturally safe legal support if they choose to do so. Culturally safe legal representation can provide guidance, advocacy, and ensure that the rights and interests of Aboriginal individuals are protected throughout the tribunal process.

In conclusion, establishing a culturally safe MHT in Victoria is essential to address the specific needs and experiences of Aboriginal individuals. By implementing initiatives such as a Koori support team, a dedicated Koori List, Aboriginal Community Justice Reports, standardised cultural safety policies, and improved legal representation, the MHT can foster an environment that is respectful, inclusive, and supportive of Aboriginal people, ultimately leading to fairer and more equitable outcomes.

Conclusion

The Centre appreciates the efforts in place to review the sections of the Mental Health and Wellbeing Act relating to compulsory assessment and treatment. The Centre supports the recommendations that the government must 'act immediately' to ensure compulsory treatment is prohibited and only used as a last resort. It is vital these efforts are appropriately and adequately resourced, to specifically include:

- *Supported decision-making for Aboriginal people* in mental health care that incorporates cultural understanding and respect, inclusion of Aboriginal perspectives, collaborative decision-making, adequate support and resources, and ongoing review and flexibility
- *Nominated support person for Aboriginal people* undergoing mental health compulsory treatment that incorporate advocacy, emotional and practical support, effective communication, continuity of care, and cultural considerations
- *The Will and Preferences framework* that incorporates mechanisms that consider protective factors of connection to country, community, and kin for Aboriginal people
- *Aboriginal cultural and social emotional wellbeing therapies* that are viewed by mainstream systems as a valid and legitimate approach to treatment, care and support
- *Mental Health Tribunal that is culturally safe*, respectful, inclusive, and supportive of Aboriginal people, ultimately leading to fairer and more equitable outcomes.

The Centre looks forward to further discussions and working together to ensure the diverse perspectives of Aboriginal people are included in making recommendations about assessment and treatment criteria and the alignment of decision-making laws. This includes Aboriginal people who have experienced, or who have been at risk of experiencing, compulsory mental health assessment and treatment, as well as those of their families, carers and broader support networks.

Sincerely,

Sheree Lowe

Executive Director,

The Balit Durn Durn Centre

For further information about this submission, please contact Emma Brathwaite, Executive Manager – SEWB Policy and Evidence, at EmmaB@vaccho.org.au.

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