



25 March 2020.

POSITION STATEMENT: COVID-19 EMERGENCY AMENDMENTS TO THE NSW MENTAL HEALTH ACT 2007: CONSUMER PERSPECTIVES LEFT OUT

On 24 March 2020, the NSW Government passed a bill to make changes to several legislative processes for emergency procedures.

The [COVID-19 Legislation Amendment \(Emergency Measures\) Bill 2020](#) was passed in NSW Parliament yesterday without any broader consultation or engagement with consumers of mental health services.

Pertinent to consumers who access mental health services are the amendments to the NSW Mental Health Act (2007) under 2.13 Section 202 of the bill, giving greater powers to the Mental Health Tribunal to enact in the following ways:

1. This section has effect for the prescribed period and prevails to the extent of any inconsistency with any other provision of this Act.
2. An assessable person, or any other person, may for the purposes of a mental health inquiry and with the approval of the Tribunal be brought or appear before the Tribunal by way of telephone.
3. The Tribunal may adjourn a mental health inquiry for up to 28 days.
4. The Tribunal may by order extend the period of a community treatment order that is in force by a period of up to 3 months even if that results in the order being in force for more than 12 months.
5. The Tribunal may exercise a function under this section only if the Tribunal considers that it is necessary to do so because of the COVID-19 pandemic.
6. In this section—
prescribed period means the period—
 - (a) starting on the commencement of this section, and
 - (b) ending on—
 - (i) the day that is 6 months after the commencement, or
 - (ii) the later day, not more than 12 months after the commencement, prescribed by the regulations.

Whilst **Being** is concerned with a number of elements of the new legislative changes, **Being** is particularly concerned with the above amendments and believes that the approach taken minimises the basic human rights of the consumers we represent.

Our concerns for people living with mental health issues in NSW are as follows:

- The amendments lack specific criteria and clarity, which lean to the needs of services rather than the consumer needs.



- The Tribunal may by order extend the period of a community treatment order that is in force by a period of up to 3 months even if that results in the order being in force for more than 12 months.
- The Tribunal may exercise a function under this section only if the Tribunal considers it is necessary to do so because of COVID-19 pandemic. Of specific concern is the matter of who determines whether the function is aligned to COVID-19.
- Insufficient clarity of why COVID-19 requires such extreme measures and/or if they are necessary specifically pertaining to people with mental health issues.
- The amendments appear to give more powers to detaining people for longer periods of time to suit service provision and the needs of the Tribunal.
- The bill indicates a minimum period of 6 months and maximum of 12 months, however there is no indication of any review in between these times. Being would like to see specific criteria, for example why would this be extended to 12 months?

Being wishes to raise several additional questions and issues:

- How will consumers be informed of these amendments; will this be undertaken by the services directly?
- We request that consumers be given clear communication as to why the decisions made by the Tribunal are in consumers' best interests and in line with their rights.
- We would like to understand if Tribunal hearings will continue to consist of a three-member panel. In the interest of consumer rights to have a fair and equitable hearing the continuation of a three-member panel should be mandatory.

Being calls on the NSW Government and the NSW Minister for Mental Health to implement and provide better processes to protect consumers at this time of need. We also call on the NSW Government to ensure that fair and equitable processes are in place at all Tribunal hearings and that the current three-member panel process remains during what are difficult times for the consumer cohort.

Being will ensure consumers are given a chance to respond to [this emergency bill](#) - and a voice - by hosting a Zoom meeting for interested parties this Friday 27 March from 1pm–3pm, after which Being will develop a letter in response, to be presented to the NSW Minister for Mental Health.

If you would like to attend please register your interest at info@being.org.au once registered, further information of the Zoom meeting will be provided.

Being is the independent, NSW peak organisation for people with lived/living experience of mental health issues and suicidal thoughts. Our primary focus is to ensure the voices of people with mental health issues are heard by decision makers, service providers, and the community.