

## Joint Response to the *Draft Mental Health and Wellbeing Bill 2025*

### About Carers SA

Carers SA is the peak advocacy body for Carers in South Australia. Raising the voice of Carers, recognition of Carers, their rights, wellbeing and needs is at the heart of Carers SA's efforts. We persistently advocate across governments, health and social services and systems, business and communities to prioritise appropriate and meaningful support and services for Carers.

Carers SA aims to ensure that Carers needs, wishes, values and perspectives are elevated and able to inform and influence decision-making by government, service providers, policy makers, legislators and systems and services to improve the lives and wellbeing of Carers in South Australia.

Carers SA is both an advocacy peak body and a service provider for Carers through the Carer Gateway. This provides us with a unique opportunity to understand the needs of Carers and identify and implement ways to improve the services they use. It enables us to engage with many and diverse Carers across South Australia through our broad networks and through services and supports and in so doing, positions Carers SA to raise awareness of issues facing Carers and raise the voice of Carers to inform and influence policy and decision-making about things that impact them.

Our Advocacy aims to enable Carers to:

- have their voices heard on issues that are important to them
- defend and safeguard their rights
- be at the table as partners in decision-making that impacts them and the people they care for, and
- contribute to shared planning and problem solving to improve the lives of Carers.

Carers SA welcomes the opportunity to comment on the draft Mental Health and Wellbeing Bill 2025 and commends the human rights inclusions that more closely aligns this Bill with the rights of all people to have choice and control over their lives, including their health and wellbeing.

Carers SA's response is in representing the unique role Carers play in supporting people with Lived Experience, the challenges, concerns and needs of Carers in relation to these amendments.

## About Skylight Mental Health

Skylight Mental Health has 40 years' experience delivering high-quality, recovery-oriented mental health and wellbeing services across South Australia. Our offerings include psychosocial supports, therapeutic and activity-based groups, counselling, service navigation, brief intervention, capacity building, community development and mental health education. We are passionate about elevating the voice of Lived Experience, including that of Carers. We operate from six sites: Elizabeth, Christies Beach, Mile End, Murray Bridge, Mount Gambier, and the APY Lands.

Skylight is a strategic partner with Carers SA in the delivery of the Carers Gateway program. As a Mental Health expert service provider, Skylight is pleased to support this submission from Carers SA in response to the draft Mental Health and Wellbeing Bill 2025. We believe that these recommendations will help the legislative environment deliver improved outcomes in partnership with South Australian Carers who are integral in the delivery of all mental health services and supports.

## About Carers & Disability Link

Carers & Disability Link supports carers, people with disability and people over 65 in regional South Australia and Carers and people living with disability find disability support and resources. Carers & Disability Link also help provide valuable aged care services to their local communities. For over 25 years Carers & Disability Link has been a trusted and compassionate community service organisation in South Australia. Carers & Disability Link support carers, people with disability and people over the age of 65 to live enriched lives by offering a listening ear as well as providing a professional, high-quality, accessible, and timely service in regional South Australia.

## About Lived Experience Australia

Lived Experience Australia makes a difference in systemic advocacy by being informed about the issues facing people with mental health challenges, their families and carers and using this to influence mental health policy, planning and decision making at local, state and national levels. Formed in 2002, Lived Experience Australia was previously known as the Private Mental Health Consumer Care Network (Australia) to promote the interests of members of the community requiring private mental health services. While our focus is on private sector mental health services, we provide national systemic advocacy for consumers, families and carers in all mental health settings. Our activities are making a difference in the mental health sector, with our being on private mental health services. We develop high quality resources for consumers, families, carers, clinicians and service providers. Lived Experience Australia is well informed in the broader sense about issues, needs and concerns that affect people with a mental illness, families and carers. We have close relationships with mental health professional colleges and organisations.

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# Carers SA's response to the Draft Mental Health and Wellbeing Bill 2025

## About mental health Carers

There are 3 million Carers in Australia<sup>1</sup>, of these approximately 10% are Carers supporting people with lived experience of mental illness.<sup>2</sup> In South Australia there are approximately 245 000 Carers.<sup>3</sup>

**Unpaid Carers of people with lived experience are integral to mental health care and support and are a core part of the mental health workforce. They have however often faced exclusion, severe burnout, suicidal ideations, distress and significant risk to their own health and wellbeing with poor outcomes for both the person with lived experience they support and poor support for themselves.**

Whilst Carer inclusion, consultation and support is well documented in a range of health and mental health policy and guiding frameworks, translation into practice routinely falls short of these expectations. Carers often feel their knowledge and experience of the person with lived experience they care for is overlooked or discounted and their caring role, rarely acknowledged. Carers often have limited rights and formal recognition within the mental health system, despite frequently being the primary source of support in a person's life. They hold invaluable first-hand historical knowledge about what has and has not worked in the past. This experiential knowledge is critical to developing a comprehensive understanding of the person with lived experience, including their unique social, cultural, and relational context. Meaningful inclusion of carers in assessment, planning, and review processes can therefore significantly enhance treatment relevance, continuity of care, and caring outcomes.

**Note:** For the purposes of this submission the term 'Carer' will be used and with intent, recognises and includes family, friends and kinship relationships who are in an unpaid caring relationship with the person with lived experience of mental illness.

## Summary Recommendations

- 1. OCP Guidelines include instructional principles and guidelines that require the active inclusion and support of Carer and their inclusion and support are seen as pivotal in mental health care services.***
- 2. Recognition, respect, inclusion and support for Carers be enshrined in key policy documents and resources that underpin and inform practice under the legislation.***
- 3. Specific, accessible, plain language resources be developed for Carers interpreting the legislation including rights, supported decision-making and the role of the authorised support person/s, information explaining restrictive practices, involuntary treatment orders, consent processes that inform the Carers advocacy for the person with lived experience they care for.***

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<sup>1</sup> Carers Australia

<sup>2</sup> Mind Australia / University of Queensland. *The economic value of informal mental health caring in Australia* (2017).

<sup>3</sup> Carers SA

4. ***Carer rights to be recognised, respected and supported as an integral part of the mental health care support workforce.***
5. ***The compassionate care principle extends to Carers who experience significant stress in their caring relationship, are often disenfranchised by mental health services and whose health trajectory frequently parallels that of the person they care for.***
6. ***OCP guidelines underpinning the Suicide Principle pay specific attention to the experience, needs and risks associated with suicide, of Carers, given the impact Carers experience of suicide of the people with mental illness they care for.***
7. ***OCP guidelines that underpin supported decision-making outline minimum expectations of service protocols, development of resources and training supports for Carers who support decision-making to inform issues related to consent, information sharing, rights to participation and guard against tokenism.***
8. ***Inclusion of a legislated provision for a 5 yearly review of the new Mental Health and Wellbeing Act as a process for continued monitoring of implementation and mental health practice; amendment and strengthening of principles and protections where evidence continues to show poor human rights practices and continued and incremental alignment with the WHO Mental Health, Human Rights and Legislation: Guidance and Practice.***
9. ***OCP Guidelines and all resources, tools and training materials to support implementation of the Act, be aligned with the WHO Mental Health, Human Rights and Legislation: Guidance and Practice.***
10. ***Inclusion of a public reporting requirement of the HRCRC Annual Report under s160 in addition to reporting requirement to the Minister and both Houses of Parliament.***
11. ***Inclusion of a clause under s158 and/or in subsequent Terms of Reference, that at least one member of the HRCRC is a Carer, family member or kinship relationship to ensure their experience, perspectives and advocacy for the person they care for inform the functions of the Committee.***
12. ***The Human Rights Coercion and Reduction Committee be independent, allowing for the Ministerial appointed member, but under the oversight and direction of the office of the Mental Health Commissioner.***

## Guiding Principles

Carers SA has identified several key principles that have direct impact on Carers. The guiding principles carry considerable importance in promoting and protecting the rights, personhood and informal support networks of people with lived experience of mental illness. The weight of power of these principles in that they, *must be taken into account and given effect in the administration, operation and enforcement* but also a commitment of mental health services and individual clinicians to shift the culture of mental health care to a rights based, human centred approach that focuses on compassion, safety, trust, dignity, collaboration and respect that supports the person through recovery.

## Family and Carers Principle

The role and importance and inclusion of Carers in mental health care is increasingly recognised in Australian mental health policy which provides clear directives as to the need for inclusivity and support for Carers and the important role they play in supporting the health and wellbeing of people with live experience of mental illness.

- The [National Suicide Prevention Strategy for Australia's Health System 2020–2030](#) identifies the need to *'strengthen support to family members, and friends so they can better support their loved ones at risk and aid their recovery in times of crisis'*.
- The [Fifth National Mental Health and Suicide Prevention Plan](#) cites that *'Families and carers are the backbone of community mental health support. They can, and do, help service users to live well in the community and can also help to reduce episodes of acute illness, and the need for hospital admissions'*
- Australia's [National Standards for Mental Health Services](#) state that *consumers should be involved in treatment decisions and that consumers have the right to have their nominated carer involved in aspects of care, recognising carers' distinct role and needs.*
- The [Royal Australian and New Zealand College of Psychiatrists partnering with carers in mental health services position statement](#) recognises that *carers are an essential part of the mental health system, and that partnership between carers and psychiatrists, together with the person, is important to improving outcomes.*

The majority of mental health Carers however remain excluded and unsupported in Australian mental health services.<sup>4</sup> For Carers to safely and appropriately continue to provide care for people with lived experience, particularly after acute admissions, the mental health system requires well-articulated lines of communication with Carers to ensure:

- Carers have the information they need to effectively support treatment and care.
- Carers have the knowledge and skills they need to understand changes to treatment and ongoing care and support needs.
- Carers have information about the mental health legislation including the person's rights , implications of treatment orders, restrictive practices, supported decision-making etc so that the Carer can appropriately care for, support and advocate for the person.
- Mental health services recognise and identify the Carers role and the impact on Carers caring for a person with mental illness.
- Mental health services proactively identify and facilitate access to the supports Carers need.

**Whilst this Bill outlines the implementation of instructional guidelines issued by the Chief Psychiatrist, it is Carers' experience that such guidelines frequently do not articulate Carer inclusive practice or where they do, they are poorly implemented in the practice setting.**

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<sup>4</sup> Poon, A., Hofstaetter, L., & Judd-Lam, S. (2025). Experiences of mental health carers examined using a recovery framework. *Australian Social Work*, 78(1), 43–57. <https://doi.org/10.1080/0312407X.2023.2298925>

It is important that guidelines supporting the Act, clearly outline the specific and vital role of Carers and the need for actively engaging with them to ensure they have the information, knowledge, skills and supports they need to provide ongoing safe care outside of mental health services. Such guidelines must also require mental health services to be actively aware of and assess the mental health and wellbeing of the Carer to identify distress and signs of burnout that mean the Carer is at risk.

Further, whilst the [National Mental Health Care Workforce Strategy 2022-2023](#) identifies the importance of all levels of paid mental health workforce, including peer workers, it fails to recognise the unpaid mental health Carer as integral and essential care providers and who provide the predominance of care outside of mental health services.

## **Recommendations**

- 1. OCP Guidelines include instructional principles and guidelines that require the active inclusion and support of Carer and their inclusion and support are seen as pivotal in mental health care services.**
- 2. Recognition, respect, inclusion and support for Carers be enshrined in key policy documents and resources that underpin and inform practice under the legislation.**
- 3. Specific, accessible, plain language resources be developed for Carers interpreting the legislation including rights, supported decision-making and the role of the authorised support person/s, information explaining restrictive practices, involuntary treatment orders, consent processes that inform the Carers advocacy for the person with lived experience they care for.**
- 4. Carer rights to be recognised, respected and supported as an integral part of the mental health care support workforce.**

## **Lived Experience Principle**

Carers SA supports the recognition of Carers in this principle and that their contribution is acknowledged and valued. In doing so mental health services must be aware of the impact of caring to Carers own health and wellbeing.

The [National Carer Wellbeing Survey 2025](#) findings report:

- 31% of Carers experience high psychosocial distress
- More than double the proportion of Carers experience higher distress compared to non-Carers
- 61% of Carers report low wellbeing
- The general health of Carers has been steadily declining since 2021, with only 15.3% of Carers in 2025 reporting very good or excellent health
- Carers with higher caring commitments consistently report lower health and wellbeing outcomes.

Research<sup>5</sup> is clear that:

- Supporting someone with mental health distress can be extremely stressful and at times traumatic.<sup>6</sup>
- The mental health caring role impacts physical, emotional, financial and mental wellbeing<sup>7 8</sup>
- Carers/family provide often unseen support of advocacy, emotional, financial, housing and social support, and facilitate the activities of everyday living for the person they care for<sup>9</sup> that often impact on their own and family wellbeing.
- A more collaborative approach, where clinicians work with Carers, family and supporters, together with the person with mental illness, to support experiences of recovery, could reduce emotional and psychological distress<sup>10</sup>
- Carers are very often excluded, resulting in a lack of any information about treatment, understanding the illness, or how to support the person with mental illness. A lack of clarity and understanding of information sharing and privacy and confidentiality laws amongst mental health professionals often results in Carers and families not having the information and support they need, both during an inpatient stay, and when a person is discharged<sup>11</sup>.
- Prioritisation of the clinical relationship, and the promotion of individualistic treatment rather than relational recovery<sup>12</sup> often results in blanket exclusion to any information to the Carer and family if explicit consent is not given.

Carers should have a right to make their own choices and to live their own lives over and above their caring relationships. They have a right to be consulted and supported in situations that may impact their lives and relationships, either with the service user or with other family members. They are an important, but underutilised resource in supported decision-making, and post-discharge community tenure. Nevertheless, this support needs to be negotiated and not just assumed and relied upon.

## Compassionate Care Principle

Carers SA supports the inclusion of a compassionate care principle.

**Compassionate care is one of the most directly observable principles from a consumer and Carer perspective, compared with more technical legal safeguards, that makes it practical for quality measurement, accreditation narratives, and consumer-led feedback loops.**

Legislating compassion matters in human services as it:

- **Is consistent with rights-based and recovery-oriented policy frameworks used in Australia.** The [A national framework for recovery-oriented mental health services](#) emphasises practice and

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<sup>5</sup> Annette Mercuri & Melissa Petrakis (11 Jul 2025): Carer-inclusive service delivery in mental health: a policy review and commentary, *Advances in Mental Health*, DOI: 10.1080/18387357.2025.2529297

<sup>6</sup> Albert, R., & Simpson, A. (2015). Double deprivation: A phenomenological study into the experience of being a carer during a mental health crisis. *Journal of Advanced Nursing*, 71 (12), 2753–2762.

<sup>7</sup> Cormac, I., & Tihanyi, P. (2006). Meeting the mental and physical healthcare needs of carers. *Advances in Psychiatric Treatment*, 12(3), 162–172.

<sup>8</sup> Wooff, D., Schneider, J., Carpenter, J., & Brandon, T. (2003). Correlates of stress in carers. *Journal of Mental Health*, 12(1), 29–40.

<sup>9</sup> Wooff, D., Schneider, J., Carpenter, J., & Brandon, T. (2003). Correlates of stress in carers. *Journal of Mental Health*, 12(1), 29–40.

<sup>10</sup> Doody, O., Butler, M. P., Lyons, R., & Newman, D. (2017). Families' experiences of involvement in care planning in mental health services: An integrative literature review. *Journal of Psychiatric and Mental Health Nursing*, 24(6), 412–430. <https://doi.org/10.1111/jpm.12369>

<sup>11</sup> Nurjannah, I., Mills, J., Usher, K., & Park, T. (2014). Discharge planning in mental health care: An integrative review of the literature. *Journal of Clinical Nursing*, 23(9-10), 1175–1185.

<sup>12</sup> Price-Robertson, R., Obradovic, A., & Morgan, B. (2016). Relational recovery: beyond individualism in the recovery approach. *Advances in Mental Health*, 15(2), 108–120.

service delivery that support recovery, rights and personhood, and it is explicitly linked to national standards for mental health services.

- **Strengthens the Bill's least restrictive practice.** Compassionate care is not inconsistent with restrictive practice; it is one of the practical enablers as it changes the focus on assessment of restrictive practice as a last option and practice that is least restrictive. It also requires empathy and respect, focuses on the person and their rights and shifts the paradigm to respectful, human centre communication including more effective de-escalation. It further acts to reduce real and perceived conflict and coercive practices that should have no place in mental health care.
- **Provides a clear reference point for lived experience accountability and service co-design.** The Bill includes principles that value lived experience and support Carers and it places people's experiences at the centre of continuous improvement objectives.
- **Strengthens the Bill's rights-based orientation and legislated obligations for service quality and quality indicators related to compassionate care.** We know that therapeutic alliance as a relationship closely tied to trust, respect, collaboration and partnership, is associated with improved health outcomes and shapes quality care. Mental health law to date focuses on thresholds, powers, orders and safeguards. By embedding compassionate care as a guiding principle that decision-makers must give effect to, the Bill makes relational qualities such as respect, empathy, dignity and compassion part of what lawful, proper administration looks like in mental health care in South Australia. The Bill's structure explicitly links guiding principles to administration and enforcement, creating a basis for service standards, workforce expectations, oversight and complaint narratives to reference a concrete legislative anchor.

## Recommendation

5. ***The compassionate care principle extends to Carers who experience significant stress in their caring relationship, are often disenfranchised by mental health services and whose health trajectory frequently parallels that of the person they care for.***

## Suicide Principle

Of relevance to Carers health and wellbeing is the principle relating to suicide. Carers have unique experience with suicide. An Australian study in 2021<sup>13</sup> found Carers are frequently the people who provide ongoing care and support for a person following a suicide attempt. Carers provide an important protective factor in reducing the risk of further suicide attempts and help facilitate recovery.

**In providing support to those who have attempted or died by suicide, Carers are vulnerable to adverse physical and psychological outcomes such as burnout, fatigue, trauma, and reduced health status (caregiver burden).<sup>14</sup>**

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<sup>13</sup> Predictors of Caregiver Burden Among Carers of Suicide Attempt Survivors 2021 [Predictors of Caregiver Burden Among Carers of Suicide Attempt Survivors - PMC](#)

<sup>14</sup> Hours of care and caring tasks performed by Australian carers of adults with mental illness 2019 [Hours of Care and Caring Tasks Performed by Australian Carers of Adults with Mental Illness: Results from an Online Survey - PubMed](#)

As the main emphasis of care is on the person who has attempted suicide and not on the Carer, Carers often feel isolated as their concerns are largely hidden. A close relationship between Carer and person they care for who has attempted suicide can increase pressure on Carers to consistently monitor for suicide risk. A study on factors associated with high psychological distress of Carers of people with a disability found 27% of Carers had high psychological distress, and when Carers had a closer relationship with the person they care for, psychological distress was elevated by 50%.<sup>15</sup>

An international review found the number of Carers experiencing suicidal ideation ranged up to 71% and further reported evidence of suicide attempts and deaths with 1 in 6 Carers likely to attempt and 1 in 10 Carers already having attempted suicide.<sup>16</sup> Carers are more than twice as likely to have low wellbeing and higher rates of psychological distress compared to the average Australian.

Carers of people who have made a suicide attempt are highly distressed and are at heightened risk of suicide themselves.<sup>17</sup> However, little is known about the additive effects of suicide exposure, caring behaviours, and psychological variables on caregiver burden. Understanding the risk and protective factors would help inform strategies on how to best support Carers of people who have attempted suicide in the development of future interventions and support services for Carers.

The first UK study of suicide risk in parents caring for children with disabilities (and long-term illnesses) has found that while caring for a disabled child; 41% of parents had thought about killing themselves, 8% of parents had made a plan to kill themselves and 2.5% had attempted to kill themselves. Of those who experienced suicidal thoughts and behaviours while caring: two-thirds had thought about killing themselves in the last 12 months and one-third had made a plan to kill themselves in the last 12 months.

More than 50% of parent Carers who had thought about or attempted suicide had never told anyone about these experiences. Fear, judgement, and stigma were the main barriers to disclosure, particularly the fear of having their child removed.<sup>18</sup>

The 2024 [National Carers Wellbeing Survey](#) reported that:

- 28.2% (of over 9000 survey respondents) were identified as having the highest probability of serious mental illness on the Kessler Psychological Distress Scale.
- This increased to 37.3% of Carers who care for a person with mental illness reporting high levels of distress
- Psychological distress scores also correlated with high degrees of loneliness and low satisfaction with personal relationships and community inclusion.
- 72.8% of these Carers had not accessed psychological support in the last 12 months despite scoring high on the Kessler scale.

**The evidence on suicide risk in Carers spans care provided across a wide range of conditions including but not limited to terminal illness, physical and/or psychosocial disability and frail aged.**

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<sup>15</sup> [Factors associated with high psychological distress in primary carers of people with disability](#) 2019 Aust J Gen Pract 2019 Apr;48(4):234-238. doi: 10.31128/AJGP-04-18-4559

<sup>16</sup> Carers Australia. The value of informal care in 2020. Deloitte Access Economics

<sup>17</sup> Ideation in family carers of people with dementia: A pilot study. 2018 [International Journal of Geriatric Psychiatry | Wiley Online Library](#)

<sup>18</sup> Suicidal Thoughts and Behaviors in Parents Caring for Children with Disabilities and Long-Term Illnesses 2024 [Full article: Suicidal Thoughts and Behaviors in Parents Caring for Children with Disabilities and Long-Term Illnesses](#)

The [Australian Longitudinal Study on Women's Health](#) is the largest, longest-running project of its kind ever conducted in Australia. Data from the fifth survey, identified a small but significant proportion of female Carers experience of death thoughts adding to the growing body of evidence on suicide-related thoughts and behaviours in Carers. This research found that 7.1% of female Carers had felt life was not worth living, also known as having death thoughts, in the previous week, compared with 5.7% of non-carers.

Suicide Prevention Australia, in their [Suicide Among Carers Policy Position 2022](#) recognise that suicide attempts and suicidal distress have significant impacts not only on the individual experiencing suicidality but also on the Carers, family and friends surrounding them. While aftercare services support survivors of suicide attempts and postvention supports those bereaved by suicide, there is a major gap in the support available to people impacted by a suicide attempt or suicidal distress.

## **Recommendation**

- 6. OCP guidelines underpinning the Suicide Principle pay specific attention to the experience, needs and risks associated with suicide, of Carers, given the impact Carers experience of suicide of the people with mental illness they care for.**

## Supported Decision Making

Whilst Carers SA recognises people with mental illness should have the same rights to freedom and informed consent without coercion as all other people, in the absence of this in the legislation, we recognise and support a shift to supported decision-making and the legislated recognition that:

- the best interests of people with mental illness may be upheld and effected *by the views of parents, guardians, carers or family members of the person where appropriate* and that
- the person with lived experience of mental illness has the right to be supported by other persons (in addition to guardians and substitute decision-makings) – *by a relative carer or friend of the person who has been nominated by the person for the purpose, or who has or is assuming responsibility for the care of the person.*

Legislating supported decision-making is the first step. To ensure it is effective and appropriately implemented in practice requires a range of resources to support both the staff and those who support the person in their decision-making. Rights to supported, and supporting someone in, decision-making require clear operational guidance and training for clinicians on how to involve designated support persons including Carers and to ensure practical supports for communication and participation.

The development of service level protocols and tools, staff training, Carer information resources in plain language (such as “about supported decision-making” videos and fact sheets) will ensure that supported decision-making is implemented with rights-based intent, supports the Bill’s trustworthiness and transparency principle so that supported decision-making does not become tokenistic.

Resources for staff and Carers should include:

- Clear and consistent information-sharing with Carers including guidelines on what can and should be shared

- Service-level protocols that distinguish confidentiality from safe, appropriate information-sharing to ensure staff understand the context of information sharing and do not restrict information sharing through misunderstanding the parameters of confidentiality.
- Practical escalation pathways for Carers when they believe risk is rising, aligned with treatment order compliance processes and safety obligations.
- Access to intermediary and step-up supports for carers when the complexity or intensity of the care recipient's needs surpasses the carer's physical, emotional, or practical capacity to continue providing care safely and sustainably.
- Accessible escalation mechanisms for Carers to raise systemic issues and to promote and advocate for the person's rights.

Such resources should be consistent with [National Standards for Mental Health Services](#), and Carer-focused policy directions, so services are not left to interpret requirements inconsistently.

## **Recommendation**

- 7. OCP guidelines that underpin supported decision-making outline minimum expectations of service protocols, development of resources and training supports for Carers who support decision-making to inform issues related to consent, information sharing, rights to participation and guard against tokenism.***

## **Need for more frequent legislative review**

Mental Health is a human rights imperative that requires urgent legislative reform. While the Bill goes some way to support this change, there is need for continued focus and change that the Bill does not currently reflect. System and service reform will be challenging, slow to implement and there is a high risk of tokenism to compliance.

Carers SA acknowledges and supports the concern raised by the Mental Health Coalition of South Australia in their submission that there is missed opportunity to align South Australia's mental health legislation with the World Health Organisation '[Mental Health, Human Rights and Legislation: Guidance and Practice](#)' as world best practice in this space. MHCSA rightly identifies that the timing of the Bill is such that it could be 15 years before SA has the next opportunity to update its legislation in line with current international thinking.

For this reason, Carers SA recommends inclusion of a legislated requirement for a 5 yearly review. We further recommend that the guidelines resources, tools and training materials developed by the OCP for the purpose of implementation of a new Mental Health and Wellbeing Act be aligned with the WHO *Mental Health, Human Rights and Legislation: Guidance and Practice*.

## **Recommendations**

- 8. Inclusion of a legislated provision for a 5 yearly review of the new Mental Health and Wellbeing Act as a process for continued monitoring of implementation and mental health practice; amendment and strengthening of principles and protections where evidence continues to show poor human rights practices and continued and incremental alignment with the WHO Mental Health, Human Rights and Legislation: Guidance and Practice.***

**9. OCP Guidelines and all resources, tools and training materials to support implementation of the Act, be aligned with the WHO Mental Health, Human Rights and Legislation: Guidance and Practice.**

## Need for independent human rights oversight

We commend the establishment of a Human Rights Coercion and Reduction Committee and its functions outlined in s155. In supporting this inclusion however, we have identified several oversight structures that in our view will strengthen the role of the committee to achieve its objectives.

Reporting of the Committee should also be made available and be easily accessible to the public. Human rights are better upheld in transparent processes.

We believe also that at least one member of the Committee is a Carer, family member or kinship relationship to ensure their experience, perspective and advocacy for the person they care for informs the functions of the Committee.

Further, to fulfil its functions in a way that is consistent with the [Universal Declaration of Human Rights \(UDHR\)](#), the Human Rights Coercion Reduction Committee should be legislatively independent and placed under the oversight and direction of the Mental Health Commissioner, rather than the Minister or the Chief Psychiatrist.

The Committee's core role is not operational, but human rights scrutiny and systemic accountability, particularly in relation to coercive practices such as restraint, seclusion, and involuntary treatment. Independence is essential to prevent conflicts of interest. The Committee must monitor and advise on practices that are often authorised, governed, or defended by the same executive and clinical authorities it is required to scrutinise.

Locating the Committee under the Mental Health Commissioner strengthens compliance with the UDHR by ensuring the Committee can provide frank advice, publish findings, advocate for reform, and prioritise the rights of people receiving care without being constrained by political, administrative, or clinical pressures from those responsible for the system being reviewed.

## Recommendations

**10. Inclusion of a public reporting requirement of the HRCRC Annual Report under s160 in addition to reporting requirement to the Minister and both Houses of Parliament**

**11. Inclusion of a clause under s158 and/or in subsequent Terms of Reference, that at least one member of the HRCRC is a Carer, family member or kinship relationship to ensure their experience, perspectives and advocacy for the person they care for inform the functions of the Committee.**

**12. The Human Rights Coercion and Reduction Committee be independent, allowing for the Ministerial appointed member, but under the oversight and direction of the office of the Mental Health Commissioner.**

The Draft Mental Health and Wellbeing Bill's rights-based focus reinforces the integral role of Carers by:

- making Carers part of the guiding principles, including recognition that Carers may also be affected by harm risks
- providing a right for the person to be supported by Carers as part of supported decision-making
- requiring consideration of Carers' views (where appropriate) in best-interests decisions made under the Act and
- recognising Carers play a vital role in supporting the person with mental illness and are an integral part of the mental health workforce.

Beyond legislation however, guidelines and protocols that educate inform and enforce systemic and cultural change in mental health services must be embedded to address the current disconnect with Carers in mental health care. Equally, recognition and understanding of the impact on Carers in caring for a person with mental illness, and the increased risk to Carers own mental health and wellbeing, must be part of mental health care services understanding, focus and action to better support Carers to sustain their caring relationship and ensure their own mental health and wellbeing.

Carers SA presents with the following co-contributors to this response.



February 2026