

## **Review of the NSW Mental Health Act – A Window of Opportunity.**

The NSW Department of Health, as part of the Government's response to the Legislative Inquiry into Mental Health Services in NSW, has undertaken to review the NSW Mental Health Act. As the first stage of the review process NSW Health has asked stakeholder groups including MHCC to identify the areas they consider require review.

This is a unique opportunity for MHCC to make a submission to the Department of Health to raise issues outlined in the Mental Health Inquiry recommendations, as well as highlighting those, that in our opinion, require legislative amendment that were omitted in the Inquiry.

After consultation with a wide range of MHCC members and interested stakeholders, MHCC's wrote to the Department of Health advising them of the following broad issues identified as those needing to be addressed:

- Confidentiality.
  - Families and carers of people with mental illness have reported being denied information by health staff regarding the diagnosis, treatment and course of their relative or friend's mental illness. This situation is causing friction between health staff, carers and consumers. Whilst the Act does currently attempt to address this issue it requires review to better clarify and guide processes around protecting the rights of consumers to privacy and the family or carers 'right to know'
- Informed Consent
  - Review of the criteria against which a person is deemed capable of informed consent requires development to guide clinicians in the decision making process.
- Community Treatment Orders
  - Review of the criteria against which the need for a renewal of a CTO is measured. by the Mental Health Review Tribunal is required including review for consumers who comply with the CTO.
- Medication
  - Involuntary patients have very little recourse to medication review where they are experiencing distressing side effects. Mechanisms to allow appeal within inpatient and community settings require review.
  - Situations where consumers are placed on depo medications as a resource issue as opposed to therapeutic decision making leave consumers vulnerable to less than optimum medical intervention without access to appeal processes.
- Transport
  - Review of the transportation of people with mental illness to and between mental health units and other facilities requires review. Police vans may be the best option in a limited number of instances but for the vast majority the option of specially fitted unmarked mental health vehicles with trained nurse escorts may be preferable with police escort requested when assessed as necessary for safety reasons.
- Forensic
  - Review of the process whereby forensic patients are released or given leave provision is currently a political decision. This situation needs to be acknowledged as an area of medical expertise.
  - Forensic patients require access to support from consumer advocates in the same way as other individuals under the Mental Health Act.
- Advanced Directives
  - With this concept becoming more popular it is timely to consider the standing and legality of these directives in relation to the Mental Health Act.
- Physical Health

- Evidence tells us that there is a substantial correlation between mental illness and poor physical health. It would be useful to review the requirement under the Mental Health Act to ensure all consumers receive a full medical check up.
- Magistrates Hearing
  - The process whereby decisions regarding a consumer's capacity to manage their financial affairs is taken at the Magistrates Hearing requires review as it is considered to be too early in the course of the consumers illness to be making decisions of this nature and may be more appropriately a matter for the Mental Health Tribunal.
- Official Visitors
  - The autonomy and independence of the Official Visitors Program from NSW Health requires review along with the criteria under which Official Visitors are appointed and the length of this appointment. The requirement to have a medical practitioner allocated to each of the visiting teams may no longer be as appropriate as previously considered and is in need of review. Experience and background rather than occupation should dictate appointments and the partnering of Official Visitors into teams.

As a second stage to this process, MHCC are keen to use this opportunity to draw up a more detailed submission, outlining the specific sections to be highlighted in the Mental Health Act & the Mental Health (Criminal Procedures) Act.

To this end, MHCC are asking the Working Groups that were established to progress the implementation of the recommendations of the Legislative Inquiry, and focus on various specific areas, to now identify the particular sections of the Act, that require amendment. The groups are researching the Queensland and Victoria Mental Health Acts, to draw comparisons between those acts, which have both been more recently amended, and are deemed to be more progressive than the statute that currently exists in NSW.

MHCC welcome the contributions of its members to this discussion. Your knowledge and experience would be invaluable to us in making the submission as authoritative and broad-based as possible.

If you would like to participate in one of the working groups: Forensic; Housing & Homelessness; Carers; Mental Health & Substance Abuse and Young People, or any other relevant areas, please contact Corinne Henderson at MHCC on [consult@mhcc.org.au](mailto:consult@mhcc.org.au) or Telephone: (02) 9555 8388 or Fax: (02) 9810 8145. Alternatively, you can post a message on our website (anonymously if preferred) at [www.mhcc.org.au](http://www.mhcc.org.au) using our [Internet Forum](#) established for the purpose.

To obtain details or access to copies of the relevant Mental Health Acts, please contact Corinne Henderson at MHCC, details above.