

Mental Health Act - Draft Exposure Bill released

August 2006 - View from the Peak

On August 12th the Minister assisting the Minister for Health (Mental Health) Cherie Burton, released the long awaited draft Exposure Bill detailing the proposed changes to the NSW Mental Health Act. Many will remember the consultations that MHCC held with its members around the review of the Mental Health Act back in 2004 initially with Discussion paper 1: Carers and Information Sharing and then in the second half of 2004 with Discussion Paper 2 which covered a wide range of matters including admission and care in hospital, care and treatment outside hospital, the role of police and ambulance services and management of forensic patients.

Amongst the many issues addressed within the Draft Exposure Bill is an attempt to balance the rights of consumers in relation to privacy and the need for families and carers to know what is going on. The opportunity for consumers to make an 'advance directive' on who can have access to their information should they become unwell and the notion of a 'primary carer' are two of the proposed approaches within the Bill. Other areas which have been addressed are a decreased role for police in the transport of people with mental illness which has been limited to cases where there is serious concern about patient and or staff safety. Balancing this is a larger role for NSW Health which is given greater responsibility in the area of transportation with inclusion of provisions for restraint for involuntary patients now included. In addition the Bill adds ambulance officers to the categories of persons who are entitled to take a person to hospital for involuntary treatment.

The Bill will be out for public consultation for a period of three months and MHCC will be again providing members the opportunity to participate in consultations. Access papers at: <http://www.health.nsw.gov.au/legal/index.html>

Whilst the draft Exposure Bill incorporates community feedback on the majority of issues within Discussion papers 1 and 2, a decision has been taken by the Minister's office to review matters around the future of the forensic system in NSW in a separate process chaired by President of the Mental Health Tribunal (MHRT), The Hon Greg James QC. This is occurring in response to the complex legal, medical and sensitive community views on management and discharge of forensic patients. In particular, decision needs to be taken on the type of model the forensic system will operate under. Options are: transfer of decision making powers in relation to release of forensic patients to the Supreme Court or transfer of determinations of release to the MHRT, retaining the Supreme Court's power of review by an appeal process including right of appeal by the Government or transfer of all determinations on release to the MHRT but establish a right of veto by the Minister for Health.

A detailed consultation will be prepared by the MHRT and is due for release in 6 weeks. The process of review of the forensic system is to be finalised over a 12 month period.

While the draft Exposure Bill on initial review appears to be well constructed and incorporates many of the recommendations put forward by community members, there remain several areas requiring further attention. MHCC will be holding forums with members and interested stakeholders detailing the proposed changes to the Mental Health Act and developing a submission based on feedback from the consultation process.

Just as important as the actual recommendations / legislation will be the way the Act is interpreted to provide the real cultural shift needed within the mental health system. Consequently, education will be crucial for those charged with its implementation.