

# Mental Health Act review

Summer 2007: View from the Peak

**Following the recommendation of the Dec 2003 Select Committee Inquiry into Mental Health Services in NSW, in 2004 the Minister announced a comprehensive review of the Mental Health Act 1990. After an extensive series of consultations the Bill was finalised, excluding the Forensic Provisions of the Act.**

Two discussion papers were released, *Carers and Information Sharing (February 2004)* and *the Operation of the Mental Health Act (August 2004)*. Over 200 submissions were received by government. At every stage of the process, MHCC facilitated working groups, consultations and forums and produced relevant, targeted submissions. All of these are available on the MHCC website at [www.mhcc.org.au](http://www.mhcc.org.au)

## Mental Health Bill 2007

The Exposure Bill, which was the draft legislative amendments to the *Mental Health Act 1990*, released in August 2006, was finalised as the *Mental Health Bill 2007* and tabled in Parliament in December, 2006.

The new Bill enhances the commitment to the protection of the legal rights of persons with a mental illness contained in the previous *Mental Health Act 1990*. Reactions to many changes in the Bill were positive (particularly supporting the recognition of the role of carers in sharing information, and consumer confidentiality). However, there was widespread discontent about issues that had been ignored in the face of widespread support.

A negative aspect of the Bill is that in the two Discussion Papers, the key focus of the Objects of the Act was to incorporate the spirit and intent of Parliament to set overarching parameters, thus giving guidance and assistance as to how more detailed provisions of the Act should be interpreted, so that good practice is entrenched in the legislation. MHCC recommended that the Act should be expanded to include core 'Principles', supporting a concept of overarching guidance to provide for the care, treatment and protection of people with a mental illness, informed by *UN Resolution 46/119, Principle 1: Fundamental freedoms and basic rights*.

Whilst the Objects of the Act also refers to the civil rights of those under the Act, there is broad consensus that the Act should recognise the needs of particular groups of people, for example: Indigenous, culturally and linguistically diverse groups, people with an intellectual disability, and recognition of the rights of carers who are under 18. MHCC would have liked to see greater acknowledgement included in the overarching *Principles of the Act*.

MHCC highlighted many issues previously raised in their submission *Response to the Mental Act 1990: Discussion Paper 2*. Some sections that were of particular concern were that:

- It is imperative that Mental Health Tribunals reflect a spectrum of clinical, legal and community expertise and not (as in some matters) be conducted by one person as drafted in the new Bill.
- MHCC felt greater clarity should be given to the definition of an accredited person and the qualifications necessary for nomination. This was identified in consultations as particularly important in rural, regional and remote locations where medical officers are frequently unavailable. The absence of an accredited person (a medical doctor or psychiatrist) frequently results in delays to both hospital admissions and release of patients back into the community.
- When dealing with limited further detention of a person taken to a facility by police or after Magistrate's bail, MHCC identified the ability to detain a person for no more than 1 hour (pending the person's apprehension by a police officer), as an inadequate time for the police to respond, which might put a person at risk.
- The Draft Bill included a section dealing with prohibited treatments, which included psychosurgery. Consultation revealed that some groups were happy to accept this amendment, however, in our submission, we stated our position which is in agreement with the conclusion of the Psychosurgery Review Working Group: Medical knowledge and technology are evolving fields and psychosurgery can be effective for, "a very small and specific group of patients suffering from some chronic, disabling and treatment resistant psychiatric illnesses." In stating this position, we also advocate for a proviso that rigorous safeguards must be implemented to ensure that any intervention is in the patient's best interests, that consumers are fully

informed of their rights, options and possible consequences of the procedure, and that any consent is a genuinely informed consent. The new Bill however, reflects the prohibition as drafted.

### **Recognition of the rights of patients, the role of carers, and their right to obtain information**

The Bill overhauls provisions of the current Act to update and streamline practices and services. Some of the amendments particularly affect the role of carers and consumer rights. This recognition is present throughout the Bill. In particular, Chapter 4 clearly sets out the rights of consumers and carers, which include:

- Principles for care and treatment based on the principle of the least restrictive environment enabling effective care and treatment
- Provisions allowing the nomination of a primary carer
- An amendment that enables carers to obtain an Interim Court Order, to obtain confidential information and urgent assessment when an individual is at risk is now reflected throughout the Act, which MHCC welcomes
- Enhanced information sharing provisions including notification requirements about medication, detention, conduct of inquiries and appeal rights
- An obligation on the part of the authorised medical officer of a mental health facility to consult with patients, carers and other relevant agencies in relation to discharge planning and follow-up care

The Bill also provides clarity and balance around the training of professionals in all contexts to understand their obligations, to seek information from and disclose to carers, the implications for all other community based organisations, and the rights of consumers and carers under the various Mental Health and Privacy Acts.

For any further information with regard to this submission please direct enquiries to Corinne Henderson at [corinne@mhcc.org.au](mailto:corinne@mhcc.org.au) or telephone 02 9555 8388 ext 101. The full submission is available on the website at [www.mhcc.org.au](http://www.mhcc.org.au)

**The Consultation Paper on the Forensic Provisions of the Mental Health Act 1990 and the Mental Health Crimes Act 1990** is under review at present. MHCC is facilitating a consultation for this review