

Review of the *Mental Health Act 1986*

Some key questions – December 2008





Ministerial foreword

In May 2008 I announced a review of the *Mental Health Act 1986* (the Act) to examine whether it provides an effective and contemporary legislative framework for the treatment and care of Victorians with a serious mental illness. The Act imposes obligations on government, enshrines protections for people subject to it and regulates the provision of involuntary treatment and other practices.

When passed in 1986, the Act led Australian reform of mental health legislation. Since then, unprecedented changes have occurred in the way that services are delivered. This period has also seen significant developments in international and local human rights law especially the Victorian *Charter of Human Rights and Responsibilities* and the United Nations' *Convention on the Rights of Persons with Disabilities*.

While the Act has been amended frequently over the past two decades, a comprehensive review is required to ensure the Act effectively protects the rights articulated in these documents. It is also necessary to ensure the legislative framework of the Act reflects the current context within which mental health care occurs and underpins the Victorian Government's aspirations for mental health services into the future.

The Victorian Government is currently developing a statewide reform vision for mental health services. Responses to the consultation paper *Because mental health matters: A new focus for mental health and wellbeing in Victoria*, released earlier this year, will help shape Victoria's new mental health strategy and our future service system. The vision emphasises the fundamental importance of flexible, consumer-oriented services with an increased focus on recovery. Legislation plays a key part in reflecting and facilitating these objectives.

In June 2008 Mr Ben Bodna AM, Ms Dominique Saunders and Mr Wayne Schwass were appointed to an independent panel to lead public consultations on this review. This panel, the Community Consultation Panel, is supported by the legislation review team within the Mental Health and Drugs Division of the Department of Human Services.

Sadly Ben Bodna, the inaugural chair of the panel, passed away suddenly in October. I was shocked and greatly saddened by his death. Ben made important contributions to this review that were marked by a passion for human rights and a keen interest in understanding consumer issues and experiences. I am sure that Ben's belief in the value of talking directly to consumers, their families and carers will be continued throughout this review process.

Mr Julian Gardner has since been appointed to chair the panel. Mr Gardner is also chair of the independent Expert Advisory Group (EAG) consisting of stakeholders and key experts, which was appointed to provide specialist knowledge and advice on the complex issues contained in this paper. I thank all members of the EAG for their input, invaluable advice and commitment to this review.

We aim to introduce new mental health legislation into the Victorian Parliament in 2010. It is my hope that this consultation paper will promote high levels of input and I encourage all interested members of the Victorian community to make their views on the future shape of the Act known to the panel. These submissions will help ensure our aspirations for the future of Victoria's mental health law become a reality.

A handwritten signature in black ink, appearing to read 'Lisa Neville', with a stylized flourish at the end.

The Hon Lisa Neville MP
Minister for Mental Health

Introduction

This document provides a brief outline of the main issues covered in detail in the full consultation paper. It also poses key questions for people to respond to in their submission. Additional questions are contained in the full consultation paper for people who prefer to make a more detailed submission. Comment is welcome on any matter related to the Act, and need not be limited to the questions in this paper or the full consultation paper.

How to be involved

For people who wish to make their comments in person, there will be a number of forums held in Melbourne and country Victoria during February 2009. Information about these public forums will be available from the department's website at <www.health.vic.gov.au/mentalhealth/mhactreview> or by calling the enquiry line on 1300 656 692.

Written submissions can be made by email to <mhactreview@dhs.vic.gov.au> or can be sent to:

The Community Consultation Panel
Mental Health Act Review
Mental Health and Drugs Division
Department of Human Services
GPO Box 4057
Melbourne Vic 3001

There is an optional submission template available on the website. If you require assistance in making a submission, please call the enquiry line on 1300 656 692.

Closing date for submissions is 5:00pm on Friday 27 February 2009.

Submissions will be treated as public documents and placed on the review website at <www.health.vic.gov.au/mentalhealth/mhactreview>. If you do not want your submission to appear on the website, please mark it as confidential.

However, the department may receive a request for submissions under the *Freedom of Information Act 1982* (Vic). You will be notified if such a request is made and the department is required to disclose your submission.

Please note: There are a range of views about the most appropriate term to describe people who have a mental illness and receive involuntary treatment and care. Diverse views about this are acknowledged. In this paper, 'patient' is used when describing laws that apply to both voluntary and involuntary patients. 'Involuntary patient' means a person subject to an involuntary treatment order (ITO) or community treatment order (CTO) and 'voluntary patient' means a person receiving treatment but not under an ITO or CTO.

The following issues are excerpts from the full consultation paper. The relevant chapters are indicated in brackets, for example, "(Ch.3)".



Cover artwork Graeme Doyle, *The Horse - "A Poor Man's Guernica" or Landscape on Another Planet (detail)*, 1971-2000. Image reproduction courtesy of The Cunningham Dax Collection.

Framework for reform (Ch.2)

This review will examine possible ways to strengthen or improve: the Act's role in promoting recovery; patient participation in treatment and care decisions, including placing patients at the heart of the Act; the existing rights-based approach to involuntary treatment and care; the effectiveness and accessibility of mechanisms to oversee treatment and care; and the Act's responsiveness to the needs of families and carers. Please refer to the full consultation paper for a more detailed discussion of why there is separate mental health legislation.

(a) What other reforms could the new Act include?

Involuntary orders (Ch.3)

The Act currently contains five grounds that must all be met before a person can be placed on an involuntary order. The person must appear to be mentally ill and require immediate treatment that is necessary for their health or safety or for public protection. The person must be refusing treatment or unable to consent and there must be no less restrictive manner in which adequate treatment can be provided. Issues concerning these grounds include whether an involuntary order should be allowed when a person is able to consent to treatment but has refused and how immediate and serious the risk of harm to the person or others should be before an involuntary order is used.

(b) When should people who are seriously mentally ill be able to be placed on an involuntary order under the new Act?

The Act currently requires that people who are found to meet the grounds for an involuntary order should, wherever possible, be treated while in the community on a CTO. Issues in relation to CTOs include: who should make CTOs; how long CTOs should last; and how to ensure a person does not remain on a CTO for longer than necessary. These issues also apply to people on hospital-based ITOs.

(c) How could the new Act improve ITOs and CTOs to better meet patients' needs?

Patient participation (Ch.4)

The Act currently sets out the rights of involuntary patients including: receiving a written statement and explanation of their rights; involvement in treatment planning; obtaining a second psychiatric opinion; appealing involuntary orders; and appearing at Mental Health Review Board hearings. Patient advocates argue that many involuntary patients are not aware of their rights and find it difficult to exercise them. Ways to help both involuntary and voluntary patients to understand and exercise their rights could include: a person nominated by the patient to receive information; an independent support person who can assist patients including advocacy; improved treatment plans; and allowing people to make an advance statement.

(d) How could the new Act improve patient participation in decisions about treatment and care?

Electroconvulsive therapy (ECT) (Ch.5)

The Act currently deals with how ECT can be performed. If a patient is unable to consent to ECT, consent may be provided by an 'authorised psychiatrist'. An issue is whether there should be a second opinion by a psychiatrist before ECT can be performed or a review by an external body like the Mental Health Review Board.

(e) How should the new Act deal with ECT?

Restraint and seclusion (Ch.6)

The Act defines mechanical restraint and seclusion and sets out grounds for their use. Physical restraint is not dealt with in the Act other than in relation to the safe transport of a person to a mental health service. Issues include whether the new Act should deal more broadly with physical restraint and whether the grounds for using mechanical restraint and seclusion should change.

(f) How should the new Act deal with restraint and seclusion?

External review (Ch.7)

The Mental Health Review Board currently reviews involuntary orders within eight weeks after they are made and at least once every 12 months to check that the order is still required. Issues include how soon after involuntary orders are made should they be reviewed by an external body and how frequently thereafter.

(g) How should the new Act deal with external review of involuntary orders?

Monitoring patient wellbeing (Ch.8)

The Chief Psychiatrist and 'community visitors' currently have roles in monitoring treatment and care provided to patients under the Act. Patient advocates argue that increased scrutiny

and monitoring is important for patients, in particular, those subject to involuntary treatment, to ensure that their wellbeing and rights are respected. Robust monitoring processes can also promote service improvement.

(h) How could patient rights and wellbeing be protected and monitored in the new Act?

Complaints (Ch.9)

Currently the Act does not deal with complaints. Some mental health services have a local complaint system for patients while others use the broader complaint system within general hospitals. The Chief Psychiatrist and other bodies also receive complaints. Patient advocates argue that the present complaint system is confusing and inadequate. Issues in relation to complaints include the accessibility and effectiveness of current complaint systems.

(i) How could the new Act improve the complaint system for mental health?

Confidentiality and information sharing (Ch.10)

The Act currently limits the circumstances where patient information can be given to family and carers. It is important that the Act provides an appropriate balance between the right to privacy of a patient, and the needs of family and carers to access information to enable them to undertake their caring role. The Act also limits when information can be given to other services in providing treatment and care. Issues include how to improve information sharing and what kinds of information should be provided.

(j) When should patient information be shared with others?