



## **Submission**

# **Mental Health Legislative Review**

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## **Mental Health Legislation Review Consultation**

This submission is provided by the Carers Association of SA based on the feedback and advice of Carers of the Mental Health Carers Task Group, ongoing feedback from Carers and community consultations.

### **Objects of the Mental Health Act**

- The Objectives of the Mental Health Act are still considered relevant.
- The Objectives also outline what the Minister must endeavour to do in  
*2(a) to work towards ameliorating the adverse effects of mental illness upon family life*  
and  
*2(g) to promote informed public opinion on matters of mental health by the dissemination of knowledge and generally to promote public understanding of and (wherever practicable) involvement in measures for the prevention, treatment and cure of mental illness.*
- Carers consider that these objectives have not been addressed in South Australia. When this occurs these initiatives will strengthen the overall operation of the legislation.
- The Mental Health Legislation needs to give greater emphasis on the best possible treatment including a full range of community services and early intervention.
- In keeping with the Objectives there needs to be a greater emphasis placed on raising public awareness of the rights of people with a mental illness. Examples of the way this has been done in other sectors include the disability sector through National Standards for Disability Services.

### **Definitions**

- The Carers Association of SA defines a Carer as "someone who provides care and support for their parent, partner, child or friend who has a disability, is frail aged, or who has a chronic mental or physical illness". Inclusion of this definition in the legislation would recognise, acknowledge and entrench the contribution of families and informal Carers.
- The Equal Opportunity Amendment Bill 2003 cites a person's responsibilities as a Carer as "to provide care or support [other than on a commercial or voluntary basis] for another who is wholly or substantially dependent on the person for the provision of that care or support and a member of the person's family or household or a close acquaintance".
- Carers frequently take ultimate responsibility for the care of the consumer in the community including medication and medical appointments, social and living arrangements, pre and post acute care in the community and emergency assistance.
- The strongest message from family Carers is that they are totally disregarded, ignored and overlooked in the considerable contribution they make to the care of their family member. The legislation needs to reflect the principles included in the Northern Territory Mental Health Legislation where it is stated "It is the right of Carers to be provided with relevant information about the person's rights and entitlements and how those rights and

entitlements can be accessed and exercised". It is also stated that the Carer must be consulted and involved in the development of ongoing treatment plans and discharge planning [Northern Territory Consolidated Legislation, 2004].

- All legislation should include an appropriate set of mental health principles. The National Standards for Mental Health Services should be referred to when considering changes to the legislation in order to focus on continuing improvement.
- The Act needs to reflect the ongoing needs of chronically ill patients who are on medication and in remission so that they still have access to services. The Carers feel that the Act needs to acknowledge the episodic nature of mental illness.
- The definition of mental illness [Part 1 Interpretation] is *any illness or disorder of the mind*. This needs to include people diagnosed with a personality disorder so that if there is someone who is a danger to others or can't look after themselves we can provide care for them within the Mental Health System. This is seen to be within the scope of the spirit of the Mental Health Act of keeping people and /or the community safe.

### **Recognition of the Role of Community Multi Disciplinary Care**

- To be effective, changes to the Mental Health Legislation need to be accompanied by an increase in resources in the community for the care and treatment of consumers as well as support for their families. The Act cannot ensure proper treatment of patients and protection of the community without adequate resourcing of services.

### **Detention Process**

- The legislation needs to continue to provide for people to be detained in the interests of their own health and safety. Definition of the term 'own health and safety' varies, as does the resultant assessment. This is particularly relevant for people who are undiagnosed, as often no diagnosis means no treatment. Consumers who don't receive treatment are at increased risk of homelessness. Service providers and Police do not detain people unless they perceive them as being a threat to others [as per Section 23 of the Act], thus self harming behaviours can be overlooked. Consumers and Carers would prefer transportation to occur in the least restrictive manner possible. Carers are in a good position to inform professionals when the person they are caring for is considered a risk to themselves.
- There needs to be formalised links between forensic services, mainstream mental health services and mainstream medical services.

### **Community Treatment Orders**

- Community Treatment Orders need to be highlighted in the Act in order to reflect the least restrictive alternative requirement.
- Service provision accountability is needed. Services are often not provided. Who provides accountability and maintains services? Should CTOs be reviewed?
- With the power of delegation the psychiatrist does not necessarily see the consumer. There is a need for clear delegation of responsibility for the CTO,

transparent processes and formal paper work for the delegation. There are legal presumptions about sub-delegation which need to be addressed. We need consistent procedures and processes between orders and treatment. None of the current procedures and processes are satisfactory for the consumer or their families and this leaves them at a legal disadvantage.

- In this state we need CTOs that are not just about medication and medical treatment but the best possible treatment eg have a plan for naming personal goals as a focus for the consumer and the family. It is considered that a more positive approach would result in a better experience and help prevent the failure to adhere to the CTOs.
- Other states have Community Management Orders that allow for specific treatments for example where the person should live, what is best for the person and so on. At the moment in SA there is a lack of accountability and enforceability if the person under the CTO removes themselves geographically.
- How good should the evidence be to grant a CTO? It is often a mix of hearsay and opinions not grounded in fact and unfair predictions of behaviour. Sometimes the Board is asked make an order without much information from the person who is mentally ill and so the resultant order and reasons for making it are often unclear. Opinions about the order need to be sought from the consumer but also from the Carer as very often they have valuable insight into the person's needs.
- The Act doesn't define what the treatment is, but what it is not. Treatment is not only about medication but should also incorporate other supports. Without this it makes it difficult, particularly when consumers have a lack of insight as a symptom of their illness and can not or do not access services.
- In many cases the person applying for the CTO had not seen the consumer. There are examples of the health team incorrectly changing the medication because they didn't know the current medication details. Teams don't talk to each other or in fact the patient but in reality the family does know the situation much better.

### **The benefit of Community Treatment Orders is dependent on the range, quality and quantity of services to support people in the community**

- The experience is that health systems promptly stops looking after the consumer when the CTO ceases. There is no legal capacity for the service provider to continue the CTO. What happens to the consumer if they choose not to continue with the CTO, even though it is in their best interests? The Carer may believe that it is in the best interest of the consumer's health but they have no voice in the process.
- There is a view from Carers that people not under CTOs receive fewer services. When remission occurs there is still the need for long term supports for Carers who need to support the consumer during these periods. Non government agencies need to be better funded to offer greater variety and availability of community based and non-acute services.

## **Guardianship Board**

- Many Carers consider that there is a critical need to improve the functioning of the Guardianship Board and the appeals process.
- Complaints about the Guardianship Board include:
  - Lack of procedural fairness for the applicant.
  - Inadequate and inconsistent information given to the consumer and their family of the process for orders. Lack of formal information on applications across varying orders. Sometimes the consumer is told that there could be an order on the same day but hadn't seen an application nor had it discussed.
  - Lack of affordable advocacy services to support consumers through the process.
  - Applications being heard by one sitting member when the Guardianship and Administration Act provides for a multi-disciplinary panel of members.
  - Lack of preparation and contextual information to assist the application as there is an absence of social background reports.
  - Reliance by the Guardianship Board on the professional applicants information alone, regardless of whether it is factually correct or not. It is considered that the Board – because of the pressure and the time, tend to take the word of professionals.
  - There is a view that the Board sides with anybody who is a professional and that family Carers are looked down on and their views disregarded. Only Carers that are able to be articulate and are informed about the procedures can easily access information or be heard.
  - The appeals system is too complex and difficult to understand and navigate. For example, Appeals against Detention Orders can be heard at any time during the 45 day process and a further appeal can be made to the Administrative Appeals Court [a division of the District Court]. Appeals against Guardianship Orders and Administration Orders can be heard by the Guardianship Board if there is a change in circumstances. A further appeal can be heard by the Administrative Appeals Court. Appeals against all other orders [including CTOs] must be made to the Administrative Appeals Court but first the person must seek leave to appeal from the Guardianship Board or the court and this leave must be granted before the process can commence.
- It needs to be noted that the Guardianship Board is a statutory and an independent body that comes under the jurisdiction of the Attorney-General's Department that is maintained separately from Mental Health Services System. The legal structure of the Guardianship Board has meant that Carers have experienced difficulty in having their concerns and complaints heard and obtaining information under FOI.
- There used to be a team of social workers supporting the Board to provide information who would spend a lot of time with the consumer and family. The Public Advocacy Body was established to provide the "caring" body but lack of resources has meant it has been unable to fulfil this role. Advocacy

organisations won't provide Carers with advocacy because they are representing the care recipient.

- The functioning of the Guardianship Board needs to be improved by making sure:
  - There is procedural fairness and that consumers and their families have access to the information about the consumer that will determine the order made by the Board that is "procedural fairness through a therapeutic lens".
  - There is access to advocacy services for consumers from the beginning of the process. Currently people are said to have the right of a lawyer but this does not work in practice because of cost and there is no paid legal representation until appeal. Lawyers charge \$300 per hour and this is out of the reach of most consumers.
  - Changes to the Guardianship Board and its process should include social workers (possibly employed by the Public Advocates Office) to provide reports regarding the context, treatment and care needs of the consumer. This report needs to be made available to all involved in the application, whilst being mindful of the need to protect the family relationship between the Carer and the consumer.
  - There needs to be access to legal advice provided by a funded duty solicitor and information on the process provided by a duty social worker as part of the Guardianship Board structure.

### **Appeals to District Court**

- When the Guardianship Board was first formed there was an independent tribunal that reviewed the orders fairly quickly. It is now up to the consumer to appeal an order to the Guardianship Board. If this appeal is not successful then it needs to be taken to the District Court.
- The current process of appeals to the District Court is considered inappropriate and slow. The Court process is too legalistic and intimidating. Although consumers are provided with free legal representation for appeals, this does not apply to Carers. The use of the District Court to hear appeals is not considered to be within the intended spirit of the Mental Health Legislation.

### **The need for an Independent Mental Health Review Tribunal**

- Procedural fairness must be addressed for those receiving an order from the Guardianship Board. It is considered that the best way of addressing this is by establishing an independent Appeal Tribunal to replace and provide for the current appeal process to the court.
- The previous independent Mental Health Review Tribunal was lost in the 1993 review of the Mental Health Legislation. This loss was detrimental to the proper functioning of the interface between the Mental Health Legislation and the Guardianship and Administration Act. It was also a loss because it ensured procedural fairness for consumers and their families in relation to hearing appeals on orders made by the Board. There is strong support from Carers that an independent mental health review tribunal should be reinstated in legislation

## **Confidentiality**

- Families and Carers consider 'confidentiality' practices the most contentious issue in the Mental System and there have been demands to change the practice for many years, but without success. The review of the legislation is seen as a good opportunity to do this. Section 15 subsection 4 states that information can be given to families "informing family unless it is not in the best interests of the patient to do so" [Mental Health Act, 1993].
- Under Section 34 a person involved in the professional care of the person can't divulge information "unless it is authorised or required to do so by law or by his or her employer" [Mental Health Act, 1993] and so we need a change in the authority under the Act so that information can be released to those who require the information to provide ongoing care. Under current arrangements this information is shared more between professionals than with family members who also need it. This Section 34 effectively excludes families from getting information.
- The view of Carers is that, in practice, confidentiality is used by professionals for their professional protection. The family Carer is not provided with the information they need but they are expected to do the caring as part of the treatment plan in an informal capacity. Nor are Carers able to give information and yet they are the ones who know the behaviours and early warning signs of impending ill health.
- Families and Carers need to be informed if a person is detained in hospital. They also need to be informed of their treatment plan. Many Carers are not informed if the consumer is detained and this can be distressing and dangerous particularly if kids are left at home unsupervised for example. This issue is addressed in policies but often not practiced. It is vital that Carers and families are included in the discharge planning and are advised of care and medication required.
- Government organisations in SA need to be required to give information to families and Carers. Professionals and services should be required to follow the Code of Fair Information Practice.
- The formalisation and use of advanced medical treatment orders and Ulysses agreements within the clinical setting needs to be established as a firm policy and practice in the Mental Health Services as a critical adjunct to dealing with issues related to confidentiality. Inclusion in legislation would enable these agreements to be used when consumers are well, so that their family Carers can have access to information when they are unwell.

## **Approved Treatment Centre**

- There need to be changes to the legislation to provide for the better treatment of people with acute conditions in regional areas. The Police are considered to be doing a fantastic job, including in rural regions, and many Carers find their intervention vital and stabilising in difficult or threatening situations where families and members of the community are at risk. Carers in general do not want to see the responsiveness of the police changed. However, treatment options need to be streamlined and this requires legislative change. However, transport of detained patients by police to treatment centres is seen as traumatic and inappropriate.

- Regional hospitals and facilities need to be able to be used as an Approved Treatment Centre because the transporting of people to Glenside and care in the city is considered to be traumatic.
- In order to meet the legislative requirement for ordering detention
  - The facilities need to be able to provide proper facilities to care and detain people
  - There needs to be psychiatrist and trained people to provide the Care
  - And people who meet the requirements of the legislation to make the order for detention and treatment
- There is support for approved people (social workers and nurses) who are not psychiatrists and not GP's, to be able to order detention under the act. Specially trained and registered personnel should be accessible in country regions. With video conferencing used to enable psychiatrists to review the patient and Detention Orders under the requirement of the act. Consumers with acute illnesses often require transportation to Glenside.
- It was considered that there were people in Whyalla and Port Augusta who could fit the criteria but because of the current legislative and resource barriers were not being used to their full potential.
- Under current legislation service providers perceive the need to exaggerate the mental illness to satisfy the legal requirements. A sense of seriousness and crisis needs to be conveyed for consumers to receive a service. This could be overcome if changes were made to the current legislation.

## **Advocacy**

- There is a lack of advocacy in the Mental Health system. Both Disability Complaints Service and Disability Action are limited in what they can do and they do not provide advocacy for Carers.
- The Ombudsman can investigate systems but because of lack of resources this can be delayed for a year.
- The Public Advocate has a key role in informing consumers and families of their rights and the legislation, however a lack of resourcing means that information is not widely 'distributed' and calls can not be returned to consumers and families in time to be effective. Written information is only provided in English and not available in other languages and this is disadvantaging people from CALD communities.
- More networking with consumers and Carers is required.