

5 November 2014

Subject: Mental Health Amendment (Statutory Review) Bill 2014

MHCC comment that the consultative process in relation to review of the NSW Mental Health Act 2007 was appropriately inclusive, and that there were multiple opportunities for discussion across most stakeholders' interests. The community was invited to participate directly through submissions and consultation and provided with a summary and report of the consultation feedback and advice. Nevertheless, it would have been preferable to be able to review the draft Bill with more time to lobby as to its contents, than the parliamentary process is allowing.

Most of the proposed amendments to the NSW Mental Health Act are uncontroversial, however, MHCC are disappointed that there is an absence of the positive rights that might be activated. This falls far short of the Election Commitment the NSW Government made in the wake of the Waterlow Case and recommendations from various quarters including the Deputy State Coroner.

We propose that the amendments reflected in The Objects of the Bill as follows are reasonable in view of the fact that a voluntary patient may want to discharge themselves immediately, when the treating team consider that they need to be assessed before they leave:

c) to enable a voluntary patient to be detained in a mental health facility for up to 2 hours for the purpose of a review by a medical officer to ascertain whether the patient should be detained in the facility for assessment,

Further reflected in:

Section 10 Detention of voluntary patients in mental health facilities

Insert after section 10 (2):

(3) A voluntary patient in a mental health facility may be detained for a period of up to 2 hours for the purpose of enabling an authorised medical officer to exercise the officer's functions under this section.

We note the new title of a Designated Carer (instead of primary carer) as the person appointed by the consumer as such, or a person who has a guardian role. We understand that the title principal care provider, is to give status to another person who may be providing care and support to the consumer who might otherwise be bypassed and not be appropriately informed, consulted or involved in recovery plans, discharge, hearings etc.

MHCC are pleased to see the concept of 'Recovery' in the Bill:

Section 3 Objects of Act

(a) to provide for the care and treatment of, and to promote the recovery of persons who are mentally ill or mentally disordered, and

Section 68 Principles for care and treatment

"and be supported to pursue their own recovery"

Section 68 (h)

"every effort that is practicable should be made to involve persons with a mental illness or mental disorder in the development of recovery plans and to consider their views and expressed wishes in that development".

"every effort that is reasonably practicable should be made to obtain the consent of people with a mental illness or mental disorder when developing treatment plans and recovery plans for their care, to monitor their capacity to consent and to support people who lack that capacity to understand treatment plans and recovery plans,"

Whilst the definition of psychosurgery has been amended, the practice is still prohibited, and the Bill has not made possible deep brain stimulation (sometimes used for Parkinson's Disease) which has been found beneficial for some patients with severe obsessive-compulsive disorder (OCD) who do not respond well to medication or cognitive-behaviour therapy, and may provide some relief from the recurrent, distressing thoughts and/or repetitive behaviours of the anxiety disorder. This treatment is supported by expert neurologists, and the prohibition means the patients will have to continue to travel from NSW to access such treatments if they so wish.

We are concerned that the insertion of Section 44 (6) below concerning Appeals against discharge, is rather a strange amendment from a civil rights perspective. A patient having successfully appealed against refusal to discharge, can then be subject to the Tribunal deferring the discharge for a period of up to 14 days. We propose that this is misleading to the patient and may cause conflict with the treating team. If a person is detained after a successful appeal, they could be offered to remain as a voluntary patient until discharge is suitably arranged, otherwise if held for a further 14 days, they are involuntarily detained and it is misleading to categorise in any other way.

The Tribunal may defer the operation of an order under this section for the discharge of a person for a period of up to 14 days, if the Tribunal decides it is in the best interests of the person to do so.

Whilst this is clearly to ensure safe discharge (i.e. not to discharge someone to homelessness, or for special arrangements to be made) we note that at least a patient can be discharged into the care of a designated carer under Section 38 (5)(a):

Section 38 (5) now is amended as follows:

(5) In any other case that the Tribunal determines that a patient is a mentally ill person, it must make an order that the patient be discharged from the mental health facility in which the patient is detained and may make any of the following orders:

(a) an order that the patient be discharged into the care of a designated carer or the principal care provider of the person,

We welcome the enhanced acknowledgement of the important role and rights of “designated carers” and “principle care providers”, particularly in relation to the right to be informed, consulted and involved in discharge planning and supporting the patient in the community.

Disappointing to MHCC, its members and many stakeholders will be the absence of any reference to further minimising the use of restraint either in the context of transportation or in acute and other mental health settings.

Likewise, MHCC had hoped for some guidance around supported decision-making, however, we anticipate that these two matters will be appropriately reflected in the policy and regulations that support the legislative framework which has at its core the concept of “the best possible care and treatment in the least restrictive environment enabling the care and treatment to be effectively given.”

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