

Update on Progress to a New Mental Health Act for WA

First mental health legislation in WA

Lunatics Act 1871

Human Rights Protections Under That Act

- ☹ Colonial surgeon could visit at any time
- ☹ Admission of paupers required one doctor and one JP
- ☹ Personal examination required
- ☹ Re-examination at the hospital by Board of Inquiry within 3 days and person discharged unless the doctors were satisfied that the person should be in hospital
- ☹ Visitors from the Board of Visitors to visit weekly, any time of the day and inspect patients

Mental Health Act 1962

Drift away from legalism due to advances in treatment options

Between 1949 and 1960 a number of effective medications were introduced-

1949-Lithium for stabilising mood disorders

1952- Phenothiazines (Chlorpromazine/ Stelazine ect) for psychosis

1955- Antidepressants for depression

1957- Benzodiazapines for anxiety disorders

1958- Haloperidol for psychosis

But the legislation was inadequate as it did not consider-

- Patient's Rights
- A process for review of involuntary status
- Any complaints procedures
- Community treatment

Events which lead to a new Act

1991- Statement of Rights and Responsibilities

1991- United Nations Principles for the Protection of Persons with Mental Illness and for the Improvement of Mental Health Care

1994-Federal Government Model Mental Health Legislation

1996- WA Mental Health Act came into force November 13 1997

The 1996 Mental Health Act included

Part of the Act specific to Patient's Rights

Introduced the Mental Health Review Board

Introduced Community Treatment Orders

Made the Board of Visitors the Council of Official Visitors

Gave a determination of mental illness and criteria for involuntary status

Gave specific powers to the police

Prohibited certain treatments and regulated others

Stated there had to be a review of the Act after 5 years of the Act being in force

The Review was conducted over an 18-month period and included:

1. Over 300 public submissions.
 2. A widely representative stakeholder group.
 3. Working Parties on
- Council of Official Visitors,

- Mental Health Review Board,
 - Involuntary Status & Community Treatment Orders
 - Treatment of Patients
 - Protection of Patients' Rights
 - Criminal Law (Mentally Impaired Defendants) Act.
4. Circulation of a Draft Report in October 2003.
 5. Feedback from the public about the Draft Report.
 6. A series of regional consultations in rural and remote areas of WA.
 7. Presentation of a Final Report 'The Way Forward' to the Minister and Attorney General in December 2003.

Governments Response to the Review Recommendations

Placed before Parliament October 2004

1- Recommendations that are accepted that advance the human rights of persons with mental illness.

2- Recommendations accepted that clarify the Act

Important to note that a new Act is being drafted not just amending the 1996 Act
Drafting not completed

Recommendations that are accepted that advance the human rights of persons with mental illness.

That the definition of 'mental illness' be revised to accord with internationally accepted standards

The Internationally accepted standards which will be in the regulations of the Act will include DSM IV and ICD 10

Further exclusions be added ensuring that only persons with mental illness are subject to the Act

Exclusions to include 'cultural activity', particular 'political, economic or social status', 'involved in family or professional conflict', and 'been previously treated or detained for mental illness'

The objects of the Act are replaced and expanded

Principles relating to treatment and care, involuntary admission, Aboriginal and Torres Strait Islanders, the rights of patients and involvement of carers

That the role of the Chief Psychiatrist be enlarged

To include the care and welfare of voluntary patients as well as involuntary patients;
Give approval to guidelines to improve treatment and care including second opinions;
Keeping statistical information on Emergency Psychiatric Treatment, Mechanical Bodily Restraint and Seclusion;

In special circumstances where medical care is needed to be involved in the process to make a person an involuntary patient in a general hospital

That the criteria for involuntary status be amended to include that '*the person has unreasonably refused treatment*' accepting that persons may quite reasonably refuse treatment and should not be made subject to involuntary status

That the referral process be amended to ensure that when a person is referred to another place for examination a psychiatrist is available to conduct that examination
Referrers will be obliged to make contact with place where the person is being referred to if not an authorised hospital to ensure a psychiatrist is available

That a Form is provided to the referred person to inform them as to why the referral is occurring and what the expectations of the referral are
The referral form will be provided to the person while maintaining confidentiality of information from a confidential source

That a psychiatrist be able to examine a referred person by audiovisual means ensuring that the person is not unnecessarily transferred from a rural to a metropolitan hospital
An audio-visual examination will allow an extension of the assessment period when a person is detained in a rural authorised hospital and no psychiatrist is immediately available

Guidelines be published for the optimal use of mental health beds, which will ensure that there is a system-wide response when facilities in a particular authorised hospitals are inadequate to meet the needs of the patient
This work has commenced with the Mental Health Division and the mental health services agreeing an assertive patient flow policy and appointment of staff to assist this process

That there is a reduction in the maximum time a person is kept as an involuntary detained patient from 28 to 21 days and in relation to extension of the order from 6 months to 3 months

A service agreement with the Northern Territory to ensure that persons with a mental illness in the Kimberley area receive a service regardless of the constraints imposed by the border
Work has commenced on cross-border arrangements with the Northern Territory and other states

That the definition of treatment be expanded to allow a wider range of therapeutic intervention

The sections regarding informed consent be expanded placing expectations on services to obtain informed consent

That electroconvulsive therapy not be considered an emergency psychiatric treatment.
That all persons admitted to an authorised hospital receive a complete medical as well as mental health assessment.

That a mandatory review by the Mental Health Review Board (MHRB) be conducted within 35 days rather than 56 days.

That, with appropriate restrictions, legal representatives may have access to a patient's records for the MHRB review.

The MHRB to be fully subsumed into the State Administrative Tribunal

That the maximum penalty for the offence of ill treatment be raised

That in the part of the Act dealing with community support services, the issue of discharge planning is addressed

That the meaning of 'affected person' be extended to persons referred to an authorised hospital for examination, voluntary patients and those patients subject to the *Criminal Law (Mentally Impaired Defendants) Act 1996*

Will mean that the COV, now to be called Mental Health Advocacy Council with a Director will advocate for voluntary and involuntary patients and referred persons

That any restrictions on the capacity to vote be removed

That a new part of the Act dealing with complaints be introduced

The Act has a specific part for dealing with Minors-

That the concept of the Competent or Mature Minor be introduced into mental health legislation;

That there are shorter time frames for the MHRB review of minors (7 days) as well as shorter time frames for involuntary detention (14 days initial period);

That ECT be prohibited for children under 12 and with special restrictions for its use in minors under the age of 18;

That Youth Advocates be introduced- Youth advocates will be members of the Advocacy Council

Recommendations accepted that clarify the Act

That a medical practitioner or an authorised mental health practitioner be enabled to detain, if necessary a referred person for up to 6 hours. This will lead to greater safety for the referred person who may be at immediate self-harm or harm to others.

That the way to detain a voluntary patient who needs involuntary status while an in-patient in an authorised hospital be changed- using a 6 hour detaining power by the person in charge of the ward to enable an assessment by a medical or authorised mental health practitioner.

That the referral of patients on CTOs to authorised hospitals be changed so that the CTO is suspended.

That issues of medical treatment for persons with mental illness be changed to clarify the use of emergency powers and clarify when intervention of the Guardianship and Administration Board is appropriate.

That the administration of seclusion and mechanical bodily restraint be changed to clarify who may be subject to this intervention and who may not, as well as the keeping of statistical information

That there is a new section to the Act allowing the use of reasonable force by mental health or medical practitioners in relation to disturbed patients

Parliamentary Council has drafted the majority of the Mental Health Bill.

When finalised the Bill will be placed before Parliament.

Once passed there will be an implementation period allowing for the development of guides, pamphlets and forms.

There will be a state-wide education and training program for clinicians, consumers, carers and other stakeholders.