



**Mental Health Council of Australia Submission to:
Victorian Department of Health's *Exposure Draft Mental Health
Bill 2010*
December 2010**

Introduction

The Mental Health Council of Australia (MHCA) is the peak, national non-government organisation representing and promoting the interests of the Australian mental health sector, committed to achieving better mental health for all Australians. The membership of the MHCA includes national organisations of mental health service consumers, carers, special needs groups, clinical service providers, community and private mental health.

The MHCA welcomes the review of mental health legislation in Victoria and its efforts to make the Mental Health Act more consistent with the principles and objectives of the *Charter of Human Rights and Responsibilities*. The MHCA believes, as outlined in its 2005 *Not For Service* report, that all governments should 'work to achieve the highest attainable standard of mental health care as required by the International Covenant on Economic, Social and Cultural Rights and the Convention on the Rights of the Child and apply the UN Principles for the protection of persons with mental illness and the improvement of mental health care.'¹

Victorian Exposure Draft Mental Health Bill 2010

Part 2: Objectives and Principles

Clause 7(5): The MHCA welcomes the inclusion of a clause that recognises the important role of carers and families. In Australia's first national survey of mental health carers the common view expressed among carers was that they are neither listened to nor respected. The rhetoric of including carers as part of the care 'team' for the consumer is not borne out in reality. Often this leaves carers trapped, excluded, feeling unable to provide adequate care, but also unable to find the services needed for the person they care for.²

Clause 7(4): The MHCA supports the inclusion of a clause that states that a person with a mental illness be supported to make decisions regarding their treatment and care. The MHCA believes that effective community supported recovery includes the support of autonomy, independence and freedom of choice while the person is actively engaged in their treatment and support options.³

¹ Mental Health Council of Australia (MHCA) (2005) *Not For Service*, MHCA: Canberra, p. 16.

² MHCA (2009) *Adversity to Advocacy: the lives and hopes of mental health carers*, MHCA: Canberra, p.7

³ MHCA (2006) *Time for Service*, MHCA: Canberra, p.13

Part 4: Voluntary Patients

Clause 61(2): The MHCA recommends that all jurisdictions develop nationally consistent guidelines on the assessment and provision of specialised mental health care and that all Australian jurisdictions provide specialised legal services for people with mental illness who encounter the justice system.⁴

Part 7: Treatment

Clause 135: People with mental illness have a higher risk of having a co-occurring physical illness, which often goes undiagnosed and untreated.⁵ MHCA supports service providers working with consumers to undertake (at least) annual physical health examinations.

Part 8: Restrictive Interventions

Clauses 136-141: The MHCA welcomes the aim of the Bill to regulate the use of seclusion and physical and mechanical restraint, and only use restrictive interventions as a last resort. While protection from harm may be cited as one reason for implementing measures to restrain someone, there are clinical and ethical issues that practitioners must consider before using restraints.

While the MHCA welcomes the clauses relating to mechanical and physical restraint and seclusion, we note that chemical restraint is not addressed in the same manner.

Part 9: Regulated Psychiatric treatments

Clause 144: The MHCA supports prohibiting electroconvulsive therapy on a person who is less than 13 years of age.

It is important that consent for people aged over 13 but less than 18 be sought – a parent/guardian or nominated person should also have input, however there are a number of young people in this age group who should have the right to be part of decisions about their care. Mental Health Tribunal oversight is welcome.

The MHCA would like to see nationally consistent guidelines for the use of ECT in all states and territories.

Part 14: Interstate application of mental health provisions

The MHCA recognises there may be a need to transfer and return compulsory patients to and from Victoria to ensure patients receive appropriate access to mental health services. However, the MHCA would like to see acknowledgement of the need for cross-border agreements so that consumers do not ‘fall through the cracks’ when moving interstate. Nationally, the MHCA believes there is a lack of cross-border agreements and integration with other sectors between different jurisdictions.⁶

Conclusion

The MHCA supports the overriding principles of a rights-based approach in the Bill. We believe the Bill marks a significant shift in policy and commend efforts to improve safeguards on the use of compulsory orders and restrictive interventions, encourage increased carer involvement and provide more responses to specific patient needs.

⁴ MHCA (2005) *Not for Service*, MHCA: Canberra, p.18

⁵ Coghlan R, Lawrence D, Holman CDJ, Jablensky AV (2001), *Duty to Care: Physical illness in people with mental illness*, The University of Western Australia: Perth.

⁶ MHCA (2005) *Not for Service*, MHCA: Canberra, pp.177-178

However, we would like to stress the importance of implementing, where possible, national standards in addition to human rights for mental health services.

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