Psychiatric Disability Services
of Victoria (VICSERV)

Level 2, 22 Horne Street
Elsternwick Victoria 3185
T 03 9519 7000 F 03 9519 7022
www.vicserv.org.au

Consultation Paper Response

Review of the *Mental Health Act 1986*

Contact details:

Kim Koop, Chief Executive Officer
Psychiatric Disability Services of Victoria (VICSERV)
Level 2, 22 Horne Street, Elsternwick Victoria 3185, Australia
T 03 9519 7000 **F** 03 9519 7022
W www.vicserv.org.au **E** k.koop@vicserv.org.au

Psychiatric Disability Services of Victoria's (VICSERV) role in the Review of the *Mental Health Act 1986*

VICSERV members and staff have participated in various consultations where they have been actively involved in discussion and feedback. VICSERV compliments DHS on the extensive nature of the consultation process.

VICSERV has actively encouraged all members to provide a written response to this consultation paper. In line with our knowledge management function for the sector, VICSERV has invited members to provide their submissions to be archived and to be used in the ongoing development of the sector.

This response represents the key issues from our consultations with members. It does not attempt to summarise the views of all PDRS providers and certainly does not attempt to choose between the various views, rather it contains itself to the broader interests of the sector and to role of VICSERV itself. The views expressed in this response are therefore not necessarily the views of all members.

VICSERV will continue to work with the sector and DHS in line with its current mandate to undertake sector development and to promote high-quality, person-centred care in line with psychosocial principles.

1) Principles and functions of the new Act

The quality and standard of treatment and care provided to people with mental illness in Victoria will be judged first and foremost by the principles in the law that relates to mental health. VICSERV supports the inclusion of the principles outlined in the discussion paper (p14):

- An explicit recognition in the principles that treatment should be voluntary wherever possible and that any decision about a patient must take into account the patient's views, wishes, beliefs and values to the greatest extent practicable
- A principle that mental health services protect rights, minimise interference with them and promote rehabilitation and recovery.

There should also be a function to support mental health services to assist carers and facilitate the provision of information, education and support.

2) The new Act's role in promoting recovery

A particular purpose of the review is to consider how a recovery orientation can be better reflected in the Act. This is a goal that is strongly supported by VICSERV and its members. However, the consultation paper does not offer a definition of recovery and it is therefore not clear how the goal will be achieved.

There is currently a great deal of misunderstanding about the term recovery. A narrow view of recovery exists in some parts of the mental health sector. Recovery is seen as an outcome; symptoms have dissipated or the patient is seen to have been cured and can be discharged

From the perspective of people living with a psychiatric disability, recovery is seen as a journey rather than an end point or destination. William Anthony[1] identifies recovery as:

> *. . .a deeply personal, unique process of changing one's attitudes, values, feelings, goals, skill and/or roles. It is a way of living a satisfying, hopeful, and contributing life even with the limitations caused by the illness. Recovery involves the development of new meaning and purpose in one's life as one grows beyond the catastrophic effects of mental illness.*

In this context recovery can be understood as:

> *… a product of dynamic interaction among characteristics of the individual (the self/whole person, hope/sense of meaning and purpose), characteristics of the environment (basic material resources, social relationships, meaningful activities, peer support, formal services, formal service staff), and the characteristics of the exchange (hope, choice/empowerment, independence/interdependence)*[2]

Empowerment is a key dimension of recovery. Substituted decision making, lack of information about treatment and care or rights and coercive practices disempower people with psychiatric disabilities, especially those on involuntary and community treatment orders under the Act. It is welcome therefore that the discussion paper rethinks many of these matters. This submission will make further comment on specific issues.

A common understanding of the meaning of recovery and its key principles is needed if the Act is to truly have a key role in promoting recovery. VICSERV has progressed someway toward common definitions and understandings via the development of practice texts such as *Towards Recovery* Volume 1.

Recommendation

- That the new Mental Health Act contains a definition of recovery that emphasises the whole life experiences of the person living with mental illness and the unique meaning it has for each individual.

3) Patient participation in treatment and care

The Review discussion paper asks how could the new Act improve patient participation in decisions about treatment and care. The work of the Psychiatric Disability Rehabilitation Support Services (PDRSS) sector is guided by a set of principles for psychosocial rehabilitation (see Appendix 1). These principles focus on the person, rather than the illness, and offer hope whilst supporting recovery. Principle 3, for example, is that of self-determination: *People have the right and the ability to make decisions regarding their lives and do so on a regular basis*.

When people are severely unwell they may not have the same capacity as at other times to understand and exercise their rights. The provision of information alone will not ensure effective patient participation in decision-making. All patients, whether they are involuntary or not, should be provided with information about their rights and to have support available to understand and exercise them. In this respect, legislative strategies such as a nominated person or an independent support person should be considered for inclusion in the new Act. They have proven effective in other jurisdictions. The role, qualifications and experience of the independent support people

[1] Anthony, W.A. (1993). Recovery from mental illness: the guiding vision of the mental health service system in the 1990's. Psychosocial Rehabilitation Journal, 16(4), 11-23.
[2] Mental Health Recovery: what helps and what hinders http://www.namiscc.org/Recovery/2002/MentalHealthRecovery.htm accessed 20 February 2009

should be broad enough so that they can provide advocacy on behalf of the patient throughout the treatment process, including appealing involuntary orders and appearing at the Mental Health Review Board.

Including access to an independent support person in the legislation would also go some way to addressing the criticisms identified in the discussion paper around patient involvement in treatment plans. Independent support people could ensure that patient's wishes were incorporated into the plan to the fullest extent possible.

VICSERV would also like to recommend that consideration is given to including a requirement for the authorised psychiatrist to prepare discharge plans. The Northern Territory *Mental Health and Related Services Act* 1999 has detailed provisions in relation to discharge plans. (See Appendix 2). The discharge plan contains arrangements for accommodation, psychosocial rehabilitation and ongoing psychiatric treatment. The discharge planning process should be consultative and provide timely information to parties that will be involved with the ongoing treatment, care and recovery of the person involved.

The right to an *independent* second psychiatric opinion together with legal recognition of advance statements or directives are ideas that are supported by VICSERV for inclusion in the new Act.

Recommendations

- Patients' rights to a nominated person or an independent person should be considered for inclusion in the new Act
- Consideration is given to including a requirement in the new Act that comprehensive discharge plans are prepared prior to a person leaving a treatment facility and that these plans include arrangements for accommodation and community support
- Patient's rights to an independent second psychiatric opinion should be considered for inclusion in the new Act
- Advance statements/directives should be considered for inclusion in the new Act and given legal recognition.

4) Rights-based approach to involuntary treatment and care

VICSERV welcomes the Review's aim to ensure that the new Act adequately protects human rights in light of the Victorian *Charter of Rights and Responsibilities* and the UN *International Convention on the Rights of Persons with Disabilities*.

When people's rights are taken away they the reason why should be explained in a timely manner and in a way that the person can understand. As recommended above, legislating for nominated or independent support people can assist this process.

Furthermore, when people's rights are taken away they should be reinstated as soon as possible. Involuntary patients can wait up to eight weeks before an external review of the order is conducted. This is unacceptable, particularly in relation to the shorter time frames for review that are included in the provisions of mental health legislation in other jurisdictions and WHO recommendations that involuntary treatment orders should be automatically externally reviewed within three days after they are made.

In the first instance, VICSERV recommends that the involuntary treatment process be separated into stages as described in the discussion paper (p.19). Decisions about involuntary treatment should be made during an initial assessment phase of the shortest possible duration. Any subsequent involuntary treatment orders should be externally reviewed at frequent intervals. A staged process offers better protection for patients' rights to refuse treatment and not to be detained and enables these rights to be reinstated as soon as possible if they are taken away.

Monitoring mechanisms are a further way of ensuring patient's wellbeing and rights are respected. Complaints mechanisms are also important in this context. VICSERV is attracted to the idea of a separate independent body that would monitor rights, investigate complaints and proactively initiate service and systemic improvement. A body such as a Mental Health Commission with an independent Commissioner is supported.

Recommendations

- That the new Act separates the involuntary treatment process into stages similar to that contained in the provisions of the Northern Territory and New South Wales Acts.
- That further consideration is given to the idea of an independent body to monitor patients' rights and wellbeing, investigate complaints and drive service and system reform

5) Confidentiality and information sharing

There are many partners in the treatment and care of people with severe mental illness when they are patients in a treatment facility and when they are in the community. Balancing the person's right to privacy with the need to provide necessary information to other partners has to be carefully managed. Families and carers should be enabled to provide the support that allows their loved ones to stay at home. The new Act could be strengthened by adopting the New South Wales approach that requires a carer or person *nominated* by the patient to be provided with information about key events such as admission, transfer and discharge.

The new Act should also reflect the contribution of the full range of service partners in the mental health system. An example of this could be by designating a role for the PDRSS sector in areas such as the development of treatment and discharge plans. The PDRSS sector works with people when they are well and could play a key role in supporting the development of advance statements/directives.

Recommendations

- That the new Act requires information about key events to be provided to a carer or person nominated by the patient
- That the provisions of the new Act reflect the roles of the full range of service partners involved in the care, treatment and recovery of people with severe mental illnesses.

In conclusion, VICSERV would like to emphasise that protecting and promoting the rights of people with severe mental illness and embedding a recovery focus into care and treatment will require a culture shift in the mental health system. Training for clinical and specialist mental health staff will assist this shift to occur. VICSERV would be willing to contribute to the development and delivery of this training through its established and well-regarded training unit. Any training for the mental health sector should include consumer and carer input.