

Mental Health Council of Australia

Mental Health Council of Australia Submission on Inquiries into the Employment and Workplace Relations Legislation Amendment (Welfare to Work and Vocational Rehabilitation Services) Bill 2006, and Safety, Rehabilitation and Compensation and Other Legislation Amendment Bill 2006

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 service providers, national research institutions and state/territory peak bodies.

This Submission

This submission addresses mental health issues in the Employment and Workplace Relations Legislation Amendment (Welfare to Work and Vocational Rehabilitation Services) Bill 2006, and the Safety, Rehabilitation and Compensation and Other Legislation Amendment Bill 2006. The key areas are:

- The amendment to the *Disability Services Act* removing the requirement for individual rehabilitation programs to be approved under that Act.
- The move to a contestable rehabilitation services market.
- Financial Case Management debts.
- Amendments to the definitions of 'disease' and 'injury'.

The MHCA is supportive of employment policies and strategies that assist people with a mental illness. Statistics indicate that Australia performs well below comparable OECD countries when it comes to employing people with a mental illness. However, workplace changes should not occur at the expense of people's health.

We believe that the changes mooted in these amendments will negatively impact on the health, welfare and employability of people with a mental illness.

Inquiry into the Employment and Workplace Relations Legislation Amendment (Welfare to Work and Vocational Rehabilitation Services) Bill 2006

Removing the requirement for individual rehabilitation programs to be approved under the Disability Services Act

Removing the requirement for individual rehabilitation programs to be approved under the *Disability Services Act* will make it more difficult to ensure the quality and standard of vocational rehabilitation programs delivered to consumers. There must be guidelines or procedures for programs to focus on the best outcomes or particular needs of the consumer.

Consumers are often reluctant to seek employment through rehabilitation programs due to the stigma attached to mental illness. The proposed changes may lead to the development of rehabilitation programs with only a low level understanding of mental health priorities, creating a situation where mental health consumers are even more reluctant to access these programs.

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There is a level of stigmatisation associated with mental health in the employment agency sector, particularly where people have had limited contact with mental health consumers. Vocational rehabilitation programs must be developed with skills in the mental health area to have an understanding of the ongoing support required and empathy for people with a mental illness.

Move to a contestable rehabilitation services market

Evidence indicates that the most effective rehabilitation programs are those tailored to meet the individual needs of consumers. By moving to a contestable rehabilitation services market, there must be assurances that specific rehabilitation programs are developed with the needs of mental health consumers as the primary motivation. There must be standards applied to agencies developing vocational rehabilitation programs to ensure mental health consumers receive the same level of service quality as other consumers.

The move to a contestable market could present positive opportunities for mental health non-government organisations to become involved in the provision of rehabilitation services. However, given the current move to more generalist employment agencies, this does not create a favourable environment for mental health specialist rehabilitation services. The MHCA is concerned that the capacity for people to access psychological employment services will be reduced. Employment programs for mental health consumers must take into account the episodic nature and seriousness of mental illness, and the impact on workplace participation.

The standard of rehabilitation programs could be reduced where arrangements are entered into with a provider who does not hold a current certificate of compliance. While the MHCA understands this is due to moving to a contestable market, this again does not ensure that the standard of rehabilitation programs will be managed or meet the needs of mental health consumers.

Financial Case Management debts

Centrelink is ultimately responsible for referring people for Financial Case Management. In situations where Financial Case Management has been provided but the person was not entitled, then it is reasonable for the costs of assistance to be recovered. However, if Centrelink made the decision to provide the Case Management, then they should be accountable for any costs incurred.

There must be very clear guidelines on how fault is determined, and what criteria are used to assess whether a person was entitled to assistance or not. This is particularly important given the vulnerable circumstances of many people living with a mental illness.

Inquiry into the Safety, Rehabilitation and Compensation and Other Legislation Amendment Bill 2006

Definition of 'disease'

The amendment to the *Safety, Rehabilitation and Compensation Act* will change the definition of 'disease' to require that a person's employment must make a significant contribution to contracting or aggravating a disease to receive compensation. Under existing legislation an employee was required to establish that employment was a contributing factor. The Explanatory Memorandum quotes a speech by the Hon Kevin Andrews, Minister for Employment and Workplace Relations in which it is stated:

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It is intended that the test will require an employee to demonstrate that his or her employment was more than a mere contributing factor in the contraction of the disease¹.

The test will be for employees to demonstrate that employment has contributed in a 'material degree' to a disease.

This will impact on people with a mental illness as work can often be a factor in them experiencing a change or worsening of their illness. This could be due to an unsupportive work environment, limited understanding of mental illness, or inflexible work arrangements. They also may not want to disclose their illness for fear of discrimination by employers and other workers, or losing their job. Sane Australia research indicates these factors are major barriers to employment for people with a mental illness².

Under the amendments, employers may be able to stop or not consider accommodating someone with a pre-existing condition when determining employment conditions. A work environment that welcomes, understands and accommodates people with a mental illness is crucial for successful employment. As noted earlier, employment for people with a mental illness must take into account the episodic nature and seriousness of mental illness, and the impact on workplace participation.

Definition of 'injury'

The amendment proposes to exclude workers compensation for injuries, particularly psychological injuries, resulting from administrative action including:

- An appraisal of the employee's performance
- A counselling action, formal or informal
- Suspension from employment
- Disciplinary action
- Action in relation to an employee's failure to obtain a promotion, reclassification, transfer or benefit
- Action in respect to any of the above.

Psychological injury is specifically listed in the Explanatory Memorandum, and each of the actions listed above would particularly affect mental health consumers.

This amendment could result in people with a mental illness being discriminated against and vilified in the workplace. A person may not receive a promotion or have their job description changed because of a perception that their mental illness will affect future work performance. Support in the work place is essential for people with a mental illness to retain a job, and administrative actions that do not recognise this will have a negative impact.

Excluding compensation for psychological injuries will leave people with a mental illness, and people in general who experience a stress related work injury, in an extremely vulnerable position. People will become isolated and more fearful of disclosing that they have a mental illness, and less likely to seek help if their condition is aggravated by work.

¹ House of Representatives, The Parliament of the Commonwealth of Australia (2006). *Safety, rehabilitation and Compensation and Other Legislation Amendment Bill 2006, Explanatory Memorandum.*

http://parlinfoweb.aph.gov.au/piweb/view_document.aspx?ID=2516&TABLE=EMS

² Sane Australia (2006). *Research Bulletin 3 – Employment and mental illness.*

<http://www.sane.org/Information/Information/Research.html>

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Conclusion

The MHCA is concerned that the Employment and Workplace Relations Legislation Amendment (Welfare to Work and Vocational Rehabilitation Services) Bill 2006 removing the requirement for individual rehabilitation programs to be approved under the *Disability Services Act*, will make it more difficult to ensure the quality and standard of vocational rehabilitation. Programs must be developed with skills in the mental health area to have an understanding of the ongoing support required and empathy for people with a mental illness.

By moving to a contestable rehabilitation services market, there must be assurances that specific rehabilitation programs are developed with the needs of mental health consumers as the primary motivation, to ensure the delivery of high quality services.

The Safety, Rehabilitation and Compensation and Other Legislation Amendment Bill 2006 to change the definitions of 'disease' and 'injury' will impact on people with a mental illness as work can often be a factor in them experiencing a change or worsening of their illness. Excluding workers compensation for psychological injuries will leave people in a vulnerable position. They will be more fearful of disclosing that they have a mental illness, and less likely to seek help if their condition is aggravated by work.

Employment for people with a mental health illness must take into account the episodic nature of the illness, and the impact on workplace participation. A work environment that welcomes, understands and accommodates people with a mental illness is crucial for successful employment.

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The Secretary
Senate Standing Committee on Employment, Workplace Relations and
Education
Department of the Senate
PO Box 6100
Parliament House
Canberra ACT 2600
By email.

22 January 2007

Dear Secretary,

**Re: Submission to the Senate Inquiry into Employment & Workplace
Relations Legislation Amendment (Welfare to Work & Vocational
Rehabilitation Services) Bill 2006**

We thank the Standing Committee for providing the Mental Health
Coordinating Council (MHCC) with the opportunity to make a submission to
this Senate Inquiry.

MHCC is the state peak body for non-government organisations (NGOs)
working for mental health throughout NSW. MHCC represents the views and
interests of more than 150 NGOs in the formulation of policy, and acts as a
liaison between the government and non-government sectors. Our member
organisations specialise in the provision of services and support for people
with a disability due to mental illness. MHCC is a Board member of the
Mental Health Council of Australia.

***The move to a contestable vocational rehabilitation services market
and removal of the need for approval of individual programs***

In principle, MHCC supports introducing contestability and the related
changes to the legislation, as long as there are consistent standards applied
throughout all participating agencies, and consumers / clients are assured
access to mental health specialist vocational rehabilitation services.

As will be outlined shortly, vocational rehabilitation for people with a mental
illness is a specialised area, requiring trained staff sensitive to the range of
issues that impact upon the capacity of each individual to obtain
employment.

It is likely to be unfeasible for each agency providing vocational
rehabilitation services to have the level of expertise required to

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*MHCC is the peak
body for mental health
organisations in NSW*

People living with mental illness have a broad range of backgrounds, skills, and interests, and rehabilitation services need to work closely with each individual to find meaningful work. In other words, a consumer-driven approach should be at the heart of services. Emphasis must not be on finding *any* job.

Vocational rehabilitation services providing support for this client group must be appropriately qualified and aware of these specific issues.

The need for standards and expertise in mental illness in the delivery of services and vocational rehabilitation programs.

One of the potential disadvantages of services being delivered by a range of different agencies is varying standards, expertise, and experience, which leads some clients to access a lower quality service than others, and in some cases miss out on opportunities that others access due to a lack of knowledge on behalf of their agency's staff. All efforts should be made, therefore, to ensure there is a consistent minimum standard applied across the board. This is of particular importance in mental health, due to its specialised nature.

This also applies to the proposal to remove the requirement for individual rehabilitation programs to be approved under the Disability Services Act, and MHCC is concerned that this could result in vast inconsistencies in the standard of vocational rehabilitation programs.

MHCC recommends that:

- Agencies providing these services must have, or be in the process of getting, quality accreditation under the Commonwealth Disability Service Standards. This is currently a requirement of agencies contracted by CRS Australia to provide vocational rehabilitation.
- All agencies providing these services must have vocational rehabilitation staff with specific knowledge of mental health, the vocational rehabilitation needs of people living with a mental illness, and the broader social issues that impact on the capacity of people living with mental illness to obtain and retain employment.
- If vocational rehabilitation programs do not need to be individually approved prior to their implementation, there should be a quality assurance process established to audit such programs to ensure they are appropriately consumer-focused and achieving quality outcomes.
- The funding system should adequately reward those agencies who work with the most challenging clients, with targets that reflect the positive outcomes that can come from even a short work placement.

As a final point, we also take this opportunity to restate our concerns about Welfare to Work. First, the Job Capacity Assessment process is quite inadequate in capturing the employment capacity of people living with a mental illness due to the episodic nature of many mental illnesses. Second, people living with mental illness are among those especially vulnerable to the 8 week penalty for breaches of the law. These blanket laws have very little applicability to the particular range of issues that characterise the experience of living with a mental illness.

We support all efforts to properly support people into employment, but a more flexible approach that can take into account the unique pathways of mental illness is urgently required.

Yours faithfully,



Ms Jenna Bateman
Executive Officer