



22 January 2007

Mr John Carter  
Committee Secretary  
Senate Employment, Workplace Relations and Education  
Committee  
Department of the Senate  
PO Box 6100  
Parliament House  
CANBERRA ACT 2600

Dear Mr Carter,

**Inquiry 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**

The Mental Health Council of Australia (MHCA) would like to thank you for the opportunity to submit comments on the above inquiries by the Senate Employment, Workplace Relations and Education Committee.

This submission addresses key issues for mental health consumers, in particular:

- 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 believes the Senate Employment, Workplace Relations and Education Committee should take the MHCA comments into serious consideration in their inquiry.

Yours sincerely,



Sebastian Rosenberg  
Acting Chief Executive Officer

## 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 disease<sup>1</sup>.

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 illness<sup>2</sup>.

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.

<sup>1</sup> 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](http://parlinfoweb.aph.gov.au/piweb/view_document.aspx?ID=2516&TABLE=EMS)

<sup>2</sup> 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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