

Director General.  
Legal & Legislative Services  
Department of Health  
LMB 961 North Sydney  
NSW 2058

26<sup>th</sup> November 2004

**Response to the Review of the Mental Act 1990: NSW Health.**  
**Discussion Paper : 2.**

Dear Director General,

Thank you for providing the Carers Working Group (CWG) with the opportunity to contribute to the review of the NSW Mental Health Act 1990: Discussion Paper 2.

We strongly support the benefit and value of reviewing the appropriateness of the Mental Health Act 1990, in a 21<sup>st</sup> century context. We welcomed the involvement in the development of comprehensive and effective legislation and guidelines in this critical area.

The CWG consists of stakeholders, consumers, carers and interested parties, auspiced by the Mental Health Co-ordinating Council (MHCC). It was originally established in March 2003 to respond to the recommendations of The Legislative Council Select Committee Inquiry into Mental Health Services in NSW when it tabled its final report.

The CWG have been involved in numerous consultations with MHCC since Discussion Paper 2 was made available, and we wish to confirm that we support in principal most of the views expressed in the submission authored by MHCC.

However, we would like to take this opportunity to highlight a few issues that have particularly been of concern to us, and reiterate or clarify some of the sentiments expressed in the MHCC submission from our Carer focused position.

In answer to comments sought in the Discussion Paper 2, we wish to highlight the following:

**Part 2. Objects.**

In noting that the object clauses set out to embrace the spirit and intent of the Act and provide guidance. The CWG feel that in defining the objects of **Care, treatment and control of mentally ill and mentally disordered persons** (2.1 p 5), that an inclusion should be made as to 'Standards for Treatment,' which would encompass all aspects of: access; education; training; human rights; living standards; and support, in accordance with professional standards, integrated into accepted 'National Standards,' in order to be effective. Therefore, our answer to Comment Sought Q 3, would be affirmative.

We also strongly support further inclusions and amendments to the Objects:

- That the use of the word “control” should be amended throughout the Act to focus on support, care, protection and progressive recovery rather than promoting a sense of ‘management’ or ‘restraint’.
- An acknowledgement and recognition of the contribution played by families and carers in caring for people with a mental illness, and the needs of those in a support role, especially in the case of children who are the primary carers for parents affected by mental illness and have very special needs.
- In “***balancing the individuals need to receive appropriate care and treatment... and their rights to liberty and self-determination,***” (p.5) we feel that the term “***the best treatment in the least restrictive environment,***” would be more appropriate, so that adequate care is taken to prevent unfortunate tragedies that occur from inappropriate early release or inadequate supervision.
- There should be a recognition in the Objects of the consumer to participate in all aspects of their own care or treatment, as far as it is practicable, and that they should be provided with alternatives, information and a treatment plan, plus appropriate community services that will enable the concept of “***the best treatment in the least restrictive environment,***” to be fully realised.
- The Objects should also include a recognition of the importance of maintaining family relationships, nurturing unity and that wherever appropriate, the carer or family should also be involved in treatment planning and processes.

#### **Part 4. Admission To and Care in Hospitals.**

##### **Comment Sought Q 28 & 29.**

The CWG believe that “***limitations for the detention of mentally ill persons,***” should be altered so that decisions are made purely on clinical grounds that are ‘best practice’ using ‘evidence based care,’ for a person with a severe personality disorder, with provision for ongoing review.

The current exemption is frequently used strategically, and there is a need for greater openness and consideration as to what is in the best interests of the patient. The system is overly focused on acute inpatient treatments, and there is a need for access to appropriate treatments and interventions in the community, as well as non-clinical support and long-term housing, safety and care in the community.

##### **Comment Sought Q 30 & 32.**

Regarding “***Comments sought on the current procedures and provisions applying in respect to Magistrates Hearings,***” the CWG strongly urge that the hearings should be taken out of the hands of the Magistrates, and dealt with by the Mental Health Tribunal. The system as it stands is perceived as a “court procedure,” and the same stigma arises as though it were a ‘criminal court’ procedure. These ‘hearings’ should be ‘reviews’ separate from the judicial system.

In these instances the individual concerned is exposed to a system that is rigid, and as an open procedure, it is often humiliating and traumatising with scant attention to the individual’s rights, which they themselves rarely understand they are entitled to. What is required is the best process for comprehensive care, acknowledging the needs of the individual, their family or carer. This can best be assessed with the advice of the clinical team and the expertise of the Mental Health Tribunal.

**Comment Sought Q 80 Access to official visitors**

The CWG agree with the view that carers should be able to arrange for a patient to have access to the official visitors, and stress that official visitors should be able to bring matters immediately to the attention of the Tribunal for review. They also would like to highlight the need of carers to have access to the official visitors to discuss their concerns regarding the patient, particularly when a patient is very unwell and may be incapable of communicating with anyone.

**Part 10. Cross Border Issues and other issues.****Comment Sought Q 90.**

Section 293 should be amended to include a discharge requirement direction in relation to those who have attempted suicide, in the same way as for those who are mentally ill. Post-discharge should include a treatment plan that enables the individual to function in the community with support that does not just involve providing medication under the terms of a CTO.

Thank you for seeking our involvement in this legislative reform review. We look forward to participating in future discussion, when the first draft of the new Act is available for comment.

Should you wish to discuss any issues surrounding this submission the contact person is Corinne Henderson, MHCC, on 9555 8388.

Members of the group include representation from the following organisations; consumers and carers of people with mental illnesses:

ARAFMI NSW  
HUG (Hope Unlimited Group)  
Fairfield / Liverpool CCC (Consumer Consultative Committee).  
Mental Health Carers Network Incorporated  
Carers Support Unit / Schizophrenia Fellowship

Yours sincerely,

Corinne Henderson  
On behalf of the Carers Working Group.