

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

26th November 2004

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

Dear Director General,

The Forensic Working Group (FWG) would like to express our appreciation for the opportunity to contribute to the review of the NSW Mental Health Act 1990: Discussion Paper 2.

The Group consists of stakeholders, consumers, carers and interested parties, auspiced by the Mental Health Co-ordinating Council (MHCC). Several group members are also members of the Carers Working Group, and similarly, the FWG 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.

We have long felt that this review was overdue and are pleased to find that so many issues that we have struggled with over the years are now being addressed in this Discussion Paper. We welcome our involvement in what we are sure is the development of comprehensive, effective legislation and guidelines, in this contentious area of forensic mental health.

Since Discussion Paper 2 was made available, the FWG has been involved in numerous consultations with MHCC, and have had the benefit of input from consumers progressing through the system, and been able to access a broad spectrum of views from consumers, carers and service providers.

We confirm our support of the views expressed in the MHCC submission. However, we would not like to let this unique opportunity pass without highlighting several issues central to the systemic change that we deem crucial to providing a just and humane piece of legislation.

It is our strong belief that the Act should reflect 'world best practice' and support the concept of: "*the best treatment in the least restrictive environment,*" - the most effective treatment with an emphasis on recovery, and appropriate support in the community for all individuals with a mental illness.

This is no less applicable to forensic patients for whom gaol is an unsuitable environment in which 'management' and 'medication' rather than 'recovery' and 'rehabilitation' are the main focus.

5.2 Executive Discretion in relation to the release of Forensic Patients.

Comments Sought Q 42 & 43.

The FWG strongly support the view in relation to review and release, that the decision is one requiring the expertise of the Mental Health Tribunal in consultation with the clinical team professionals.

The Tribunal makes its deliberations on the basis of clinical judgement, but with a duty of care towards both the community and the individual concerned. They are, after all, members themselves of that same community. The notion that broader community issues cannot form part of the Tribunal's province is unfounded and is a far more reasonable expectation than that of the executive's capacity to make clinical judgements.

We agree with the establishment of a two-tiered structure where a superior court, the Supreme Court, deals with questions disputing release or reduction of conditions imposed on a conditional release, and the Tribunal deal with issues of transfer, review and release. This would be a process that would remain transparent in impartial hands, unaffected by propaganda from the media, victim support groups or politicians. Both sides would have equal access to appeal whether a forensic patient or the executive. However, The CWG is concerned as to the potential cost to forensic patients or carers of referring matters to the Supreme Court.

5.3 Public safety criteria for recommendations for the Tribunal.

It is our view that the **least onerous conditions** should be imposed, measured against risk assessment in the **least restrictive circumstances**. The same criteria should be applied with regard to the issue of leave provision.

Comments Sought Q 44.

We strongly support that forensic patients are re-categorised as they progress through the system, and draw attention to delays regarding release of patients still suffering from mental illness, who have been incarcerated for a longer period than the maximum sentence for the crime committed. It is our belief that release with the appropriate level of support, care and treatment on a CTO or where there is an assessed risk, into a public facility on a non-forensic order, would be a more appropriate and humane alternative.

Comments Sought Q 53.

The FWG stress the need for 'evidence based' individual care plans designed for individual forensic patients by the Tribunal in consultation with the clinical team when issuing conditional release conditions.

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:

NCOSS
Western Sydney Prisoners Mentors
Hope Unlimited
Mental Health Carers Network Incorporated

Yours sincerely,

Corinne Henderson
On behalf of the Forensic Working Group.