

Review of the *Mental Health Act 1996 & Criminal Law (Mentally Impaired Defendants) Act 1996*

Stakeholder Committee Meeting

Minutes of meeting

11 September 2002 9.00 – 10.30am
5TH Floor, Dumas House, 2 Havelock Street, West Perth

Attendance:

Prof D'Arcy Holman, Ms Sylvia Meier, Mr Christopher Mulhall, Ms Ann McFadyen, Dr Ralph Chapman, Ms Cushla Leech, Ms Elaine Smith, Mr Kevin Hogg, Mr Neville Barber, Mr Lloyd Marsh, Dr Steve Pachett, Dr Elizabeth Moore, Ms Paula Parentich, Ms Irene Morgan, Dr Neil Morgan, Dr Rowan Davidson, Dr Aaron Groves, Ms Francine Holder, Ms Deborah Wilmoth, Mr Jas Man, Mr David Bruce, Mr Alan Philp, Ms Jill Rapp, Ms Pauline Robertson.

1.0 Apologies:

Superintendent Ross Tomasini, Ms Ann White, Ms Angela Woodacre, Ms Gillian Lawson

Adoption of Minutes of Meeting 7 August 2002

The minutes of last meeting were recorded as true and accurate.

2.0 Business Arising from previous meeting

2.1 Expansion of Membership

It was reported that most of the suggestions regarding the expansion of membership were accepted and actioned. Therefore, new members and those who were unable to attend the previous meeting are as follows:

- Mr David Bruce – Authorised Mental Health Practitioner at the Psychiatric Emergency Team
- Dr Steve Pachett – RANZCP representative and Director of Forensic Mental Health Service
- Mr Alan Philp – Commonwealth Department of Health
- Superintendent Ross Tomasini – Police Legal Service Unit Police Service Representative (not in attendance)
- Mr Jas Mann – Ethnic Disability Advocacy Centre
- Ms Paula Parentich - Coordinator Mental health Law Centre
- Dr Deborah Wilmoth – Clinical Psychologists Association – Frankland Centre
- Ms Francine Holder – Justice Coordinator at the Disability Services Commission

Review of the *Mental Health Act 1996 & Criminal Law (Mentally Impaired Defendants) Act 1996*

Representatives from the Derbarl Yerrigan Health Service and a Community Forensic Mental Health Nurse are still to be confirmed.

An updated list of the new committee members will be circulated with work contact telephone numbers in the near future.

ACTION: Update and distribute member contact details – S Meier

2.2 Updated Review Business Plan

As requested, the closing date for the submissions had been extended to the 29 November 2002. The Minister for Health had signed off the updated Business Plan a few weeks ago, which had since been circulated to all members.

2.3 Submission Structure

As requested, the covering sheet for 'Confidentiality' was developed and included in the submissions.

3.0 New Business

There was a presentation by Dr Neil Morgan and Irene Morgan '*The Mentally Impaired Defendants Review Board – What is it? What does it do and how can it be improved?*' Copies of this presentation were distributed, in conjunction with flowcharts on *Custody Orders* and *Unfit to Plead and Unsoundness of Mind*.

The presentation outlined the basic role of the Board and the key issues regarding the review of custody orders. It went on to define who are 'Mentally Impaired Defendants' and the importance of distinguishing between the two categories. It looked at the Court's powers and procedures with respect to the 'Mentally Impaired Defendant' (MID's) – those that were unfit to stand trial and those who are of unsound mind.

It was noted that the MID Act may not adequately reflect and distinguish between the two categories and that the courts options in the case of those found unfit to stand trial is restricted.

Major issues raised include:

- The lack of options available to the Courts regarding individuals who are unfit to stand trial.
- The lack of an intermediate option for those who are unfit to stand trial, eg. Community supervision and/or treatment.

Review of the *Mental Health Act 1996 & Criminal Law (Mentally Impaired Defendants) Act 1996*

- The limitations of Schedule One, which prohibits the higher courts from making anything other than a custody order in the case of scheduled offences.
- The power of Magistrates to make indefinite Custody Orders, which should be reserved for higher courts.
- The possibility of identifying a prescribed length of time for the custody order.
- Major weaknesses in the Police Act were mentioned
- While there was a need for people under the CLMIDA to come in contact with a number of agencies, there is a need for one agency to act as coordinator
- Dr Morgan had raised these difficulties with the Department of Justice on a number of occasions.
- The prescribed timing of the Review Hearings is 5 days, which is a short period of time to prepare and collate information.
- The Board's reliance upon Expert Reports, which are often lacking in information and require further clarification.
- The lack of options available to the Board severely constrains its ability to develop plans for individuals.
- The lack of a declared place, which is a particular concern for those people who do not have a severe and treatable mental illness.
- The lack of Inter-agency collaboration and the cut-off criteria for access to services.
- The lapsing of victim protection measures upon a release order.

It was noted that people with intellectual disability appear to get less support than those with a mental illness and it was suggested that perhaps as part of this Review, a lead agency should be identified to improve the service and coordination between agencies.

After the presentation comments were sought from the committee members, which are outlined below:

- It was suggested that the Board should meet with Family/Carers when planning a discharge plan. Dr Morgan responded that for many people there was no or little family/carer involvement and most of the care is through agency support.
- National Mental Health Working Group – AHMAC has developed proposed principles for the treatment of Forensic Mental services. Furthermore, in these principles, the release of forensic patients should not be a decision made by a political appointee.
- Across State boundary transfers is a significant issue that needs to be addressed to combat the legislative barriers between the States and Territories.
- Given the Crown Law Department's reluctance to consider the need for intermediate options, it was suggested that this Review consult with the

Review of the *Mental Health Act 1996 & Criminal Law (Mentally Impaired Defendants) Act 1996*

Department regarding this matter now as opposed to waiting for a conclusion of the Review.

- It was suggested that some people might choose to plead guilty in order to have a definite sentence, as opposed to receiving an indefinite Custody Order. It was unknown as to whether there were any available statistics regarding this issue.
- The Chief Judge has agreed that Justice Wallwork will participate on the Stakeholder Committee upon his retirement in November. In the interim, the Chief Judge has advised Judges of this Review and will keep them up to date with the Review's progress.
- Concerns regarding victims and their rights needs to be carefully and sensitively managed.
- It was suggested that the MIDRB Working Party broaden its Terms of Reference and look at the entire Act as opposed to just the functions of the Board. This was highly supported and endorsed by the committee.
- It was noted that Aboriginals with disabilities in remote areas were in a particularly difficult situation and that it was provide a release plan for them in the remote areas.

The number and nature of cases before the Review Board were of interest. Dr Morgan noted that the Review Board's Annual Report 2002 should be available shortly, which will provide accurate statistics.

Prof Holman thanked Dr Morgan and Ms Morgan for their presentation.

It was agreed that this was an excellent mechanism for identifying issues that the Stakeholder Committee needed to be addressed. As such, Prof Holman requested that the Council of Official Visitors and the Mental Health Review Board also prepare a presentation for the following meetings.

ACTION: Council of Official Visitors presentation on 16th October 2002 – K Hogg
Mental Health Review Board presentation on 13th November 2002
– N Barber

3.2 Conflict of Interest

Prof Holman tabled a 'Conflict of Interest' policy, which has been developed due to concerns being raised regarding individuals participating in this Review who may have a conflict of interest.

All Conflict of Interest must be declared to the Chairperson in order to try and manage the process whereby we minimise the amount of exclusion and maximise the participation in an open and transparent manner. The Chair will then advise the best course of action and will recommend if the person should withdraw from all or part of the discussion or maintain full involvement in the Committee/Working Party.

Review of the *Mental Health Act 1996 & Criminal Law (Mentally Impaired Defendants) Act 1996*

3.3 Working Parties update

Prof Holman outlined that there had been fifteen proposals for various working parties. As a number were of a similar nature, these were merged together to result in eight working parties.

The Executive Officer circulated an update of the Working Parties and nominations. Nominations are still being sought and are required by the Executive Officer as soon as possible.

The Executive Officer will draft Terms of Reference for all of the Working Parties and will circulate these for comment. Clearly the Terms of Reference need to be concise and relate to the Review's Terms of Reference set by the Minister for Health.

Prof Holman noted that Convenors and Deputy Convenors will need to be appointed and that these should be from the membership of the Stakeholder Committee. Volunteers would be appreciated, however if none are forthcoming, Prof Holman will approach individuals.

It was noted that the Working Parties are required to feedback their findings to the Stakeholder Committee by the 18 December 2002.

It was clarified that each working party can determine their own mode of operation regarding how often, where and when they meet. The Review Office would assist the Working Parties in the establishment of their first meeting.

3.4 Other Business

3.4.1 Information Exchange

The Executive Officer requested that any relevant information or documents that would be useful to share with the committee to be forwarded to her. It was also noted there was a computer and resources available in the office for those who wish to take advantage of these facilities.

The Department of Health has made available a copy of the minutes from the *Mental Health Act Working Group 1998 – 1999*, which are available for viewing at the Review Office.

3.4.2 'Detention Decision & Dilemmas' Conference

It was noted that three members of the Stakeholder Committee would be attending this conference in October. These are Mr Lloyd Marsh, Mr Neville Barber and Dr Rowan Davidson.

Review of the *Mental Health Act 1996 & Criminal Law (Mentally Impaired Defendants) Act 1996*

3.4.3 Cover sheet for Submissions

It was suggested that some consumers might have difficulty with the structure of the Submission Format. The Executive Officer clarified that if the consumer bodies or any other agency wished to restructure or design their own Submission Format they were very welcome to do so. It is expected that submissions will be received in a range of formats.

3.4.4 Audio taping of minutes

A motion was put forward by Mr Chris Mulhall and seconded by Ms Anne McFadyen to audio-tape all meetings. It was thought important for accountability and transparency and could be used for historical purposes. It was also stated it could be used for clarification of minutes.

The motion was put to vote with the following results:

6 in favour

11 against

2 abstaining

The motion was not carried and it was agreed that meetings would not be taped.

3.4.5 Correspondence between Mr Mulhall and Prof Holman

As agreed by Mr Mulhall and Prof Holman, their correspondence regarding a number of process and outcome issues concerning the Review was to be distributed at the meeting. Unfortunately the documents could not be distributed and would be sent out in the mail to all members by the close of business today.

**ACTION: Distribution of Mulhall/Holman correspondence to all members
- S Meier**

3.4.6 Legal Advice and Support for Consumers

Mr Marsh requested that the Review give some consideration of the provision of legal assistance to consumers. Prof Holman requested that Mr Marsh provide him with further detail regarding this matter and that a response would be provided at the next meeting.

**ACTION: Legal Advice and Support for Consumers proposal for Prof Holman
- L Marsh**

3.4.7 Weighting of Submissions

The issue of weighting's that will be provided to consumer submissions versus clinical submissions was raised. It was agreed that the Executive Officer would investigate the weighting of submissions.

Review of the *Mental Health Act 1996* &
Criminal Law (Mentally Impaired Defendants) Act 1996

ACTION: Investigation of options for weighing submissions – S Meier

4.0 Next Meeting: Wednesday 16th October 2002

Please note that the next meeting has been changed from the 9th to the 16th October 2002 (Mr Bob Kucera, Minister for Health will still be attending).

5.0 Meeting concluded at 10.45 am