

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

Stakeholder Committee Meeting **Minutes of Meeting**

13 November 2002 9.00 – 10.30am
10th Floor, Dumas House, 2 Havelock Street, West Perth

Attendance:

Prof D'Arcy Holman, Ms Sylvia Meier, Mr Chris Mulhall, Dr Ralph Chapman, Ms Cushla Leech, Ms Elaine Smith, Mr Kevin Hogg, Ms Michelle Scott, Mr Neville Barber, Mr Lloyd Marsh, Ms Ann White, Dr Elizabeth Moore, Ms Paula Parentich, Dr Neil Morgan, Mrs Irene Morgan, Dr Rowan Davidson, Mr Alan Philips, Ms Angela Woodacre, Ms Francine Holder, Ms Jenny Au Yeong, Dr Deborah Wilmoth, Mr Tim Rolfe, Ms Jill Rapp (Minute Secretary)

Prof. Holman welcomed new attendees to the meeting.

1.0 Apologies

Dr Aaron Groves, Ms Ann McFadyen, Mr David Bruce, Mr Ramdas Sankaran, Mr Geoff Williams Dr Steve Patchett, Superintendent Ross Tomasini

2. Acceptance of previous minutes (161002)

- Ms Paula Parentich was inaccurately noted as an apology in the minutes of 16 October 2002
- Dr Neil Morgan noted that the minutes of 11 September 2002, it was inaccurately recorded that he had encountered difficulties with the Department of Justice. It should have read "Dr Morgan had raised these difficulties with the Department of Justice on a number of occasions".
- Item 4.2.1 needed to be clarified as EO refers to the name of a case that has appeared before the Supreme Court. This item should read "The question was asked whether there had ever been a case to the Supreme Court? In the past 5 years, one case (EO) has appeared before the Supreme Court".

Amendment to minutes of 7 August 02

Introduction to Ann White to read "Previously with the Schizophrenia Fellowship of WA and was involved as a member of the Mental Health Act action group. Is now Executive Officer of WAAMH and offers executive support to the Mental Health Action Group and the Human Rights and Social Justice Committee, two of WAAMHs Standing Committees."

It was agreed that the minutes would be amended to reflect any changes to the original document and subsequently circulated. This would ensure that a true copy of the minutes is placed on the official file and is also accessible to everyone else.

Audio taping of Minutes

The issue of audio taping minutes was again raised as some of the committee members felt that relevant information was not being adequately represented in the minutes. Given that this issue had been discussed and voted upon at a previous meeting, Prof Holman clarified that he did not foresee any problem with the meeting being audiotaped, if they were only to be used to assist the minute secretary to clarify pertinent issues. However, he would not support taping the meetings if it was for the purpose of retaining an audio record of proceedings.

With this clarification, Ms Paula Parentich put forward a motion to audiotape the meetings, which was seconded by Mr Chris Mulhall. The motion was subsequently put to vote with the following results:

13 in favour

7 against

Therefore, the motion was passed and all Stakeholder Committee meetings will be audiotaped to assist the minute secretary.

Prof Holman requested that all Convenors put forward a similar recommendation to their respective working parties.

Concerns were raised regarding the legal implications of audiotaping the meetings and whether this would result in the tapes forming part of the official record.

ACTION: Ms Meier to seek clarification regarding the legal implications of audiotaping the meetings.

3. Business Arising

3.1. Update on actions from previous meeting

- 3.1.1. The Attorney General has declined to fund a Research Solicitor to assist consumers and carers. Dr Aaron Groves, Director of the Office of Mental Health has agreed that the Department of Health would fund this position in the interim. Further discussions between Health and Justice will occur at a later date in order to address the inequitable funding of the Review.
- 3.1.2. Telepsychiatry Changes - forwarded to next meeting.
- 3.1.3. Development of State Mental Health Plan – forwarded to next meeting.
- 3.1.4. Annual Reports for the Council of Official Visitors can be accessed from their website. www.coov.org
- 3.1.5. The Review's website should be completed in the very near future.
- 3.1.6. Mr Ramdas Sakaran has been nominated as an additional Cultural and Linguistically Diverse Representative.

Ms Sylvia Meier and Prof Holman will be meeting with representatives from Indigenous Groups to request representatives for the Stakeholder Committee and Working Parties.

The question was asked if the submissions would be made available

on the Review website. Some discussions were held regarding the possible identification of the author and privacy.

ACTION: Ms Meier to investigate options for adding submissions to the website.

4.0 New Business

4.1 Presentation : Mental Health Review Board – Mr Neville Barber

There was a presentation by Mr Neville Barber on the Mental Health Review Board. The presentation included a brief statistical overview from the commencement of the Board until June 30, 2002. Mr Barber also outlined the many varied and complex tensions that exist in review of involuntary status.

These included the following:

- For most persons with a mental illness, there is no need for recourse to the legislation, as they accept treatment for their illness. Though legislation is important, it affects only a small percentage of persons with a mental illness;
- The complexity and interrelatedness of factors in reviews, which makes research very difficult;
- The relative greater focus in the United Nations Principles on the consumer and relative lesser focus on carers in the Principles;
- Whether the review body should review involuntary status or review other matters, such as treatment, and how a broader mandate including treatment would require very different legislation, as the review body would become the case manager;
- It was noted that some persons express concern that discharge from involuntary status means that people miss out on a review, though it does make them voluntary;
- How a review body should be constituted, whether a court (as in the US) or a three member panel (as in Australia and the UK);
- The timeliness of reviews, with a tension between the need for an early review and the availability and preparedness of all relevant persons and agencies;
- The length of a review, with a tension between ensuring that a review is sensitive and respectful to all participants but not of unnecessary duration;
- The tension between mandatory reviews (which derogate from a consumer's right of choice) and reviews requested by consumers;
- Scheduling of reviews, with a tension between all factors that require consideration for scheduling and the desirability of prompt reviews;
- What are reasonable expectations of a review process – discharge from involuntary status or a determination that the legislation has been complied with?; discharge from involuntary status or a broader framework such as discussion of complaints?;
- The availability of information, with a tension between maximising the amount of information available to a review body and the requirement for quick and informal reviews, in addition to the desirability in public policy terms for consistency of approach in similar legislation;
- The tension between court procedures and tribunal flexibility;

- Noting that the Government is proposing a State Administrative Tribunal, which may impact upon how reviews are conducted.

For the period between 13 November 1997 and 30 June 2002, a total of 13,285 involuntary orders were made (for a client base that on 12 November 2002, comprised 6,902 individual patient files).

To date there have been 5811 reviews scheduled by the Board. Of these, 3,840 were completed. (The other scheduled reviews did not proceed primarily because the involuntary order was discharged prior to the review).

It was noted that Board statistics confirm that psychiatrists discharge approximately 65% of all involuntary hospital orders within the first 28 days of the order being made. Over the 5 year period of the existence of the Board, and having regard to the number of persons discharged from involuntary status prior to their review, 4.6% patients have had their status discharged by the Board.

It was noted that the Board' Annual Reports and handbook were available on the Boards website www.mhrbwa.org.au.

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

- 4.1.1 Does the Council of Official Visitors and the Mental Health Law Centre advocate for all consumers at Mental Health Review Board hearings? Though the Board encourages persons on involuntary orders to obtain legal advice and other support, only a small number of consumers are represented by the MHLC or supported by the Council of Official Visitors. Consumers can bring a relative or friend as support, however this occurs infrequently.
- 4.1.2 The question was raised as to what factors would warrant the Review Board to cancel a review? Reviews are cancelled if the person's status has changed or if Board members are unavailable for the reason of ill health, which results in a rescheduling of the review. It was noted that the vast majority of patients are treated as voluntary patients and that the Review Board only comes in contact with a very small proportion of patients.
- 4.1.3 It was noted that the U.K. model of mental health service delivery funds lawyers to represent clients at reviews.
- 4.1.4 The question was asked whether there was a higher rate of discharge when a lawyer represents a patient. Mr Barber noted that in his experience there was a slightly higher rate of discharge.
- 4.1.5 It was also questioned whether psychiatrists had asked for legal representation when they had to appear before the Board. While some psychiatrists have raised this as a possibility due to their concerns about some adversarial reviews, there had been no definitive outcome.
- 4.1.6 How are disputes resolved when a three member Board is not in agreement? Mr Barber noted that in the majority of cases there was no doubt that the criteria were satisfied and

consensus was achieved. Of those reviews where there is more doubt, consensus is usually reached. However, in the small number of cases in which the three members Board do not reach agreement, a majority of two prevails. In only 20 of 3,840 cases has this occurred.

- 4.1.7 Who is responsible for the appointment of the Board members? Mr Barber noted that the Governor appoints members following a selection process, which in the past has involved public advertisement, application, selection processes by a panel constituted by him and two persons external to the Board, with recommendations being made to the Minister. Positions for administrative staff are appointed in accordance with the Public Sector standards, whereby positions are advertised in the newspaper or the Intersector.
- 4.1.8 One of the questions was how many reviews does each panel members attend? Mr Barber noted that members were scheduled according to their availability, which varied enormously.
- 4.1.9 Issues of conflict of interest are dealt with individually and in accordance with the Board's Conflict of Interest policy that is available on the Board's website.
- 4.1.10 The NGO representatives commented that the Victorian Mental Health Review Board was universally well regarded.

4.2 Other Business

4.2.1 'Detention Decision & Dilemmas' Conference

Mr Neville Barber, Mr Lloyd Marsh and Dr Rowan Davidson attended the above conference.

ACTION: Mr Neville Barber to circulate paper from the conference.

4.2.2 'Striking the Balance' Workshop

'Striking the Balance' workshop has been scheduled for the 4th December 2002 and will be held at the 'North Plympton' Function Room at the TradeWinds Hotel in Fremantle beginning at 9.00 am with lunch included. (Should members have any special dietary needs kindly advise Ms Rapp or Ms Meier).

The facilitator for the workshop is Mr Alan Bandt from BandtGattor. Members were reminded that those who wished to present short presentations on the day should contact Ms Meier.

4.2.3 Executive/Drafting Committee Meeting

The role of the Executive/Drafting Committee in regards the role of the Stakeholder Committee was again discussed.

Prof Holman clarified that the Stakeholder Committee was the major committee and that the Executive/Drafting committee was more of a 'Think Tank' for him to exchange ideas and use the expertise of

members. As members will not be representing specific stakeholders and constituents, it was hoped that they would be able to act as independently as possible. It was unlikely that the committee would meet as an entity as they will not have to make decisions, but that it was more likely that Prof Holman would call upon them individually, as he required.

Prof Holman also stressed that the Stakeholder Committee does not report to the Executive/Drafting Committee in any way and that there is no hierarchical relationship between the two.

5.0 Closure:

The meeting concluded at 10.30am.

Meeting for 2002/2003

18 December 2002

No January 2003 meeting

12 February 2003

12 March 2003

16 April 2003

14 May 2003

18 June 2003

16 July 2003 (tentative)

13 August 2003 (tentative)

17 September 2003 (tentative)