



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

Submission regarding the Mental Health Act (MHA) 1996

This feedback structure has been provided to assist you in your submission to the Review of the MHA. Using this format will assist the Review in the gathering of information.

Your Details

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Do you wish to be placed on our mailing list to receive any information that the Review may distribute (eg updates, Draft Report, etc.). Yes No - ARAFMI is already on mailing list

Confidentiality

We are concerned about your confidentiality, so please indicate which of the following applies to this submission:

- This submission is to remain strictly confidential and is **not** to be shared/distributed to anyone outside of the Review.
- This submission may be shared/distributed to any other party, **if** my personal details are removed and kept confidential.
- This submission is public information and **may** be freely shared/distributed to anyone interested.
- Other, please specify:

Signature: _____

Date: _____

Closing Date

The closing date for submissions is **Friday 28 February 2003**. Please send your submission to:

Ms Sylvia Meier
Executive Officer
Review of the MHA and CLMIDA
11th Floor, Dumas House
2 Havelock St
WEST PERTH 6005

Or to ReviewofMHA@health.wa.gov.au

Or to Fax: (08) 9222 5450

This Review is about the operations and effectiveness of the existing Act and not about writing a new Act. Therefore you do not need to re-write sections of the Act, this will occur after the Review has been completed and is the responsibility of the Parliamentary Counsel's Office.

Please address those areas that are of concern and how you think the Act may be altered. The following is not a comprehensive list of all aspects of the Act. You do not need to comment on all areas. Please use the space available or add pages to include other areas of importance.

NB. Copies of the Act are available from the State Publisher or at www.mhrbwa.org.au/publications/pdfs/The_Mental_Health_Act1996.pdf.

AREAS OF THE ACT

Definitions (including meaning of mental illness) (s.3)

PART 1 – PRELIMINARY

Definitions

3. ***“Carer” means a person who takes responsibility for caring for a person with a mental illness as required***

Objects of the Act (s.5)

5 (c) to minimize the adverse effects of mental illness on family life ***with particular reference and consideration to those identified as carers.***

Objects of persons performing certain functions (s.6)

(2) A carer shall be consulted and informed prior to treatment and care of the patient unless the patient directs the hospital or treating practitioner to the contrary

Administrative provisions with regard to the Minister for Health (s.7)

Office of the Chief Psychiatrist (ss. 8-16) (eg Responsibilities, Functions, Powers of Inspection, etc.)

Mental Health Practitioners (s.19, 58 & Regulation 10)

Authorised Mental Health Practitioners (s.20 Regulation 4.5.6)

Authorised Hospitals (s.21, Regulation 7)

Involuntary Patients (Part 3)

Becoming an involuntary patient (s.26)

Referral for Examination (ss.29, 31, 32, 33 & Consequential provisions Part 2)

Referral in certain circumstances (s.30)

Police assistance (ss.34, 35, 41, 42)

Detention for examination and choices (ss 36,37, 40)

Examination in another place (ss. 38,39)

Involuntary status (ss. 43, 44, 45, 48, 49, 50, 51)

Transfer (s. 46)

Declining to accept (s. 47)

Releasing a detained patient (ss.52, 54, 55, 56)

Absence without leave (s.57, 58 & Regulation 10)

Leave of absence (ss 59-63)

Community Treatment Orders (CTOs) (Part 3, Division 3)

Making a CTO (ss. 65, 66, 67, 69)

Terms of a CTO (ss. 68, 73, 74, 75, 77)

Extension of a CTO (s. 76)

Variation of a CTO (s. 79)

Following the acceptance of the definition of carer, carers should routinely have access to pertinent information necessary for the care of the ill person person. This includes copies of Orders made on behalf of the ill person.

Revocation of a CTO & police assistance (s. 70, 71, 72, 78)

Breach of a CTO (ss. 80, 81)

Order to attend (ss. 82-84)

Police Assistance

(3) (a) a Carer is to be given a copy of the order made under subsection (1) . As with all provisions relating to information given to Carers this is with the express permission of the Persons receiving treatment under the Act.

Treatment of Patients (Part 5)

Definitions (s. 92, 108)

Informed consent (ss. 95-98)

Where provisions of the Act require information to be given to patients regarding informed consent the Act should also require this information be given to carers where the patient gives permission for this to happen. This provision of information to the Carer should be subject to the same degree of formality as is that given to the patient. Carers object to having information provided for them only at the discretion of mental health practitioners.

Prohibited treatments (s. 99)

Psychosurgery (ss100- 103)

Electroconvulsive Therapy (ECT- ss104-107)

Consent not required (s. 109)

Medical Treatment (s.110)

Second opinions (ss111, 112, 164)

Emergency Psychiatric Treatment (ss. 113-115)

Seclusion (ss. 116-120& Regulations 11-13)

Mechanical bodily restraint (ss. 121- 124 & Regulations 14-16)

Protection of Patient Rights (part 7)

Explanation of rights (ss. 156-159 & Regulation 18)

Affected persons to be given a copy of order

...is to give a copy of the order to the person concerned **and their carer where the person concerned has given permission for this to happen.**

Access to records (ss. 160, 161)

Where the carer has been given permission (by the person concerned) the carer will be able to have access to the records of the person concerned. This is an acknowledgement that carers are often the primary advocates for persons for whom treatment is provided under this Act.

Other rights- Ill-treatment/ Interview/ personal possessions/ letters/ phone calls and visitors (ss. 162-171)

Restriction or denial of entitlement

169.

A carer who is present in the hospital during the enforcement of the denial of entitlement must be informed of the decision of the psychiatrist.

Capacity to vote (ss. 201- 203)

Police Powers (ss. 195-200)

Mental Health Review Board (Part 6 & schedule 1 & 2) (eg Registrar (ss22-25 and Regulations 8, 9) Establishment, Constitution, Procedure, Reviews, Appeals, Provisions concerning Proceedings)

Council of Official Visitors (Part 9 & schedule 3 & Regulation 20) (eg Administrative and Procedural Provisions, Powers and Functions)

The Council of Official Visitors be given permission to act on behalf of carers to insure that the provisions of the Act relating to them are upheld and in the first instance when carers approach the Council of behalf of the person being treated under the Act.

Interstate Movements (Part 4)

Miscellaneous (Part 10)

Restrictions on authority to practice (ss. 193,194)

Records and information (ss. 204, 205, 212, & Regulations 17, 19)

Confidentiality (s. 206)

Protection from liability (s. 213)

Inquiries (ss. 207-210)

Other areas of concern:

Lack of general feedback to carers about the treatment and well being of the person being treated under the Act.

More attention needs to be given to the general and physical health of the person being treated under the Act.

Families should be acknowledged as an important part of the treatment team.

Lack of resources (such as the availability of hospital beds) may impact negatively on the person who is given treatment under the Act i.e. could early intervention prevent patients from needing to be treated under the Act.

There is no legal representation for carers.

There is great concern for the children of those who are treated under the Act. These children and adolescents need to be provided with care arrangements (either family or otherwise) while their caregiver is hospitalized. Currently, children whose parents are treated under the Act are not routinely identified/tracked by any service/system and hence are often overlooked in their parent's treatment process. As recommended in the Pathways to Resilience Project: Children of Parents with a Mental Illness Project Report, released recently by the Office of Mental Health, "data management systems at a statewide level [must be improved] so that children of mentally ill parents can be identified and tracked across all age and specific population groups".

They need to be provided with age appropriate information so that they understand what is happening and so the lack of knowledge does not add an additional burden for them.

Visiting areas with authorised hospitals need to be suitable for children so they are safe and not exposed to further trauma while visiting their caregivers. Being given the opportunity to visit caregivers as they recover is very important for these children.

When community mental health treatment is provided for caregivers the needs of their children need to be considered in the acknowledgement that some of these children and adolescents will be involved in noticing and monitoring their caregivers mental health.

There is no non-government agency presently adequately resourced to meet the needs of these children.