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Professor C D'Arcy J Holman  
Chairperson  
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WEST PERTH WA 6005

Dear Professor Holman

**REVIEW OF THE MENTAL HEALTH ACT (1996) AND THE CRIMINAL LAW  
(MENTALLY IMPAIRED DEFENDANTS) ACT (1996)**

Thank you for the opportunity to provide a submission to the Review of *the Mental Health Act (1996)* and the *Criminal Law (Mentally Impaired Defendants) Act (1996)*.

The Department's submission provides comments regarding aspects of the *Mental Health Act*, including relevant policy issues. The Department has decided not to comment upon the *Criminal Law (Mentally Impaired Defendants) Act*.

This submission has been made with the intention that the document will be made publicly available by the Review. The Department looks forward to providing further comments when the Interim review report is released.

If you require further information or clarification regarding this submission, please contact Mr Peter McGlynn A/Principal Officer Social Inclusion on 9222 2612.

Yours sincerely

Jane Brazier  
DIRECTOR GENERAL

15 April 2003

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## Introduction

The Department for Community Development was established on 1 July 2001 to:

- strengthen communities so that individuals and families are able to meet their needs, achieve self reliance and contribute to their own solutions,
- promote a just and equitable community enriched by diversity and increased social participation, and
- support families and communities to provide for the care and safety of their members.

These statements of purpose reflect the State Government's desire for increased collaboration and engagement with target populations and the wider community through consultation and involvement in policy, program, service development and review. Indeed, the interrelated nature of the problems facing many individuals, families and communities requires greater collaboration between service providers than ever before.

Unpublished Departmental research highlights the importance of close links between mental health service providers, the drug and alcohol sector, the community and housing sectors and others. The research findings suggest that in the year 2000, parental drug and alcohol use was a factor in 70% of Care and Protection Applications, in combination with factors such as family and domestic violence, mental illness and poverty, including homelessness. Significantly, the research also suggests that approximately 25% of the families where parental drug and alcohol abuse was a problem also had a co-occurring mental illness.

A variety of recent government reports also emphasise this issue, including the recommendations of the *Inquiry into Response by Government Agencies to Complaints of Family Violence and Child Abuse in Aboriginal Communities* and the *State Homelessness Taskforce*.

It is the Department's view that legislation such as the *Mental Health Act* should also reflect these philosophical principles and service directions.

### **The need for the *Mental Health Act* to acknowledge children and young people**

The Department believes that the *Mental Health Act should* acknowledge the specific needs of children and young people. As the current *Mental Health Act* is 'silent' with respect to children and young people, it is understood that currently children and young people who are patients have the same rights and protections as an adult patient.

In particular, the Department has concerns regarding two groups of children and young people; those with a parent with a mental illness and children and young people in the care of the Department with their own mental illness and or a drug and alcohol problem. The Department believes that there is a need for the Act to explicitly acknowledge the special needs of children and young people, including children and young people from Aboriginal and Torres Strait Islander and culturally and linguistically diverse (CaLD) backgrounds.

A proportion of children and young people with a parent with a mental illness are subject to neglect or abuse. A small number are the primary carer for a parent. These children and young people require services which are co-ordinated across agencies and access to confidential information which is available to service providers. The aim of the *Mental Health Act* should be to facilitate best practice services for these children and young people.

The second group of concern, children and young people in the care of the Department with their own mental health and or drug and alcohol problems, face great difficulty obtaining access to treatment. Often this is because they are difficult to diagnose or uncooperative. The Department believes that the Act's definition of mental illness should be reviewed with respect to s.4 (2) (e). The current wording is too broad and can be used to exclude children and young people with significant drug and alcohol problems from treatment when a diagnosis is unclear. Mental health clinicians may still have a valuable consultancy role to play concerning this small group of children and young people, even while their care remains the Department's responsibility.

It is requested that the Review bring these issues to the attention of the Minister for Health and recommend that steps be taken to ensure that the *Mental Health Act* clearly reflects the needs of children and young people, both as dependants of a parent with a mental illness and as patients in their own right.

The current legislation could be more effective in this regard by ensuring that the Objects of the Act are broadened to include specific references to children and young people. However, the Department's preferred approach would be that future mental health legislation includes a number of key principles which reflect a commitment to the needs of particular target groups such as children and young people, carers, Aboriginal and Torres Strait Islander and CaLD families and communities, and others.

These principles, which may be similar to the Principles attached to the Western Australian *Disability Services Act (1993)* should be developed through a broad consultation process which also specifically targets children and young people. However, direct engagement with children and young people in reviews of this nature requires a targeted approach that is both meaningful and appealing to them. The Department for Community Development Office for Children and Young People's Policy is currently researching and documenting innovative ways of hearing the voices of children and young people, and will have an ongoing role in providing advice on this issue.

### **Safeguards regarding children and young people**

The Department believes children and young people require additional safeguards which the Department wishes to bring to the Review's attention. Firstly, promoting the involvement and decision making of children and young people who are patients requires acknowledgement of the decision making ability of children on a case by case basis. Many adolescents are quite capable of an informed opinion about their treatment and the Act should provide for this to occur.

As stated, a small number of young people are the primary carers of a parent with a mental illness. The Department considers that the Act should acknowledge the right that these carers have to information about treatment in an age appropriate and sensitive manner. Treatment planning should include liaison to ensure the safety and wellbeing of children and young people as dependants.

A second area of concern regarding the operations of the current Act and services is that on occasion, children and young people are accommodated with adults in secure wards because there are no other facilities available. Although there are designated beds available at Bentley Hospital, when these are occupied, a child or young person requiring compulsory treatment is sent to either Graylands Hospital or to Banksia Hill Detention Centre. Neither facility is appropriate for children. This is a significant gap in services which the Department considers a serious concern.

### **Mental illness and homelessness**

Treatment planning for people needs to include a responsibility to the patient to safeguard their long term housing needs. The Government response to the State Homelessness Taskforce acknowledged the need for support for people leaving hospitals to ensure that they did not become homeless. The Taskforce report noted that people with mental illness were susceptible to homelessness, whether sleeping rough, in “stop gap’ accommodation or living in insecure or unsafe housing. Insecure tenure may be the result of moving in and out of hospital, if proper supports are not in place.

The provision of private psychiatric hostels for people with mental illness is one aspect of ongoing long term accommodation. The standards in some of the older hostels are poor. For people who are patients in the community this is a real problem. The Department is aware of the moves to lift the standards of these hostels and fully supports such an approach, provided it occurs in conjunction with a growth of better quality community living options.

### **Other general issues**

As part of the Government’s election commitments to carers, the Office for Seniors Interests and Volunteering is currently developing legislation to serve the interests and rights of individual carers. The proposed legislation will ensure the formal recognition of carers, provide a mechanism for the involvement of carers in the provision of care and services, and ensure carers have access to all complaints mechanisms available to service recipients.

The proposed legislation may include making amendments to existing legislation, which will require certain key government agencies, including the Western Australian Department of Health, to develop carers plans and ensure carers access to their complaints mechanisms. It is therefore likely that some sections of the *Mental Health Act 1996* may need to be amended. At this time, the Office is not in a position to provide advice on the exact nature of these amendments.

## Issues arising as a result of a specific consultation with women

In October 2002 the Office for Women's Policy, a portfolio unit of the Department for Community Development with responsibility for providing strategic advice to the Government on issues of concern to women, conducted a forum regarding the impact of the *Mental Health Act* upon women. The meeting was held at Osborne Clinic and arranged in collaboration with Clinic staff.

The following general comments are made:

- The public perception of mental illness was expressed as a concern and many viewed the need for further education and awareness raising.
- There was an overwhelming concern about the rights of children, particularly those who are the primary carers of parent(s) who have a mental illness. Many considered this group to be increasing in numbers and viewed them as the 'invisible' victims of mental health in need of recognition and support.
- Perhaps the stakeholder groups which have been formed to examine the various areas of the Act can examine the most appropriate avenue to address this major concern.
- Concern was expressed about the access mentally ill people have to support services. Whilst there are valuable services providing a range of programs, many people did not know of their existence.
- Many participants believed schools should be given additional support to educate and assist children and families who are dealing with issues relating to mental illness.
- Great concern was expressed over the transition of a patient from voluntary to involuntary status – many felt the process was not sufficiently rigorous and weighted heavily in favour of the professional, not the patient.

## Specific issues

- Part 1 s.3 Definitions:
  - The definition of 'Spouse' should be altered to recognise the rights of same sex partnerships
- Part 1 s. 5 Objects of Act:
  - 5(c ) While this provision states 'to minimise the adverse effects of mental illness on family life', there is still concern that this is not receiving the priority it deserves.
- Part 2 Administrative provisions Division 1 the Minister:
  - s.7(g) There needs to be recognition and inclusion of the need for services and care of persons having a mental illness to be sensitive to the rights and needs of families. This has particular application when the patient is a woman, who is often the primary caregiver. Treatment creates challenges for the family which need to be recognised when developing a treatment plan.
- Part 3 Involuntary patients Division 1 Becoming an involuntary patient:
  - s.26 (2)(b) While this provision gives reference to 'important personal relationship', forum participants considered that feedback indicates there needs to be specific mention of 'family'.
  - s. 29 Concern was raised in relation to this section that the voluntary patient for whom a referral is made should have the right to examination by a practitioner other than with the referrer.

- s.34 In all consultations, the view that police should not be used to transport patients was strongly expressed. Many felt that police assistance was accessed because 'they were available' rather than it being necessary. It was viewed that the mental state of many patients was worsened by the presence of police officers to transport them to an institution. It was felt if the police were accessed for the purposes of assistance, they should be, at all times, in unmarked cars and plain clothes since the presence of police officers was strongly associated with the justice system.
- Part 5 Treatment of Patients Division 2 Informed consent:
  - s.97 A provision should be included to give the patient the option of an advocate or support to assist in the informed consent process.
  - s.98 Whilst this provision contains reference for the patient to 'obtain such advice and assistance as may be desired' there was concern that unless a specific provision was included, which required authorities to inform patients where further advice and assistance could be accessed to assist them in making an informed decision, patients would be disadvantaged.
- Part 7 Protection of Patient Rights:
  - There should be some provision to ensure the explanation of patients' rights be a process which is repeated. That is, upon admission, a patient may not be in a frame of mind to truly understand their rights and the process may need to be repeated so the patient has the opportunity to reflect and question their rights.
  - s.156 Included in this section should be explicit provision for a patient to have access to an advocate or family member to be present and, if preferred, communicate those rights to the patient.
  - s.157 To ensure a copy of the explanation is received by the specified person, a provision should be included which gives responsibility to an authorised person to speak with the nominated person to inform them of the patient's rights and notification that a copy of those rights are to be forwarded to them.
  - ss 162-171 There may need to be some provision for electronic communication. Very few people communicate by post – many rely upon email and mobile phones.
- Part 9 Council of Official Visitors:
  - S.189 Patients should be informed, as part of the protection of their rights, of the existence and functions of Official Visitors so they may be able to request a visit.

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