



Submission to
the Legislative Council Select Committee
Inquiry into
Mental Health Legislative Measures

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For further information about this submission please contact:

Rev. Dr. Chris Jones

Anglicare Tasmania
GPO Box 1620
HOBART TAS 7001

Phone: (03) 6231 9602

Fax: (03) 6231 9589

Email: c.jones@anglicare-tas.org.au

1. Introduction

Anglicare is pleased to have the opportunity to respond to the Legislative Council Select Committee Inquiry into Mental Health Legislative Measures.

Anglicare is interested in making a submission because of our longstanding commitment to vulnerable people including those living with a disability, or with mental illness. We have recently been active participants in the review process for the Mental Health Act 1996. We are glad to have this opportunity to focus particularly on the elements of that Act and other legislation that relates to the rights and wellbeing of people with psychiatric disabilities and addictions and to canvas some wider ideas.

2. Recommendations

Anglicare recommends that

1. The criteria for any involuntary treatment be defined more rigorously to ensure that a person undergoing treatment has been determined to have a mental illness.
2. Anglicare recommends that the extra criterion “the person has unreasonably refused or is unable to consent to the necessary treatment for the mental illness” be added to the list of essential criteria for the making of a Treatment Order.
3. That mechanisms be established to monitor and audit the effectiveness of the implementation of current and new legislation.
4. The role of the Official Visitors be expanded to monitor the full range of locations where people with mental illness are treated.
5. The Department of Justice provide funding to the Legal Aid Commission to ensure a duty lawyer covers hearings of the Mental Health Tribunal or its equivalent as is the practice in other jurisdictions.
6. The introduction of Advance Directives be explored as a matter of priority.
7. Training of all staff, including medical staff in the National Privacy Principles be improved.
8. The proposal for a comprehensive review of the Alcohol and Drug Dependency Act 1968, the Guardianship and Administration Act 1995 and the Mental Health Act 1996 be addressed promptly by government.
9. The State Government proceeds with the review of the Mental Health Act 1996.

3. About Anglicare

Anglicare works for social justice in Tasmania through the provision of prevention and early, crisis, transitional and long term intervention services. Anglicare is the largest state-wide community service organisation in Tasmania. It has offices in Hobart, Glenorchy, Moonah, Launceston, St Helens, Devonport and Burnie and provides a range of services including emergency relief, accommodation, counselling, employment and mental health services, acquired injury support services, alcohol and other drug services, parenting support programs and outreach services to rural areas.

3.1 Anglicare's mental health services

Anglicare provides a range of mental health services throughout Tasmania:

- **Curraghmore** is a State Government funded residential facility in the North West for clients who have diagnosed psychiatric disabilities and are recovering from mental illness. It provides a recovery and rehabilitation program and support to individual clients both at Curraghmore and in the wider community.
- **Club Haven** is a recreational, social and personal development program located in Devonport. Day to day operations are managed by Club members who are all people living with a mental illness. Unfortunately, the program does not have external funding and is therefore limited in its capacity to meet local needs.
- **Family Mental Health Support Service** involves two programs, one covers Hobart and greater suburbs, the other most of North West Tasmania. It provides flexible support and outreach for families affected by mental illness (including information, referrals, support planning and skills development) and community education and capacity building, and includes a strong focus on young people, children and Aboriginal and families from culturally and linguistically diverse (CALD) backgrounds. This programme receives Australian Government funding through the Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA).
- **Recovery Program** operates in the North and South and offers tailored, flexible support for people living in the community who are recovering from a diagnosed mental illness. Previously known as the Supported Packages of Care Program, Recovery Program receives State Government funding.
- **TAMOSCH –Towards a Model of Supported Community Housing** is a project in Devonport providing support (including transitional accommodation) for people

with a mental illness to establish and maintain independent living in the community. It is funded through the Home and Community Care Programme.

- **Kids in Mind Tasmania** – including Taz Kids Clubs, Champs Camps and Parenting Workshops is an early intervention program that supports the emotional and social needs of children with parental mental illness through regular club meetings, kids' camps and parenting workshops. The program receives State Government funding.
- **Pathways** is a structured social and recreational program based in Launceston for adults with severe and persistent mental illness. It is aimed at developing and relearning day to day living skills and connecting with family, social networks and the wider community, including community participation such as employment. The program receives Australian Government funding through the Department of Health and Ageing (DOHA).
- **Personal Helpers and Mentors Program** operates in the Sorell and Tasman areas. It offers recovery focussed support planning for people with severe and persistent mental illness living in the community where their mental illness impacts their ability to function in day to day living and community connection. The program receives Australian Government funding through FaHCSIA.
- **Respite for Carers of People with Mental Illness** provides in-home and recreational respite throughout Tasmania and centre-based respite in the north-west and south. The program receives Australian Government funding through FaHCSIA.

2.2 Anglicare's alcohol and other drug services

- **Glenorchy Illicit Drug Service (GIDS)** offers a range of support to young people affected by illicit drug use and their friends as well as outreach support and education sessions through schools. Information, counselling and other support is also offered specifically to the families of young people.
- **Court Mandated Diversion** programs provide counselling and other support to clients referred through the justice system.

4. Anglicare's submission

In preparing this submission, Anglicare has consulted its own staff who are active in the delivery of services to people living with mental illness or addictions as well as representatives of other organisations with an interest in the field of mental health and addiction, particularly those that have been active in the current legislative review processes.

We had also the benefit of viewing some submissions from other parties and have reflected on our earlier submissions to the review of Mental Health Act 1996¹.

We note that the Mental Health Act 1996 has been undergoing a process of review over the past two years and that many individuals and organisations, including Anglicare have invested considerable time and effort in contributing to that review process. Concerns have been expressed, at various stages of the review, that the process, particularly the wider consultation phase, has been too rushed, but in general the interested parties, have had a strong commitment to reaching as good a goal as possible.

Anglicare was initially concerned that this Legislative Council Inquiry may serve to interrupt the Mental Health Act 1996 review process. We did not want this to happen as we felt that the government and the community had made genuine commitments to the integrity of the process. While there would appear likely to be a number of features of the proposed Mental Health Act that Anglicare will have concerns about we look forward to an opportunity to contribute to the next consultation phase about the Draft Bill expected early in 2009. We believe that the proposed new Act will overcome a number of the deficiencies of the Mental Health Act 1996 and we look forward to legislation that will support the mental health of the community.

The Legislative Council inquiry process provides an opportunity to canvass some wider issues and to look beyond the silos of special legislation focused just on people living with a mental illness or people who have a substance dependency.

It is our view that there is nothing in the current review process that would cut off the opportunity for ongoing wider review and the exploration of new models, as foreshadowed / promoted / in the background materiel to this review².

¹ Strengthening Safeguards and Support: Review of the Mental Health Act 1996, May 2007 *and* Letter, 8 October 2007, to Legislation Review Officer

² Hansard, Tasmanian Legislative Council, 26 and 27 August 2008

5. Responding to the points of reference

Reference 1 - The role and function of the protective legislative schemes with respect to promoting the rights and protecting the wellbeing of people with psychiatric disabilities and/or addictions

In responding to this reference, Anglicare notes that promotion of the rights and protection of the wellbeing of people living with a mental illness are stated to be central to the objects of the proposed new Mental Health Act. The Discussion paper Overview proposes a new Mental Health Act with "...a shift in focus from detention to treatment and to add the ability to treat without consent to ability to detain³". The new act will, it is proposed, "... include a focus on human rights".⁴

We look forward to seeing the Draft Bill and reassuring ourselves that this stated emphasis on human rights will indeed be enacted, and trust that the proposed Review of the Alcohol and Drug Dependency Act 1968, a very outdated piece of legislation, will similarly emphasise the promotion of the rights of people with an addiction/dependency.

We note that Australia ratified the United Nations Convention on the Rights of People with Disabilities on 18 July 2008. In taking this step, Australia has made a commitment in principle to the provisions of the Convention. There are many areas where the Convention points to continuing agendas for action by government and within the wider society and we would urge that Tasmania note the provisions in reviewing legislation that impinges particularly on the lives of people with disabilities.

Reference 2 - Whether Tasmania's legislation meets world's best practice in terms of providing - (a) adequate protection for the rights and wellbeing of people with psychiatric disabilities and/or addictions and their families; and (b) clarity and certainty for medical practitioners and support workers providing services to people with psychiatric disabilities and/or addictions and their families

Anglicare has long been aware that current legislation does not provide adequate protection for people with psychiatric disabilities and or addictions and we have raised these matters in our earlier submissions to the Review of the Mental Health Act 1996.

Our concerns include:

³ Department of Health & Human Services, 2007, *Review of the Mental Health Act 1996 Discussion Paper* p 6

⁴ *Ibid.* p 10

Involuntary Treatment

Anglicare is concerned that the new Mental Health Act will not be consistent with contemporary human rights approaches, particularly in relation to involuntary treatment. Anglicare has very grave concerns about any proposals for involuntary treatment of mental health consumers who have the capacity to consent (or refuse their consent) to treatment, unless in emergency circumstances. In our response to the Mental Health Act 1996 Review Discussion Paper, we supported the views of the President of the Guardianship and Administration Board and the Public Guardian who said:

“providing a legislative scheme by which a person who has capacity (i.e. a patient who understands the nature and effect of their illness and the treatment proposed but refuses anyway) can be treated against their refusal is the creation of a legislative means to abuse human rights and is out of step with all other international developments.”⁵

Anglicare noted that this is apparently not a majority view heard during the consultation phase, and that the proposed legislation will provide for treatment without consent. We urge that the distinction between involuntarily treating people with capacity and treating those without capacity should be very clearly retained in any proposed legislation, whether in relation to mental health or to dependency.

We have also argued in our earlier submissions that there needs to be much more rigour around the criteria for any involuntary treatment. Firstly we argued that in the proposals discussed so far, by the time a Treatment Order is proposed, the mental health consumer would have been assessed twice, by a Medical Officer and by an Authorised Medical Officer, so it is not sufficient that “the person appears to be mentally ill”, but rather the person should have a mental illness.

Secondly, to allow a Treatment Order to be made where “involuntary treatment is necessary for his or her health, safety or welfare...(welfare to include reputation and financial well-being)” is unacceptably broad and subjective, in particular for a person who retains decision-making capacity. Accordingly, Anglicare is of the view that the extra criterion “the person has unreasonably refused or is unable to consent to the necessary treatment for the mental illness” be added to the list of essential criteria for the making of a Treatment Order.

⁵ Smith A & Warner L, 2007, *Review of the Mental Health Act in 2007: Guardianship as a One-Stop-Shop for a Comprehensive Legal Response to Serious Psychiatric Illness in a New Century: A submission by Anita Smith, President of the Guardianship Board and Lisa Warner, Public Guardian*, Hobart, p10.

Recommendation 1:

Anglicare recommends that the criteria for any involuntary treatment be defined more rigorously to ensure that a person undergoing treatment has been determined to have a mental illness.

Recommendation 2:

Anglicare recommends that the extra criterion “the person has unreasonably refused or is unable to consent to the necessary treatment for the mental illness” be added to the list of essential criteria for the making of a Treatment Order.

Sanctions

There are few provisions of current mental health and related legislation that are backed with sanctions and this has led to a perception that the enforcement of safeguards is not highly regarded. We have previously noted the low level of consumer and community confidence that the Mental Health Act 1996 is well or consistently implemented.

Recommendation 3:

Anglicare recommends that that mechanisms be established to monitor and audit the effectiveness of the implementation of current and new legislation.

Official Visitors

One such mechanism would be Official Visitors. Anglicare has elsewhere documented its support for a wider role for Official Visitors in the interests of protecting the rights and well-being of people living with a mental illness, including a role in monitoring government-funded services delivered by community service organisations, and the capacity to have access to the full range of locations where people with mental illness are treated and to information about that treatment, and related matters such as incident reports.

If Official Visitors were given a wider remit we wish to stress that additional resources would be essential. To have the service spread even more thinly than it currently is would make the scheme tokenistic.

A wider role would also raise the question of the most appropriate organisational location for the Official Visitors Scheme. We suggest that the necessary independence would be best supported by establishing the Scheme within the office of the health Complaints Commissioner, or a similar independent statutory authority.

Recommendation 4:

Anglicare recommends that the role of the Official Visitors be expanded to monitor the full range of locations where people with mental illness are treated.

Advocacy and representation

Advocacy services have as an object the protection of the rights and well-being of consumers. To this end, Anglicare would support the allocation of increased resources for mental health and related advocacy services.

The Mental Health Representation Scheme has done much good work and is to be commended. However, it is a scheme primarily provided by volunteer law undergraduates.

Legal representation for consumers appearing before the Mental Health Tribunal and similar bodies is another important area which would go towards more adequate protection for the rights and wellbeing of people living with a mental illness and addictions. The Mental Health Act 1996 provides for a right of representation for consumers appearing before the Mental Health Tribunal but this is a hollow unsupported right in the context where it is not properly resourced. We continue to be concerned that the provision of representation is not funded through the Legal Aid Commission or through community legal centres and note that in other jurisdictions a duty lawyer covers hearings of the Mental Health Tribunal or its equivalent.

Recommendation 5:

Anglicare recommends that the Department of Justice provide funding to the Legal Aid Commission to ensure a duty lawyer covers hearings of the Mental Health Tribunal or its equivalent as is the practice in other jurisdictions.

Informed Consent

Informed consent to treatment is a central tenet of protecting the rights and well-being of service users. We have previously emphasised the need for clarity in relation to: whether each particular patient has or has not capacity, has or has not provided informed consent, and the need for clear and consistent documentation in relation to this.

Advance directives

This is an issue of considerable interest in the field of mental health. While the Minister for Health has indicated that she is supportive of advance directives being available to people living with a mental illness she has also made a decision that advance directives were not to be considered in the context of the review of the Mental Health Act 1996, but addressed as part of a broader legislative review because of their potential applicability within a wide range of health domains.

Anglicare would argue that the issue should be addressed promptly and we are concerned that making the project very broad may mean that no action at all will be taken. We note that there have been formal submissions made to government requesting the introduction of advance directives since at least 1999, the International Year of Older Persons. While advance directives have applicability in a range of areas, the episodic nature of much mental illness means that they are a tool with particular applicability in the mental health field, and may also have a role in addictions. Such a directive could cover such matters as treatment options and who should be informed about a person's condition when they are unwell. While far from universally applicable and still with many complexities, advance directives can offer some safeguards to support autonomy and self-direction and protect family relationships and offer clarity for medical practitioners and support workers in delivering appropriate services.

Recommendation 6:

Anglicare recommends that the introduction of Advance Directives be explored as a matter of priority.

Privacy

Anglicare is concerned that there still appears to be within health services a subjective and uneven understanding about privacy and confidentiality in relation to treatment, especially of people living with a mental illness. We urge that a more rigorous understanding of the National Privacy Principles and their applicability in the mental health and addictions area be incorporated into the operating standards of mental health and dependency services. More consistent and rigorous application of these principles would support promotion of the rights of people with a mental illness or dependency.

Recommendation 7:

Anglicare recommends that training of all staff, including medical staff, in the National Privacy Principles be improved.

Alcohol and Drug Dependency Act 1968

Anglicare is pleased to note that the Alcohol, Tobacco and Other Drug Services, Tasmania Consultation Document for *Future Directions – a five year plan* makes a commitment⁶ to review the Alcohol and Drug Dependency Act 1968 on the grounds that some of the provisions are not in keeping with current practice and service delivery. We recommend that a high priority be placed in this, particularly in relation to the issues that related to compulsory treatment. It is Anglicare's understanding that the Alcohol and Drug Dependency Act 1968 is rarely used and that issues of involuntary treatment tend to be dealt with under the Mental Health Act 1996. The Future Directions Plan notes that the current Act is seldom invoked for involuntary treatment of clients due to a range of issues including the such as changes in service delivery, the operation of the Act, the requirements to place an individual on an order, and the "lack of protection of client rights and the lack of mandatory oversight by relevant bodies and tribunals."⁷

Anglicare is pleased to note that this review and its outcome are planned for completion within the first two years (2008/09 – 2010/11) of the five year plan. We strongly support the need for review and urge that it be considered in a wider context (see below Recommendation 8). Anglicare has much to contribute to this review process based on our service delivery experience and our research history.

Reference 3 - Any other matters incidental thereto.

Anglicare has had the opportunity to consider the proposals put forward jointly by the President of the Guardianship and Administration Board and the President of the Mental Health Tribunal. Anglicare believes that the proposals are worthy of further consideration.

Recommendation 8:

Anglicare recommends that the proposal for a comprehensive review of the Alcohol and Drug Dependency Act 1968, the Guardianship and Administration Act 1995 and the Mental Health Act 1996 be addressed promptly by government.

However, we would be concerned if the current Select Committee inquiry were to slow in any way the completion of the current phase of review of the Mental Health Act 1996. This legislative review process has been extended and many service users and providers, government departments and the wider community have placed

⁶ Alcohol, Tobacco and Other Drug Services, Tasmania Future Directions – a five year plan Consultation Document (July 2008) Page 61

⁷ *ibid*

considerable faith in the process and look forward to the consultation about the Draft Mental Health Bill which we have been assured will be available early in 2009. It is also Anglicare's view that nothing within the proposed changes would preclude introduction of a wider or more radical review at a later stage.

Recommendation 9:

Anglicare therefore recommends that the State Government proceeds with the review of the Mental Health Act 1996.

6. Bibliography

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