



Tasmanian Council of Social Service
response to the

Review of the *Mental Health Act 1996*
Issues Paper

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The Tasmanian Council of Social Service (TasCOSS) is the peak body for the community service sector in Tasmania. Its membership comprises individuals and organisations active in the provision of community services to low income, vulnerable and disadvantaged Tasmanians. TasCOSS represents the interests of its members and their clients to government, the public, the private sector and to the media. TasCOSS welcomes this opportunity to comment on the Review of the *Mental Health Act 1996* Issues Paper. Mental health is an important issue to many of our members and their clients, and we have consulted with those members on a number of key issues.

The *Mental Health Act 1996* is a significant piece of legislation that affects every Tasmanian, including the one in five Tasmanians who will experience a significant mental illness in their lifetimes, the families and carers of mentally ill people and the numerous other stakeholders working with, and caring for people with mental illness. TasCOSS believes that, as a community, we should be working towards strengthening the underlying human rights foundations of our mental health law. We need to better protect the rights of mentally ill citizens while providing better care and treatment services. The recommendations made below aim to promote and protect the rights of mentally ill citizens and to ensure better service provision and delivery.

1. Timeframes

We strongly urge that the timelines for community comment on the review of the Act is reviewed and restructured to allow for a full and comprehensive community discussion of the issues. The Tasmanian Social Policy Council (TSPC) is TasCOSS' peak forum for social policy in Tasmania recently supported a motion to call for the Government to extend the timeline provided for community consultation and comment. TasCOSS believes that allowing six weeks on any discussion paper and then six weeks for consultation on any draft legislation is the minimum that all stakeholders can expect. Representations to the Minister by TasCOSS on the matter have failed to have the timelines for the review altered. We urge that timeframes for a review of this nature be extended in the future.

The Government's decision to hasten such an important piece of legislative review is unacceptable and the timelines offered are unfeasible and unreasonable. TasCOSS is concerned that the timeline for the review does not allow for full consumer participation or consultation.

2. Safeguards

The civil rights of mentally ill people must be safeguarded and these safeguards must be upheld and regularly reviewed. It is of concern to TasCOSS that the current safeguards within the *Mental Health Act* to protect the rights of mentally ill Tasmanians are not enforced and there are no sanctions for breaching them. People with mental illnesses in

Tasmania do not have the same protections offered to children or to other citizens against unlawful, forced or arbitrary detention.

People with mental illnesses are not a homogenous group, comprising of people of different experiences, ages, cultures, religions and backgrounds. Cognitive and physical capacities can vary greatly, as do the degree and nature of the illness, treatment and care requirements. Furthermore, mental illnesses are not static; they can be subject to periods of intensity, severity, respite and change. The Act must ensure that the safeguards to protect the rights of mental health consumers, their carers and families are sufficient, appropriate and enforceable. Current safeguards within the Act need to be enforced and breaches must be penalised. In addition, safeguards need to be developed in order to address the changing needs and unique vulnerabilities of mentally ill individuals.

3. Treatment without consent

Tasmanian mental health law does not effectively address the issue of treatment without consent. Our members have found that in some cases consent of the mentally ill person is not always gained with regards to treatment and medication. If a person has the capacity to understand the nature and effects of treatment then it follows that they have the right to consent to or refuse that treatment.

If the Act is amended to include forcible treatment of capacitated individuals, its current safeguards need to be reviewed to ensure appropriate accountability, and enforced sanctions for breaches of the Act.

In cases where treatment without consent is sought, we recommend that the Mental Health Tribunal convene in each region with three members at all times. We believe these members should be a lawyer, a clinical worker and a community worker to ensure the mentally ill person is adequately represented by the different sectors and stakeholders. For the Mental Health Tribunal to function properly it needs to be appropriately funded, resourced and its members trained to provide this role.

4. ‘Advanced Directives’

The issue of ‘Advance Directives’ must be given more consideration and credence in the Review of the Act. ‘Advance Directives’ are an essential part of observing the civil and human right to autonomy by enabling the mentally ill person to pre-plan their treatment and care options. ‘Advanced Directives’ allow capacitated patients the opportunity to guide future health care decisions in the event that they are unable to participate directly in medical decision-making. Our members have emphasised the importance of ‘Advanced Directives’ to carers, since carers expressed the desire to be involved in decision-making process before the person becomes incapacitated.

5. Carers

TasCOSS members have expressed concern with the fact that carers of mentally ill persons are not always included in decision making processes with regards to their loved ones. Many carers expressed feelings of being ‘left in the dark’ about why and how decisions are made. Carers were not often informed about the decision-making process with regards to treatment of the mentally ill person, nor was it been explained to them how they could or could not participate in the process. Our members have expressed concern about the role of the carer in decision-making processes and require a clearer understanding of the roles and rights of the carer in relation to the rights to privacy of the mentally ill person.

6. Other Issues

Members of TasCOSS have raised a number of other concerns with regards to the Act including:

- The need for approved hospitals to be audited to ensure that all areas meet appropriate levels of best practice service delivery.
- The Act must clearly address the fact that taking a citizen into protective custody is a health issue and not a criminal issue.
- The Act needs to specifically safeguard people from culturally and linguistically diverse backgrounds and people from Australian indigenous backgrounds.
- Young people should be separated from adults on admission to both secure and open mental health units. There is a need for a juvenile-specific facility, capable of providing high-level security.
- All participating sectors (health, community services, legal, justice etc) must be sufficiently resourced and supported to ensure that the rights and care of people with mental illnesses in Tasmania are protected in line with current national and international standards.

Addressing and amending the Act in the areas we have outlined above will assist in improving the lives of people with mental illnesses in Tasmania. The capacity to make informed decisions about treatment, admission and care through ‘Advanced Directives’ enable mentally ill people to exercise the right to autonomy and personal dignity.

The workers and organisations that provide services for the mentally ill must be better equipped and resourced to deal with diversity and unique needs. We urge the Government to provide appropriate funding and resources, including oversight mechanisms, training, information materials and administrative support.

We hope that our comments are useful, and we look forward to seeing improvements in the *Mental Health Act* result from this review process and, as a consequence, better protections for people experiencing mental illness in Tasmania.