



SUBMISSION

MENTAL HEALTH REVIEW ACT
2007

MR PAUL MASON,
COMMISSIONER

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The Commissioner for Children is an independent, statutory office responsible to the Parliament of Tasmania. The Commissioner's functions include promoting the rights and well-being of children and young people, examining and advising the Government on policies, practices and services provided for children and laws affecting their health, welfare, care, protection and development.

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OVERVIEW

The Commissioner for Children recommends that the opportunity be taken in this review of the Mental Health Act to shore up the civil rights protections of involuntary patients, to provide more developmentally appropriate environments and outcomes for young patients and yet enable medical staff to fulfil their duty of care to patients and the community.

INVOLUNTARY ADMISSION

The Commissioner for Children is concerned about the failure to provide the responsible person with written notice of rights: the solution is to have the person responsible sign acknowledgement of and understanding of the matters in s.45(2)(c) to (f).

The Commissioner for Children agrees with any proposal to reduce into written form an acknowledgement that information provided under s.45 has been provided in a way that is understood by the person receiving it rather than being a perfunctory and nuisance "box-ticking" requirement of admission staff.

The acknowledgement should be included in an admission record, and in a format not just "I acknowledge that I have been provided with an explanation/statement/notice of rights" but rather a tick box or series of short yes/no questions to be filled in by the responsible person's own hand to signify understanding. Also not all "yes" questions but a mixture of questions requiring an involuntary treatment some "yes" answers and some "no" to avoid a "donkey" response.

INFORMED CONSENT

Similarly with patient consent, the consent form should include questions against interest to protect hospital staff from a young person or their parent giving external consent without internal understanding: Have I been told that if I do not sign this form the doctor will order that I be admitted to hospital without consent/the medical treatment will be provided without my consent.

If the young person is unable to read the form or write, a parent or in absence of parent, or if the parent is unable to read and understand the form, a responsible adult person other than the

admitting medical practitioner should depose on the form that they have read the questions and faithfully record the young person's answers.

ADMISSION TO SECURE MENTAL HEALTH UNIT

The rationale for the Chief Forensic Psychiatrist's Standing Orders concerning the admission of young people to a secure mental health unit is as follows:

- Patients under the age of 18 years (particularly developmentally immature young people) are vulnerable if admitted to an adult environment. The environment may expose them to risks from co-patients and to the risk of exploitation. They are also prone to learning inappropriate behaviours from adult patients and inappropriate coping strategies. Admitting a youth into an adult environment requires a careful balancing of the benefits of the proposed care and treatment against the above risks. A youth should only be admitted if there is a clear benefit that outweighs any risks. Often it is better to put program , care and treatment in place within the existing accommodation situation if there is no clear benefit in admitting a youth into an adult environment.

These propositions are so uncontroversial that the Commissioner for Children recommends that this Standing Order be incorporated in the Mental Health Act so as to give it the force of law.

These propositions also apply just as much to the entire provision of mental health services for young people, from casual and outpatients care, to community and home care, to voluntary admission, to involuntary admission and to forensic admission.

The Commissioner for Children recommends that s.7 or its replacement be amended by the insertion of the words:

- (c) in respect of a youth detainee or a patient under the age of 18 years
- (i) a facility is not regarded as adequate if it does not provide for the separate accommodation of that patient for persons over the age of 18 years; and
- (ii) contact between that patient and patients over the age of 18 is to be supervised at all times where necessary to prevent harm and inappropriate role modelling.

INVOLUNTARY TREATMENT FOR INVOLUNTARY PATIENT

The Commissioner for Children agrees that the legal inability to provide involuntary provision of medical treatment for mental illness and non-mental illness medical conditions when a young person is admitted involuntarily whether from the community or as forensic patient is not in the best interests of mentally ill young people. The Commissioner for Children recommends that the anomaly be rectified.

ENFORCEMENT OF COMMUNITY TREATMENT ORDERS

The Commissioner for Children supports an amendment of the Act to provide for enforcement of community treatment orders for young people.

MANDATORY DISCHARGE FROM INVOLUNTARY ADMISSION

There is some evidence of intellectually disabled but not mentally ill persons being admitted to hospital under the Act for the convenience of care staff or other organisations, and of persons being admitted as involuntary patients because of homelessness. It is against the interests of disabled and homeless young people to be included in a mental health treatment facility as a substitute for other residential care.

This is to the effect of s.28 of the NSW Mental Health Act s.28:

- The Superintendent of a hospital must refuse to detain a person if of the opinion that person is not mentally ill or mentally disordered.

The Commissioner for Children recommends that the Act be amended to ensure that if an "approved medical practitioner" form the view that the person does not or has ceased to suffer a mental illness, then the person must be discharged from the hospital.

DIGNITY BEFORE MENTAL HEALTH TRIBUNAL

It is extremely difficult for a patient seeking discharge from involuntary treatment to argue their case effectively while dressed in pyjamas or hospital gowns. The Commissioner for Children recommends the inclusion in s.56 or s.57 of a provision in terms of s.39 of the NSW Act:

- 39 Dress
- The medical superintendent is to ensure that, so far as is reasonably practicable, a person in respect of whom

advice under section 33 (1) is furnished is, when brought before the Magistrate, dressed in street clothes.

INVOLUNTARY TREATMENT OF FORENSIC PATIENTS

The concept of “in the best interests” when it concerns involuntary treatment and the deprivation of liberty is extremely elastic and will depend very largely on the individual medical practitioner rather than on principle. On the other hand, medical staff must have the power to detain an involuntary patient (and to administer involuntary treatment) where medically indicated, having regard to the objects of the Act.

The Commissioner for Children recommends amendment of s.72H (2)(a)(iii) “in the best interest of the forensic patient or for the protection of other persons”.

The Commissioner for Children recommends that the expression read:

- for the protection of other persons or for the prevention of serious damage to the patient’s health or to prevent the patient suffering or continuing to suffer serious [not significant] pain or distress.

And likewise in s.72H(2)(a)(iv) delaying treatment

- where the delay is likely to pose a risk other persons or likely to cause serious damage to the patient’s health or to cause the patient to suffer serious pain or distress.

72H (3)(c) provides for emergency involuntary treatment for a forensic patient to 96 hours whilst s.27 provides for 72 hours for a non-forensic involuntary patient. The circumstances requiring involuntary treatment without first obtaining an order appear so similar as not to indicate longer time in one situation than in the other.

There is no suggestion that a forensic patient in need of emergency involuntary treatment needs different treatment simply by virtue of being forensically detained. 72 hours adequate to settle symptoms of presenting condition and assess for continuing order, then 72 hours adequate for involuntary medical treatment.

The Commissioner for Children recommends substituting “72 hours” for “96 hours” in the amended Act.

S.72N SECLUSION AND VISITS BY OFFICIAL VISITOR – CREATION OF YOUTH OFFICIAL VISITOR

There is no surety that an official visitor will have any or any adequate skills or qualifications to assess and address the particular developmental needs of youth detainees. The Commissioner for Children recommends that for persons under 18 the provision should include a visit at least once in each 12 hour period.

The external purpose will be to document attendance by the visitor including time notified, start time and end time of interview, notes by the visitor in clinical notes of SMHU. The internal purpose will be to provide assurance to the young person that their situation is still being attended to by "the outside world".

The identity of the visitor could be a youth justice worker within meaning of s.3 of the Youth Justice Act. However there is no certainty that a YJW will have the skills or qualification necessary to provide the proper level of support in that rather extreme situation, and the YJW would rightly be seen as an adjunct to the system that put the young person in there, rather than independent.

The Commissioner for Children recommends a new subsection 74P(4)

- The Secretary nominate not less than one Official Visitor from time to time to be a Youth Official Visitor being an Official Visitor with post-secondary expertise in developmental psychology, youth justice or primary health care.

To enable the Youth Official Visitor to perform ordinary functions for adult patients the Commissioner for Children recommends a concurrent new subsection 74P(5):

- The provisions of this Part apply in respect of a Youth Official Visitor in relation to patients including forensic patients less than the age of 18 years, but do not limit the power and functions of the Youth Official Visitor as an Official Visitor in relation to patients of or above the age of 18.

SUMMARY RECOMMENDATIONS

- The Commissioner for Children recommends that the opportunity be taken in this review of the Mental Health Act to shore up the civil rights protections of involuntary patients, to provide more developmentally appropriate environments and outcomes form young patients and yet

enable medical staff to fulfil their duty of care to patients and the community.

- The Commissioner for Children recommends that the rationale for the Chief Forensic Psychiatrist's Standing Orders concerning the admission of young people to a secure mental health unit are so uncontroversial that they be incorporated in the Mental Health Act so as to give it the force of law.
- The Commissioner for Children recommends that s.7 or its replacement be amended by the insertion of the words:
 - (c) in respect of a youth detainee or a patient under the age of 18 years
 - (i) a facility is not regarded as adequate if it does not provide for the separate accommodation of that patient for persons over the age of 18 years; and
 - (ii) contact between that patient and patients over the age of 18 is to be supervised at all times where necessary to prevent harm and inappropriate role modelling.
- The Commissioner for Children recommends that the anomaly be rectified whereby the legal inability to provide involuntary provision of medical treatment for mental illness and non-mental illness medical conditions when a young person is admitted involuntarily, whether from the community or as forensic patient, is not in the best interests of mentally ill young people.
- The Commissioner for Children recommends that the Act be amended to ensure that if an "approved medical practitioner" form the view that the person does not or has ceased to suffer a mental illness, then the person must be discharged from the hospital.
- The Commissioner for Children recommends the inclusion in s.56 or s.57 of a provision in terms of s.39 of the NSW Act
- The Commissioner for Children recommends amendment of s.72H (2)(a)(iii) "in the best interest of the forensic patient or for the protection of other persons" and

- recommends that the expression read: for the protection of other persons or for the prevention of serious damage to the patient's health or to prevent the patient suffering or continuing to suffer serious [not significant] pain or distress.
- Likewise in s.72H(2)(a)(iv) delaying treatment: where the delay is likely to pose a risk other persons or likely to cause serious damage to the patient's health or to cause the patient to suffer serious pain or distress.
- The Commissioner for Children recommends substituting "72 hours" for "96 hours" in the amended Act.
- Section 72N, the Commissioner for Children recommends that for persons under 18 the provision should include a visit at least once in each 12 hour period.
- New subsection 74P(4): the Secretary nominate not less than one Official Visitor from time to time to be a Youth Official Visitor being an Official Visitor with post-secondary expertise in developmental psychology, youth justice or primary health care.
- New subsection 74P(5): The provisions of this Part apply in respect of a Youth Official Visitor in relation to patients including forensic patients less than the age of 18 years, but do not limit the power and functions of the Youth Official Visitor as an Official Visitor in relation to patients of or above the age of 18.

CONCLUSION

The Commissioner hopes these observations and recommendations are of assistance.

Paul Mason
Commissioner