

New Drug & Alcohol Treatment Bill

Under Construction

Human Rights at Risk

The human rights of people with drug and alcohol dependence are likely to be severely compromised by new legislation being drafted by the Department of Human Services (DHS) to replace the Alcoholic and Drug Dependent Persons Act 1968 (Vic).

At this stage, it is proposed that the new Drug and Alcohol Treatment Bill (Bill) will mirror the Mental Health Act 1986 (Vic) and allow for longer-term involuntary detention of persons with drug and alcohol dependence, where decision-making capacity is compromised and there is a risk of those affected harming themselves and/ or others.

We believe approach being proposed by DHS will not protect basic human rights or safeguard fundamental civil liberties.

Advocates have serious concerns that the new laws will violate fundamental human rights. Some considerations are as follows:

Loose trigger mechanisms

At this stage it seems the proposed triggering mechanisms will cover persons engaging in conduct harmful to themselves or others where decision-making capacity is compromised. We believe this is too broad to be meaningful. Conceivably it could include most persons with drug and alcohol dependence, adding an arbitrary element to the detention regime. Regardless of what decision makers are appointed under the new laws, or what appeal processes are put in place, it is wholly inappropriate to institute civil detention on the basis of vague criterion.

Involuntary detention and compulsory treatment

The new legislation presumably applies where mental health law and criminal law do not. Traditionally our society has valued liberty, and justified deprivation of liberty only in cases of serious criminal convictions following a fair and public trial, and in some cases of severe mental illness. It is also considered fundamental to the protection of persons from “torture and cruel, inhuman or degrading treatment” that “a person must not be subjected to medical... treatment without his or her full, free and informed consent.”¹ It is extremely difficult to conceive of circumstances where long-term involuntary detention and involuntary treatment initiatives can be justified for those experiencing drug or alcohol issues.

The Mental Health Act

The Mental Health Act was passed in 1986 when institutions provided treatment and care to people with mental illness. It is outdated and overdue for review. It fails to provide adequate protection to people living with mental illness and hold the service system accountable. It is risk averse and fails to assist people to move towards wellbeing. Mimicry of this dated and

¹ *Charter of Human Rights and Responsibilities Act 2006* (Victoria), s 10

cumbersome legislation is extremely concerning and reveals a failing within government to understand the impact of civil detention upon the lives of vulnerable Victorians who need support not punishment.

Negative impacts on existing service provision

Engagement with existing drug and alcohol treatment services is likely to be compromised. The belief that drug and alcohol dependence can be cured by confinement and compulsory treatment is archaic and just not true. There is significant evidence that coerced or compelled drug treatment provides less positive outcomes than treatment that is voluntarily undertaken.²

Compulsory treatment is also in opposition to the core value of harm minimization. Most drug and alcohol treatment agencies accept the decision-making capacity of clients, and attempt to enhance new decision-making skills along with the range of possible choices available to clients. Coercive treatment characterizes clients as helpless or hopeless, in need of external control, and devoid of decision-making capacity. Experiences with other coercive regimes indicate such approaches can have long-term repercussions in terms of trauma, alienation and disempowerment.

Wider funding issues ignored & existing service providers do not benefit

Legislative tinkering obfuscates the real issues: paucity of funding available to long-term and short-term residential withdrawal units. Voluntary clients seeking to engage with such services already face huge hurdles in terms of long waiting lists in order to access these. It would seem more appropriate that increased funding is introduced as a first port of call to those persons that have come to the stage of actively seeking treatment as opposed to those who may be avoiding it.

Additionally the introduction of the proposed Bill along with the protections that will be necessary such as independent legal advocates for those affected will involve significant funds that can be better spent. As the proposal is to develop an independent stand-alone facility to house persons detained under the Bill, it is extremely unlikely that existing service providers will receive any additional resources through this proposal.

Examples

There are concerns where legislation is so widely framed that those likely to be dealt with under the legislation may be ad hoc, and their capture under the provisions linked not so much to objective criteria as to their perceived status as a "problem". For instance:

- + Where young **people** are engaging in substance use, concerned families may be desperate, and this may lead to pressure to have such young persons admitted under the proposed Act. However, solutions to drug and alcohol dependence tend to be complex and long-term. Coercive interventions can lead to serious and long-term breakdown of family and other relationships. They can also raise false hopes.

² Senate Legal and Constitutional References Committee, *Inquiry into Provisions of the Disability Discrimination Amendment Bill 2003* (2004) 24-34; T C Wild, A B Roberts and E L Cooper, 'Compulsory Substance Abuse Treatment: An Overview of Recent Findings and Issues' (2002) 8(2) *European Addiction Research* 84-93.

- + Where substance use is causing **serious health problems**, significant harms may be occurring that do not relate to mental health or criminal conduct. Mandating treatment on that basis alone raises serious questions around consent and proven incapacity. On a practical level, once awareness grows in the community of drug and alcohol users that they may be detained for treatment, especially vulnerable groups may choose to disengage with services and go "underground" to avoid detection. The connection with this group is tenuous and must be nurtured. The consequences in terms of net harm caused to the community increases through failure to access existing drug and alcohol treatment agencies.
- + Many individuals may be experiencing **homelessness, discrimination, unemployment, mental health issues as well as substance dependence**. Such persons may be presenting repetitively to various service providers (including emergency departments) in crisis. To commit such persons for a period of time into involuntary detention/ treatment as a direct result of a lack of supports is not a solution. In all likelihood their dilemmas still exist at time of their exiting care. A holistic analysis of existing and absent supports and protocols around these multidimensional issues is more appropriate than periods of mandated treatment.

Victorian Human Rights Charter considerations

The introduction and entry into force of the Charter of Human Rights and Responsibilities Act 2006 this year means that government departments and non-government agencies carrying out public functions must audit their practice and human rights compliance. Further, any bills being introduced into the Victorian Parliament must be accompanied by a statement of compatibility indicating that the bill is compatible with the rights set out in the Charter. In our opinion, as currently framed the Bill raises serious concerns in regards to the ways it infringes on the rights of those with drug or alcohol dependencies in a way which is disproportionate and unnecessary. Protection of human rights is a balancing act; many human rights are not absolute. However, they enshrine fundamental values that must inform the development of policy and practice in all dealings with the community.

The right to liberty and security of person is a fundamental right protected under the Charter. The right to be treated with humanity and with respect for inherent dignity of the human person, the right to be detained only in accordance with law, and the right to judicial review of any such decision are paramount. The terms of the Bill presently proposed are inconsistent with these rights and do not strike the appropriate balance in protecting the human rights of service users. The approach is not a justifiable limitation given the importance of these rights, the questionable effectiveness of Bill's purpose, and the fact that there are alternatives available which are less restrictive of human rights and which would achieve a reduction in the harm cause by drug and alcohol dependence.

Finally, the Bill also ignores the fact that better funding of existing drug and alcohol treatment agencies can alleviate the current problems and raises significant concerns in terms of undermining the valuable work of these services.

We would encourage service providers to forward their comments so that adequate consideration of the complex range of concerns involved occurs prior to the tabling of the Bill. Correspondence can be forwarded to the following:

Hon. Lisa Neville

Minister for Mental Health/ Community Services
Level 22, 50 Lonsdale Street, Melbourne 3000
lisa.neville@parliament.vic.gov.au

Hon. Rob Hulls

Deputy Premier/ Attorney General
Level 3, 1 Treasury Place, East Melbourne 3002
rob.hulls@parliament.vic.gov.au

cc **VAADA Victorian Alcohol & Drug Association**
211 Victoria Parade, Collingwood, Melbourne 3066
vaada@infoxchange.net.au

Further information is available on the Fitzroy Legal Service website at www.fitzroy-legal.org.au.

We would also encourage service users to express their views about the proposed laws and likely impacts. For further information feel free to contact Meghan Fitzgerald, Community Development Officer and Lawyer, Fitzroy Legal Service - 9419 3744 mfitzgerald@fitzroy-legal.org.au, or those persons listed below.

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