



Mental Health Legal Centre Inc

9th Floor, 10-16 Queen Street, Melbourne Vic 3000

Reg. No. AOO1366S
A.B.N. 30 996 171 084

Phone: (03) 9629 4422 Fax: (03) 9614 0488 Country Callers: 1800 555 887

Website: www.communitylaw.org.au/mentalhealth

The Executive Officer
Family and Community Development Committee
Parliament House
Spring Street
East Melbourne
VIC 300

Dear Family and Community Development Committee

Re: Inquiries into Supported Accommodation for those with Disability and Mental Illness

We thank you for the opportunity to comment on the Inquiries into Supported Accommodation for those with Disability and Mental Illness in Victoria dated August 2008.

The Mental Health Legal Centre provides a free and confidential legal service to anyone who has experienced mental illness in Victoria where their legal problem relates to their mental illness. All centre activities aim to promote the rights of people who experience mental illness. The Legal Centre is a non-profit organisation run by an independent Committee of Management. We receive the majority of our funding from the Victorian Department of Human Services and Victoria Legal Aid. The Legal Centre provides telephone advice and referral, direct advocacy - in some cases, education and general inquiries about mental health and the law for consumers in Victoria.

We are constantly aware of the lack of suitable accommodation for clients of the Centre. Because of the gross shortage of dignified affordable housing people with mental illness accept substandard, often appalling, accommodation. The choice is often not theirs, for them there is no choice, with the pressure on beds in inpatient settings case managers/social workers refer their clients to facilities that offer little more than basic support. Moreover, in the interests of ensuring that the clients remains in the facility, case managers/social workers often make application for the appointment of an administrator to manage the persons money. The criteria requires that the person has a disability, by virtue of the disability is unable to make decisions about their finances and needs an administrator. An administrator does not scrutinise value for money, but on the recommendation of the mental health team assumes that the person is suitably placed and pays the accommodation account. Administration orders thus become quasi guardianship orders whereby an administrator decides where the person lives, as without access to their funds the person has no choice but to stay.

Clients of the MHLC are public patients and on income security, we cannot comment on more exclusive and expensive SRSs

We hope that this current review will improve the rights of people with mental illness and other vulnerable people living in supported residential services. We make the following comments in response to the terms of reference:

The standard, range, and adequacy of care and accommodation currently available.

Standard of Care

The objective of both the *Health Services Act 1988* and the Health Services (Supported Residential Services) Regulations 2001 is to provide a protective regulatory framework for people residing in supported residential services (SRS).

Residents of SRS are vulnerable because of low income, disability, ill-health, age or a combination of these and accordingly receive various kinds of care and physical support/assistance. In particular, the MHLC is concerned about the lack of specific protections offered to individuals in SRS facilities who experience mental illness.

Currently, proprietors are under obligations to take reasonable steps to ensure the physical welfare of all residents in terms of personal hygiene (r. 18), administration of medication (r. 19), and nutrition (r. 21). While the Health Services Regulation 2001 even requires proprietors to provide personnel and facilities for 'activities' (r. 16), there are no provisions relating to care associated with a residents mental wellbeing.

In reality these facilities fall short in terms of providing decent safe and dignified housing for people with mental illness. Observation of the patterns of comings and goings from any SRS soon highlights the inadequacies: breakfast is early at 5-6 am, residents are showered and then encouraged to leave; the residents wander the streets for most of the day until they return around 4.30 pm when the evening meal is served. Often people are seen scavenging through rubbish bins looking for food or cigarette butts. No doubt there are some people who attend programs but there are certainly many who are not engaged in any programs at all.

It cannot be concluded that proprietors are ill motivated or making a fortune from running these facilities, rather that the monolithic mental health system is a crisis prone, over stretched, under resourced, post institutional service that has not adapted to provide community based services. Although the payment for board is generally the entire pension, proprietors work hard to manage these small institutions and make a marginal profit. Residents have no money left for personal items, fares or cigarettes or to pursue interests or activities.

As over 50% of residents in SRS suffer from a mental illness, the existing legislation should be amended to include provisions to enforce proprietors of SRS to take reasonable steps to monitor and take an active role in improving the mental wellbeing of residents. Moreover, the proprietors should also be required to provide access to internal and external support services, specifically equipped to deal with mental health issues. As 'personal care co-ordinator' and 'special or personal care' staff can hold the mandated qualifications (r.33) without any formal training or prior experience dealing

with mental illness, these recommendations would provide an improved protective regulatory framework for such vulnerable residents.

Furthermore, in compliance with s. 108G (2) *Health Services Act 1988*, the regulations should be extended to include a uniformed dispute/complaint resolution framework. Aside from directing complaints to a Community Visitor, an Authorised Officer or the proprietor, the regulations do not specifically cover the provision of advocacy outside the scope of the 'provision of services' and the 'standard of the facilities'. In the event that a resident requires legal advice whether related to a complaint lodged by a fellow resident, or any other matter, proprietors should be required to provide access to formal adversarial support.

Adequacy of Care

'Special or personal care' defined in the *Health Services Act 1988* relates to supervision or assistance in undertakings relating to personal hygiene, mobility and administration of medicine. Despite the provision of 'substantial emotional support' which is limited by common usage to mean bereavement or generalised counselling, we propose that the current definition of 'special or personal care' be extended to include 'the provision of treatment and non-clinical support to persons with mental illnesses'. This additional requirement would acknowledge the ever increasing proportion of SRS residents who suffer from a mental illness and would ensure that as a bare minimum, appropriate support is provided to these vulnerable residents.

Range of Accommodation

Conformity among all SRS, large and small is particularly important for residents with mental illness who have a particular need for consistency. Consequently, the minimum standards of accommodation and support addressed in the law and regulations should apply irrespective of size and/or location. However, should there be a difference in the level of regulation; it should be based on the level of support given. In this case, Victoria should adopt the tiered structure set out in the Queensland legislation (*Residential*

Services (Accommodation) Act 2002 and the Residential Services (Accommodation) Regulations).

We hope these comments are of assistance and invite you to contact Vivienne Topp , if you have any queries.

Ms Vivienne Topp
Lawyer/ Policy Co-Ordinator
Mental Health Legal Centre

