

# ***New Mental Health Act: a view from the Office of the Public Advocate***



The new *Mental Health Act 2009* is a welcome reform. It is also a critical time for consumers, carers and clinicians to show heightened vigilance. I would nominate four key areas to watch.

The first is decision making about detentions and community treatment orders. There is always a risk that a person may be placed on an order when they should not be, or alternatively that orders are not started when they are needed. The Act has new criteria which must be met before an order is made, but with any new legislation these criteria will not be fully understood until they are used in practice, and then appealed to the Courts who interpret how the criteria are meant to be read. The new South Australian legislation requires that the “least restrictive” option be applied but there can be significant differences of opinion between policy makers, clinicians and consumers about what “least restrictive” means.

The second will be the level of communication that occurs between treating staff and consumers and carers. Poor communication has been a common complaint in the past. There are now significant

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expectations in both the principles and the specific provisions of the new Act. Consumers should be told why an order has been started, so they can decide whether to exercise their right to appeal that order. Carers should receive similar information as well as information they need to know for their caring role. Information provision and clear respectful communication are critical. There is evidence from the patient safety literature that consumer and carer participation in health care improves the safety of care. Even if a consumer is under an order, a consumer should still be an informed partner and participant. We also know that when consumers are very unwell, carers take on a role as advocate, and observer of care and in this role can prevent clinical errors.

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The third will be the use of care plans. The new Act has excellent expectations that care plans should be in place. This is another opportunity for consumer and carer participation. We often hear from both consumers and carers that holistic care is not provided. For example, there are many people under community treatment orders who receive a fortnightly injection and medical review, when they should also receive rehabilitation or therapy services. We hear similar concerns from clinicians who want to deliver broader services as part of a “biopsychosocial” approach, but cannot do this because of a lack of time. I suggest the new care plans should match up with best practice – what is written should meet consumers’ goals as well as offering what is recommended as standard practice in Clinical Guidelines (such guidelines usually describe the need for psychotherapy, rehabilitation, as well as, drug treatment, if required).

The fourth will be the commencement of community visitors. They will provide independent rights based inspections of mental health wards starting in mid 2011, and will be available to visit detained patients who request a visitor. This is a significant advance. Consumer advocate, the late Trevor Parry (a member of the Bidmeade Legislation review committee) was very clear in his expectations about community visitors. He was concerned that because the new legislation would allow consumers to be detained for longer – 7 days for the first detention and 42 days for the second – it was even more critical that there be additional rights protection for

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consumers. He insisted that Community Visitors be available in this role and argued that this service – long advocated for by many others – should now be provided to balance the longer detention periods.

### ***...the commencement of community visitors... is a significant advance.***

The start of community visitors will be positive, but we also need to recognise that they will not be available for another year. (It has been a long journey to fruition for the many consumers and advocates who have called for community visitors for the last 20 years.)

If you have been detained or placed under a community treatment order and need information or advice please call the Office of the Public Advocate enquiries service. Similarly, if you are a carer who has questions relating to a person you care for who is the subject of a Mental Health Act order, please call our number.

**John Brayley**

**Public Advocate**



*Promoting rights*

## **Office of the Public Advocate ENQUIRY SERVICE**

If you are a consumer, carer or community member and need to know more about the use of the new Mental Health Act 2009, the Office of the Public Advocate operates an information and advice service.

For routine matters please call Monday to Friday between 9AM and 5PM.

**Metro: 8342 8200**  
**Country SA callers only : 1800 066 969**

The service also provides information and advice on guardianship, administration and advanced directives.

There is a 24 hours emergency after hours roster: a staff member can be contacted by calling the above numbers.