



MOVEMENT TOWARDS A HUMAN RIGHTS PARADIGM – REVISITED

Submission in response to the draft
Mental Health Bill 2010

Vanaheim Group Pty Ltd

ACN 111 717 429

www.vanaheimgroup.com

PART I – Previous material

It is clear that the Government has failed to take into account Vanaheim Group's suggestions in our submission to the review of the Mental Health Act 1986 (**the Act**) during the drafting of the Mental Health Bill 2010 (**the Bill**).

Accordingly, we refer the Government to that submission once more and note that it still stands but for references to Parts and sections which have changed places in the Bill compared with the Act.

A copy of the Executive Summary of that submission:

Part I – Suggested amendments

The following suggested amendments would provide real choice to those who are subject to the mental illness sector, and would further shift Victorian law towards a human rights paradigm:

- 1) Repeal the Part 4, Part 5 and related involuntary treatment provisions;
- 2) Repeal the Part 5 (Division 2) involuntary electroshock provisions; and
- 3) Amend the definition of section 53B informed consent to require a wider more fully informed consent to all invasive psychiatric treatments, based on the Model Consent forms in Appendix I.

Part II – Policy direction

In line with the Victorian government's policies and the Human Rights Charters, funding less restrictive prevention and treatment/recovery programs for those diagnosed with a mental illness is better and cheaper than the status quo, and shifts towards a human rights paradigm in mental health.

We are concerned that should the amendments suggested in our submission not be incorporated into the new Mental Health Act, that Act may continue to contain serious limitations on the human rights of Victorians.

Vanaheim Group therefore calls for the Mental Health Act Review to be halted and handed over to the Law Reform Commission for a review compliant with Victoria's democratic obligations under the Charter of Human Rights and Responsibilities Act 2006 (Vic).

PART II – Additional material

In light of the draft Bill, we wish to add the following comments.

The Exposure Draft Mental Health Bill 2010 Explanatory guide provides that:

The principles guiding the administration of the new Act are consistent with the United Nations Principles for the Protection of Persons with a Mental Illness and the Improvement of Mental Health Care 1991 (Mental Illness Principles), Article 3 of the United Nations Convention on the Rights of Persons with Disabilities (Disabilities Convention) and the Charter.

This is not good enough. The principles must be consistent with the entire United Nations Convention on the Rights of Persons with Disabilities (**the Convention**) as well as the Report of the Special Rapporteur.¹

The two most pertinent problems that flow from the above statement are the inclusion of discrimination, and the continuation of torture and other cruel, inhuman or degrading treatment or punishment (together **torture**).

Discrimination

In its current form, the Bill provides for the involuntary treatment of people who have a so-called “psychosocial disability”, namely a label of “mental illness” attached by a psychiatrist. Without such a “disability”, the involuntary treatment provisions of the Bill do not apply.

Accordingly, the Bill in its current form discriminates on the basis of “psychosocial disability”. In order for the Bill to prevent discrimination all involuntary treatment provisions must be eliminated.

Torture

The Bill is inconsistent with Article 15 of the Convention which prohibits torture. We refer the Government to the Report of the Special Rapporteur which

notes that the acceptance of involuntary treatment and involuntary confinement runs counter to the provisions of the Convention on the Rights of Persons with Disabilities.²

¹ Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment on “Protecting Persons with Disabilities from Torture”:
<http://www2.ohchr.org/english/issues/disability/torture.htm>

² Ibid, paragraph 44.



Accordingly, the Bill in its current form allows for torture on the basis of “psychosocial disability”. In order for the Bill to prevent torture all involuntary treatment and involuntary confinement provisions must be eliminated.

Electroshock and psychosurgery for children

Vanaheim Group wishes to formally express its disgust and disappointment that electroshock and psychosurgery have not been banned for all children. While it was clearly idealistic to suggest that psychosurgery and involuntary electroshock be banned altogether, that both electroshock and psychosurgery remain as options for children between the ages of 12 and 18 (which by its very nature reflects an involuntary arrangement) reflects very badly on the Government.

CONCLUSION

Vanaheim Group understands that the medical model of mental illness is the basis for the Bill and that either or both a belief and an adherence to that model has created a lot of the problems inherent in the Bill and the Act before it.

Yet, the Government was given an opportunity by the Convention which would have legitimately circumvented this model while saving face with the medical profession. This opportunity has been squandered, and the actions of this Government will result in hundreds if not thousands of mental patients suffering torture (and children suffering permanent brain damage) for decades to come.

Vanaheim Group’s mission is to inspire real choice in the mental illness sector.

Since its establishment in 2004, Vanaheim Group has offered an Australian port of call for referrals for Australian psychiatric survivors from the American psychiatric survivor networks.