

Review of the *Severe Substance Dependence Treatment Act 2010*

Victorian Government Report and Response
2015

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Background

The Severe Substance Dependence Treatment Act 2010

Legislation providing for the involuntary detention of persons with substance dependence for treatment has existed in Victoria for more than a century in the form of a number of 'Inebriates Acts' and, more recently, the *Alcoholics and Drug-dependent Persons Act 1968* (Vic).

The current legislative scheme, the *Severe Substance Dependence Treatment Act 2010* (the Act), has the following objectives:

- to provide for the detention and treatment of persons with severe substance dependence where this is necessary as a matter of urgency to save the person's life or to prevent serious damage to the person's health; and
- to enhance the capacity of those persons to make decisions about their substance use and personal health, welfare and safety.

Treatment under the Act can only be provided through an admission to a gazetted treatment centre at the direction of a Magistrates' Court where there is no less restrictive means of support available. This, and other procedural matters set out in the Act, seek to ensure that the scheme may only be applied where:

- detention and treatment is a consideration of last resort; and
- any limitations on the human rights and any interference with the dignity and self-respect of a person who is the subject of any actions authorised under this Act are kept to the minimum necessary to achieve the objectives specified.

The Bill received Royal Assent on 10 August 2010 and the new Act came into effect on 1 March 2011.

In March 2011, after a competitive procurement process, St Vincent's Health began operating the treatment service under the Act through its existing 12 bed residential alcohol and drug withdrawal unit, DePaul House, and St Vincent's Hospital, located in Fitzroy.

Basis for the review

The Act provides a mechanism for detaining people and subjecting them to drug treatment on an involuntary basis. In doing so, it impinges on a number of human rights protected by the Charter of Human Rights, namely the right to liberty, freedom of movement, security of person and the right not to be subjected to medical treatment without full, free and informed consent.

A set of safeguards are contained in the Act, including procedural requirements, which are designed to ensure its use is limited to urgent and serious matters given it impinges on these rights.

At the time the Severe Substance Dependence Treatment Bill was before Parliament, the limitations to human rights protected by the Charter issue were raised and concerns expressed that over time, 'net widening' may occur and the Act applied more broadly than intended. This was considered to be a significant risk by some Members of Parliament.

In response, the Bill was amended to include section 41, requiring:

- a review of the Act to be undertaken by 1 March 2015, to determine whether the objectives of the Act are being achieved and are still appropriate, and whether the Act is effective or needs to be amended; and
- a report of the review, including the Government's response to the review, to be made available to the public by 1 June 2015.

This document provides both a report of the review and the Government's response to it.

Report of the review

Methodology

In December 2014, DLA Piper was appointed via a competitive process to conduct the review of the Act. A team of staff (the reviewers) undertook a range of activities to inform the review process, including literature review, detailed analysis of activity under the Act, comparison of the Act with other legislation, and a significant program of consultation.

Stakeholder input was a critical part of the review, and the reviewers received contributions from 68 organisations and individuals, including five consumers and eight family members of a person with a substance use issue.

Representatives from Aboriginal services, addiction medicine specialists, alcohol and drug treatment services, mental health, legal and court services, ambulance and health service providers, local government, the Office of the Public Advocate, police, child protection and nursing services were also consulted. A full list of contributors is provided at Attachment 1.

This input was provided through a range of mechanisms including interviews, workshops, written submissions and consumer and family forums.

Operation of the Act to date

The review found that in the period 1 March 2011 to 2 February 2015, the Act has, consistent with its intended objectives:

- provided for the detention and treatment of a small number of people with severe substance dependence (28 admissions over the period related to 23 clients); and
- improved the capacity of most clients detained under the Act to make decisions about their substance use, health, welfare and safety.

The outcomes of 25 treatment cases at six months post-discharge were available and reported as follows (three cases had not yet reached 6 months post-discharge follow-up):

- five clients abstinent (20%)
- two clients reduced substance use (8%)
- 12 clients relapsed (48%)
- Three clients deceased (12%)
- Three clients lost to follow-up and presumed relapsed (12%)

The review found that the combined abstinence/reduced use rate of almost 30% was an 'encouraging' rate for such a complex group of substance dependent clients.

Stakeholder perspectives

Some of the key issues raised include:

- Limited knowledge of the Act and how and when it should be used.
- Concerns that this is a complex client group that requires long term intensive supports and that people being discharged may not have these, which led some people to suggest the period a person could be detained should be extended.
- Processes for seeking orders are complex.
- Lack of clarity around the services provided under the Act and level of activity over time.

The review process highlighted that views about the Act, its appropriateness and its operation varied between different stakeholders.

Across the gamut of stakeholders, for example, views ranged from some consumers advocating that there should not be any such involuntary detention for the purposes of treatment through to drug treatment clinicians and other treatment providers advocating for a longer period of detention and more applications under the Act.

There was also divergence of views within some groups of stakeholders. For example some consumers and family members expressed support for the Act while others strongly objected to involuntary detention and treatment.

While the review report notes points of general consensus, a range of the findings and suggestions put through the review are not based on consensus amongst stakeholders but rather highlight the views of particular groups, which sometimes varied based on the nature of their engagement with the scheme's operation.

Opportunities for improvement

The review found that there were a range of areas where operation of the legislative scheme could be enhanced within its current scope of application. These included:

- Enhancing awareness of the Act and its operation through education for stakeholders, to expand its use where needed.
- Improving post-withdrawal care pathways for people who are being discharged following a period of detention, so they receive the ongoing rehabilitation and care required, including care coordination, access to multidisciplinary services and active post-discharge support.
- Simplifying administrative processes throughout the scheme. While it was acknowledged that the procedural requirements sought to minimise limitations on a person's human rights, some stakeholders strongly supported streamlining these requirements to ensure prompt intervention when required.
- Establishing more robust and transparent performance arrangements for the designated treatment services.
- Monitoring (and as necessary responding to) demand, with the suggestion that a minimum data set be collected and reported on.

While the primary purpose of this review was to determine whether the Act was meeting its intent and whether 'net widening' had occurred, a range of opportunities for improving the overall administration of the scheme or enhancing longer term outcomes for people with severe substance abuse were also identified, which if adopted, would result in more people being detained for treatment, people being detained for longer periods or the nature of their detention changing.

Suggestions included:

- Broadening the objectives of the Act, which are currently limited to short term detention for medically-assisted withdrawal, to support longer term care and recovery of these clients beyond the period of detention.
- Extending the period of time a person can be detained, to provide additional time in which to stabilise the client's condition and establish and implement a comprehensive treatment plan.
- Amending procedural arrangements associated with seeking an order to admit someone under the Act simpler.
- Considering changes to legislative arrangements to make the scheme more like and/or integrated with the Mental Health Act 2014, although there was a diversity of views regarding this.

- Developing secure facilities for better management of the small number of clients at high risk of absconding.

It is important to note that while views were put by some stakeholders, others (particularly some consumers) opposed any changes that would broaden the reach of involuntary treatment.

Government Response

The Government thanks the many individuals and organisations who contributed to the review of the Act.

Involuntary detention for purposes of treatment is a complex matter, which requires balancing the risks to the individual against their human rights. The review of the Act reflects this complexity and the differing views of stakeholders around where the appropriate balance lies.

The report itself provides a comprehensive overview of the Act's operation, how it compares to and/or interfaces with other legislative schemes, and identifies a wide range of potential opportunities to enhance its operations.

The Government accepts the review's findings that the Act has met its intended objectives, and that the comprehensive and integrated safeguards in the Act have ensured that initial concerns regarding the potential for net-widening have not been borne out in the early years of implementation.

The Government acknowledges the Review's finding that the Act is effective in so far as improvement has been reported for around one third of clients, six months after discharge. Given the nature of the client group and their complexity, such improvements are encouraging.

The Government is strongly committed to the principles of human rights, and to safeguarding the health and welfare of individuals severely affected by their alcohol and other drug use. The Government notes the review's finding that the vast majority of stakeholders, whilst recognising the infringement on human rights associated with involuntary detention and treatment, believe that the Act remains appropriate as a last resort for a small group of people. To date, the people detained under the Act have reflected the targeted client group of highly complex substance dependent people at serious risk of death or harm.

An analysis of two other legislative schemes, the Victorian *Mental Health Act 2014* and the NSW *Drug and Alcohol Act 2007*, was undertaken by the review. The Government acknowledges the range of views in regards to features of these Acts however notes that the purpose of these Acts and the context within which they operate vary considerably. In the Victorian context, it is considered appropriate to maintain the existing balance between the *Mental Health Act 2014* and the *Severe Substance Dependence Treatment Act 2010*.

It has been established that the current procedural arrangements for applications under the Act are onerous and, in some cases, may create barriers to access. The Government notes that the fundamental purpose of these procedural requirements is to provide checks and balances where the rights of people subject to the Act are impinged upon.

In some instances stakeholders have suggested that legislative reform occur to expand the Act's reach or streamline procedural arrangements however the government does not intend to amend or extend the reach of the scheme at this time as it believes there are a range of non-legislative approaches that can enhance the scheme's operation without compromising the high standard in place that protects an individual's human rights, except in extreme circumstances.

The Government will progress work on administrative and policy responses to the identified areas where there are opportunities to improve the operation of the Act. This will include immediate action to:

- Strengthen client pathways to community based alcohol and drug treatment and support services following discharge from involuntary treatment under the Act, in order to further improve outcomes for clients. For example, recent reforms to the non-residential adult alcohol and drug service system provides for a new dedicated treatment function known as Care and Recovery Coordination which delivers intensive alcohol and drug treatment and coordinated care to the most complex clients. These new service arrangements prioritise clients at the greatest risk and engage closely with other service providers to meet the range of needs with which clients present and further work will occur with the sector to ensure that these and other supports are effectively used to support clients who are discharged.
- Enhance communication and education approaches, particularly to clinicians and service providers, with a view to supporting timely and appropriate applications for people who may require treatment under the Act. The Department of Health and Human Services in partnership with key stakeholders will develop and disseminate information materials for a range of audiences to describe the Act, appropriate application, procedural requirements and supports available to the diverse stakeholder groups identified in the review.
- Improve monitoring and accountability mechanisms in relation to the operation of the Act, and of the service provided to people detained under its provisions. This will involve establishment of a service level agreement with the declared treatment centre which documents data collection and reporting requirements, thereby strengthening the monitoring and accountability mechanisms that contribute to the existing safeguards within the Act.

These activities will commence in 2015, and will be informed by input from a range of stakeholders who participated in the review. Given the nature of the scheme and its interface with the courts and the health system, close ongoing work will be required between those sectors to explore opportunities for enhancement.

The Government acknowledges the range of other suggestions made through the review of the Act, and will explore where there is scope to address some of the underlying issues within the existing legislative and service delivery settings.

This Act provides a critical extension to the voluntary alcohol and drug treatment system in Victoria by ensuring involuntary detention and treatment is available to the community's most vulnerable substance dependent people.

This Government remains committed to supporting and enhancing the Act's operation, and will work with stakeholders to enhance its operation and associated monitoring and accountability mechanisms.

Attachment 1

CONSUMER FORUM

5 service user participants

FAMILY MEMBER FORUM

8 family member participants

EXPERT REFERENCE GROUP

Ms Judith Abbott, Director Drugs, Primary Care and Community Programs, Department of Health and Human Services

Ms Leanne Beagley, Director, Mental Health, Wellbeing and Ageing, Department of Health and Human Services

Ms Pauline Ireland, Director Health Review and Regulation, Department of Health and Human Services

Ms Kathryn Johnston, Director of Legal Services - Health, Department of Health and Human Services

Mr Peter Lamb, Director, Courts Policy, Department of Justice and Regulation

Prof Dan Lubman, Director, Turning Point Alcohol and Drug Centre

Ms Heather Pickard, Chief Executive Officer, Self Help Addiction Resource Centre

Professor Greg Whelan, Addiction Medicine Specialist, Consultant to review team

WRITTEN SUBMISSIONS RECEIVED

Dr Rodger Brough, Addiction Medicine Specialist

Dr Mike McDonough, Addiction Medicine Specialist

Dr Benny Monheit, Addiction Medicine Specialist

South West Healthcare

Uniting Care ReGen

Victorian Alcohol and Drug Association

INDIVIDUAL AND ORGANISATIONAL PARTICIPANTS IN INTERVIEWS AND FORUMS

Ms Mary Baker - Mallee District Aboriginal Services

Dr Rodger Brough - Addiction Medicine Specialist, South West Healthcare, Warrnambool

Ms Linda Bryant - Youth Justice Mental Health Initiative, Goulburn Valley Health

Ms Charlotte Byrne - Victoria/Tasmania Representative, Drug and Alcohol Nurses Australasia

Mr Paul Burke - Ambulance Victoria

Mr Brett Cain - State Coordinating Registrar, Melbourne Magistrates Court

Mr Matthew Carroll - President, Mental Health Tribunal

Ms Jenny Collins – Department of Health and Human Services, Grampians Region

Dr Ruth Collins - Consultant Addiction, Psychiatrist/Drug and Alcohol Services, Barwon Health

Ms Shelley Cross - General Manager, Stepping Up

Ms Liz Dearn - Senior Policy and Research Officer, Office of the Public Advocate

Ms Maria De Grazia - Ballarat Community Health

Ms Kerry Donaldson - Manager Community Programs, YSAS Bendigo

Mr Neil Duggan – Manager, Mental Health and Ageing, Department of Health and Human Services
Loddon Mallee Region

Ms Meghan Fitzgerald - Fitzroy Legal Service

Dr Matthew Frei - Head of Clinical Services, Turning Point Alcohol and Drug Centre

Ms Eleanore Fritze - Senior Lawyer, Mental Health and Disability Advocacy

Ms Ann Hamden - Manager, Drug Treatment Services, Latrobe Community Health Service

Professor Margaret Hamilton - Melbourne University

Mr Paul Hurnall - Loddon Campaspe, Southern Mallee Dual Diagnosis Consultant, Psychiatric Services
Professional Development Unit, Bendigo Health

Mr Rod Jackson – Chief Executive Officer, Wathaurong Aboriginal Co-operative

Dr Paul Lee, Clinical Director Mental Health, Latrobe Regional Hospital

Ms Debra Little - Service Development Officer of Territorial, AOD Unit, The Salvation Army

Dr Martyn Lloyd-Jones – Senior Clinician, St Vincent’s Hospital Melbourne

Ms Anne Malloch - Team Leader, City Issues, City of Melbourne

Ms Megan McDonald - Area Manager, Loddon Mallee, Mind Australia

Ms Claire McNamara - Office of the Public Advocate

Mr Eugene Meegan - Manager of Youth and Primary Mental Health Services, Bendigo Health

Ms Jillian Michaelski – Goulburn Valley Health

Ms Chantelle Miller - Manager, Drug and Alcohol Strategy Unit, Victoria Police

Mr Edward Morgan - Senior Police Custodial Medical Officer, Victoria Police

Mr Allan Muntz - Practice Leader, Child Protection, Goulburn East Division, Department of Health and
Human Services

Deputy President Genevieve Nhill - Head of Human Right Division, Victorian Civil and Administrative
Tribunal

Dr Ed Ogden, Addiction Medicine Consultant, St Vincent’s Hospital Melbourne

Ms Helen O’Neill - Clinical Nurse Consultant, Department of Addition Medicine, St Vincent’s Hospital
Melbourne

Ms Josephine Parkinson - Senior Policy and Projects Officer, Civil Justice, Victoria Legal Aid

Ms Maria Plakourakis - Senior Policy Officer, City Safety, City of Melbourne

Deputy Chief Magistrate Jelena Popovic, Melbourne Magistrates’ Court

Ms Rosie Rand, Connect Team Leader, ACSO

Ms Sonia Rowe – Care and Recovery Clinician, Drug Treatment Services, Latrobe Community Health
Service

Mr Glenn Rutter - Manager - Court Support and Diversion Services, Melbourne Magistrates’ Court

Ms Claire Ryan - AoD and Refuge Services Team Leader, Ballarat Community Health

Ms Maggy Samaan - General Counsel - Ambulance Victoria

Mr Rod Soar - Federation Training

Ms Cheryl Sobczyk, Senior Manager, Alcohol and Other Drugs Services, Bendigo Community Health Services

Ms Raelene Stephens - Manager Social & Emotional Wellbeing Program, Mallee District Aboriginal Services

Ms Jenny Strauss - Regional Assessor, ACSO

Magistrate Stella Stuthridge - Melbourne Magistrates Court

Mr Peter Treloar - Emotional Wellbeing Nurse, Ballarat and District Aboriginal Co-operative