



MENTAL HEALTH LAW CENTRE (WA) Inc.
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Our Ref: NCW 1093

25 September 2014

Private and Confidential

Education and Health Standing Committee
Legislative Assembly Committee Office
Level 1
11 Harvest Terrace
WEST PERTH WA 6005

(by email: laehsc@parliament.wa.gov.au)

Dear Sir/Madam

SUBMISSIONS FOR INQUIRY INTO MENTAL ILLNESS IN FLY-IN FLY-OUT WORKERS

Submission Overview

In this submission, the Mental Health Law Centre (the Centre) identifies some factors that could lead to a less than ideal response/outcome to/from the mental health needs of FIFO workers, which in turn might lead to exacerbation of the signs and symptoms of their mental illness and/or increase the risk of suicide.

The Centre proposes that there be more stringent employer obligations and OHS regulations; and education of FIFO workers and their families about mental health needs/mental illness responses needs to be implemented.

FIFO workers and their families need to be aware of their work rights and their employer obligations, and that they are afforded appropriate medical attention for any mental illness.

This submission includes measures that could be implemented to help make a decision between public and private health care, and ensure the safety and care of FIFO workers when and if they enter the mental health system as involuntary patients.

We note that there is an increasing body of law about businesses having an obligation to ensure the health and safety of their workforce, including the mental health of their workforce. There is also increasing understanding about the link between productivity and proper mental health care in the workplace. Recent commentary suggests that businesses can save \$2.30 for every \$1 they spend on mental health strategies.

Work Rights

Under an employer's *duty of care* the employer should provide ongoing mental health services for FIFO employees.

Employees of the mining industry may not have a diagnosed mental illness prior to their employment with a company but due to the stressors of the FIFO environment, FIFO workers may develop a mental illness in an environment that provides no support. This is not uncommonly depression, which may in turn be associated with suicidal ideation.

Depression may be coped with by self-medication of alcohol and/or drugs. Although the employees may be drug tested on a random basis, alcohol does/may not show up. It appears that there may not be free on-site counselling services available by telephone or in-person. Counselling services are made available for private enterprise and government organisations. Why not for FIFO workers employed by large mining companies and sub-contractors? The stigma of attending such counselling could be overcome by requiring every FIFO worker to attend a counselling session as a set and ongoing routine as part of their employment conditions.

Anecdotal evidence has been given to us that fair and reasonable work conditions in relation to wellbeing and mental health are less likely to be part of sub-contractors' contracts. So even, if say for example, a high profile mining company has exemplary mental health wellbeing conditions, their FIFO subcontractors may not, and for which the lead company may not take responsibility.

All employment contracts should identify where grants of personal leave for emergency family situations should and must be made. Such contracts should also identify the sources of legal advice available to workers and their families about their rights relating to mental health legislation, for example referral, transport, examination, treatment without consent and detention under the *Mental Health Act 1996 (WA)*.

FIFO workers have families who sometimes need them, in a hurry.

FIFO workers and their families need to have work rights protection that are transferrable to/embedded in sub-contract conditions.

FIFO workers and their families need to be aware of the rights they have as part of their employment contract, specifically in relation to family emergencies or when personal/family grievances arise.

Duty of Care

Policies should be made that clearly identify who is responsible for implementing measures to minimise mental health risks and ensure appropriate care is taken. Particular people must have particular obligations.

While the government is responsible for the standard of care delivered by mental health service providers and authorised psychiatric hospitals, employers have/should have workplace obligations to mitigate mental health risks for employees while at the work site and the families left without their FIFO worker at home.

Mental Health Care

Greater care and attention needs to be given to FIFO workers when leaving work sites to receive mental health treatment.

A clear understanding of the rights and obligations of all parties in the mental health system is a necessary first step to ensuring that the worker is referred to appropriate care with family and carers engaged effectively in their treatment and recovery. A poor understanding of the mental health system and the rights and responsibilities of all parties will lead to poor "navigation" through the mental health system and lead to less effective outcomes, to the detriment of the worker, their family and the employer. At the least:

- workers families must be notified that the worker is leaving the site for mental health treatment;
- the worker **MUST** always be accompanied by someone responsible for their safe travel until they reach their destination;
- the worker's current choice of treating practitioner must be consulted before travel is undertaken (this will be required under the new Mental Health Bill 2013 in any event);
- the worker must be given specialist legal advice about her/his rights if civil involuntary care is being contemplated and/or if the worker has been charged with an offence committed while unwell; and
- Companies including FIFO workers should be required to have education about rights and obligations under OHS and MH legislation in relation to work place wellbeing and safety, in the context of mental illness.

Aaron Prisgrove

FIFO worker, Aaron Prisgrove committed suicide at Graylands Hospital after being flown from Tom Price Hospital in the Pilbara to Royal Perth General Hospital, Perth and then to Graylands Psychiatric Hospital.

The day after his RPH admission, Aaron was assessed by RPH psychiatrist, Dr Allet whose opinion was that Aaron had experienced a depressive episode in the context of alcohol misuse.

Whether or not alcohol or drugs have been used lawfully or unlawfully leading up to a mental illness episode should NEVER be used as reason for a less than perfect emergency response to a mental illness episode or the needs generated by the illness.

Aaron's family were not notified of his admission into hospital for two days. Aaron was transferred to Graylands Hospital following 2 suicide attempts while at RPH.

On admission to Graylands Hospital, Aaron was not assessed by a psychiatrist, but by a triage nurse, who assessed Aaron as high risk. Aaron was placed on 15 minute observations, given a physical check and property search, during which time items considered to be a risk to him were removed. However, Aaron's bag was left with him while he waited for assessment by Dr Rosell, the admitting duty doctor. Aaron was permitted to lie down alone in his room on the ward while waiting for Dr Rosell. Aaron then hung himself using the travelling bag that had been left with him in his room.

The circumstances of Aaron's death raise many issues, for example:

- why did not the nurse on 15 minute observations of Aaron, presumably to assess risk, actually enter Aaron's room to speak to him each 15 minutes?;
- Immediate family members should be notified if a worker is taken into hospital;
- The lives of mental health patients with suicidal ideation who are transferred to an 'authorised hospital' under the *Mental Health Act (WA) 1996* may not necessarily be safeguarded; and
- At high risk of suicide mental health patients should be immediately assessed by a suitably qualified psychiatrist on receipt at hospital and should be on 24 hour one to one (special) monitoring.

In relation to Aaron's death, the Coroner found that,

I have found that the quality of supervision, treatment and care of the deceased by staff at Graylands was reasonable in the circumstances, one of those circumstances was the unsuitability of the Smith Ward for the purpose for which it was being used" at Ref 54/12, page 25.

Aaron may have been suitable for transfer to a private hospital such as the Perth Clinic of the Marion Centre, if he had private insurance. Aaron could have been transferred to psychiatric care in Melbourne where he would have had family engaged in the oversight of his care and treatment. It

appears that his family were not given this option and they should have been.

We also note that in the private mental health system, the qualifications of a psychiatrist will be recognised by the Australian and New Zealand College of Psychiatrists and the private psychiatrist will be a fellow of that college. Under the Mental Health Act the definition of psychiatrist has been made very wide and includes certain doctors who are not members of the College and cannot be, and may not even hold a psychiatric qualification able to be recognised in Australia. This appears to not be well understood even by the mental health service: see *RD v MHRB* [2013] WASAT 80.

We understand that there are also significant job vacancies in public psychiatric facilities. Thus the standard of psychiatry in WA public hospitals may be less than ideal. In fact, we understand that the Kalgoorlie public hospital psychiatrists have been/may still be being provided on a FIFO basis. We understand that there are a number of mental health nursing vacancies in the public system and we are also unaware of how many nurses employed in public psychiatric hospitals have general nursing qualifications and what mental health nursing qualifications are acceptable in private versus public psychiatric hospitals. Professor Stokes findings cited below also found that,

For some [carers] an unhesitating opinion was that the system, by virtue of not providing adequate, timely and preventive care, was a major contributing factor to a patient's suicide: page 3 Executive Summary.

The inquiry may wish to review the preferred destination of FIFO workers requiring mental health treatment, especially those with suicidal ideation.

A duty of care was owed to Aaron and this should not have/did not stop once he left the Tom Price work site.

The Centre is aware of at least one matter in which inadequate care and supervision was taken for the FIFO worker when they were being sent from work to receive mental health treatment in Perth, resulted in severe consequences for the patient.

Education

Companies employing FIFO workers should fund a comprehensive education program for FIFO stakeholders about MH rights/obligations, including for HR/OHS staff, help lines, unions, all sub-contractors.

Legal Representation

As referred and/or involuntary patients under the *Mental Health Act 1996* (WA) (the Act), FIFO workers and their families should be made aware very early on that they are entitled to free expert legal advice from the MHLC.

Early legal triage is particularly important to foster best practice under the Act, especially having regard to the findings of the Coroner about the deaths of 10 Graylands patients and the findings of Professor Stokes in his, "Review of the admission or referral to and the discharge and transfer practices of public mental health facilities/services in Western Australia" published in July 2012.

Professor Stokes found *inter alia*

- *The governance of public mental health facilities in WA is fragmented, variable in type and methods of service delivery, and that there is no robust uniform clinical accountability across the system*(page 6 Executive Summary); and
- *Despite the training of non-psychiatrist mental health clinicians, in the opinion of the Reviewer, this increases the level of risk for the patient, especially when presenting of with a risk of self harm: (page 6 Executive Summary).*

The Centre, including a confidential case study, would appreciate the opportunity to make oral submissions to the Education and Health Standing Committee, as part of this important inquiry.

We look forward to your response and wish you well in your inquiries.

Yours faithfully
Mental Health Law Centre



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Enc: list enclosures