



A response to

**Review of the *Mental Health Act 1986*
*Consultation paper – December 2008***

**Prepared by the
EATING DISORDERS FOUNDATION OF VICTORIA
(Eating Disorders Victoria)**

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Introduction

The Eating Disorders Foundation of Victoria (Eating Disorders Victoria) welcomes the Victorian Government's decision to review the Mental Health Act 1986 as timely and appropriate. Eating Disorders Victoria has sent participants to consumer and carer forums organised by the Department of Human Services with regard to the review process, and has taken into account feedback from its own service users in formulating this response.

Eating Disorders Victoria is a non-government organisation and DHS funded agency, and represents the voices of carers and consumers with eating disorders throughout Victoria. Eating Disorders Victoria is the Victorian's government's prime communicator with the eating disorder consumer and carer, and has a history of advocating strongly on their behalf for the evaluation, recognition of and improvement to consumer and carer experiences. Eating Disorders Victoria supports and promotes consumers' active involvement in their own treatment and recovery. We believe that this submission reflects the views of consumers and carers who have lived through, or are still living with, the experience of coping with an eating disorder in Victoria.

We trust that the Victorian Government will find value in the points made and the issues raised.

Background Information about the Eating Disorders Foundation of Victoria

Eating Disorders Victoria is the primary source of support, information, community education and advocacy for people with eating disorders, and their families, in Victoria. Our vision is to connect all Victorians whose lives are affected by eating disorders with the people, services and hope they need for recovery.

We are unique in Victoria in providing a comprehensive support and information service on all aspects of eating disorders. We are also unique in our provision of non-clinical help through a blend of qualified professionals and lived experience. Through our helplines, website, support groups, schools program and community education we have a direct impact on the mental health and wellbeing of thousands of Victorians every year.

Our core services and activities include:

- Telephone and email helplines, 9-5, five days per week – we provide the only specialised eating disorders helpline for consumers and carers in Victoria.
- Facilitated support groups – metropolitan and regional – providing a confidential and safe environment for recovery and learning through shared experience.
- Internet ChatRoom and MessageBoards - fully moderated for safety – reaching out to those who are isolated, or who require full anonymity.
- Specialist staff providing training and outreach to schools, fitness professionals, welfare workers, community workers.
- Specialist lending library of books and DVDs on eating disorders, self-esteem, self-help and related areas.
- Helpfinder database of health professionals and treatment facilities.
- Information service – free leaflets, booklets, highly rated website.
- Community education program - creating awareness in the community.

Some key statistics for Eating Disorders Victoria for the 12 months ending Jun 2008:	
Number of Help users (telephone, email, face to face):	3,569
Number Chat Room users:	469
Number of people attending support groups:	637
Number of individual face-to-face support sessions run:	261
Number of education event attendees:	2,244
Number of Message Board posts:	4,324
Number of website hits:	1.1 million
Number of information mailouts:	2,131

General principles contained within the Act

Within this consultation it should be recognised that there is the need for a continuous process of review and improvement for the Act to ensure that it remains relevant to the needs and rights of patients and carers at all times. Eating Disorders Victoria recommends that the Act should be reviewed and amendments incorporated every two years to ensure this is achieved.

This Act needs to go further than being 'responsive to the needs of families and carers'. It needs to recognise the key importance of families and carers in the recovery and/or management of people with mental illness.

Throughout the consultation paper there is reference to the provision of information, particularly information for carers. Consideration needs to be given as to the definition of the term 'information' in each case, as it is a wide-ranging term and subject to differing interpretation.

A definition of the information that should be provided, as a minimum, to patients and carers is important.

In a similar vein, the term 'best interest' is used at various points in the consultation paper. Consideration needs to be given as to the definition of this term. In addition to clinicians, carers and family members should be consulted when defining this term.

It should be noted that 'Consultation' with carers is very different to 'provision of information' to carers. A fundamental principle should be that carers are not just informed, but also consulted.

Eating Disorders Victoria strongly supports the suggested new principles and functions made on p28 of the consultation paper.

In addition to the stated principles, the Act should include recognition that the carer is at least of equal importance with the clinician in the long-term care and recovery of the patient.

Involuntary Orders

How should mental illness be defined in the new Act?

Eating Disorders Victoria suggests:

‘A medical condition that is characterised by significant disturbance of thought, mood, perception, orientation, or decision-making ability, and by an apparent inability to recognise that the individual’s own health and/or safety is at risk.’

Separating Involuntary Orders into Stages

Before supporting the division into three stages, Eating Disorders Victoria would require further evidence that the three-stage process has been demonstrated to be more effective than the current process in providing clarity over whether a person meets the grounds for involuntary treatment. We would also require further information about how the assessment would be carried out, and the environment in which it would be conducted.

If supported, grounds for an Assessment Order could include the person demonstrating behaviours, either in mood, action or orientation, which suggest that they may be experiencing an episode of mental illness. A suggested duration of an assessment prior to diagnosis for eating disorders would be 5-10 days.

Capacity to consent

Eating Disorders Victoria is supportive of the definition of ‘inability to consent’ rather than ‘capacity to consent’.

Inability to consent could be defined as:

‘When a person’s ability to make decisions regarding treatment is impaired to such an extent that they demonstrate an inability to accept treatment which will:

- ensure their own safety and/or prevent serious harm to themselves;
- alleviate or prevent the symptoms or effects of the disorder;
- prevent behaviours that are a potential risk to the safety of another member of the public.’

Deciding whether a person’s ability to make decisions regarding treatment is impaired would be a clearer test to apply than deciding whether a person has capacity.

Grounds for an involuntary order

The grounds for an involuntary order should include a likelihood of ‘imminent harm to self or others’, or ‘serious mental or physical deterioration’.

‘Imminent harm’ would need to be further defined. Seriousness and imminence of harm are often based solely on the perception of the treating practitioner. The perception and knowledge of carers, particularly family members and friends of the person need to be taken into account when defining seriousness of illness and imminence of harm for a person with a mental illness.

Eating Disorders Victoria believes that the grounds should be based on the above listed factors (inability to consent and likelihood of imminent harm to self or others) rather than on the availability of treatment or need for immediate treatment.

Consent to treatment

The Act should provide for an involuntary patient to retain as many options as possible, by providing them with the opportunity to consent to a wide range of treatments while on an involuntary order.

Safeguards

The Act should provide for the patient, carer or nominated person to obtain a secondary, multidisciplinary opinion if treatment is to continue beyond two months. A secondary psychiatric opinion alone does not go far enough.

A secondary opinion scheme, similar to the one applied in Scotland, would assist in safeguarding the patient, ensuring they continue to receive appropriate treatment. This would be especially relevant if the Mental Health Board does not currently require a compulsory audit of treatment being provided to these patients.

Eating Disorders Victoria supports the concept of a multidisciplinary secondary opinion scheme. The concept of an independent multidisciplinary commission which provides secondary opinion has the potential to alleviate concerns of patients and families who often seek more than one practitioner's opinion on treatment methodology.

The following safeguards could also be considered:

- Requiring the treating clinician to establish a time frame for treatment at the start of treatment, which can be reviewed at each clinical review;
- Requiring reasons for continuing treatment to be clearly recorded until discharge from treatment centre;
- Treatment time frames and reasons for ongoing treatment to be communicated clearly both to the patient and family/partner.

Best interest

The Act should require that any proposed treatment is in the patient's best interests. However the term 'best interest' needs to be clearly defined. In addition to clinicians, carers and family members should be consulted in defining this term.

Consent for Children and Young People

The Act should make specific provision for issues relating to children and young people.

Where the young person cannot consent due to their level of maturity, consent to treatment by the carer/parent or guardian should be permitted. The determining factor as to whether a person requires treatment for a mental illness should not rest with their age, but with their ability to make the decision in their own 'best interest'.

The Act should require the same safeguards that apply to involuntary patients to apply to children and adolescents who are receiving treatment under parental/guardian or carer consent.

Patient participation in treatment and care

Better informing patients of their rights

A severely mentally ill person is frequently not in a position to make an informed decision on their own behalf or understand their rights.

The Act should provide for every patient – voluntary and involuntary – to be given a statement and explanation of their rights.

The Act should require that the Statement of Rights be given again at a later stage (3-14 days) after admission or after treatment has commenced, to increase the likelihood of understanding by the patient.

Independent Support Person

The Act should provide for rights and advice to be explained through the means of an independent support person.

For involuntary patients, the Act should require the appointment of an independent support person with understanding of the clinical situation but not involved in their care, to represent the patient's rights in the event that they are unable to do this for themselves.

Informing a patient's family, carer or nominated person of a patient's rights

The Act should require that a Statement and Explanation of Rights also be provided to a member of the patient's family or carer or other nominated person.

Improving information for carers while respecting patient privacy

It is unreasonable to expect a carer to fulfil their role and duty of ongoing care without pertinent information regarding the treatment and care of the patient. Disclosure of pertinent information is vital and necessary in order to help the carer develop the insight and understanding to provide optimum support to the patient.

However the patient has the right to privacy regarding details of the therapeutic relationship that do not impact directly on the treatment plan or care.

Eating Disorders Victoria suggests that pertinent information would need to be carefully defined, and that this would be 'information relating to the treatment and care of the patient'.

It should be noted that there is a difference between consultation with the carer and disclosure of information to the carer.

The Act should require clinicians to disclose pertinent information to, *and consult with* the family or nominated carer or support person unless it is not in the best interests of the patient (ie prejudicial to the welfare of the individual) or is not practicable.

Nominated Person Scheme

The Act should allow for a nominated person scheme.

Eating Disorders Victoria strongly supports the adoption of a nominated person scheme, whereby a member of the patient's family, carer, or other person is nominated to receive information about their treatment and care. The patient should be allowed to decide who is their nominated person, except where there is a reasonable belief that this may put the person or others at risk of harm.

However, there would need to be defined a mechanism for family members or carers to contest the nomination, in the event that there is a belief of harm as described above.

Creating an advance statements scheme

The Act should provide for Advance statements.

Eating Disorder Victoria strongly supports the use of advance statements as described in the review; however this is a complex issue and will require considerable further definition.

Eating Disorders Foundation of Victoria **Mission, Values and Vision**

Mission

Eating Disorders Victoria is the primary source of support, information, community education and advocacy for people with eating disorders and their families in Victoria.

We connect those whose lives are affected by eating disorders with the people, services and hope they need for recovery.

Our Values

Eating Disorders Victoria has adopted the following values in all its relationships:

- Respect
- Acceptance
- Understanding
- Empathy, and
- Hope

Our Vision

We envisage a future where the incidence, duration and impacts of all eating disorders are reduced and ultimately eradicated.

This is a future where:-

- Our culture supports and promotes people engaging in healthy lifestyles without dieting;
- Diversity of size, shape and body image is celebrated among men and women;
- People live in a society which values, protects and enhances their self-esteem at all ages;
- The causes, prevention and treatment of eating disorders are well researched, better understood, and the resulting knowledge is available;
- Eating disorders are recognised in all levels of the community as serious illnesses which require professional treatment and early intervention;
- GPs, community health workers, fitness professionals and school staff are able to recognise the early warning signs of an eating disorder and are equipped to intervene or refer as appropriate;
- People with eating disorders can access age-appropriate, publicly funded, evidence-based treatment at the earliest possible time;
- There is consistent clinical service provision across Victoria, with equitable access throughout metropolitan and rural areas;
- Non-clinical support is available for all people with eating disorders and their carers, for as long as and wherever they need it; and
- People experiencing eating disorders and their carers are treated with respect, acceptance, understanding, empathy and hope throughout treatment and recovery.