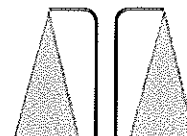


Our Ref: QM:PSOs.sep.11

Reply to: Head Office

Your Ref:



Peninsula Community  
Legal Centre Inc

5 October 2011

The Hon. Terry Mulder MP  
Minister for Public Transport and Roads  
Member for Polwarth  
Level 16, 121 Exhibition Street  
MELBOURNE VIC 3000

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We gratefully acknowledge  
the financial assistance of:

- Commonwealth Attorney-General's Department
- Department of Justice (Vic)
- Consumer Affairs Victoria
- Victoria Legal Aid
- City of Casey
- City of Glen Eira
- City of Kingston
- Frankston City Council
- Mornington Peninsula Shire

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Community  
since 1977



Dear Minister,

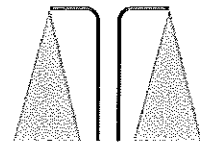
**RE: Protective Services Officers**

Peninsula Community Legal Centre (PCLC) is a not-for-profit organisation that has been providing free legal services to its community for over 30 years, with a mission "To empower and support disadvantaged community members of the South East and Westernport Region to use the law and legal system to protect and advance their rights and broaden their awareness of their rights and responsibilities."

PCLC's staff and volunteers provide clients with free and accessible legal services, particularly the most disadvantaged and marginalised members of our community who may otherwise be unable to access legal assistance. PCLC's client's life circumstances can be severely affected by their legal problems and they are often not able to access other legal services. Being able to obtain free legal assistance can often help our clients move on with their lives and become active participants in their local communities.

PCLC endorses the comments in the Federation of Community Legal Centres letter dated 17 August 2011 (copy attached) and reiterates concerns over the Government's *Justice Legislation Amendment (Protective Services Officers) Act 2011* ('the legislation'). Primarily PCLC shares concerns that much of the amended legislation, particularly the amendments to the *Mental Health Act 1986*, is reliant on subjective reactions by protective services officers ('PSOs') rather than any actual threat to individuals or property. PCLC considers that it is possible under this legislation for a person whose appearance causes fear, due to prejudices held within the community, to fall foul of this legislation and be liable to apprehension.

PCLC believes this legislation is likely to have a disproportionate effect on young people, CALD communities, the homeless, those with mental health disorders and members of minority and other visible groups. Young people and the homeless often have decreased access to private space for social, financial and legal reasons. As a result, public spaces, such as railway stations, are of great importance to these groups. PCLC is concerned that individuals, already socially alienated, would be the likely targets of PSO powers which may serve to reinforce their disengagement with society. It is the belief of PCLC that an unintended consequence of the legislation may be the targeting of certain demographics and creation of the erroneous impression that these members of our community are the perpetrators of crime, violence and anti-social behaviour.



Peninsula Community  
Legal Centre Inc

Whilst PCLC is cognisant of the Government's commitment to address both crime and perceptions of crime on the railway network, and the community's right to be and feel safe while utilising public transport, PCLC believes that many of the amendments, particularly those concerning mental health, involve measures which cannot and will not achieve the Government's aims. A person with a mental illness can be apprehended by police in accordance with powers vested pursuant to section 10 of the *Mental Health Act 1986*, without being found committing any crime. PCLC contends that these powers were never intended to address crime and violence, but were about enabling access to mental health assessment and other services at the time of immediate need for the person concerned. Enabling this power for PSOs promotes the idea that mentally unwell people are the cause of crimes and the perceptions of crimes committed on the rail network.

The June 2010 report of the Victorian Auditor-General entitled, 'Personal Safety and Security on the Metropolitan Train System', found that only 17% of crimes committed on the rail network were crimes against the person and that over 60% of crimes were property related. The Auditor-General recommended a sound evidence base as the requirement for the introduction of measures to reduce crime and the associated public perception of crime. PCLC does not believe that the enacted legislative amendments appropriately reflect the Auditor-General's recommendations.

PCLC considers that a mandate to reduce crime and increase safety on trains is better addressed by laws which do not disproportionately target vulnerable groups in the community. PCLC strongly urges the Victorian Government to seek further consultation in relation to the introduction of this legislation and to reconsider the introduction of PSOs, including the powers that have been vested in them and the training that they will be provided.

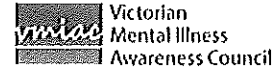
Yours faithfully,

HELEN CONSTAS  
CHIEF EXECUTIVE OFFICER  
PENINSULA COMMUNITY LEGAL CENTRE INC.

cc: The Hon Peter Ryan MP, Minister for Police and Emergency Services  
cc: The Hon Mary Wooldridge MP, Minister for Mental Health, Women's Affairs and Community Services  
cc: The Hon Robert Clark MP, Attorney General



Psychiatric Disability Services  
of Victoria (MCSERV)



The Hon. Mary Wooldridge MP  
Minister for Mental Health, Women's Affairs  
and Community Services  
Level 22, 50 Lonsdale Street  
MELBOURNE 3000

17 August 2011

Dear Minister,

**Re: Protective Services Officers - proposed amendments to the Mental Health Act**

We are writing as key organisations who work with and for people with psychiatric disability in Victoria, to express our grave concerns over the Government's proposed amendments to section 10 of the *Mental Health Act 1986* (MHA), at clauses 37 and 38 of the *Justice Legislation Amendment (Protective Services Officers) Bill 2011* (the Bill). We do not support protective services officers (PSOs) on the rail network or any other designated public place being given the power to apprehend a person who appears to be mentally ill and at risk of suicide or causing serious bodily harm, and to use reasonable force in order to do so. These amendments wrongly label people with psychiatric disability as perpetrators of crime, violence and anti-social behaviour and it is our strong view that extending section 10 powers beyond police will have serious deleterious consequences for the community at large.

**Incompatible with a mandate to address crime and violence**

The Government maintains it has a mandate to address actual and perceived violence and crime on Melbourne's rail network. Whilst we agree that the community has a right to be and to feel safe on public transport, we are concerned that the mental health amendments are a poorly conceived measure which will not achieve this aim. Police have broad powers of arrest for the general public, but a person with a mental illness can be apprehended by force under section 10 without being found committing any crime. Section 10 powers are less about addressing crime and violence than they are about facilitating timely access to mental health assessment, support and services for a person in acute crisis.

**Contrary to the purpose of Section 10 and objectives of the Mental Health Act**

It is crucial that the significant powers under section 10 are strictly circumscribed, and are consistent with and promote a therapeutic framework. As the Minister for Mental Health you will be aware of the objects of the MHA which state, at s4(2)(b) that in providing for "the protection of members of the public any restriction upon the liberty of patients and other people with a mental disorder and any interference with their rights, privacy, dignity and self-respect are kept to the minimum necessary in the circumstances". Indeed, when the MHA was first introduced in 1986 parliament debated whether police should have *any* role in mental health specific laws. Amendments were made to limit police powers under section 10 in response to concerns that such powers would be wider than those for the general public.

The Bill assumes that the community needs to be better protected from people with mental illness who are at risk of suicide or harm, and this can only be achieved through giving significant powers to other armed officers with arguably less training and support than police. We do not believe the Government has sufficient compelling evidence to justify a need to extend the exercise of these powers, consistent with the objectives of the MHA.

### **Misleading messages about mental illness, violence and risk of harm**

The Bill's second reading speech implies that all people with mental illness are violent and engage in criminal behaviour when, in fact, the evidence indicates otherwise.

The Department of Health's own fact sheet, 'Mental illness and violence' (Better Mental Health Channel) refers to research that shows that people with psychiatric disability who are receiving treatment are no more likely to be violent or dangerous than the general public. Whilst there is a link between violence and particular mental illnesses such as schizophrenia, studies indicate that, of the 1 in 100 people who have schizophrenia, only 0.1% are sometimes violent. Research indicates that under 10% of all violent offences are attributable to people with schizophrenia. By comparison, a significantly greater prevalence of violence exists in males aged 18-30 years old, and people who have substance abuse. Evidence shows that people with mental illness are in fact at far greater risk of being a victim of violence than they are of being a perpetrator.

### **Lack of evidence-based approach to addressing crime and public safety**

The Victorian Auditor-General's June 2010 report 'Personal Safety and Security on the Metropolitan Train System' (Auditor-General's Report) emphasises that measures to reduce crime and the public perception of crime and safety, must have a sound evidence base. It found that over 60% of crimes committed on the rail network were property-related offences, whereas less than a fifth (17%) were crimes against the person such as assault or robbery.

The second reading speech asserts that the various amendments are "limited to ensure a proportionate response to the types of incidents that have occurred on the [rail] network". The section 10 amendments however are clearly at odds with this assertion, given the findings of the Auditor-General's Report. Couching them in terms of "crime", "violence" and "unacceptable risk to the community", in our view, ultimately does more to fuel prejudice and discrimination against people with mental illness and undermine public perceptions of safety than it does to improve them. A mandate to reduce crime and increase safety on trains is better addressed by laws which do not disproportionately target vulnerable groups in the community.

### **Escalation of incidents and risk of more adverse outcomes**

In our experience, the involvement of, in particular, armed law enforcement personnel does more to increase distress and anxiety of the person in mental health crisis and inflame the situation, than to de-escalate it. Being apprehended by force when one has not committed a crime is, itself, humiliating and degrading and research confirms that people with mental illness are more likely than the general public to suffer adverse, even fatal, outcomes in their encounters with police through the use of force. Victoria Police has acknowledged the need for improved mental health specific training and support for police in dealing with people with mental health issues. We are concerned that extending section 10 powers to officers who do not have the same training, supervision and support as police, will only increase the risk of harmful, deleterious outcomes.

It is our view that, as a result of these amendments, people with psychiatric disability are likely to have a very real fear of their symptoms or side effects of medication being inappropriately misconstrued by poorly-trained officers and by members of the public. Clearly this is contrary to the Government's obligations under the United Nations Convention on the Rights of Persons with Disabilities to enable the full and effective participation of people with psychiatric disability in the community.

### **Lack of consultation**

It appears that neither the Mental Health Branch nor the Department of Health, nor the Office of the Chief Psychiatrist have been consulted in the development of these amendments. This only reinforces our concern that the ultimate effect of the Bill is to criminalise and stigmatise people in acute psychiatric crisis, which is counter-therapeutic to their mental health.

### **Effect in practice poses greater risk of harm**

We are further concerned that little thought has been given to the exercise of section 10 powers by PSOs and their effect in practice. We are concerned for example about where exactly PSOs would 'hold' a person at a train station once apprehended but before the arrival of a member of the police, or a mental health professional. It is unclear for how long a person could be so detained and, as the Bill does not propose PSOs have the same powers as police to transport a person to hospital or elsewhere to ensure expeditious assessment by a mental health practitioner, the likely result will be exacerbation of the person's distress and anxiety and arguably escalation of the incident. We are concerned that a person might be handcuffed and subjected to restraint, use of capsicum spray and other humiliating and degrading treatment in full view of the public. Similarly, we are concerned about the lack of amenities which would be accessible to someone who has been apprehended by PSOs.

These issues spark serious concerns about the risks of people being subjected to cruel, inhuman and degrading treatment, arbitrary interference with their right to privacy and bodily integrity, deprivation of liberty and freedom of movement through the use and interpretation of these powers. They reinforce our view that such amendments are unjustified and must therefore be withdrawn.

### **Focus should be training, supervision, support & accountability of police**

If the Government can in fact point to compelling evidence that police are currently unable to adequately meet the needs of the community under section 10, then this must be addressed directly through a commitment to improved training, supervision, support and accountability of members of the police force and other therapeutic measures. Powers to apprehend a person, particularly through using force, should only ever be used as a last resort and any restrictions on the person's rights must be reasonable, justified and proportionate to the perceived risk. We stress that any measures taken must promote the dignity and respect of the person with psychiatric disability, consistently with the Government's responsibilities under the Victorian Charter of Human Rights and Responsibilities.

### **Section 10 powers should not extend beyond members of the police force**

In around 25 years of the operation of the MHA, the section 10 powers have only ever been vested in members of the police force. There are very good reasons why they should continue to be so limited and, as outlined above, we see no evidence to justify extending the exercise of such significant powers beyond qualified police officers. To do so, in our view, is neither compatible with the Government's mandate, nor is it proportionate in light of the objectives of the MHA. Further, it will result in increased adverse outcomes for people with psychiatric disability, well as the broader community.

We therefore urge the Government in the strongest of terms, to remove the mental health amendments (clauses 37-38) from the Bill and call for the Minister's support, consistent with promoting the rights of people with psychiatric disability. We advise that we will be urging the broader community to support our campaign. We welcome the opportunity to meet with you to discuss our

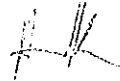
concerns and, further, to be consulted on the development of any further legislation or amendments affecting people with mental illness.

We look forward to your response at your earliest convenience. Please contact Catherine Leslie at the Mental Health Legal Centre on 9629 4422 or [Catherine.leslie@mhlc.org.au](mailto:Catherine.leslie@mhlc.org.au)

Yours faithfully,



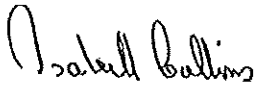
Barbara McLure  
Statutory Manager  
Mental Health Legal Centre



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Flick Grey  
Resource Coordinator  
Our Consumer Place



Isabell Collins  
Director  
Victorian Mental Illness  
Awareness Council



Kim Koop  
CEO  
Vicserv

cc Peter Ryan MP, Minister for Police and Emergency Services  
cc Andrea Coote MP, Parliamentary Secretary for Families and Community Services  
cc Nick Wakeling MP, Parliamentary Secretary for Health