

## *Submission to the review of The Mental Health Act 1986*

It is submitted that better legislation than Section 9 of The Mental Health Act 1986 would provide a firm framework to guide decisions concerning the modes of transport for examination of persons subject to Section 9 Recommendations. Including a requirement that requests by medical practitioners for police involvement be counter-signed by experienced medical professionals, such a legal framework could ensure transportation by the least undignified method circumstances permit. Section 9 of The Act details police powers relevant to transportation but specifies criteria for assessing whether a person should be subject to an involuntary treatment order without providing criteria for whether the police should be involved in that person's transport for examination.

The consultation paper passes over a major issue in nine words when discussing 'Transport for examination', stating 'A police vehicle is an option of last resort'. Part Four of the *Protocol between Victoria Police and the Department of Human Services Mental Health Branch (2004)* which concerns transportation to hospital of individuals subject to a Recommendation under Section 9 of The Mental Health Act 1986 but yet to be examined for confirmation of admission as an involuntary patient (Section 12) is quite specific. The *Protocol* lists the methods of transportation preferable to a police vehicle from 'transport provided by family or friends' to 'ambulance transport with police assistance'. Lastly it states, 'If transport in a police vehicle is necessary then a police sedan should be used, except where there is an unacceptable risk of aggressive or violent behaviour. Where physical containment is required *and the person has not been sedated*, transport in a divisional van may be necessary'. The Department of Human Services has no statistics on methods of transportation,<sup>1</sup> however, I would contend that currently CAT teams sometimes involve police prematurely merely to expedite non-threatening situations partly through thinking pressure of work justifies this. Once involved, police do tend to see their role as expediting things and consequently too many Victorians arrive for examination at a psychiatric facility in that divisional van of 'last resort'.

Though necessary where violence is an issue or where the person to be transported is believed to be using drugs with which sudden eruptions of violent behaviour are associated ('crack' cocaine, crystal methamphetamines, etc.), transportation by police vehicle is invidious in relation to many persons subject to Section 9. It's instructive to view the scenario from the perspective of the person facing Sectioning. If you have not committed a crime, transportation by divisional van in particular is likely to see you arrive at the hospital confused, bewildered and angry.<sup>2</sup> In almost all cases the doctor Recommending involuntary admission will be correct about your having a mental illness: the issue at hand is whether your illness is currently acute enough that you satisfy the five criteria for admission as an involuntary patient. Your confusion and bewilderment are enough for criteria (a) and (b) to be satisfied as they deal with 'appearing to have a mental illness' which 'requires immediate treatment'. Your anger goes a long way to fulfilling criteria (c), (d) and (e) as these deal with 'safety' and 'consent' as well as being unable to 'receive adequate treatment for the mental illness in a manner less restrictive of (your) freedom of decision and action.'

---

<sup>1</sup> 'Such statistics are uncollatable', said The Office of the Chief Psychiatrist.

<sup>2</sup> Out of respect for the force I prefer to write 'bewildered' here rather than 'frightened' but it should not be forgotten in this context that The Victoria Police are armed.

As I've stated above, there are circumstances where transportation by police vehicle is appropriate. However, transportation for examination by police vehicle actively makes it more likely that a Section 9 Recommendation will become a confirmed Involuntary Treatment Admission under Section 12 because of the adverse effects of such transportation upon the person transported. Of itself, this is hardly ideal. However, what is worse is that involuntary patients who have experienced this manner of admission tend to remain confused, bewildered and angry for some days or even several weeks. This means their time in locked ward, their time under section and the full duration of their inpatient stay are longer periods than would otherwise be the case. Patients who are confused, bewildered and angry are less quick to respond to treatment and have more trouble satisfying either their treating psychiatrist or The Mental Health Review Board that they now satisfy the criteria for being taken off section. It is better medicine (*'First, do no harm'*) and more efficient for the CAT team to spend several extra hours,<sup>3</sup> patiently working to avoid unnecessary police involvement in the admission than for the admission (because of transportation by divisional van) to end up being for twice as long a period.

The problem with the *Protocol between Victoria Police and the Department of Human Services Mental Health Branch (2004)* is that it doesn't have the force of Law, and that particularly with regard to transport for examination what it deems 'an option of last resort' seems in practice to be a rather popular resort. Section 9 of The Act authorises medical practitioners to make Recommendations for admission of a person as an involuntary patient clearly specifying the criteria which make such recommendations appropriate. Section 9 also authorises police to assist in transporting such recommended persons to hospital but in my view should clearly specify the criteria which make such police assistance appropriate. In line with the *Protocol between Victoria Police and the Department of Human Services Mental Health Branch (2004)*, new legislation should make clear that in order of preference the transportation options are:-

- (a) transport provided by family or friends
- (b) transport provided by mental health staff such as CAT services
- (c) transport by ambulance
- (d) transport by CAT service car with a police escort; or police accompanying the person and CAT service staff in a CAT service vehicle
- (e) transport by ambulance with police assistance
- (f) transport by police sedan
- (g) transport by police divisional van

Furthermore, legislation should stipulate that a CAT services request for police assistance in transportation for examination be counter-signed by a senior medical authority (the hospital's Director of Psychiatry or his or her assistant where possible). The criteria for involving the police in transportation would principally relate to 'where violence is an issue or where the person to be transported is believed to be using drugs with which sudden eruptions of violent behaviour are associated ('crack' cocaine, crystal methamphetamines, etc.).

---

<sup>3</sup> I'd have no problem with it being 'several extra hours, over possibly multiple days' but as best I understand The Act this would involve a further legislative change to the requirement that the 'Examination' (Section 12) take place within 24 hours of the 'Recommendation (Section 9). The 24 hour timeline seems a sound one to me but new legislation could provide for an exception being made where transportation was delayed.

On balance, the practical outcomes of such legislative changes might be that CAT services find operating where possible without police assistance makes transportation for examination a more time consuming part of their job, yet (through starting off with less humiliation) inpatient stays where transportation by police vehicle was avoided may well prove shorter and less hospital resources (as well as police time) would be consumed. The ethical and philosophical outcomes are no less important and this submission is one about legislative change which would make (Public) Mental Health Practices more consistent with Victoria's *Charter of Human Rights and Responsibilities*. Unwarranted transportation for examination by police vehicle is unequal before the law. Where such transportation is quite public it is degrading and injurious to your privacy and reputation. Numerous Victorians have experienced transportation for examination by police vehicle as adding insult to the injury of losing their freedom through mental illness. Where it is unnecessary, the indignity inflicted is gratuitous.

Hugh Tolhurst