



MI Fact Sheet Series

UNDERSTANDING AND MANAGING MENTAL ILLNESS

The mental health legal framework in the ACT

Mental Health (Treatment and Care) Act 1994

The Mental Health (Treatment and Care Act) 1994 is the law which governs the provision of treatment, care rehabilitation and protection for people with a mental illness. People who are mentally ill or mentally dysfunctional must be treated in a manner that is least restrictive of their human rights. The Act aims to protect the rights of people whilst ensuring that they have access to appropriate care.

Mental illness and mental dysfunction defined

The Act defines mental illness as a condition that seriously impairs (either temporarily or permanently) the mental functioning of a person and is characterised by the presence in a person of any of the following symptoms:

- Delusions
- Hallucinations
- Serious disorder of thought form
- A severe disturbance of mood
- Sustained or repeated irrational behaviour indicating the presence of the symptoms referred to above.

The Act also defines mental dysfunction and describes it as a disturbance or defect, to a substantially disabling degree, of perceptual interpretation, comprehension, reasoning, learning, judgment, memory, motivation or emotion. And as a consequence

- the person's health or safety is, or is likely to be, substantially at risk; or
- the person is or likely to do serious harm to others or him/herself.

Some important features of the Act are:

• Voluntary Admission

Many people who have a good understanding of their mental health often voluntarily admit themselves for psychiatric care and treatment if needed.

• Involuntary Detention

Some people who have a severe mental illness may lack the capacity to recognise their need for inpatient psychiatric care. In this situation, a doctor may, after examining a person, authorise the involuntary detention and care of the person at an approved mental health facility for a period not exceeding three days.

The Office of the Community Advocate must be notified of all involuntary detentions.

In order for involuntary detention to continue, the Mental Health Tribunal must be satisfied that the person is mentally dysfunctional or mentally ill.

- #### • Informed Consent
- occurs where the patient provides permission for a specific treatment to occur. For consent to be informed, the patient needs information which enables them to understand the procedure or treatment, the risks involved, the consequences of not having or agreeing to the treatment and also alternative treatments. The person must also be deemed well enough to be able to give informed consent.

• Involuntary Psychiatric Treatment Orders

are made when a person is determined to be suffering from a mental illness. In making such a determination, the Tribunal must also consider:

- whether there are reasonable grounds for believing that, by reason of the illness, the person is likely to do serious harm to him/herself or others and
- whether treatment cannot be adequately provided in a way that would involve less restriction of the freedom of choice and movement of the person.

- #### • Confidentiality
- generally means that information about a patient is not given to people outside the service agency without the patient's permission. Section 86A of the Act defines confidentiality as secrecy and a person to whom this section applies must not, directly or indirectly, divulge or communicate to a person protected information about someone else.

Protective bodies

A number of public bodies and appointed individuals protect the rights of people within the mental health system.

Mental Health Official Visitors play an important role in ensuring that the health care system maintains an appropriate standard of care of people with a mental illness or dysfunction. They do this by visiting and inspecting public mental health in-patient facilities, making inquiries as to the care and treatment of patients and investigating concerns or complaints received from patients.

The mental health legal framework in the ACT continued...

The **Office of the Community Advocate (OCA)** has a legal mandate to promote and protect the interests of people with a mental illness. The OCA may represent interest, investigate, enquire and report to the government, courts, tribunals and other relevant bodies including the Mental Health Tribunal. The OCA is informed of each meeting of the Mental Health Tribunal and has the responsibility to ensure the protection of people coming before it.

The **Mental Health Tribunal** hears applications for orders for the treatment and care of people who are suffering from a mental illness or mental dysfunction. The Tribunal may also consider applications for the release of people involuntarily detained under emergency detention and care as well as applications for the administration of electroconvulsive therapy.

The **Commissioner for Health Complaints** addresses complaints about health services, including services provided to people with a mental illness.

The **Legal Aid Commission** provides legal advice, information, assistance and representation to those people who cannot, for financial reasons, reasonably pursue or defend their legal rights and entitlements in the ACT. The Commission may represent people before the Mental Health Tribunal.

Useful references

Mental Illness Fellowship of Australia
www.mifellowshipaustralia.org.au

Mental Illness Fellowship Victoria
www.mifellowship.org

Mental Health Official Visitors
02 6205 5045

Office of the Community Advocate
02 6207 0707
www.oca.act.gov.au

Mental Health Tribunal
02 6217 4277

Commissioner for Health Complaints
www.healthcomplaints.act.gov.au/

Legal Aid Commission
1300 654 314
After Hours Urgent 0429 440 084

Canberra Schizophrenia Fellowship Inc
02 6205 1349