



MI Fact Sheet Series

UNDERSTANDING AND MANAGING MENTAL ILLNESS

The mental health legal framework in NSW

Mental Health Act (1990)

The Mental Health Act (1990) is the law that governs the treatment of people with mental illness in hospitals and the community. It aims to protect the rights of people with mental illness or mental disorder whilst ensuring that they have access to appropriate care. This care is required to place as little restriction on the rights and liberty of the patient as the circumstances permit. Some important features of this Act are:

- **Informal Admission** means the person agrees to be admitted to hospital voluntarily. The medical superintendent needs to be satisfied that the person is likely to benefit from inpatient care and treatment.
- **Formal Admission** means the person is admitted to or detained in a hospital against their wishes. The law states that if detained as a mentally ill or mentally disordered person, the person will be brought before a magistrate. The magistrate will conduct a hearing to decide whether the person needs to remain in hospital. A lawyer at the magistrate's hearing must represent the person unless she/he decides otherwise. The magistrate may order that the person remains in hospital for up to three months although orders, when made, are usually for much shorter periods.

- For formal admission to occur a person must fall within the definition of a "mentally ill person" or "mentally disordered person" as set out in the Act and must meet the following criteria:
 - the person is displaying irrational behaviour
 - the person is at risk of serious harm to self or others (includes physical harm, and harm to reputation, relationships, finances and self-neglect) and;
 - has a continuing condition, including any likely deterioration taken into account and;
 - has no other care of a less restrictive kind available.

The mental functioning of a person is determined and characterised by the presence of any one or more of the following symptoms or signs:

- Delusions
 - Hallucinations
 - Serious disorder or thought form
 - Severe disturbance of mood
 - Sustained or repeated irrational behaviour indicating that the person is having delusions or hallucinations.
- **Informed Consent** occurs where the person with a mental illness provides permission for a specific treatment to occur. For consent to be informed, the person needs information that 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.

Community Orders

Two types of orders require patients to receive treatment in the community. They are called Community Treatment Orders (CTOs) and Community Counselling Orders (CCOs). They enable temporary and continued treatment. Patients are to present at a specified time and place to receive treatment including medication and other therapy.

Confidentiality

The Health Records and Information Privacy Act 2002 generally means that information about a consumer is not given to people outside the service agency without the consumer's permission. However, the Act recognises that, as relatives and friends often play a major role in the person's ongoing care, it is important to involve and inform them in appropriate ways wherever possible. The involvement of families is specifically encouraged in the case of Aboriginal patients and particular consideration must be given to seeking advice on involving the families of non-english speaking background patients.

Protective bodies

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

The **Mental Health Review Tribunal** is a tribunal consisting of a solicitor, a psychiatrist and another suitably qualified member. It has many functions under the Mental Health Act including regularly reviewing all involuntary patients, hearing appeals and hearing applications for community treatment orders.

The mental health legal framework in NSW continued...

The **Mental Health Advocacy Service** attend magistrate's inquiries at all metropolitan hospitals and appear for patients free of charge. The service also coordinates free legal representation for patients throughout NSW.

The **Guardianship Tribunal** makes decisions in relation to the appointment of guardians and financial managers, or in relation to medical and dental consent, for persons who do not have the capacity to make their own decisions.

The **Office of the Protective Commissioner** is an independent public official legally appointed to protect and administer the financial affairs and property of people unable to make financial decisions for themselves and where there is no other person suitable or able to assist.

The **Office of the Public Guardian** exists to promote the rights and interests of people unable to administer their own interests through the practice of guardianship, advocacy and education. The Guardianship Tribunal appoints NSW Public Guardian as guardian of last resort and the Office is part of the Attorney General's Department.

Official Visitors are appointed by the Minister for Health to visit the facilities within each Area Health Service. They visit psychiatric hospitals and wards, both public and private, at least once a month and community health care agencies at least once every six months. Their role is to inspect the records and facilities of hospitals and health care agencies, make inquiries into the care, treatment and control of voluntary and involuntary patients.

Useful references

Lawaccess NSW
170 Phillip Street Sydney
02 9926 0333

Lawlink (Attorney General's Department)
www.lawlink.nsw.gov.au
Toll free 1800 684 449

Mental Health Coordinating Council
www.mhcc.org.au
02 9555 8388

NSW Association for Mental Health
www.mentalhealth.asn.au

Mental Health Review Tribunal
02 9816 5955

Mental Health Advocacy Service
02 9745 4277

Schizophrenia Fellowship of NSW Inc.
02 9879 2600
www.sfnsw.org.au

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

Mental Illness Fellowship Victoria
www.mifellowship.org