



Session 1: Overview of changes to the Act

May 2017

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Mental Health Portfolio



Understanding changes to Act's emphases

- Increased emphasis on personal recovery
- Increased emphasis on obtaining consent
- Increased emphasis on active involvement of the person's family and carers
- Requirement to consider information from a range of people
- Strengthened focus on voluntary care and treatment including a Statement of Rights

About Leanne Craze

- PhD and BSW (Hons1, UNSW) & Grad Dip Science (WSU)
- Independent mental health and social policy consultant since 1991
- Co-author, National Model Mental Health Legislation, 1994 (Cwlth Dept. Health)
- Principal author, A national Framework for recovery-oriented mental health services
- Co-evaluator, ACT Mental Health Act 2015

Acknowledgment

The illustrations used in this presentation and here listed, were painted by Pauline Miles and are used with her consent.

- The creator within
- Going jamming with my mates
- Rowing my own boat
- There are many destinations
- My team
- The kitchen table where it all happens.

Learning Outcomes

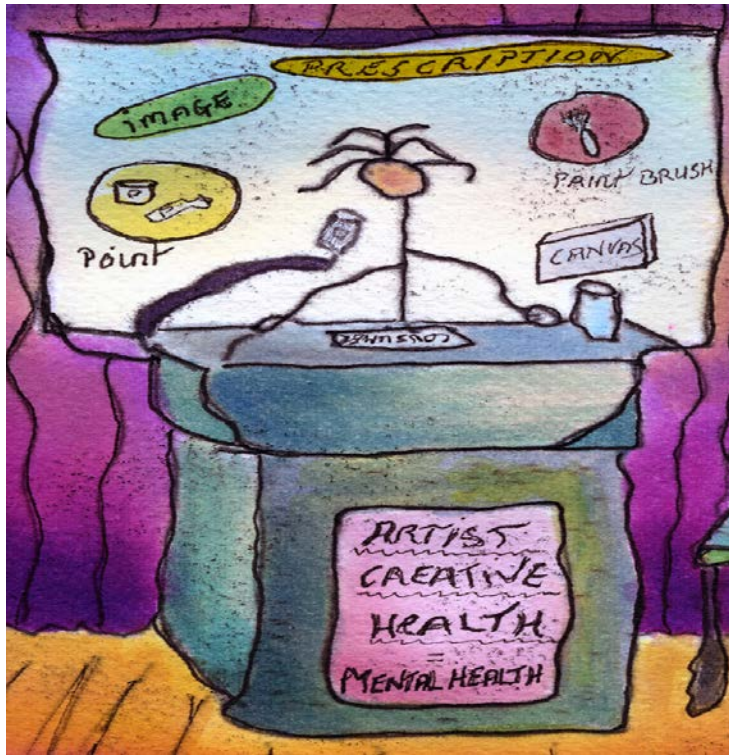
By the end of this session, learners will be able to:

- Improve your understanding of the Act's increased emphasis on supporting recovery and obtaining consent
- Improve your understanding of the increased emphasis on the active involvement of carers and families
- Improve your understanding of the strengthened emphasis on voluntary care and treatment
- Consider the implications of the Act's changes for your specific role as well as for your team

Why the changes and new emphases

- [United Nations Principles](#) for the Protection of Persons with Mental Illness and for the Improvement of Mental Health Care (1991) & [National Statement Rights & Responsibilities](#) (1991 & 2012)
- AHMAC [National Safety priorities in Mental Health](#): a national plan for reducing harm 2005
- [Convention of the Rights of Persons with Disabilities](#) 2008
- [Recovery principles](#) of the [National Mental Health Service Standards](#) 2010
- A [National Framework](#) for Recovery-oriented Mental Health Services

Increased emphasis on supporting recovery



Supporting recovery s3 Objects of the Act

2007

- a) care, treatment and control of persons who are mentally ill or mentally disordered
- (d) While protecting the civil rights, to give opportunity to access appropriate care

2015

- ‘Control’ has been removed from (a), (b) and (e)
- (a) To provide for the care and treatment of, **and to promote the recovery of persons** who are mentally ill or mentally disordered.

Supporting recovery s3 Objects of the Act

2007

- a) care, treatment and control of persons who are mentally ill or mentally disordered
- (d) While protecting the civil rights, to give opportunity to access appropriate care

2015

- d) “ ...and where **necessary to provide for treatment for their own protection or the protection of others**”

What is serious harm?

While serious harm is not defined in the Act it can be understood to potentially include:

- physical harm, including the risk of misadventure
- emotional/psychological harm & financial harm
- self-harm and suicide
- violence and aggression (incl. the person being at risk of sexual assault or abuse as well as assaulting others)
- stalking or predatory intent
- harm to reputation or relationships
- neglect of self & neglect of others (including children).

Supporting recovery s68 Principles of care and treatment

2007

- (e) people with a mental illness or mental disorder should be provided with appropriate information about treatment, alternatives and the effects of treatment

2015

- **e) and be supported to pursue their own recovery**

Supporting recovery s68 Principles of care and treatment

2007

- (g) the age-related, gender-related, religious, cultural, language and other special needs of people with mental illness or mental disorder should be recognised

2015

(g) any special needs of people with mental illness or mental disorder should be recognised, including needs related to age, gender, religion, culture, language, disability or sexuality

Supporting recovery s68 Principles of care and treatment

2007

- (g) the age-related, gender-related, religious, cultural, language and other special needs of people with mental illness or mental disorder should be recognised

2015

- **(g1) people under the age of 18 with mental illness or mental disorder should receive developmentally appropriate services**

Supporting recovery s68 Principles of care and treatment

2007

- (g) the age-related, gender-related, religious, cultural, language and other special needs of people with mental illness or mental disorder should be recognised

2015

- **(g2) the cultural and spiritual beliefs of people with mental illness or mental disorder who are Aboriginal or Torres Strait Islanders should be recognised.**

Consider the scenario of Sophie

- What do you think recovery means for Sophie?
- How did the mental health service teams promote Sophie's recovery?
- When was it necessary to provide treatment to protect Sophie or others?
- Are there any implications for Sophie's care and treatment of 'control' having been removed from the Act?
- What else might have been done to support Sophie with her recovery? What if Sophie is Aboriginal?

The requirement to obtain consent s68(h)(h1)



The requirement to obtain consent s68(h)(h1)

(h) Every effort that is reasonably practicable should be made to involve persons with mental illness or mental disorder in the development of their treatment plans and **plans for ongoing care**

Plans for ongoing care has been removed and replaced with

- (h).....recovery plans and to consider their views and **expressed wishes** in their development

The requirement to obtain consent

s68(h)(h1)

(h) Every effort that is reasonably practicable should be made to involve persons with mental illness or mental disorder in the development of their treatment plans and **plans for ongoing care**

(h1) every effort that is reasonably practicable should be made to obtain the **consent** of people with mental illness or mental disorder when developing treatment and recovery plans for their care...

The requirement to obtain consent

s68(h)(h1)

(h) Every effort that is reasonably practicable should be made to involve persons with mental illness or mental disorder in the development of their treatment plans and **plans for ongoing care**

(h1) every effort that is reasonably practicable should be made to monitor their capacity to consent and to support people who lack capacity to understand treatment plans and recovery goals

Obtaining Sophie's consent

- What do you think was preventing Sophie from consenting to the course of treatment that was thought necessary by the treating team?
- How would you go about seeking to obtain Sophie's consent to the proposed treatment plan?
- What do you think is involved in monitoring Sophie's capacity to consent?

Active involvement of family and carers



Active involvement of family and carers

2007

s68(j) The role of carers and their right to be informed should be given effect.

2015

S68 (j) The role of carers for people with mental illness or mental disorder and their rights under this Act to be kept informed, to be involved and to have information provided by them to be considered, should be given effect

The designated carer

2007 Primary carers s71

2015 Designated carer replaces primary carer

- “relative”
- “relative of a patient who is a Aboriginal or a Torres Strait Islander includes a person who is part of the extended family or kin of the person according to the indigenous kinship system of the persons culture”.

Nomination of designated carer

2007 s 72(1) nomination
of a person as the primary
carer

2015 replaced with
“a person may nominate up to
2 persons to be the designated
carers for the purposes of the
Act.

The principal care providers – a new provision

72A(1) defined

“the individual who is primarily responsible for providing support or care to the person (other than wholly or substantially on a commercial basis)”

The principal care providers – a new provision

- 72A(2) the authorised medical officer or a director of community treatment may,...., determine who is the principal care provider of the person.
- (3) but cannot determine a person is the principal care provider if that person is excluded from being given notice or information about the person under the Act (see s 72(2)).
- (4) is not required to give effect to a requirement relating to the principal care provider if they reasonably believe that “to do so may put the person or the principal care provider at risk of serious harm”.
- (5) a principal care provider of a person may also be the designated carer of the person

Requirement to consider information s72B

An authorised medical officer or other medical practitioner or accredited person who examines an involuntary patient or person for the purposes of determining whether the person is mentally ill or a mentally disordered person or whether to discharge **them is to consider any information provided by the following, if it is reasonably practicable to do so:**

- a) any designated carer, principal care provider, relative or friend
- b) any medical practitioner or other health professional who has treated the person in relation to a relevant matter
- c) any person who brought the patient or person to the mental health facility.

Duty to notify carers s73-79 (1)

Principal carer provider and designated carers to be notified of:

- A **person's detention** within 24 hours (s75)
- Of the proposed **mental health inquiry** in accordance with the regulations (s76)
- AMO to consult re **discharge plan**, subsequent treatment and information as to follow up care (s79)
- If person is **absent without permission/fails to return from leave**

Duty to notify carers s73-79 (1)

Principal carer provider and designated carers to be notified of:

- Proposed/actual **transfer** to another facility
- **Re-classification** as a voluntary patient (s78)
person's detention within 24 hours (s75)
emergency surgery
- proposed application for **ECT**
- consent for surgery or **special medical treatment** by MHRT or Director-General (s78)

Duty to notify carers s73-79 (1)

Principal carer provider and designated carers to be notified of:

- **on request by a primary carer the AMO** to provide details of type, dose of current and recently administered med to the subject person (s73).
- See also s57(4) re CTOs

Sophie and her family and carers?

- When talking with Sophie about her right to have two designated carers, who might she have considered?
- In Sophie's situation, who might have been best placed to be appointed as the Principal Care Provider?
- In what ways do you think you could support Sophie's family and carers in their role with walking alongside Sophie during her recovery and to work in partnership with the treating team?

Strengthened focus on voluntary treatment including a Statement of Rights

New provision s 74A

- The AMO must give a voluntary patient an oral and written statement of rights as soon as practicable after becoming a voluntary patient
- The written statement must be in accordance with Schedule 3A.

Strengthened focus on voluntary treatment including a Statement of Rights

New provision s 74A

- The Statement of Rights must be given again if the AMO is of the opinion that the person is incapable of understanding them when it was first given *if the person becomes capable of understanding them*.
- If the person is unable to communicate adequately in English but can in another language an oral explanation is to be given in that language.

Strengthened focus on voluntary patients

2007

- Review every 12 months
- **To be reviewed whether admitted as a voluntary or involuntary patient for a continuous period of 12 months**

Voluntary treatment

2007

S 9(2) In addition to any other matters it considers on a review, the Tribunal is to consider whether the patient consents to continue as a voluntary patient

2015

and whether the patient is likely to benefit from further care and treatment as a voluntary patient”.

Sophie's expressed wish to engage in treatment voluntarily

Keeping in mind the Act's requirements to:

- consider Sophie's views and expressed wishes;
- obtain her consent; and
- monitor her capacity to consent:

where to next with and for Sophie?