HETI HEALTH EDUCATION & TRAINING

WHERE INNOVATION DRIVES
EXCELLENCE IN EDUCATION AND TRAINING
FOR IMPROVED HEALTH OUTCOMES

HETI Mental Health Portfolio

MENTAL HEALTH ACT TRAINING

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NSW GOVERNMENT Health

ABOUT THIS PRESENTATION

This PowerPoint presentation is a modified version of that presented at the 2018 Mental Health Act training sessions delivered by the HETI Mental Health Portfolio.

It has been adjusted to support clinician self reflection.

At points in this presentation clinicians are prompted to consider on case studies from their own practice, to review and reflect on their application of the NSW Mental Health Act in practice.

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NSW Local Health Districts / Specialty Networks

NSW GOVERNMENT Health

ACKNOWLEDGEMENTS

Country and Elders

We acknowledge and pay respect to the traditional owners of the land on which we meet.

As we share our own knowledge, teaching, learning and research practices within this place, we also pay respect to the knowledge embedded forever within the Aboriginal Custodianship of this land. We also acknowledge the Elders, past and present and in particular those attending today's event.

Those with lived experience of mental health conditions

In light of our purpose, we recognise those with lived experience of mental health conditions in NSW. We acknowledge that mental health clinicians can only provide quality care through valuing, respecting and drawing upon the experiences and expert knowledge of those with lived experience, their families, carers and friends, staff and the local communities.

Acknowledgement of Carers

We also recognise the 'carers' in NSW and those present here today. These carers may be our clients, may care for our clients, or are colleagues or employees.

WORKSHOP THEMES

The sessions in the workshop revisit these themes:

- Supporting recovery
- Listening to the person
- Supporting decision making
- Obtaining consent

WORKSHOP OUTCOMES

At the completion of this workshop participants will be able to:

- Identify the objects, principles and sections of NSW Mental Health Act (2007) that inform and direct their work
- Apply specific relevant sections of the Act to their workplace practice
- Make informed decisions, based on the guidance and legislative instruments of the Act.

WHY HAVE A MENTAL HEALTH ACT?

WHAT DOES THE ACT ITSELF SAY?

An Act to make provision with respect to the care, treatment and control of mentally ill and mentally disordered persons and other matters relating to mental health; and for other purposes.

WHY HAVE A MENTAL HEALTH ACT?

- Regulate consent to medical treatment, including involuntary detention and treatment
- Protect the human and legal rights of people with a severe mental illness
- Set parameters for state intervention in people's lives
- Generally, provide for treatment based on:
  - a person's need for treatment and
  - the risk of harm posed to themselves and others
- (2015 Amendments) support capacity to consent to treatment

THE ACT AND OUR LOCAL AREA

REFLECTION ACTIVITY

Draw, list or outline:

- Your role and what you do
- Identify when you are required to work with:
  - Specific sections of the Act and
  - Specific principles of the Act

THE ACT AND OUR LOCAL AREA

- Local policies, protocols and procedures
- State-wide and / or local MOUs
- Local facilities, services and supporting organisations
- Local context and implications for the Act’s implementation

OBJECTS OF THE ACT s3

- 2015 Amendments removed ‘control’ from the Objects of the Act
- Treat people for their own protection and the protection of others from harm
- Emphasis on the recovery of persons who are mentally ill or mentally disordered

OBJECTS OF THE ACT s3

Mental Health Act 2007	2015 Amendments
(a) care, treatment and control of persons who are mentally ill or mentally disordered	(a) To provide for the care and treatment of, and to promote the recovery of persons who are mentally ill or mentally disordered. *'Control' has been removed*
(b) to facilitate the care, treatment and control via community care facilities	(b) *'Control' has been removed*
(c) protection of civil rights and access to appropriate care	
(d) While protecting the civil rights, to give opportunity to access appropriate care	(d) " … and where necessary to provide for treatment for their own protection or the protection of others"
(e) to facilitate the involvement of those persons, and persons caring for them, in decisions involving appropriate care, treatment and control	(e) *'Control' has been removed*

OBJECTS OF THE ACT s3

WHY DECREASED EMPHASIS ON CONTROL?

- 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

OBJECTS OF THE ACT s3

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
- stalking or predatory intent
- harm to reputation or relationships
- neglect of self & neglect of others (including children).

OBJECTS OF THE ACT s3

ACTIVITY: DISCUSSION

NSW Health Chief Psychiatrist's Risk of Serious Harm Communique November 2014

OBJECTS OF THE ACT s3

RECOVERY PRINCIPLES

- opportunities for choices … living a meaningful, satisfying and purposeful life, …being a valued member of the community
- recovery outcomes are personal and unique for each individual …include an emphasis on social inclusion and quality of life
- empowers individuals so they recognise that they are at the centre of the care they receive.

National Mental Health Service Standards 2010

OBJECTS OF THE ACT s3

ACTIVITY: CASE STUDIES

Consider a case study from your own practice:

- What might recovery mean to the person?
- How might the person's recovery be promoted?
- What serious harm does the person or another person require protection from?

PRINCIPLES OF THE ACT s68

CONSENT AND CAPACITY

Clinicians are to take into account:

- the person's views and wishes about treatment, consent to be treated and consent to their treatment plan
- the support needs of people who lack capacity to understand their treatment plan s68(h1)
- the cultural and spiritual beliefs and practices of Aboriginal and Torres Strait Islanders
- the particular needs of some people with regard to diversity, disability or sexuality
- the particular developmental needs of people under the age of 18 years.

PRINCIPLES OF THE ACT s68

Mental Health Act 2007	2015 Amendments
S68 (e) **people** with a mental illness or mental disorder should be provided with appropriate information about treatment, alternatives and the effects of treatment . . .	(e) … and be supported to pursue their own recovery
(g) the age-related, gender-related, religious, cultural, language and other special needs of people with mental illness or mental disorder should be recognised	(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**
	(g1) people under the age of 18 with mental illness or mental disorder should receive developmentally appropriate services
	(g2) the cultural and spiritual beliefs of people with mental illness or mental disorder who are Aboriginal or Torres Strait Islanders should be recognised.

PRINCIPLES OF THE ACT s68

Mental Health Act 2007	2015 Amendments
s68(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
	(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, to monitor their capacity to consent and to support people who lack capacity to understand treatment plans and recovery goals.

PRINCIPLES OF THE ACT s68

CONSENT AND CAPACITY

- Freedom to make own decisions
- Equality and non-discrimination
- Full and effective participating
- Enabling family and relationships

Convention of the Rights of Persons with Disabilities 2008

PRINCIPLES OF THE ACT s68

CONSENT AND CAPACITY

State Parties…

- reaffirm that persons with disabilities have the right to recognition everywhere as persons before the law
- shall recognise that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life
- shall take appropriate measures to provide access by persons with disabilities to the support they may require in exercising their legal capacity.

A response to UN Disability Convention – Article 12 Equal recognition before the law

PRINCIPLES OF THE ACT s68

CONSENT AND CAPACITY

- A person with mental illness who retains decision-making capacity about their own treatment must not be treated without consent.
- Decision-making capacity must be presumed and support offered to exercise that capacity.
- Persons subject to mental health legislation must be supported to make their own decisions as far as possible and be supported to express and give effect to their will and preferences.
- Any substituted decision-making must respect the “rights, will and preferences of the person” and must give effect to them as far as possible.

Ryan and Callaghan (2017)

PRINCIPLES OF THE ACT s68

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PRINCIPLES OF THE ACT s68

ACTIVITY

Consider a case study from your practice and how the following elements are applied:

- Recovery and the persons' views and wishes
- Consent and capacity
  - Obtaining consent
  - Assessing capacity | monitoring and supporting capacity
- Information management - s68(h) and (h1)?
- Difficult | unresolved issues

MENTALLY ILL

A mentally ill person is someone who is suffering from a mental illness and, owing to that illness there are reasonable grounds for believing that the care, treatment or control of the person is necessary:

- for the person's own protection from serious harm, or
- for the protection of others from serious harm.

MENTALLY ILL

Mental illness for the purposes of the Act means a condition that:

- seriously impairs, either temporarily or permanently, the mental functioning of a person, and
- is characterised by the presence of one or more of the following symptoms:
  - delusions
  - hallucinations
  - serious disorder of thought form
  - severe disturbance of mood
  - sustained or repeated irrational behaviour indicating the presence of one of more of the symptoms mentioned above.

MENTALLY ILL

Issues to be considered in deciding whether a person should be detained as a mentally ill person:

- is there a mental illness as defined in section 4, and
- is there a risk of serious harm to the person or others, and
- has the person's continuing condition or likelihood of deterioration and its effects been considered, and
- is there a less restrictive environment in which appropriate care, control and treatment can be safely and effectively provided?

MENTALLY ILL

REFLECTION ACTIVITY

Consider a case study from your clinical practice.

What are the key clinical parameters in assessment, that lead to a person to be considered to be a mentally ill person for the purposes of the Act?

MENTALLY DISORDERED

A mentally disordered person is someone whose behaviour is so irrational that there are reasonable grounds for deciding that the temporary care, treatment or control of the person is necessary to protect them or others from serious physical harm.

MENTALLY DISORDERED

WHAT IS SERIOUS PHYSICAL HARM?

Is to be understood in its everyday usage that includes:

- risk of self-harm or suicide
- risk of violence to others.

MENTALLY DISORDERED

Issues to be considered in deciding whether a person should be detained as a mentally disordered person:

- is the behaviour so irrational that temporary care, treatment or control is necessary?
- is there a risk of serious physical harm to the person or others?
- is there a less restrictive environment in which appropriate care, control and treatment can be safely and effectively provided?

MENTALLY ILL OR MENTALLY DISORDERED?

WHO IS THE ACT FOR? WHO IS IT NOT FOR?

Exclusion criteria s16

Mental Health Act Guide Book p.17

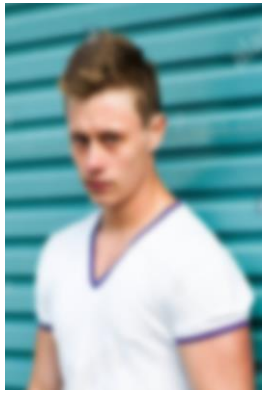
MENTALLY ILL? MENTALLY DISORDERED?

ACTIVITY

Consider the following case studies. Is the person, for the purposes of the Act:

- Mentally ill? or
- Mentally disordered?

JAKE



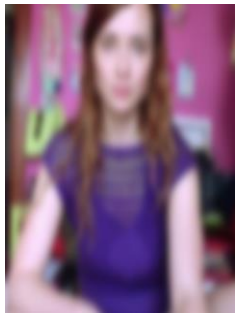
- 19 year old male in a base hospital town
- No previous history of mental health contact
- Referred by his mother who reported:
  - Not sleeping for 5 days
  - Posting bizarre messages on social media to family and friends
  - Tried to purchase car at local dealership
  - Left his job, believing he inherited a lot of money
  - Argumentative behaviour towards family and friends
  - Believes “god talks to him and people have to obey him, otherwise bad things will happen”.

PETER

- 30 year old male, referred by hostel staff 170km from the MHU
  - Had barricaded himself in his room
  - Making demands to police that his mother call him from Sydney
  - History of admissions to psychiatric hospitals
  - History of illicit substance use ICE and cannabis

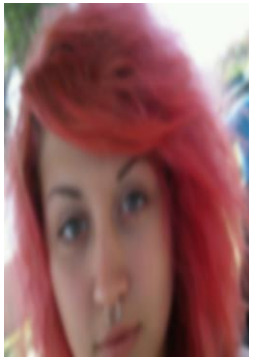
SARAH

- 23 year old female referred by police
- You are informed that she:
  - Believed she had ‘gifts’ to heal people
  - Is upset with family that they do not believe her
  - Had been ‘intrusive’ and been trying to ‘heal’ people at place of worship
  - Church called Police to intervene
  - No history of contact with Mental Health Services

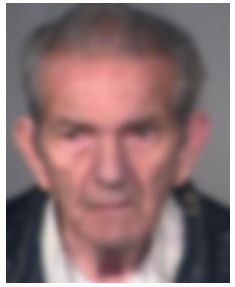


ALICIA

- 16 year old female referred by GP 90km from a MHU
- History diagnosis of eating disorder
- Lives with sister
- History 3 occasions of hospitalisation (last occasion with O/D presentation)
- Seen GP:
  - Demanding script for Benzos
  - Left surgery abruptly yesterday
  - Refusing to see a dietician or stick to food chart



TOM



- 72 year old male, referred by neighbour
- History of schizophrenia
- Known client of Mental Health Service. Lost contact for several months
- History of multiple admissions to Hospital
- Lives alone, on DSP. No contacts with family
- You are informed he has been:
  - accusing neighbours of talking and plotting against him
  - Making loud noises and shouting at all hours of the day in the unit complex

CARERS AND CARE PROVIDERS

The Act acknowledges the role of family and carers:

- under the general principles for care and treatment
- through specific provisions
- by specifying two categories of carers
  - the designated carer, and
  - the principal care provider.

CARERS AND CARE PROVIDERS

Categories of carers:

- s72(1) Person can now appoint two designated carers
- s72A(1-2) An authorised medical officer may appoint a principal care provider
- s72-79 Designated carers and the principal care provider have rights to:
  - Make certain requests
  - Be informed and
  - Have their views and the information they provide considered

CARERS AND CARE PROVIDERS

REFLECTION ACTIVITY

When should a designated carer and/or principal care provider be notified?

- s66A | s75 | s76 | s78

CARERS AND CARE PROVIDERS

REFLECTION ACTIVITY

What requests can designated carers and/or principal care providers make?

- s26 | s43 | s44 | s51 | s73 | s134

CARERS AND CARE PROVIDERS

Considering information provided by a designated carer and/or principal care provider (s72B):

- Where an examination is undertaken in relation to a person's detention or discharge from involuntary status … if it is reasonably practicable to do so.

CARERS AND CARE PROVIDERS

Involving a designated carer and/or principal care provider in discharge planning (s79):

- An authorised medical officer must take all reasonably practicable steps to consult … in relation to planning a person's discharge and any proposed follow-up care and treatment (s79).

CARERS AND CARE PROVIDERS

All reasonably practicable steps should be taken by the director of a community mental health facility to inform any designated carers and the principal care provider about decisions relating to community treatment orders including decisions to:

- apply for a community treatment order
- vary or revoke an existing order
- apply for a further order
- not to apply for a further order.

CARERS AND CARE PROVIDERS

ACTIVITY

Using a case study from your own practice identify:

- How and when information is provided to family and carers
- How information is sought and included
- What information is recorded against the relevant sections of the Act
- How this information is managed in the Local Health District / Specialty Network
- How issues arising and are addressed or resolved
- Unresolved issues.

THE MENTAL HEALTH REVIEW TRIBUNAL

Constituted under the Mental Health Act 2007.

- Conducts mental health inquiries
- Makes and reviews orders
- Hears appeals about treatment and care of people with mental illness
- Conducts both civil and forensic hearings

Given the importance of their decisions, it is essential that the Tribunal receives the very best evidence available

THE MENTAL HEALTH REVIEW TRIBUNAL

Needs to satisfy itself that any treatment it is mandating is safe and effective.

- Does not diagnose or prescribe treatment
- Members have had very limited contact with the person concerned

Information provided in medical reports and documentation play a crucial role to support the Tribunal in making determinations.

THE MENTAL HEALTH REVIEW TRIBUNAL

REFLECTION ACTIVITY:

Consider a case study from your clinical practice and the information you record on a person's file:

- How does narrative support Tribunal determinations?
- How does information from family and carers, support Tribunal determinations?
- How do you balance a patient's right to privacy with information from / to family and others?
- Is this a correct application of the Act?
- What are the implications for treatment teams?

GROUPS WITH PARTICULAR NEEDS

In s68(g) the Act requires that a person's special needs be recognised including needs related to:

- Age
- Gender
- Religion
- Culture
- Language
- Disability or
- Sexuality

GROUPS WITH PARTICULAR NEEDS

AGE	18	17	16	15	14	Under 14
Nomination of a designated carer		**Under 18:** The designated carer of a child is generally the parent.				
	Over 14: May nominate someone other than a parent.					
		Between 14 and 18: Parent may not be excluded from receiving notice or information about the child (s72(3)).				
Rights of young people under the Act				**Under 16:** Must be legally represented before the Mental Health Review Tribunal. Tribunal may decide to proceed without such representation.		
Voluntary admission (s6)				**Under 16:** AMO must notify the parent as soon as practicable		
				14 or 15: AMO must discharge the patient if a parent objects, unless the patient elects to continue as a voluntary patient		
						Under 14: Parental consent is essential
						Under 14: AMO must discharge on parent request
ECT for those under 16 years of age				**Under 16:** Psychiatrist with expertise in the treatment of children and adolescents must complete one of the two medical certificates required. Tribunal must consent to treatment.		

Reference: Mental Health Act Guide Book, Chapter 15.1 *Younger consumers*

GROUPS WITH PARTICULAR NEEDS

ACTIVITY: CASE STUDY

Consider a case study from your clinical practice and the difficulties or issues in responding to particular needs:

- How are these issues addressed?
- Do any remain unresolved?

WHERE TO FROM HERE?

NSW Mental Health Act

- Supporting recovery
- Listening to the person / patient
- Supporting decision making
- Obtaining consent.

RESOURCES

NSW Mental Health Act (2007) no 8

Mental Health Act Guidebook

Chief Psychiatrist's Risk of Serious Harm Communique 2014

S3 Statement of rights for persons detained in mental health facility

S3a Statement of rights for voluntary patients

Amendments to the NSW Mental Health Act (2007) fact sheet – Clinicians

Peers / colleagues

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