

# WHO IS THE MENTAL HEALTH ACT FOR?

## THE PRESENTERS

### Dr Yega Muthu - Adjunct Fellow, School of Law, Western Sydney University

Yega has been teaching Mental Health Law since 2004 at the University Technology of Sydney and currently from Western Sydney University. He held a judicial appointment as a member of the Mental Health Review Tribunal from 2008-2012 and runs a criminal and mental health law practice, where he views his role in protecting vulnerable people in the community from exploitation.

### Dr Leanne Craze, AM - Director, Craze Lateral Solutions

Leanne has over 30 years' experience in a broad range of fields including mental health, health, community services, housing and homelessness, disability and criminal justice. She runs a mental health and social policy consultancy and was part-time member of the NSW Mental Health Review Tribunal for many years. In June 2017, Leanne was honoured as a Member in the General Division of the Order of Australia (AM) for her contribution to mental health service development and reform.

## VIDEO TRANSCRIPT

### Who is the Mental Health Act for?

**Yega Muthu:** The definition section of the Act focuses on the definition of a mental illness and a mental disorder. A mental illness could include hallucination, delusions, a severe disturbance of mood, whereas a mental disorder relates to a person behaving in an irrational behaviour.

The clinician has got a duty to make an assessment. It is really important to take into account the circumstances that brought the person to hospital. Collateral history is very important. It is not so much about pigeon-holing the symptoms, but it is to look for those signs where the person may be unwell or they may have deteriorated, that brought them to the facility in the first place, balanced against the issue of risk to self and others.

### Mentally ill

**Leanne Craze:** Is the person by reason of the mental illness requiring care or treatment? And are they exhibiting what are considered to be, by international medical standards, major symptoms (so hallucinations, delusions, disorder of thought form)?

And then the final criteria there, is risk of serious harm.



## Mentally disordered

**Leanne Craze:** With mentally disordered, a person needs to be exhibiting behaviour that is considered so irrational, there is a risk of the person either taking their own life, or harming themselves or harming someone else. But it needs to be serious physical harm either to self or others.

## Risk of serious harm

**Leanne Craze:** The Act is silent on what risk of serious harm means and so, by not defining serious harm in the legislation, it then comes down to clinical application and clinical judgement. However there is now guidance and that is in the form of a communique from the Chief Psychiatrist about what risk of serious harm means.

## Who is the Mental Health Act not for?

**Leanne Craze:** So, who is the Act not for? People who are homeless but who do not have a mental health condition that comes under the Act. The Act has a whole list of exclusions whereby reason of those factors alone, a person cannot be considered to be mentally ill or mentally disordered. For example, sexual orientation, philosophical belief, political belief, antisocial behaviour.

**Yega Muthu:** Immoral or sexual misconduct that does not amount to a mental illness or a mental disorder, religious beliefs, political beliefs and the list goes on. All these have been enshrined in Section 16 of the Mental Health Act.

**Leanne Craze:** But that doesn't mean that a person who has one of those exclusions doesn't come under the Act. It just means that by reason of that alone, they can't be considered to be mentally ill and mentally disordered under the Act.

## Clinical Application, Clinical Judgement

**Leanne Craze:** There's grey areas. Some of those areas are around for example, people with dementia who may or may not be under guardianship, sometimes a person who's considered to have an eating disorder. Sometimes it might be someone with a disability, like intellectual disability for example. A problem with deciding whether someone comes under the Act or not, is that they probably don't but there's nowhere else for them. And so if they were discharged, they would be discharged into homelessness or into a potentially vulnerable and exploitive situation.