



NSW Consumer Advisory Group – Mental Health Inc.

Keeping it Relevant: Review of National Mental Health Statement of Rights and Responsibilities

Submission to the Safety and Quality Partnership Subcommittee of the Mental Health Standing Committee, Victorian Department of Health

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NSW Consumer Advisory Group - Mental Health Inc.

NSW Consumer Advisory Group – Mental Health Inc. (NSW CAG) is the independent, state-wide organisation representing the views of people with a lived experience of mental illness at a policy level, working to achieve and support systemic change.

NSW CAG exists to ensure that policy makers hear the perspectives of mental health consumers across NSW. We work from the premise that the participation of mental health consumers in systemic advocacy leads to the development of more effective public policy in the area of mental health. Participation is a fundamental human right as enshrined in Article 25 of the *International Covenant on Civil and Political Rights* (ICCPR).

NSW CAG's vision is for all mental health consumers to be able to participate meaningfully in society and to experience fair access to quality and recovery focused services which reflect their needs. Our work is guided by six principles:

- Being person centred and empowering consumers in the interests of consumers;
- Adopting a recovery approach to building positive futures;
- Promoting positive images and reducing stigma and discrimination;
- Enhancing best practice and building understanding of effective approaches to consumer participation;
- Capacity building of our organisation, consumers and services; and
- Promoting professionalism and continuous improvement in our ways of working.

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Introduction

The NSW Consumer Advisory Group – Mental Health Inc. (NSW CAG) welcomes the opportunity to comment on the draft of *the National Mental Health Statement of Rights and Responsibilities* (the Statement).

NSW CAG particularly welcomes the changes that reflect Australia's current national mental health agenda and Australia's international human rights commitments.

NSW CAG provides comments on the following areas:

- Recommended additions to the content
- The overall structure of the Statement
- Statement's ease of use

NSW CAG's comments are informed by the views and experiences of people with mental illness gathered in relation to this consultation draft and from other previous consultations with people with mental illnesses in NSW.

NSW CAG acknowledges the reference to people with mental health problems and/or mental illnesses in the Statement, but for the purpose of this submission, the term 'consumer' will be used interchangeably from hereafter.

Recommended additions to the content

Part II: Non-Discrimination and Social Inclusion

A) Right to participation in decision making

NSW CAG welcomes the emphasis on non-discrimination and social inclusion throughout the Statement. NSW CAG suggests that Part II should highlight the right of people with mental health problems or mental illnesses to participate meaningfully in all relevant areas of decision making, whether that be in regards to the person's care, support, treatment, decisions about service delivery, policy planning or system reform.¹ Clause 6J in the Statement only provides for participation in a very limited sense. Although concepts of involvement and participation are provided in other parts of the Statement, the draft provisions are ad hoc and the Statement does not reflect the importance of participation as a human right.

NSW CAG believes that mental health consumers must be active and equal participants in all aspects of decision making that impact on them. The value and importance of consumer participation at all levels of service delivery and the policy cycle is well documented.² Governments and services alike must ensure that people with mental health problems and/or mental illnesses are at the centre of any decisions that impacts on them. For government and policy makers, this means genuinely engaging with a wide range of consumers in order to improve mental health services and policy. For service providers, this means putting the individual consumer at the centre of all decisions about his or her care, support and treatment, and respecting the individual consumer as an equal partner in care.

B) Right to receive information about rights and responsibilities in a format and language they can understand

Clause 2B provides that the aim of the Statement is to ensure mental health consumers are aware of their own rights and responsibilities and those of others. To support this aim, NSW CAG suggests that the Statement emphasises in Part II and Part IV the rights of consumers to receive information about their rights and responsibilities as provided in this Statement, including any restrictions prescribed by local legislation, in a language that the person can understand, or have access to a professional interpreter, and in a format that is accessible to the individual person. Ensuring accessibility of information is one of the principles underlying the *Fourth National Mental Health Plan*.³ The importance of this principle is only being briefly recognised in clause 20.

Part III: The Promotion of Mental Health and the Prevention of Mental Illnesses

A) Promotion of mental health

NSW CAG suggests the inclusion in clause 9 for programs to also promote the rights and responsibilities provided in this Statement. While it is difficult to ascertain the level of community awareness of the 1991 Statement, NSW CAG believes that significantly improved public awareness of the Statement would encourage the practical implementation and protection of these rights and responsibilities.

To ensure compliance with the Statement, NSW CAG further suggests inserting a clause that requires future public policy to refer to and be compatible with the provisions in this Statement.

B) Prevention of mental health problems and/or mental illnesses

NSW CAG agrees that effective prevention requires identifying risk factors that may contribute to mental health problems and/or mental illnesses, but disagrees with the attempt by the Statement to prescribe a list of 'risk factors', which may change when research becomes available. NSW CAG contends that clause 11D should remove the list of factors and be amended to read:

'Identify factors that may contribute to health problems and/or mental illnesses or indicate relapse, and develop appropriate responses that take into consideration the needs of the individual person.'

Part IV: The Rights and Responsibilities of Individuals Seeking Support, Care, Treatment, Recovery and Rehabilitation

NSW CAG welcomes the emphasis on recovery in the Statement. The term recovery is well defined in the Glossary and reflects consumers' view of recovery as a personal process of growth and development rather than an absence of mental illness.

The term as has been defined has been misapplied in certain parts of the Statement. There are multiple instances of recovery being referred to as a form of service or support. For example, clause 15 states, 'individuals with mental health problems and/or mental illnesses have the right to access support, care, treatment, recovery and rehabilitation services on an equal basis with others without discrimination of any kind'. While services can be recovery-oriented, the highly personal nature of recovery cannot be reduced to a service model, i.e. one cannot deliver recovery services.

NSW CAG is concerned by the lack of recognition of the responsibilities of mental health consumers in the Statement. Clause 21 provides limitedly the responsibilities of both mental health consumers and persons supporting them. The reference to the responsibilities of support persons should be deleted as these are irrelevant to Part IV and are also already covered in Part VIII. The responsibility to 'participate as far as possible in reasonable treatment and rehabilitation processes', which is provided in the 1991 Statement, should be reinstated in the revised Statement.⁴

Part V: Standards and Accountability

NSW CAG strongly supports the recognition of the need for service accountability and quality assurance, and the key role governments have in supporting and ensuring this process. Given the focus of Part V is service quality and accountability, NSW CAG recommends the heading of Part V to be changed to reflect this.

NSW CAG further recommends Part V to recognise the need for the Australian Governments to fund and support the development, implementation and evaluation of evidence based approaches. This would bring Part V in line with Priority Area 4 of the *Fourth National Mental Health Plan*.⁵

Part VII: Mental Health and Forensic Matters

The significant over representation of people with mental health problems and/or mental illnesses in all stages of the criminal justice system is well documented. According to the NSW Legislative Council Select Committee on Mental Health, police reported an increasing demand for their intervention in incidents involving people with mental illnesses.⁶ The *2009 Inmate Health Survey: Key Findings Report* revealed that 47% of men and 54% of women in NSW prisons reported having been assessed or received treatment by a psychiatrist or doctor for an emotional or mental health problem at some point in their lives. The report also noted the prevalence of mental illness within the prison population is steadily increasing.⁷

In recognition of this problem, NSW CAG contends that Part VII should clearly emphasise the need for the Australian Governments to invest in developing and implementing appropriate pathways to divert people with mental health problems and/or mental illnesses from the criminal justice system. It should clearly state the onus on judicial officers to apply the principle of least restriction when dealing with a person with mental health problems and/or mental illnesses. Further, it should emphasise the need to ensure appropriate mental health care, support and treatments are available to people with mental health problems and/or mental illnesses in prisons.

Equal recognition before the law and equal protection of the law is provided in clause 6E in Part II. NSW CAG recommends reaffirming this principle in Part VII, and for it to replace clause 41 which states that the Australian Governments should ensure the law does not discriminate against mental health consumers in the criminal justice system. Equal protection of the law is a paramount human right that applies to all persons.⁸

NSW CAG further suggests changing the title of Part VII to reflect the focus on mental health and the legal system.

Overall structure of the Statement

The structure of the Statement is confusing and requires reordering to improve cohesion. Below are NSW CAG's suggestions for the restructuring.

- Part I establishes a clear overarching framework for the Statement and should be retained.
- Part II relates to the rights of individuals and is better linked with Part IV on the rights and responsibilities of mental health consumers. This should then be followed by Part VIII on the rights and responsibilities of supporters, carers and advocates.
- This should be followed by Part IX regarding the rights and responsibilities of service providers, and then by Part X on the rights and responsibilities of the community.
- The remaining parts are Part III, V, VI, and VII, which are concerned with the responsibilities of the Governments and should be placed next to each other.

Statement's Ease of Use

A) Length of the Statement

The Statement excluding the Glossary is currently 17 pages long. Its length significantly reduces its accessibility to mental health consumers. NSW CAG heard from mental health consumers that information about rights and responsibilities are most important to them when they are unwell and are placed under involuntary care. While NSW CAG appreciates the benefits of providing in detail the mental health rights and responsibilities of all participants in the mental health system, NSW CAG recommends the Statement to also be provided in shorter and more concise forms, such as in a two page fact sheet or pamphlet. The condensed Statement should be widely distributed and provided to all persons admitted to inpatient mental health care.

B) Physical presentation

NSW CAG understands the revised Statement is currently in draft form, and recommends attention be directed to improving the physical presentation of the Statement once its content has been finalised. Feedback from NSW CAG's consultations with consumers indicated that people are more likely to pay attention to written materials that are presented in interesting, colourful and engaging designs, particularly if they contained interesting visual representations. NSW CAG recommends the Statement and all related written materials that target consumers and the community

be professionally designed to engage with these targeted audiences. The materials should also be provided in a range of designs that are appropriate for specific age and cultural groups.

C) Language and accessibility

For the Statement to be effective, it must be accessible to all members of the community. Feedback from consultations indicated that a number of measures need to be taken to ensure accessibility.

- The Statement needs to be written in plain English: the language currently used in the Statement reflects that of a government policy rather than a for the general community.
- The Statement should be made available in community languages.
- The Statement should be made available in language and form suitable for young people and older people.
- The Statement should also be made available in a variety of formats, including printed, online, audio and video.
- The Statement and all related materials should be promoted and widely distributed to services likely to be accessed by mental health consumers and those who care and/or support them.

References

- 1 *Convention on the Rights of Persons with Disabilities.*
- 2 Chris Lloyd and Robert King, 'Consumer and carer participation in mental health services' (2003) *Australian Psychiatry*, Vol 11, No 2, see also National Consumer and Carer Forum, *Consumer and Carer Participation Policy – A Framework for the Mental Health Sector* (2004), available online at: <http://www.mhca.org.au/Publications/documents/ConsumerandCarerParticipationPolicy.pdf> [18 July 2011].
- 3 *Fourth National Mental Health Plan - An Agenda for Collaborative Government Action in Mental Health 2009-2014*, Commonwealth of Australia 2009, p13.
- 4 *Mental Health Statements of Rights and Responsibilities*, Report of the Mental health Consumer Outcomes Task Force, Adopted by The Australian Health Ministers (1991), available online at: <http://www.health.gov.au/internet/publications/publishing.nsf/Content/mental-pubs-m-rights-toc>
- 5 *ibid*, p52.
- 6 NSW Legislative Council, Select Committee on Mental Health, *Mental Health Services in NSW: Final Report*, Parliamentary Paper No 368 (2002), [14.10]-[14.11]
- 7 Indig, D., Topp, L., Ross, B., Mamoon, H., Border, B., Kumar, S. & McNamara, M., *2009 NSW Inmate Health Survey: Key Findings Report*, Justice Health, Sydney (2010), p135.
- 8 *Universal Declaration of Human Rights*, Article 7