

## Submission to the National Human Rights Consultation



**June 2009**

NSW Consumer Advisory Group – Mental Health Inc. (NSW CAG)  
501/80 William St, Sydney 2000  
Ph: 02 9332 0200, Fax: 02 9332 0299, email: [koakley@nswcag.org.au](mailto:koakley@nswcag.org.au)



NSW Consumer Advisory Group – Mental Health Inc.  
ABN 82 549 537 349

15<sup>th</sup> June 2009

National Human Rights Consultation Secretariat  
Attorney-General's Department  
Central Office  
Robert Garran Offices  
National Circuit  
Barton ACT 2600

To whom it may concern

**Re: National Human Rights Consultation**

The NSW Consumer Advisory Group – Mental Health Inc. (NSW CAG) is the peak, independent, statewide organisation representing the views of mental health consumers at a policy level, working to achieve and support systemic change. Our vision is for all mental health consumers to experience fair access to quality services that reflect their needs

NSW CAG considers that improving human rights protections for people living with mental illness is imperative given the marginalisation, stigma and discrimination that is faced in all aspects of their lives. NSW CAG congratulates the Australian Government for stimulating discussion on how human rights should be protected in the future, and is pleased to have the opportunity to provide comment to the National Human Rights Consultation Committee.

At NSW CAG we hear through our core work that the rights of people living with mental illness are not always upheld. As such, we recommend that mechanisms which promote and protect human rights are strengthened in Australia.

Please do not hesitate to contact me with any further enquiries you may have.

Yours sincerely,

Karen Oakley  
Executive Officer

## **Basis of this advice**

NSW CAG exists to ensure that policy makers hear the perspectives of mental health consumers across NSW. The basis of this advice derives from information obtained through our core work. This includes regular interaction and consultation with people who use mental health services across NSW including:

- Over 900 people on our Network who are accessible via the internet;
- Current face to face consultations that NSW CAG is conducting during 2009 at several locations within each Area Health Service across NSW; and
- Our knowledge base derived from consulting with consumers of mental health services in NSW over the last 17 years.

At NSW CAG we hear through our core work that the rights of people living with mental illness are not always upheld. As such, we recommend that mechanisms which promote and protect human rights are strengthened in Australia.

## **Which human rights and responsibilities should be protected and promoted?**

Australia recently ratified the *Convention on the Rights of Persons with Disabilities*, which also applies to people living with mental illness. This Convention seeks, inter alia, to promote:

- Equality and non-discrimination
- Awareness raising regarding persons with disabilities
- Accessibility to: the physical environment, transportation, information and communications, and other facilities that are open or provided to the public
- Equal recognition before the law
- Living independently and being included in the community
- Freedom of expression and opinion, and to access information
- Education
- Health, including services as close as possible to people's home communities
- Habilitation and rehabilitation, including peer support and inclusion in the community
- Adequate standards of living and social protection
- Participation in political and public life

NSW CAG views that the human rights principles in this Convention must be reflected in the Australian Government's laws, policies and processes.

## **Are human rights sufficiently protected and promoted?**

NSW CAG hears through our core work that there is much more work to be done to promote and protect human rights for people living with mental illness. This includes the areas of challenging stigma and discrimination; homelessness and accommodation; access to individual services and legal representation; health care services and supports; access to information; social inclusion and participation in the community; and mental health legislation:

### *Challenging stigma and discrimination*

NSW CAG is aware that people living with mental illness face stigma and discrimination in many areas of their lives, including self-stigma; stigma and discrimination from health care professionals; workers who have contact with people living with mental illness such as employers, police, teachers, ambulance staff and child protection workers; and the wider

community. Stigma is related to negative attitudes, while discrimination is related to negative behaviours.

At NSW CAG we hear that people are often seen as their illness rather than as a whole person. In the health care setting we hear that this can be manifested through negative attitudes where people living with mental illness are devalued, discriminatory language, and the lack of hopefulness for a person's future.

In a broader context, we hear that people living with mental illness are affected by stigma and discrimination when participating in the community, and when seeking and retaining employment and housing. This is considered to be a consequence of lack of public awareness and knowledge about mental illness, and also representation by the media which at times inaccurately reflects the realities of living with mental illness. Different cultures have different perceptions of mental illness, and this can also contribute to stigma and discrimination.

#### *Homelessness and accommodation*

Having access to adequate housing is an essential ingredient in being able to participate in the community and to a person's recovery from mental illness. As things stand today, discharge from institutions such as hospitals, mental health services, and alcohol and drug services into homelessness or unstable housing is not uncommon for many people living with mental illness (Mental Health Council of Australia, 2009, p.5). To illustrate with an issue raised in one of our consultations:

*"Housing is substandard and infested with cockroaches. For years I have rang housing because my shower needs fixing ... Half of my pension goes on cockroach baits".*

#### *Access to individual advocacy services and legal representation*

NSW CAG is aware that there is no independent advocacy service for people living with mental illness in NSW. At present there is a low rate of legal representation and aid at Mental Health Tribunal hearings in NSW (Carney, Beaupert, Perry & Tait, 2008). Indeed, legal representation is a right which is necessary in these hearings, but is not currently supported by any human rights framework in Australia.

#### *Health care services and supports*

NSW CAG hears that access to services for people living with mental illness can be problematic, particularly in rural areas, with people having to travel long distances to reach services. Our core work identifies that there is a lack of availability and accessibility to staff and consumer workers (people with the lived experience of mental illness employed by health services), gaps where there should be continuity of care, and situations where the sexual safety and privacy of people in the inpatient setting needs to be improved. In many instances we hear that there are inadequate supports in the community that can help prevent a person from having a relapse of illness and subsequent admission to an inpatient facility. Some of these issues have been highlighted during our consultations:

*"You see a different doctor every time. No one is based here, they come from Sydney once a month. We have to retell the story again – one psychiatrist has one idea and another one has another. You have no idea".*

*"I was diagnosed with mental illness at 16, and when my mother contacted Accident and Emergency she was told 'we can't see her, we're too busy'. I then got sicker until I was in hospital".*

*"You are left to your own devices when you get out of hospital. I was sent to Sydney and released with no way of getting home".*

### *Access to information*

NSW CAG identifies that people living with mental illness in many situations are not provided with adequate information about their illness, treatment, and strategies to stay well. We hear that some people experience health problems as a consequence of their medication, such as obesity and sexual dysfunction, but are often not made aware of the possible side effects from the outset. Many people living with mental illness do not have access to the internet, and therefore often rely on their health care professionals providing them with adequate information and options for treatment and care. A comment provided in a consultation was:

*"I am concerned about my medication. I would like more information and knowledge about alternatives".*

### *Social inclusion and participation in the community*

NSW CAG is aware that people who live with mental illness are often marginalised as a consequence of their illness. This is frequently demonstrated where people living with mental illness have limited input into their care and treatment, limited or tokenistic input into service delivery, and unclear roles as consumer workers within health services. More broadly, we hear that people who live with mental illness become discouraged from participating in the wider community as a consequence of pervasive stigma and discrimination, low income, reduced rates of employment compared to that of the general population, limited access to new technologies, transport, recreational activities, in some instances the perceived inability to parent, and lack of supports within the community. An issue raised at a NSW CAG consultation was that:

*"It is very hard for me. There is no support from the community and I have no contact with them... There needs to be more support to understand what mental illness is – and not just being diagnosed".*

### *Mental Health Legislation and Advance Directives*

It is suggested that the compatibility of involuntary detention and human rights may be improved through the availability of legally recognised Advance Directives (National Association of Community Legal Centres et al., 2008, p.56). Advance Directives are an advance care planning mechanism that contain instructions written by a person living with mental illness while they are well. It is for health care professionals to draw on in the future in the event that a person experiences episodic mental illness and loses the capacity to make decisions for themselves.

At NSW CAG we advocate for advance care planning mechanisms to be used to a greater extent which allow people to have a say in their care and treatment in the event that in the future they experience a period of being well and lose the capacity to made decisions.

### United Nations and Human Rights

NSW CAG points the Australian Human Rights Consultation Committee to recent reports presented to United Nations Committees. These reports also acknowledge areas where the human rights of people living with mental illness are not adequately upheld in accordance with Australia's international obligations.

### Reports from United Nations Committees

Recent United Nations reports that monitor Australia's compliance to the *International Covenant on Civil and Political Rights* and the *International Covenant on Economic, Social and Cultural Rights* have identified areas that Australia's rights protections do not go far enough in protecting people who live with mental illness.

#### *Concluding Observations of the United Nations Human Rights Committee: Civil and Political Rights: Australia (2009)*

The Committee:

- Expressed concern that the rights to equality and non-discrimination are not comprehensively protected in Australia in federal law.
- Expressed concern over reports of excessive use of force by law enforcement official groups against groups such as persons with disabilities.

NSW CAG shares these concerns based on feedback from mental health consumers in NSW.

#### *Concluding Observations of the United Nations Committee on Economic, Social and Cultural Rights: Australia (2009)*

The Committee found that:

- Insufficient measures have been taken by the State party to ensure an adequate standard of living for people with disabilities.
- There are high unemployment rates among people with disabilities.
- Social security does not provide an effective income support system, having a negative impact on disadvantaged and marginalised individuals and groups.

Again, NSW CAG shares these concerns and iterates the need for Australia to take action to ensure these human rights are protected in the future.

### **How could Australia better protect human rights?**

NSW CAG recognises that the human rights of people who live with mental illness continue to be infringed. This is indicative of the need for a stronger human rights commitment from the Australian Government. NSW CAG supports the following:

- An educative national human rights campaign, which is inclusive of a component challenging stigma and discrimination for people living with mental illness. This would help to foster a human rights culture which is necessary if stigma and discrimination towards people living with mental illness are to become a thing of the past.
- That the Australian Government acknowledges the shortfalls for human rights protections, particularly for people living with mental illness, and heeds the recommendations from United Nations Committees.
- Incorporating human rights into a national education curriculum.

- Increased consideration to human rights when new laws and policies are being formulated by government, and when existing laws and policies are reviewed. This could be kept in check with the introduction of a national Human Rights Act.
- Increased consideration to human rights when services are being planned, implemented, delivered and evaluated. This could also be kept in check with the introduction of a national Human Rights Act.
- Fairer access to legal representation and individual advocacy services, particularly for people living with mental illness.

## References

*Convention on the Rights of Persons with Disabilities*. Open for signature 30 March 2007, A/RES/61/106 (entered into force 3 May 2008).

Mental Health Council of Australia. (2009). *Home Truths: Mental Health, Housing and Homelessness in Australia*. March 2009: MHCA.

National Association of Community Legal Centres, Human Rights Law Resource Centre Ltd. & Kingford Legal Centre. (2008). *Freedom, Respect, Equality, Dignity: Action. NGO Submission to the Human Rights Committee: Australia's Compliance with the International Convention on Civil and Political Rights*. September 2008. Retrieved on 10 June 2009 from <http://www.rightsaustralia.org.au/facts-and-statistics/63-facts-and-statistics.html>

United Nations Committee on Economic, Social and Cultural Rights. (2009). *Consideration of Reports Submitted by the States Parties under Articles 16 and 17 of the Covenant: Concluding Observations of the Committee on Economic, Social and Cultural Rights- Australia. Forty second session: Advanced Unedited Version*. UN Doc E/C.12/AUS/CO/4 (22 May 2009). Retrieved on 10 June 2009 from <http://www2.ohchr.org/english/bodies/cescr/docs/AdvanceVersions/E-C12-AUS-CO-4.doc>

United Nations Human Rights Committee. (2009). *Consideration of Reports Submitted by the States Parties Under Article 40 of the Covenant: Concluding Observations of the Human Rights Committee – Australia. Ninety fifth session*. UN Doc CCPR/C/AUS/CO/5 (7 May 2009). Retrieved on 10 June from <http://www.unhcr.org/refworld/docid/4a129b130.html>