

**Submission to the NGO Shadow Report on the  
Convention on the Rights of Persons with  
Disabilities**



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Dear Amelia,

**Re: Convention on the Rights of Persons with Disabilities - NGO Shadow Report**

The NSW Consumer Advisory Group – Mental Health Inc. (NSW CAG) is the 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 which reflect their needs.

NSW CAG is pleased to have the opportunity to comment on how Australia is progressing towards its commitments to the *Convention on the Rights of Persons with Disabilities*, regarding people who experience mental illness in NSW, for inclusion in the NGO Shadow Report.

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<sup>1</sup> 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 1000 people on our Network who are accessible via the internet;
- Face-to-face consultations that NSW CAG has conducted 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.

### **General comments on the *International Convention on the Rights of Persons with Disabilities***

NSW CAG endorses and strongly supports the purpose of the *Convention on the Rights of Persons with Disabilities* (herein referred to as the Convention) to “promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity” (United Nations, 2006).

NSW CAG commends the Australian Government on being one of the first Western countries to ratify the Convention on 18 July 2008. NSW CAG is also pleased to see the Australian Government’s move to develop a *National Disability Strategy* and *National Mental Health and Disability Employment Strategy* and NSW Department of Health’s development of the *Department of Health Disability Action Plan* since the Convention’s ratification. It is encouraging to see actions being taken that are in line with the Convention.

In considering the Convention, NSW CAG sees it important to note that the nature of mental illness can often result in psychosocial disability preventing many from reaching their full potential as active citizens. The following are important key points to consider in relation to mental illness:

- Recovery from mental illness is a journey, and people with mental illness can live rich and fulfilling lives
- The psychosocial disabilities resulting from the illness may fluctuate given the episodic nature of many mental illnesses
- Mental illness is, in many situations, a manageable condition
- There are high levels of stigma and discrimination directed towards people living with mental illness, which needs addressing if people living with mental illness are going to be able to participate as full citizens with optimum quality of life

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<sup>1</sup> A mental health consumer is a person who has the experience of using mental health services. NSW CAG also hears from people who do not have this experience, but who have the experience of mental illness.

## **NSW CAG Input into the Shadow Report**

### **Stigma and Discrimination (Articles 5 & 8)**

The Convention on the Rights of Persons with Disabilities states that people should live with equality and non-discrimination (Article 5), and that signatories should undertake to raise awareness and combat stereotypes of persons with disabilities through measures such as initiating and maintaining awareness campaigns, and fostering attitudes of respect for people living with disability (Article 8).

NSW CAG's constituents and literature on mental health regularly identify that stigma and discrimination is the biggest social barrier that people living with mental illness face. This is supported by literature on mental health (Carr & Halpin, 2002; Cheverton, 2008; Corrigan et al, 2004). At NSW CAG we know that people living with mental illness have the capacity to live rich and fulfilling lives and to contribute to their communities. It is an unfortunate reality that stigma and discrimination in Australia still acts as a barrier to many, preventing them from reaching their full potential as active citizens. Stigma is not only a barrier for people that are diagnosed and treated for mental illness, but also prevents people from seeking help in the first place (WHO, 2003, p.31).

NSW CAG regularly hears that people with mental illness become discouraged from participating in the wider community as a consequence of pervasive stigma and discrimination. Compounding factors include low income, reduced rates of employment compared to that of the general population, and lack of supports within the community.

Self-stigmatisation and family stigma, caused by societal stigma is equally debilitating for people with a mental illness (Carr & Halpin, 2002, p.11). NSW CAG's statewide consultations produced much discussion relating to this, for example, one person stated "the way many psychotic illnesses are perceived in society leads sufferers to stigmatising themselves and hiding away from society". This results in many people not disclosing their mental illness, which can impact on participation in society. It can also be a difficulty in many social situations when the individual is unwell, for example in the work place.

Even within the mental health system itself, stigma and discrimination are present in the attitudes and behaviours of service staff who regularly interact with consumers. This is manifested through staff holding negative attitudes towards people living with mental illness and having a lack of hopefulness for their future. NSW CAG is aware that staff members also use discriminatory language resulting in consumers being devalued. Stigma and discrimination at service level also translates to paternalism and the lack of genuine opportunities for people using services in having input into their own treatment and care.

Currently in Australia there is a lack of public education around mental health and mental illness which translates to limited knowledge and unfounded beliefs by many about the causes of mental illness, how to seek help and how to access

information. This results in confining available support to professionals (Jorm, 2000), and can also act to reinforce stigma and discrimination within the community. Comments from consumers in our consultations have included that there is “lack of awareness in the community that mental illness can be transient, non-violent”, and that it is the “lack of mental health literacy which contributes to ignorance, misconceptions and lack of understanding” (NSW CAG Consumer Consultation, 2009).

The media is an important tool in educating the wider community about the true facts around mental illness, while misrepresentation of mental illness in the media can act as a further barrier to the social inclusion of people living with mental illness. One comment provided through our network was that “consistent misrepresentation and misreporting of ADHD (Attention Deficit Hyperactivity Disorder) and related clinical research in the media results in fear mongering, increased stigma, perpetuating stereotypes and further limiting access to specialised health care services” (2009).

There is a strong need for raising awareness and knowledge about mental illness in Australia. The importance of promoting social inclusion and positive attitudes towards people living with mental illness is embedded in many key Australian mental health policy documents (Commonwealth of Australia 1992, 1997, 2003). Two significant reports have recommended that national awareness campaigns about mental illness be implemented:

- The Senate Inquiry into Mental Health recommended “the Australian Government fund and implement a nationwide mass media mental illness stigma reduction and education campaign” (Senate Select Committee on Mental Health, 2006, p.15).
- The National Health and Hospitals Reform Commission propose “a sustained national community awareness campaign to increase mental health literacy and reduce the stigma attached to mental illness” (Commonwealth of Australia, 2009, p.37).

A program designed to combat stigma and discrimination towards people living with mental illness is the, “Like Minds, Like Mine” in New Zealand. This program has increased public awareness surrounding mental illness, reduced the prevalence of stigma and discrimination from family, mental health services, the public and employers, and has made progress in building infrastructure for the delivery of high quality training and education (NZ Ministry of Health, 2007; Vaughan & Hansen, 2004, p.117). The range of strategies used to achieve these outcomes included a nationwide television and radio advertising campaign, public speaking engagements by people with experience of mental illness, and local awareness raising events such as art exhibitions. There was also support through the media with complaints about discriminatory reporting through letters to the editor, the production of guidelines for working journalists and training for journalism students (NZ Ministry of Health, 2007, p.19).

Research has shown that contact between the general public and people living with mental illness can also greatly reduce the level of stereotypes about mental illness that the public subscribe to (Corrigan, 2001; Corrigan, et al., 2002).

Stronger support needs to be put in place to increase the participation of people living with mental illness in society. This would lead to more interaction in the community, and the flow-on effect of increasing knowledge and dispelling myths surrounding mental illness. One example of this would be increasing support for people living with mental illness to access and maintain employment.

NSW CAG is pleased to see that the Australian Government acknowledges the importance of combating stigma and discrimination by indicating in the *Fourth National Mental Health Plan 2009-2014* that there is a commitment to “improving community and service understanding and attitudes through a sustained and comprehensive national stigma reduction strategy” (Commonwealth of Australia, 2009b, p. iv). NSW CAG however stresses the importance of the government following this commitment through with comprehensive action including the funding of a national program to increase knowledge and awareness about mental illness. This program needs to include: educational and training strategies (including contact with people living with mental illness) aimed at mental health staff; people in training to enter health, education and other related professions; employers; journalists and the general public.

**Recommendations:**

- The Australian Government to follow through with its commitment by implementing a national stigma reduction strategy. This needs to include the funding of a national program to increase knowledge and awareness about mental illness in order to combat stigma and discrimination. This program needs to include: educational and training strategies (including contact with people living with mental illness) aimed at mental health staff; people in training to enter health, education and other related professions; employers; journalists and the general public. Evaluation mechanisms must be in place for this strategy from the outset in order to measure its effectiveness.

**Legal Representation (Articles 12, 13 & 14)**

Article 12(3) of the Convention requires all States to “take appropriate measures to provide access by persons with disabilities to the support they may require in exercising their legal capacity”.

Article 13(1) of the Convention states that all Countries “shall ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural... accommodations”.

In NSW there are several circumstances where people who live with mental illness require access to legal representation, individual support and advocacy. This is of most importance particularly where rights can be taken away from people under the *NSW Mental Health Act 2007* and the *Guardianship Act 1987*.

Unfortunately NSW CAG regularly hears from people living with mental illness that the current system of legal representation and support fails to adequately meet their needs.

In NSW the legal system requires a Magistrate to determine whether a person with mental illness or disorder, who is at risk of harm either to themselves or others, needs to be admitted into hospital on an involuntary basis. During this process it is a requirement of the *NSW Mental Health Act 2007* that individuals are appropriately legally represented, with family and friends allowed to sit in on the hearing if requested. Legal representation is also required when the Mental Health Review Tribunal is reviewing an individual's case. The Mental Health Review Tribunal is established under the *Mental Health Act 2007* to make and review orders, and to hear appeals, about the treatment and care of people with a mental illness in NSW.

People who live with mental illness in NSW may also come in contact with the NSW Guardianship Tribunal under the *Guardianship Act 198*. The Guardianship Tribunal has the power to appoint guardians and financial managers for people who they have determined are unable to make their own decisions.

### Legal Representation

Currently, NSW provides the service Legal Aid NSW, which provides free legal services and support to disadvantaged people within the state. This legal service can only perform this supportive role to consumers through sustained funding and if all consumers have equitable access to it. As it stands, one in five disadvantaged people who seek assistance from Legal Aid NSW are being turned away (Hatzistergos, 5 November 2009).

At present there is a low rate (12.6%) of legal representation and aid being provided for people living with mental illness at the Mental Health Review Tribunal (Carney, Beaupert, Perry and Tait, 2008). Whilst legal representation is a basic human right, it is not currently being sufficiently realised in practice. This is in contrast with the conditions outlined in the Convention. There is a need for more funding to be provided to increase Legal Aid access for consumers as they navigate the mental health legal system.

NSW CAG also hears from consumers that lawyers provided through Legal Aid NSW are often lacking education regarding mental health and mental health law. Education on mental health law and the psychosocial barriers faced by people living with mental illness is needed for all lawyers working for Legal Aid NSW who represent mental health consumers. This is essential for ensuring mental health consumers are adequately represented in situations where their rights may be removed under NSW law.

In addition to this, people confronted with the legal system have indicated that Legal Aid lawyers will often spend little time with them; do not fully understand

the situation; have not consulted with them about their wishes and do not always represent what the individual requests.

### Community Treatment Orders

A Community Treatment Order (CTO) is a legal order set out by the Mental Health Review Tribunal or Magistrate in NSW. CTOs were originally introduced to provide a community-based alternative to involuntary hospitalisation. The CTO sets out the terms under which a person must accept medication, therapy, counselling, management, rehabilitation and other services. CTOs are intended to allow a person with mental illness to live in the community rather than being detained in hospital.

Currently in NSW, allocation of legal aid is primarily reserved for inpatient hearings, rather than CTO review (Carney, Beaupert, Perry and Tait, 2008). There is insufficient aid available for consumers seeking support for representation at their CTO hearings, in terms of decision-making, and appealing against an order. Those being legally represented when having their involuntary inpatient status reviewed is 89% compared to 1.6% being legally represented under issue of CTOs (Mental Health Review Tribunal (NSW), 2008).

Different jurisdictions across Australia's states and territories relating to mental health law also make it difficult for the seamless treatment of a person on a CTO. CTOs are legislated under each state and territory which can limit the freedom of individuals on CTOs to commute across state and territory borders while meeting the requirements of their CTO.

### Increased time for Mental Health Review Tribunal to make assessments

The length of time allocated to the Mental Health Review Tribunal for assessing individual cases is severely restricted. NSW CAG has heard that the Tribunal may only have up to half an hour allocated to each case in order to review the hearing and make their decision about a person's human rights under mental health law. Often the Tribunal hearings are a stressful and emotional time for consumers, and limiting the length of time they have for assessment only compounds this stress.

### **Recommendations:**

- Education and training for lawyers representing consumers, to increase knowledge around the *NSW Mental Health Act 2007*, mental health legal system and awareness of the psychosocial barriers facing people living with mental illness
- Increased availability of legal aid for all consumers coming in contact with the Mental Health Review Tribunal, including for people undergoing Community Treatment Order reviews
- Increased funding for Legal Aid NSW to provide stronger legal representation for people living with mental illness
- Provision of more time to the Mental Health Review Tribunal for conducting assessments and making decisions that impact people living with mental illness

## **Advocacy (Articles 12, 13, 19, 21, & 29)**

Provisions in international law and throughout the Convention all call for a broader right to advocacy in all aspects of community life (including legal representation, living and participating in the community and freedom of expression and opinion). All Countries shall “ensure that persons with disabilities can effectively and fully participate in political and public life on an equal basis with others, directly or through freely chosen representatives”. (Article 29)

Advocacy services, particularly advocacy at an individual level for consumers accessing mental health services or facing the legal system, is extremely limited within NSW.

### Mental Health Consumer Workforce

Mental Health Consumer Workers (herein referred to as consumer workers) are people with the lived experience of mental illness, employed in mental health services in various capacities to provide peer support, individual and systemic advocacy for public mental health consumers. They are seen as key workers in the support and advice they offer to Area Mental Health Services on a range of issues in NSW.

There is currently an insufficient consumer workforce within the mental health system in NSW. Those who are employed have extremely limited working hours and inconsistent job definitions/descriptions. There are also restrictions on what type of advocacy support they may provide due to the mental health service being their employer.

There is also no clear definition of the roles and responsibilities of consumer workers in NSW. NSW CAG, in conjunction with the NSW Consumer Workers’ Forum is currently conducting a project to develop a framework for the consumer workforce in NSW that clearly sets out the roles, functions and responsibilities of consumer workers, including a set of generic position descriptions that cover the remunerated roles undertaken by the consumer workforce in NSW Area Health Services.

It is well documented that exposure to working with people living with a mental illness breaks down barriers and can reduce stigma (Cheverton 2008; Corrigan 2004). By reducing stigma, services are removing one significant barrier to recovery-oriented practice.

Through the lived experience of mental illness, consumer workers represent role models not only to other consumers using the service, but also to service providers who are seeking examples of how to promote and facilitate individual’s journeys of recovery.

Currently in NSW there is also inadequate and inconsistent funding to train consumer workers to enable them to participate fully in their role. This is a fundamental and urgently needed element of workforce training (Senate Select Committee on Mental Health 2006, p.33).

#### Individual Advocacy Services

NSW CAG is aware that there is no independent advocacy service for people living with mental illness in NSW. NSW CAG often receives calls from consumers seeking individual advocacy support, suggesting there is an unmet need for individual advocacy services for people with a mental illness.

Advocacy services must be made available to create a transparent and robust legal system that protects the human rights of people living with mental illness. Consumers often express that not only do they require legal representation, but also seek advocacy and support throughout legal proceedings. .At present, it is documented that lawyers and the Mental Health Review Tribunal can create a sense of intimidation for consumers (Carney, Beupert, Perry and Tait, 2008). NSW CAG is aware of the importance of emotional support being provided to consumers during their contact with the mental health legal system.

#### **Recommendations:**

- Clarification of the roles, functions and responsibilities of consumer workers, including a set of generic position descriptions that cover the remunerated roles undertaken by the consumer workforce in NSW Area Health Services
- Increased consumer worker positions in NSW Area Health Services
- Establishment of an independent mental health individual advocacy service in NSW
- Ensure that every consumer has equal opportunity to access an individual advocacy service and a support person, where required, during their contact with the legal system

#### **Peer support (Article 26)**

Article 26(1) – Habilitation and rehabilitation  
State Parties shall take effective and appropriate measures, including through peer support, to enable persons with disabilities to attain and maintain maximum independence, full physical, mental, social and vocational ability, and full inclusion and participation in all aspects of life.

Consumers have identified that there is a lack of social supports and activities outside mental health services, creating social isolation. NSW CAG hears that consumers see a strong need for more peer support networks and social activities to exist outside the mental health system to provide access to emotional support and information.

Consumers also regularly comment on the need to have people with the lived experience of mental illness employed in peer support roles within the mental health system.

**Recommendations:**

- Increase the availability of peer support, social activities and social networks for mental health consumers

**Seclusion and Restraint (Article 15)**

Article 15(2): All Countries to the Convention “shall take all effective legislative, administrative, judicial or other measures to prevent persons with disabilities, on an equal basis with others, from being subjected to torture or cruel, inhuman or degrading treatment or punishment”.

Seclusion is the confinement of a mental health consumer supervised alone in a locked room, from which they are unable to freely exit at any time for any duration or any purpose (NSW Health, 2007). Restraint is the restriction of an individual’s freedom of movement, which involves any form of detention under the involuntary patient provisions outlined in the *NSW Mental Health Act 2007* (NSW Health, 2007).

Through NSW CAG’s work we often hear from consumers who express concern around the improper use of seclusion and restraint. NSW CAG views that seclusion and restraint should only be used as a safety intervention of last resort, where there is an imminent threat to a consumer or another person’s safety. We support an approach which ensures that seclusion and restraint are used as infrequently as possible.

However, NSW CAG is aware through our consultation work that seclusion is often used, particularly in the inpatient setting, to resolve disputes between consumers and staff. Despite evidence to suggest that seclusion and restraint has a non-therapeutic effect, it remains a practice that is frequently used as an intervention method (Roberts, Crompton, Milligan & Groves, 2009).

Consumers find seclusion and restraint practices to be an extremely traumatic and emotionally damaging intervention. Such practices often significantly contribute to a person’s distress and the anger that results in being secluded. Where seclusion and restraint are used, it is often a result of the staff’s failure to carry out care to the standards set out by their profession (McSherry, 2008). The frequent use of seclusion and restraint indicates a lack of respect for individual needs and lack of adequate assessment of the necessity for these measures to be used as intervention in a person’s treatment.

The *NSW Mental Health Act 2007* states that consumers should “receive the best possible care and treatment in the least restrictive environment”. In keeping with the articles outlined in the Convention, there is a need to limit all non-consensual treatment and interventions.

An urgent assessment should be undertaken on state and territory mental health legislation and policy around the unnecessary and improper use of seclusion and restraint practices. Any use of seclusion and restraint should be in line with:

- The forthcoming revised National Standards for Mental Health Services
- State and/or national Charters of Rights
- Australia's international obligations under the United Nations Convention on the Rights of Persons with Disabilities and the Universal Declaration of Human Rights.

In addition, NSW CAG calls on the Australian Government to increase prevention and early intervention mental health services as a way to reduce acute treatment and care involving seclusion and restraint.

**Recommendations:**

- Seclusion and restraint are used only as a last resort in treatment
- Stronger care planning in partnership with consumers to limit non-consensual treatment practices
- Staff are adequately trained in de-escalation techniques
- Staff stigma and discrimination towards consumers is addressed through educational programs and regular contact with consumers who are in recovery
- Increase prevention and early intervention mental health services

**Community Mental Health Services (Article 25 & 26)**

The Convention makes provisions for all states to take appropriate measures to ensure access to health services including services that focus on "early identification and intervention".

Services and programs provided by Countries should, "begin as early as possible, be based on individual needs and strengths, help people with disability be included and take part in society, be available as close as possible to people's own communities, be voluntary..." (Article 26).

NSW CAG hears from our consultations and Network that people living with mental illness need to access a holistic range of services including those that address physical health, social networks and support, housing needs and employment needs. NSW CAG is also aware that mental health service delivery is imbalanced towards acute services and that consequently people who live with mental illness have inadequate access to holistic community health services. In many instances access to acute services are the only services available.

Community-based care is integral to supporting a person's recovery. However, funds are continuing to be targeted towards crisis care rather than promotion, prevention and early intervention and post-discharge support. Funds need to be quarantined specifically for both community health and community mental health services, rather than these services relying on the

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unguaranteed residual funding unabsorbed by crisis care. Through NSW CAG's consultations, one consumer commented that, "there is a lack of community services for consumers as opposed to hospitals – we could do heaps of things and early intervention instead of ringing the crisis team, before people become unwell" (NSW CAG Consultation, 2009).

A significant gap in the NSW mental health system is community-based services that enable people who experience mental illness to increase and decrease the levels of clinical and non-clinical supports provided to them. These services are essential to a mental health system that is recovery oriented. Without options that assist people to stay in their communities, and avoid hospitalisation unless essential, our mental health system will remain focused on acute and crisis care and fail to deliver the best outcomes to individuals and the community.

**Recommendations:**

- Improve and maintain access to quality health care in the face of increasing demand
- Reduce potentially preventable hospital admissions by funding more community services and refocusing the system from being acute to prevention-driven
- Develop flexible service models that enable people who experience mental illness to increase and decrease the levels of clinical and non-clinical supports provided to them within the community as needed

**Discharge Planning (Article 25)**

Provide those health services needed by persons with disabilities specifically because of those disabilities, including early identification and intervention as appropriate, and services designed to minimize and prevent further disabilities, including among children and older persons  
c. Provide these health services as close as possible to people's own communities, including in rural areas (Article 25)

Consumers have expressed concern about the inadequate level of discharge planning that occurs prior to leaving an inpatient setting. Discharge planning needs to extend beyond the minimum of making sure that the person has somewhere to live, or that someone has been informed they are leaving the hospital.

Research indicates that the highest risk of suicide amongst people who experience mental illness is in the first 28 days after discharge from an inpatient or hospital setting following an acute episode of illness (Senate Select Committee on Mental Health 2006, p.200; NSW Health 2008). Australia's National Suicide Prevention Strategy, the *Living is for Everyone* framework acknowledges that the risk is most imminent following discharge from a psychiatric unit if there is a history of suicide attempts or where person

was involuntarily admitted, lives alone or is exposed to work stress (Living Is For Everyone 2007).

The “revolving door syndrome” (Commonwealth of Australia, 2008b, p.137) also presents as a problem for consumers whereby they face repeat acute care admission as a result of inadequate discharge planning, and the lack of support upon discharge including supported accommodation, community rehabilitation and recovery services and employment opportunities. Discharge planning can improve outcomes for consumers, their carers and families, and reduce the potential for readmission by making sure that adequate supports are in place in the community, and facilitating the recovery journey. It is also essential for maintaining continuity of care.

Consumers report poor follow-up care from hospitals and a lack of communication about transition to community care, and others have reported receiving phone calls from clinicians rather than face-to-face follow up. NSW CAG is also aware of the need for step-down services which provide support for leaving hospital and re-entering the community, and step-up services which provide support before the need for hospitalisation arises.

Consumers continue to raise concern about the lack of discharge summary paperwork that is forwarded to clinicians and/or GPs which provide detailed notes about their medication and treatment, and what services may be needed. NSW CAG has heard of consumers being handed their discharge papers without any referral to support services within the community, which is detrimental to ensuring the continuity of care for consumers in their transitional period back into the community.

What is needed is an holistic approach to making sure that people know what services and supports exist, and that these links are made prior to discharge. Clinicians need to have knowledge about the local services, which are available for consumers within their areas, or make referrals to community mental health teams that can provide support and/or information.

**Recommendations:**

- Reduce re-admission rates by supporting people in successful transition back to their community when discharged from hospital
- Improving the current discharge planning processes currently administered across NSW to ensure the best opportunity for community integration, prevention, support and access to services

**Case Management (Article 19)**

Access to a range of in-home, residential and other community support services. (Article 19)
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Good case management plays a vital role in mental health prevention, early intervention, and recovery. Case managers support consumers to identify and address their needs within the community, and to locate and access the

appropriate support and services to maintain wellness and manage symptoms.

NSW CAG consistently hears, through our consultation work, about severe pressure on case management services in NSW. Consumers across the state tell us that caseworkers often have caseloads of 40 to 60 people, which seriously limits their contact with each person. Consumers also comment that they often do not have access to a case manager at all. When people do have a case manager, the high caseloads mean their needs are not being adequately addressed, and that many people who are allocated case management are not actually receiving a service that constitutes case management.

Case management services in NSW appear to be in crisis. In many regions consumers are only able to access case management within the community if they are under a CTO under the Mental Health Act (s51). NSW CAG has heard that some consumers have sought to be put on a CTO so they may be able to receive case management services. This is clearly an unacceptable set of circumstances.

**Recommendations:**

- Increase availability of case management services, with a simplification of referral and service access pathways

**Employment (Article 27 & 28)**

Article 27: The Convention outlines that all Countries “agree that all persons with disabilities have the same right to work as other people”, and to ensure that all appropriate steps are taken to include persons with disabilities in employment are taken.

For many consumers the opportunity for participation in meaningful employment is an important aspect of their recovery journey. Up to 90% of consumers are interested in and want to obtain and maintain employment; however they still experience many challenges in making this a reality (Mental Health Council of Australia, 2007).

Opportunities for participation in the workforce have a range of benefits for individuals that include increased self-esteem and self-worth, confidence, and providing a purpose and meaning to life. Participation in meaningful and satisfying employment also facilitates broader opportunities for economic participation, increasing social interaction, helping people to feel valued in society, increasing self-esteem and reducing self-stigma, and increasing future security through superannuation and options for housing.

Mental illness is unique in that some people can be well for long periods of time, experiencing episodes of being unwell only occasionally. This poses uncertainty for those who are trying to actively engage in employment and live

normal lives. Issues relevant to accessing employment are continually raised by mental health consumers with whom we consult.

NSW CAG has been made aware that often consumers are not effectively engaged in employment, with opportunities limited due to having a mental illness. People living with mental illness also regularly highlight the need for stronger access to training and education to assist in their integration into the workforce. NSW CAG is pleased to see the Australian Government has introduced a Vocational Education, Training and Employment Service (VETE) targeting mental health consumers in assisting them integrate into the workforce.

However, NSW CAG hears through our consultations that many employers and workplaces are inflexible, particularly around work hours and leave. One consumer commented, "It's hard to find flexible full time work that allows for a slightly late start because of my illness and the side effects of my medication" (NSW CAG Consultation, 2009). Inflexible workplaces present a large barrier to the employment of people living with mental illness. For some people the unpredictable nature of mental illness is such that it may be difficult for them to commit to regular hours and days.

It is important that the Government is committed to increasing the participation of people with mental illness in employment through reviewing related policies, infrastructure and services. The culture of the Australian workforce needs to be addressed in terms of flexible workplaces, and challenging stigma and discrimination towards people living with mental illness.

**Recommendations:**

- Promotion of flexible workplace environments in Australia
- Raise awareness and address the stigma and discrimination experienced by people living with mental illness in the workplace
- Ensure consumers are aware of and have access to training and education programs such as Vocational Education, Training and Employment services

Article 28: The Convention outlines that "people with disability and their families have the right to an adequate standard of living, including food, clothing and housing".

Disability Support Pension

The Disability Support Pension (DSP) is a nationally funded scheme to ensure the financial protection of individuals who are unable to work full-time and to ensure adequate levels of income.

The DSP is only provided to those who work less than 15 hours per week, and is removed once a person is employed for more than this. Many people who live with mental illness are often capable of, and willing to work more than 15 hours per week. However, eligibility for payment of the DSP means

that there is a disincentive for people living with mental illness to seek full time work, as the security of regular payment is threatened.

Through NSW CAG's consultations, one consumer commented that, "I cannot do certain hours of work or study due to the legislation and criteria restrictions imposed upon disabled pensioners... I have no qualms about getting off the pension permanently. This is in fact my goal. But the problem is that should I or any other disabled pensioner fall ill we will not be able to survive on the Dole for health, medicine, food and living costs" (NSW CAG Consultation, 2009).

The high cost of medication is also regularly highlighted by people living with mental illness as a disincentive to entering into employment that is more than 15 hours a week. Centrelink regulations are that once an individual is working more than 15 hours per week they become ineligible for a health care card which significantly subsidises their medication expenses.

**Recommendations:**

- Increase opportunities for meaningful employment for consumers
- Subsidise medication for consumers who are in employment, with an increase of medication available through the Pharmaceutical Benefits Scheme
- Reinstate the work hour threshold for DSP or other suitable pensions from 15hrs/week to 30hrs/week

**Housing (Article 19 & 28)**

Article 28(1) of the Convention states that all "persons with disabilities have the right to an adequate standard of living, including food clothing and housing".

Article 28(2d) of the convention requires that "State Parties recognise the right of persons with disabilities to social protection and to the enjoyment of that right without discrimination on the basis of disability, and shall take appropriate steps to safeguard and promote the realization of this right including measures to ensure access by persons with disabilities to public housing programmes".

Article 19(b): All States to the Convention need to ensure that people have "access to in-home, residential and other community support services to help them be included in the community".

Article 19 of the Convention also makes provision for individuals not to be obliged to live in a particular living arrangement.

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. However, it is not uncommon for many people living with mental illness to be discharged from institutions such as hospitals, mental health services and

alcohol and drug services into unstable housing or homelessness (Mental Health Council of Australia, 2009).

The Australian Government's *White Paper on Homelessness* (2009) outlines that "under the National Partnership on Homelessness, state and territory governments will implement a policy of 'no exits into homelessness' from statutory, custodial care and hospital, mental health and drug and alcohol services for those at risk of homelessness" (p.27). To make this policy a reality, funding must be adequately quarantined for this purpose.

Considerable measures need to be taken in order to improve the housing situation of people living with a mental illness to attain a standard that is comparable with the rest of Australian society (Mental Health Council of Australia, 2009).

Currently the Australian Government's *Nation Building Economic Stimulus Plan* aims to improve the public and community housing situation in NSW. The Government aims to deliver 6,000 additional social housing homes in NSW by June 2012 (Australian Government, 2009).

Whilst more housing is being made available for disadvantaged people in NSW, it isn't specifically being allocated to people living with mental illness. Given the high proportion of people who are homeless or living in unstable housing that live with mental illness, it is essential that their housing needs become a priority when housing is allocated.

NSW CAG is made aware through our consultations and network that consumers often seek safe and affordable accommodation upon discharge from hospital. However, affordable housing and access to assistance programs such as the Housing and Accommodation Support Initiative (HASI)<sup>2</sup> are hard to attain. Consumers often experience an extended stay in inpatient facilities due to a lack of appropriate housing being available to them.

Stable housing in the community is crucial to support people living with mental illness. Finding suitable housing based on a person's needs and providing early responsive housing support to prevent tenancy breakdown assists people living with a mental illness post discharge from hospital. Access to adequate services that assist in finding housing is limited, placing a strain on the continuity of care for consumers.

#### **Recommendations:**

- Improved discharge planning from mental health services
- Increased access for consumers seeking support through the Housing and Accommodation Support Initiative (HASI) program

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<sup>2</sup> The Housing and Accommodation Support Initiative (HASI) is a program funded by the NSW Government that ensures stable housing is linked to specialist support for people living with mental illness. HASI enables people to remain in the community rather than in hospital, and reduces homelessness by providing high level accommodation support services.

- Quarantined funding to ensure people from statutory, custodial care and hospital, mental health and drug and alcohol services are not discharged into homelessness
- Adequate support for consumers during a stay in an inpatient facility and following discharge, to prevent tenancy breakdown
- Increased social housing availability for people with a mental illness

### **Criminalisation of Mental Illness (Article 13)**

Article 13: The Convention outlines that all States “shall recognise that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life”.

People living with mental illness are exposed to an increased risk of offending due to several contributing factors such as poverty, homelessness and unemployment (Le, Ta, Vu, & Weller, 2008). This then results in people them being more likely to come in contact with law enforcement agencies, such as police.

This process of increased contact with police has often been referred to as the “criminalisation of mental illness”, where consumers are processed through the criminal justice system instead of being referred to appropriate mental health treatment (Sced, 2006).

Mental health treatment, housing and access to recovery resources are insufficient to service all consumers within the state (Le, Ta, Vu & Weller, 2008). These critical shortages in adequate community mental health services leads to many consumers being placed within the criminal justice system, as there are not other alternative choices available (Sced, 2006). The overrepresentation of people with mental illness in the criminal justice system suggests that people living with mental illness are not getting access to the care and support they require (Lamb & Weinberger, 2008).

Seclusion of prisoners who have been assessed as being at risk of suicide, self-harm or as a danger to others, also raises concern (Le, Ta, Vu & Weller, 2008). Prisoners can often be placed in a locked down ward for 19-22 hours a day, given only a hospital gown to wear and under constant video surveillance (Senate Select Committee on Mental Health, 2006). This method does not address the therapeutic needs of someone who is suicidal within the prison system. This facilitates an environment that neglects the care and attention that those prisoners who have mental health needs (Lamb & Weinberger, 2008).

Following release from prison, many people living with mental illness are often left without discharge plans and without a connection being established with community services (Le, Ta, Vu & Weller, 2008). Prisoners with mental illness need mental health teams that are readily available following release from prison to ensure that they receive adequate support and care within the community (Lamb & Weinberger, 2008).

During a person's detention in prison, they may be diverted from the criminal justice system to the health system, if they are found to be suffering from a mental illness (Senate Select Committee on Mental Health, 2006). This diversion to the health system may result in people who would have been released from prison, being placed into forensic patient care without a release date (Butler & Allnutt, 2003). This issue also applies to all forensic patients<sup>3</sup>, being placed in a forensic inpatient facility without a date for parole or release from the system (Senate Select Committee on Mental Health, 2006).

No release date can be extremely stressful for forensic consumers, not being guaranteed release from their treatment and care under the *Mental Health (Forensic Provisions) Act 1990*. NSW CAG has been made aware that each time a review of forensic consumers care is conducted by the Mental Health Tribunal, a victim statement is sought, which can overshadow the rehabilitation achieved by the individual during their stay in the mental health facility. This is also the case for people who have been in the forensic system longer than what their sentence for the same crime would have been under the justice system. The impact of the crime on the victim is incorporated into assessing the movement of the consumer between places of detention, making decisions on more or less restrictive detention and leave privileges (Mental Health Review Tribunal, 2006). NSW CAG has also heard from forensic consumers that they are often treated as if they are criminals by staff working within forensic hospitals in NSW.

#### **Recommendations:**

- Stronger community mental health services to prevent people coming in contact with the justice system
- Addressing the stigma and discrimination held by staff towards forensic patients
- A review of how and when victim statements are used in assessing the care of consumers under the *Forensic Provisions Act 2007*.
- Evaluation of appropriate service models for forensic consumers and provision of release dates

#### **Physical Health Care**

People living with mental illness have high rates of morbidity due to many different factors including high rates of smoking, alcohol and poor diet. The physical aspects of health care are often neglected during treatment for people who are diagnosed with a mental illness (Osborn, 2001). More investment needs to be made to enable physical needs of mental health consumers to be addressed alongside their mental health needs.

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<sup>3</sup> A forensic patient is a person who has:

- Been found unfit to be tried in front of a court for an offence they have committed, and detained in prison, mental health facility or other place; OR
- Been found not guilty due to mental illness, and detained in prison, mental health facility or other place, or released into the community subject to conditions.

While NSW CAG is pleased to see that NSW Health has implemented the *Physical Health Care of Mental Health Consumers Guidelines*, the effective implementation of these guidelines is imperative for ensuring that both the physical and mental health needs of consumers are adequately addressed.

Recently, NSW Health has introduced the *NSW Smoke-free Workplace Policy* which has translated to a blanket ban of smoking in all mental health and general health facilities. As a consequence, consumers who are staying in inpatient facilities have to cease smoking throughout the duration of their stay, and are supported through cessation through the supply of Nicotine Replacement Therapy (NRT). While NSW CAG supports NSW Health in encouraging and supporting consumers to quit smoking, this is being implemented at a time where consumers are most vulnerable. There is a strong need for a broader health strategy for putting such cessation strategies into practice within the community.

**Recommendations:**

- NSW Health maintains its commitment to improving the physical health of people living with mental illness
- Development and implementation of a smoking cessation strategy for mental health consumers in the community

**SOCIAL NETWORKS AND SUPPORT**

Article 26(1) – Habilitation and rehabilitation

State Parties shall take effective and appropriate measures, including through peer support, to enable persons with disabilities to attain and maintain maximum independence, full physical, mental, social and vocational ability, and full inclusion and participation in all aspects of life.

A lack of social supports and activities has been raised as a problematic issue for people living with mental illness. Social isolation is a contributing factor to mental illness, and the protective effects of social ties and supports in reducing vulnerability are well documented (Herrman, 2001, p.710; Brissette, Scheier & Carver, 2002). Many consumers with whom NSW CAG has liaised with have found activity centres and group outings an essential component to coping with the challenges associated with mental health problems.

**Recommendations:**

- Increased social networks and supports to be in place for people who experience mental illness. Social networks need to be inclusive of people from all aspects of the community so as not to segregate people living with mental illness and to break down barriers. These can be provided in the form of social events and activities and need

to be cost free to people living with mental illness who are on a support pension.

## **TRANSPORT**

Article 28(2a) “State Parties recognise the right of persons with disabilities to social protection and to the enjoyment of that right without discrimination on the basis of disability, and shall take appropriate steps to safeguard and promote the realisation of this right including measures to ensure equal access by persons with disabilities to clean water services, and to ensure access to appropriate and affordable services, devices and other assistance for disability related needs”.

A lack of accessible and financially viable options for transport are continually identified by consumers as a barrier to participating both socially and economically, as well as accessing appropriate services for maintaining mental health. This is a pertinent issue in rural and remote communities. The need for adequate provision of accessible transport is reiterated in the *Convention on the Rights of Persons with Disabilities*, which states that governments are to ensure “equal access to transportation” (Article 9). Such transport is a right under the Convention not only for accessing services but also to access sporting, recreation and tourism venues. This is a consistent area of concern for our constituents (Article 30).

### **Recommendations:**

- An increase in community transport available particularly in rural and remote areas

## Summary of Recommendations:

1) The Australian Government to follow through with its commitment by implementing a national stigma reduction strategy. This needs to include the funding of a national program to increase knowledge and awareness about mental illness in order to combat stigma and discrimination. This program needs to include: educational and training strategies (including contact with people living with mental illness) aimed at mental health staff; people in training to enter health, education and other related professions; employers; journalists and the general public. Evaluation mechanisms must be in place for this strategy from the outset in order to measure its effectiveness.
2) Education and training for lawyers representing consumers, to increase knowledge around the NSW Mental Health Act, mental health legal system and awareness of the psychosocial barriers facing people living with mental illness
3) Increased availability of legal aid for all consumers coming in contact with the Mental Health Review Tribunal, including for people undergoing Community Treatment Order reviews
4) Increased funding for Legal Aid NSW to provide stronger legal representation for people living with mental illness
5) Provision of more time to the Mental Health Review Tribunal for conducting assessments and making decisions that impact people living with mental illness
6) Clarification of the roles, functions and responsibilities of consumer workers, including a set of generic position descriptions that cover the remunerated roles undertaken by the consumer workforce in NSW Area Health Services
7) Increased consumer worker positions in NSW Area Health Services
8) Establishment of an independent mental health individual advocacy service in NSW
9) Ensure that every consumer has equal opportunity to access an individual advocacy service and a support person, where required, during their contact with the legal system
10) Increase the availability of peer support, social activities and social networks for mental health consumers
11) Seclusion and restraint are used only as a last resort in treatment
12) Stronger care planning in partnership with consumers to limit non-consensual treatment practices
13) Staff are adequately trained in de-escalation techniques
14) Staff stigma and discrimination towards consumers is addressed through educational programs and regular contact with consumers who are in recovery
15) Increase prevention and early intervention mental health services
16) Reduce re-admission rates by supporting people in successful

transition back to their community when discharged from hospital
17) Improving the current discharge planning processes currently administered across NSW to ensure the best opportunity for community integration, prevention, support and access to services
18) Increase the availability of case management services, with a simplification of referral and service access pathways
19) Promotion of flexible workplace environments in Australia
20) Raise awareness and address the stigma and discrimination experienced by people living with mental illness in the workplace
21) Ensure consumers are aware of and have access to training and education programs such as Vocational Education, Training and Employment services
22) Increase opportunities for meaningful employment for consumers
23) Subsidise medication for consumers who are in employment, with an increase of medication available through the Pharmaceutical Benefits Scheme
24) Reinstate the work hour threshold for DSP or other suitable pensions from 15hrs/week to 30hrs/week
25) Improved discharge planning from mental health services
26) Increased access for consumers seeking support through the Housing and Accommodation Support Initiative (HASI) program
27) Quarantined funding to ensure people from statutory, custodial care and hospital, mental health and drug and alcohol services are not discharged into homelessness
28) Adequate support for consumers during a stay in an inpatient facility and following discharge, to prevent tenancy breakdown
29) Increased social housing availability for people with a mental illness
30) Stronger community mental health services to prevent people coming in contact with the justice system
31) Addressing the stigma and discrimination held by staff towards forensic patients
32) A review of how and when victim statements are used in assessing the care of consumers under the <i>Forensic Provisions Act 2007</i> .
33) Evaluation of appropriate service models for forensic consumers and provision of release dates
34) NSW Health maintains its commitment to improving the physical health of people living with mental illness
35) Development and implementation of a smoking cessation strategy for mental health consumers in the community
36) Increased social networks and supports to be in place for people who experience mental illness. Social networks need to be inclusive of people from all aspects of the community so as not to segregate people living with mental illness and to break down

barriers. These can be provided in the form of social events and activities and need to be cost free to people living with mental illness who are on a support pension.

37) An increase in community transport available particularly in rural and remote areas

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