



Submission to NSW Ministry of Health: Review of the NSW Mental Health Act 2007

Never Stand Still

Medicine

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We appreciate the opportunity to comment on the *NSW Mental Health Act 2007* in this Review. We can be available in the further development of the *Act* in line with the suggestions outlined below.

Background

To provide some contextual background, information on the issue of people with an intellectual disability (ID) and a co-occurring mental illness is provided below:

- Mental disorders are at least 2.5 times more common in people with ID than in the general population.
- Many people with ID, especially those with complex developmental disabilities, experience an atypical profile and presentation of mental disorders and thus require a high level of psychiatric expertise.
- The strong link between physical and mental health in people with severe and multiple disabilities highlights the importance of specialist mental health care for people with ID and complex needs.
- People with ID and mental illness or disorders experience major problems accessing appropriate mental health care as there are only limited pockets of expertise and the specific mental health needs of people with ID are poorly met. Australian research indicates very poor access to mental health services for people with intellectual disability and co-morbid mental illness [1].
- An appropriately skilled and tailored clinical approach within community mental health teams and acute inpatient mental health facilities is currently lacking.
- In relation to people with ID and mental disorders, Australian research also indicates that GPs, Psychiatrists and trainees lack confidence and training; think that people with ID and mental disorders receive a poor standard of care and that community mental health supports are in adequate [2-7].

It is for these reasons that the intersection of intellectual disability and mental illness needs to be championed at both a policy and a legislative level to raise awareness of the issues faced by this population in entering the service system. In doing so, it is hoped that an understanding of the issues is generated right across the sector - not just among clinicians, but also among policy makers and legislators, Tribunal members, Official Visitors, accredited persons, and the like.

Recommendations

Our main recommendations for amendment of the wording and scope of the current *NSW Mental Health Act 2007* are as follows:

- s14. Definition of 'mental illness' and 'mentally ill persons' (s14) should include reference to persons with an intellectual disability, who like the general population are just as susceptible to mental illness.
- s16. That Clause (j) 'the person has developmental disability of mind' under 'Certain words or conduct may not indicate mental illness or disorder' is reworded to: 'the person has an intellectual disability or developmental disability'.

- s16; s152. That 'a developmental disability of mind' be rephrased throughout as 'an intellectual or developmental disability' and all other instances of this phrase are replaced as such.
- s8; s18; s68(e); s74; s91, Schedule 3 and throughout the *Act* more generally. That the legislation stipulates that information to be provided to a person taken to and detained in a mental health facility, including a Statement of the Person's Rights (Schedule 3), is provided/ available in Easy English format. This will make it more likely that people with an intellectual disability can understand their rights and the treatment options available to them. This is in accordance with other sections of the *Act* (for example, s68) which stipulate that the authorising officer/ clinician is to engage the person and their family or carer 'as far as is practicable'. Given the limited literacy of many people with an intellectual disability, we feel that it is necessary that all official documents relating to the legislation have an Easy English format on their reverse side to enable conceptual access to mental health services; and an understanding of their roles, rights and responsibilities, for example, how to object to involuntary status, various treatment options available etc.
- Part 3. Division 1-3. We recommend the inclusion here of a stipulation around ongoing Community Treatment Orders (CTOs). A large proportion of people with ID are on successive CTOs with limited systemic review of these Orders. We recommend that the legislation is reworded here to curtail successive Orders being made and to encourage the development of a long term treatment strategy for these clients.
- s68. That 'Principles of care and treatment' clauses (h),(i) and (j) are maintained in the next iteration of the *Act* or even emphasised. It is common for people with ID to be non-verbal or have limited speech; however this does not infer incapacity. There is limited acknowledgement currently within the *Act* regarding the non-verbal status of persons, and how to manage and to treat those who, while they may be non-verbal they may still have capacity. The employment of Easy English and augmentative modes of communication should be stipulated in the *Act* as well as involvement of the family and or support persons.
- That greater acknowledgement is provided within the *Act* to interagency agreements such as those held with agencies under the NSW Department of Family and Community Services, such as Ageing, Disability and Home Care. For example, at s162A, reference could be added here that ADHC may also be one of the agencies for whom the Tribunal can gather information. This will enhance awareness of interagency work currently in train, and will serve to enhance awareness of ID in the clinical setting.
- That greater acknowledgment is placed in the *Act* regarding the intersection between challenging behaviour and mental ill health in persons with intellectual disability, for example at s16. We recommend adding a clause to reflect this as it has ramifications in terms of the intersections for clients between the legislative frameworks of: the *Mental Health Act 2007*, the *Mental Health (Forensic Provisions) Act 1990* and the *Guardianship Act 1987*. Greater acknowledgement of these intersections between agencies and legislation will be of great benefit to clinicians in clarifying for staff, the relevant management, treatment, assessment and referral processes in their practice.

References

1. Einfeld, S.L., et al., *Psychopathology in Young People With Intellectual Disability*. JAMA: The Journal of the American Medical Association, 2006. **296**(16): p. 1981-1989.
2. Lennox, N. and R. Chaplin, *The psychiatric care of people with intellectual disabilities: the perceptions of trainee psychiatrists and psychiatric medical officers*. Australian & New Zealand Journal of Psychiatry, 1995. **29**(4): p. 632-637.
3. Lennox, N. and R. Chaplin, *The psychiatric care of people with disabilities: the perceptions of consultant psychiatrists in Victoria*. Australian & New Zealand Journal of Psychiatry, 1996. **30**(6): p. 774-780.
4. Phillips, A., J. Morrison, and R.W. Davis, *General practitioners' educational needs in intellectual disability health*. Journal of Intellectual Disability Research, 2004. **48**(Pt 2): p. 142-9.
5. Edwards, N., N. Lennox, and P. White, *Queensland psychiatrists' attitudes and perceptions of adults with intellectual disability*. Journal of Intellectual Disability Research, 2007. **51**(Pt 1): p. 75-81.
6. Jess, G., et al., *Specialist versus generic models of psychiatry training and service provision for people with Intellectual disabilities*. Journal of Applied Research in Intellectual Disabilities, 2008. **21**: p. 183-193.
7. Torr, J., et al., *Psychiatric care of adults with intellectual disabilities: changing perceptions over a decade*. Australian & New Zealand Journal of Psychiatry, 2008. **42**(10): p. 890-7.