Session 2: Changes to the Act impacting on care and treatment in emergency and inpatient settings

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Mental Health Portfolio

Practice implications of key changes to the Act's objects and principles for care and treatment

Practice implications of:

- Provisions concerning obtaining consent
- Increased emphasis on personal recovery
- Increased emphasis on active involvement of the person and family and carers
- Strengthened focus on voluntary patients including a Statement of Rights

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About Leanne Craze

- PhD and BSW (Hons1, UNSW) & Grad Dip Science (WSU)
- Independent mental health and social policy consultant since 1991
- Co-author, National Model Mental Health Legislation, 1994 (Cwlth Dept. Health)
- Principal author, A national Framework for recovery-oriented mental health services
- Co-evaluator, ACT Mental Health Act 2015

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Learning Outcomes

By the end of this session, learners will be able to:

- Improve your understanding of the Act's increased emphasis on supporting recovery and obtaining consent
- Apply knowledge concerning these emphases to practice in emergency and inpatient settings
- Consider the implications of changes to the Act's emphases for your specific role as well as for your team
- Reflect, critically appraise and incorporate into practice the research and literature underpinning the Act's changes.

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Refresher on key changes

Objects and principles

- Increased focus on ‘Recovery’
- Patient consent to treatment and recovery plans, where possible
- Requirement to take into account the wishes and expressed wishes of patient

Carers

- Designated carer(s) replace primary carer
- New provision: principal care provider
- Rights of carers to make requests, be informed and receive information

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Refresher cont.

Assessments

- Views of carers and others to be considered when determining under Form 1 the need for involuntary treatment or when needing to discharge a patient.
- Changes to whom can undertake Form 1 assessment
- Scheduling and Form 1 assessments can be conducted via video conference
- Ability to detain a voluntary patient for up to 2 hours to enable assessment to be conducted

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Refresher cont.

Voluntary/involuntary patients

- To be reviewed whether admitted as a voluntary or involuntary patient for a continuous period of 12 months
- Voluntary Patient Statement of Rights
- Involuntary Patient Statement of Rights amended to include the right to request discharge anytime and to appeal if discharge is not granted
- Rights to see Official Visitors now included in the statement

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Refresher cont.

The Mental Health Review Tribunal

- Tribunal is to consider whether the patient is likely to benefit from further care and treatment as a voluntary patient”
- Some revised and additional requirements and options for the Tribunal at certain hearings including options to:
  - Defer discharge
  - Order that the patient be discharged into the care of a designated carer or the principal care provider
  - Make a CTO

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Refresher cont.

Community treatment orders

- Revocation/non-renewal of CTO - additional duties of Director of Community Treatment to advise carer(s) and the Tribunal
- Tribunal has more flexibility in certain cases

Young People

- Appropriate treatment for their age group
- Special clause for Electro-convulsive Therapy (ECT)
- Legal representation at the Tribunal's hearings

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Why the new emphases

- United Nations Principles for the Protection of Persons with Mental Illness and for the Improvement of Mental Health Care (1991) & National Statement Rights & Responsibilities (1991 & 2012)
- AHMAC National Safety priorities in Mental Health: a national plan for reducing harm 2005
- Convention of the Rights of Persons with Disabilities 2008
- Recovery principles of the National Mental Health Service Standards 2010
- A National Framework for Recovery-oriented Mental Health Services

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UN Principles

- Autonomy
- Choice
- Self-determination
- Freedom from restrictions on liberty
- Reduce or eliminate involuntary and restrictive practices

(*Rowing my own boat*, Pauline Miles ©)

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National Safety Priorities in Mental Health

- Reduced use of, and where possible elimination of, seclusion and restraint in mental health emergency situations and in mental health services.
- Safe transportation
- Reduced associated adverse events
- Clear protocols & development of alternative safe practices

C'mon follow me, Pauline Miles ©

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UN Disability Convention

- Freedom to make own decisions
- Equality and non-discrimination
- Full and effective participating
- Enabling family and relationships

Going jamming with my mates, Pauline Miles ©

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UN Disability Convention – Article 12 Equal recognition before the law

1. States Parties reaffirm that persons with disabilities have the right to recognition everywhere as persons before the law.

2. States Parties shall recognise that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life.

3. States Parties shall take appropriate measures to provide access by persons with disabilities to the support they may require in exercising their legal capacity.

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UN Disability Convention – Article 12 Equal recognition before the law

4. States Parties shall ensure that all measures that relate to the exercise of legal capacity provide for appropriate and effective safeguards to prevent abuse in accordance with international human rights law. Such safeguards shall ensure that measures relating to the exercise of legal capacity respect the rights, will and preferences of the person, are free of conflict of interest and undue influence, are proportional and tailored to the person's circumstances, apply for the shortest time possible and are subject to regular review by a competent, independent and impartial authority or judicial body. The safeguards shall be proportional to the degree to which such measures affect the person's rights and interests.

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Implications of Article 12 for mental health legislation (Ryan & Callaghan 2017)

- *A person with mental illness who retains decision-making capacity about their own treatment must not be treated without consent.*
- *Decision-making capacity must be presumed and support offered to exercise that capacity.*
- *Persons subject to mental health legislation must be supported to make their own decisions as far as possible and be supported to express and give effect to their will and preferences.*
- *Any substituted decision-making must respect the "rights, will and preferences of the person" and must give effect to them as far as possible*.

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Amendments to the Act reflecting Australia's obligations under the Disability Convention

Important amendments to the principles of care and treatment

- s68 (h) every effort that is reasonably practicable should be made to involve persons with a mental illness or mental disorder in the development of treatment plans and plans for ongoing care **recovery plans and to consider their views and expressed wishes in that development**.

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Amendments to the Act reflecting Australia's obligations under the Disability Convention cont.

Important amendments to the principles of care and treatment

- **s68 (h1) every effort that is reasonably practicable should be made to obtain the consent of people with a mental illness or mental disorder when developing treatment plans and recovery plans for their care, to monitor their capacity to consent and to support people who lack that capacity to understand treatment plans and recovery plans.**

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Discussion: remembering Kent

Handout – Kent's involuntary admission

- What were Kent's views and wishes?
- What were the main points of disagreement between Kent and his treating team?
- How might you go about seeking to obtain Kent's consent to the preferred treatment plan?

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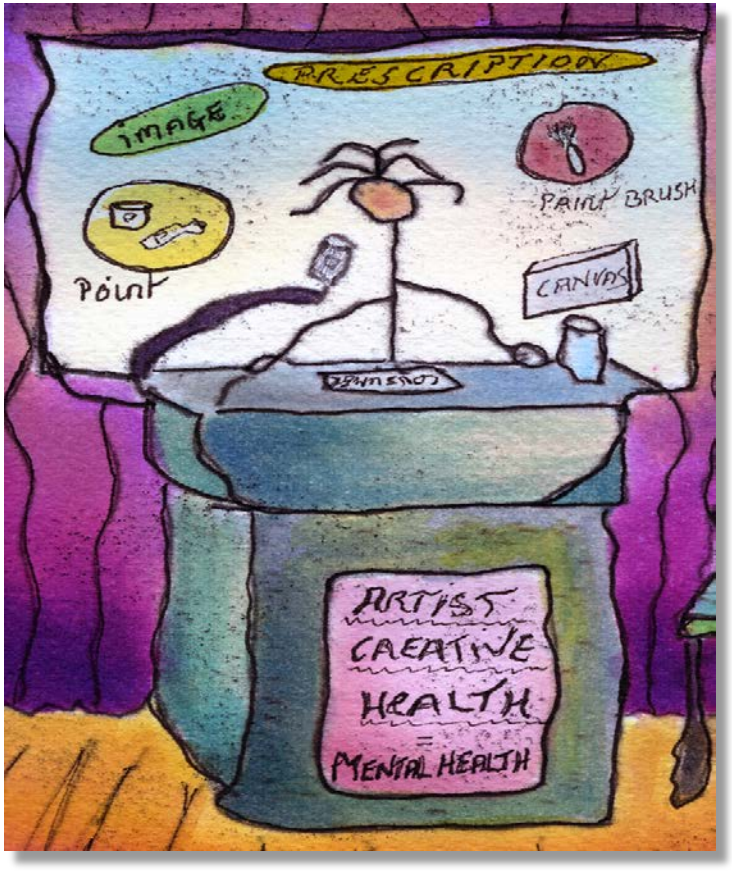
Recovery Principles of NMHSS



- Uniqueness
- Real choices
- Attitudes and human rights
- Dignity and respect
- Partnership and communication
- Evaluating recovery

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Changes to the Act reflecting increased focus on recovery

Changes to the Objects of the Act in s3 (a) and (d)

- (a) To provide for the care and treatment of, and **to promote the recovery** of persons who are mentally ill or mentally disordered.

- (d) "while protecting the civil rights of those persons, to give an opportunity for those persons to have access to appropriate care and, **where necessary to provide for treatment for their own protection or the protection of others"**

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Changes to the effect reflecting increased focus on recovery cont.

Changes to the Act's principles of care and treatment

- s68 (e) people with a mental illness or mental disorder should be provided with appropriate information about treatment, treatment alternatives and the effects of treatment and be supported to pursue their own recovery

- s68 (g) any special needs of people with mental illness or mental disorder should be recognised, including needs related to age, gender, religion, culture, language, disability or sexuality

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Changes reflecting increased focus on recovery cont.

Changes to the Act's principles care and treatment

- (g1) people under the age of 18 with mental illness or mental disorder should receive developmentally appropriate services
- (g2) the cultural and spiritual beliefs of people with mental illness or mental disorder who are Aboriginal or Torres Strait Islanders should be recognised.

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Changes reflecting increased focus on recovery cont.

Changes to the Act's principles care and treatment

- (j) the role of carers for people with a mental illness or mental disorder and their rights under this Act to be kept informed, to be involved and to have information provided by them considered, should be given effect.

- Hence recognising the relational nature of recovery and the importance of relationships in that process

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Discussion – remembering Kent

Handout – Kent's involuntary admission and detention

- In pursuing his own recovery, what is important to Kent?
- What might you do to support Kent's active involvement in assessment and decision-making about his care and treatment e.g. What alternatives might be discussed with Kent?
- What difficulties or challenges might arise when seeking to actively involve Kent? How might they be addressed?

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When do these changes apply?

These changes are to be given effect irrespective of:

- A person's legal status
- Degree of impairment, acuity or chronicity
- Special or complex needs
- Setting and level of security

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Implications for practice in ED & inpatient settings – a significant departure (Ryan & Callaghan 2017)

"*Of paramount concern is: the patient's own ability to participate in decision-making, and right to be given appropriate supports to allow the patient to participate as much as she can…*

Patients who lack capacity be supported to understand treatment and recovery plans, and that "every effort that is reasonably practicable" be made to obtain consent for treatment. In addition, patients' freedom and rights must be minimally restricted (s 68(f)), and their views and expressed wishes be considered when developing treatment and recovery plans, at least as far as it is reasonably practicable to do so."

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Discussion – remembering Kent

- What interventions or restrictions on his choice and liberty concern Kent the most?
- What might he consent to?
- What might be done in ED to try and obtain Kent's consent?
- During the period of hospitalisation what might be done to support Kent to progress toward care and treatment that better reflects his views and preferences?

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Implications for practice cont.

- Active involvement of the patient in decision-making and care and treatment
- Discussing, ascertaining and considering patients views and expressed
- Involvement of family - relational approach
- Monitoring capacity
- Supporting patients who lack capacity
- Obtaining consent (including when involuntary)

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Implications for practice cont.

- Discussing and negotiating alternative safe and therapeutic options that person will consent to
- Reducing or avoiding involuntary treatment
- Promoting voluntary treatment (NB Statement of Rights for Voluntary Patients)
- Reducing and eliminating restrictive practices
- Implementing alternatives to seclusion and restraint
- Responding to possible Tribunal questions about efforts made to obtain consent

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Implications for practice cont.

Reconciling the criteria for involuntary treatment - “mentally ill” or “mentally disordered”; care or treatment of the person must be necessary for the person’s own or another person’s protection from serious harm; there be no other appropriate and reasonably available care of a less restrictive kind, consistent with safe and effective care ... With …

every effort reasonably practicable to consider patient’s views and expressed wishes and to gain consent for treatment and recovery plans and if possible, to avoid involuntary treatment.

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Implications for practice cont.

According to Ryan and Callaghan

“If patients do not consent to suggested management plans, clinicians must try to negotiate an alternative safe and effective therapeutic avenue that they will consent to. Clinicians are freed from this onus only when the costs or risks involved in possible alternative approaches become very significantly disproportionate. Only then are they justified in imposing treatment with-out consent.”

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Considering patient's & carers' views and wishes and managing safety and risk

- Collaborative assessment and management of safety and risk
- Promoting and supporting self-management of a person's condition and safety
- Processes and tools for capturing a person's views and wishes when competent and when competent and conveyed either by carers, family or friends or in an advance statement or similar document
- Identifying, exploring and support opportunities for positive risk taking

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Final discussion – remembering Kent

- What might be done to work with Kent to ensure that restrictions on his freedom and rights are kept to a minimum and progressively reduced?
- How might inpatient teams and community teams work together with Kent and his family and friends to achieve care and treatment that is as consistent as possible with his views and preferences and which prevents future involuntary admission and involuntary care and treatment?
- How might the teams work together to help Kent achieve his preference of voluntary care and treatment?

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References

- United Nations Principles for the Protection of Persons with Mental Illness and for the Improvement of Mental Health Care (1991)
- AHMAC National Mental Health Statement Rights & Responsibilities (1991 & 2012)
- AHMAC National Safety priorities in Mental Health: a national plan for reducing harm 2005
- Convention of the Rights of Persons with Disabilities 2008
- National Mental Health Service Standards 2010
- A National Framework for Recovery-oriented Mental Health Services
- Ryan & Callaghan, The impact on clinical practice of the 2015 reforms to the New South Wales Mental Health Act, *Australasian Psychiatry 2017*, Vol 25(1) 43–47

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References

- National Mental Health Commission, *A case for change*
- *Australia's National Seclusion and Restraint Declaration*
- RANZCP *Policy Statement 61* *Minimising the use of seclusion and restraint in people with mental illness (*2016)
- Victorian Department of Health, From Seclusion to Solutions
- Ryan CJ, Callaghan S and Peisah C. The capacity to refuse psychiatric treatment – a guide to the law for clinicians and tribunal members. *Aust N Z J Psychiatry* 2015; 49: 324–333.
- NSW Health Information Bulletin Amendments to the Mental Health Act 2007

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