Session 3: The Act's new emphases and changes applied to patients with complex needs and their family and carers

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Mental Health Portfolio

Practice implications of key changes to the Act

Practice implications for working with people with complex needs of:

- Provisions concerning obtaining consent
- Increased emphasis on active involvement and supporting personal recovery
- Increased emphasis on active involvement of the person and family and carers
- Requirement to recognise special needs

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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 active involvement, supporting recovery, obtaining consent and recognising special needs
- Improve your understanding of the Act's changes in relation to families and carers
- Apply knowledge concerning these changes to working with people with complex needs and their families and carers
- Consider the implications of the Act's changes for your specific role as well as for your team.

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Why the changes and 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.
- 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 recognize 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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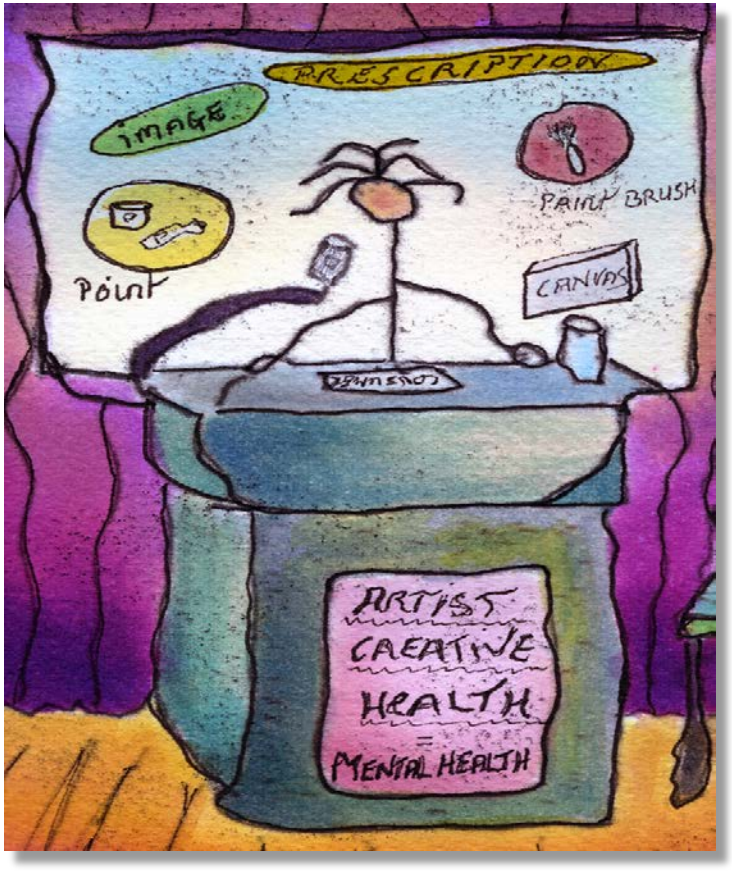
Recovery Principles of NMHSS



- 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 Act 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 to the Act 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 to the Act 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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Other changes concerning family and carers

- s72(1) Person can now appoint two designated carers
- New provision – An authorised medical officer may appoint a principal care provider s72A(1-2) “the individual who is primarily responsible for providing support or care to the person (other than wholly or substantially on a commercial basis)”
- Designated carers and the principal care provider have rights to make certain requests, be informed and their views and the information they provide considered s72-79

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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, chronicity or complexity of need
- Special needs including needs related to age, gender, religion, culture, language, disability or sexuality diversity
- Setting and level of security

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Implications for practice with patients with special or complex needs – 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 – recognising Kent's special and complex needs

- What constellation of special and complex needs is Kent experiencing?
- What supports might assist Kent to actively participate in assessment and decision-making about his care, treatment and recovery plan?
- Given Kent's views and wishes, how might you go about seeking to obtain Kent's consent to the care and treatment that the treatment team considers he requires at this point?
- How will you give effect to the rights of Kent's designated carers and principal care provider? How might they assist?

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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
- Ensuring there is no other appropriate and reasonably available care of a less restrictive kind, consistent with safe and effective care
- Reducing or avoiding involuntary treatment and promoting voluntary treatment
- Reducing and eliminating restrictive practices
- Reporting to the Tribunal efforts made to obtain consent

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Discussion – working with Kent and his family and carers

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 without consent."*

What alternatives might be discussed with Kent?

What support might be offered to Kent to support his recovery and his ongoing active involvement in care and treatment?

What support might be offered to Kent's carers?

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Final discussion – collaboration and partnership across settings

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 enable:

- Shifting progressively to less restrictive requirements and arrangements?
- Preventing escalation in inpatient settings?
- Preventing escalation in the community to a point where police apprehension is required?
- A progressive shift from involuntary to voluntary care and treatment?

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- 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
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- 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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- *Australia's National Seclusion and Restraint Declaration*
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- 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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