

Mental health statement of rights and responsibilities



Standing Council on Health



Acknowledgements

The Safety and Quality Partnership Subcommittee acknowledges the significant work of the Centre for the Advancement of Law and Mental Health, Monash University in developing this revised statement.

Thanks are also extended to the many individuals and groups who provided comments and feedback on earlier drafts of this revised statement.

Mental health statement of rights and responsibilities 2012

This statement was prepared under the auspices of the Safety and Quality Partnership Subcommittee of the Mental Health Standing Committee of the Standing Council on Health and endorsed by Australian Health Ministers.

This statement is based on the report of the Mental Health Consumer Outcomes Task Force, which was adopted by the Australian Health Ministers Council in 1991. It has been revised to reflect modern mental health care concepts and contemporary human rights legislation.



**Mental health statement
of rights and
responsibilities**

2012

Mental health statement of rights and responsibilities 2012

ISBN: 978-1-74241-762-2

Online ISBN: 978-1-74241-763-9

Publications approval number: D0788

Copyright Statements:

Paper-based publications

© Commonwealth of Australia 2012

This work is copyright. You may reproduce the whole or part of this work in unaltered form for your own personal use or, if you are part of an organisation, for internal use within your organisation, but only if you or your organisation do not use the reproduction for any commercial purpose and retain this copyright notice and all disclaimer notices as part of that reproduction. Apart from rights to use as permitted by the *Copyright Act 1968* or allowed by this copyright notice, all other rights are reserved and you are not allowed to reproduce the whole or any part of this work in any way (electronic or otherwise) without first being given the specific written permission from the Commonwealth to do so. Requests and inquiries concerning reproduction and rights are to be sent to the Online, Services and External Relations Branch, Department of Health and Ageing, GPO Box 9848, Canberra ACT 2601, or via e-mail to copyright@health.gov.au.

Internet sites

© Commonwealth of Australia 2012

This work is copyright. You may download, display, print and reproduce the whole or part of this work in unaltered form for your own personal use or, if you are part of an organisation, for internal use within your organisation, but only if you or your organisation do not use the reproduction for any commercial purpose and retain this copyright notice and all disclaimer notices as part of that reproduction. Apart from rights to use as permitted by the *Copyright Act 1968* or allowed by this copyright notice, all other rights are reserved and you are not allowed to reproduce the whole or any part of this work in any way (electronic or otherwise) without first being given the specific written permission from the Commonwealth to do so. Requests and inquiries concerning reproduction and rights are to be sent to the Online, Services and External Relations Branch, Department of Health and Ageing, GPO Box 9848, Canberra ACT 2601, or via e-mail to copyright@health.gov.au.

Foreword

Australians expect to receive safe and high-quality health care when they are unwell. For those who are experiencing a mental illness or problem, access to timely assessment, individualised care planning, treatment and support is paramount. The opportunity to achieve recovery is of vital importance. Mental health services exist to meet the needs and preferences of consumers and to improve their mental health.

The original *Mental health statement of rights and responsibilities* was released in 1991. It provided an overarching framework to guide policy and practice and inform consumers and carers. Since then there have been significant developments in national and jurisdictional mental health domains. Such developments include the release of the *National Mental Health Policy* in 2008 (committed to by all Australian governments), a series of National Mental Health Plans, with the most recent being the *Fourth National Mental Health Plan 2009–2014*, the *National Standards for Mental Health Services 2010* and the *National Carer Strategy* in 2011. In addition there have been important developments through the *Council of Australian Governments National Action Plan for Mental Health 2006–2011*.

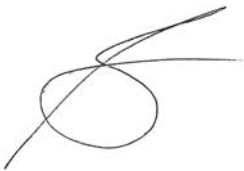
A limited review of the 1991 *Mental health statement of rights and responsibilities* was identified as a key action of the *Fourth National Mental Health Plan*. Building on the original statement's validity and utility, the review has focused on updating it against modern mental health care concepts and contemporary human rights legislation. This revised *Mental health statement of rights and responsibilities* is a dynamic and aspirational document that will require ongoing review and examination by all stakeholders who are engaged with mental health services to ensure it continues to be relevant and empowering.

Consistent with the intent of the 1991 statement, this revised *Mental health statement of rights and responsibilities* seeks to ensure that consumers, carers, support persons, service providers and the community are aware of relevant rights and responsibilities and can be confident in exercising them. The revised statement reflects recent developments in the language, concepts and legislative context of the contemporary mental health and human

rights field. This document addresses eight domains where rights and responsibilities are relevant to mental health.

The statement is consistent with Australia's international obligations, particularly the United Nations *Convention of the Rights of Persons with Disabilities*, the *Convention on the Rights of the Child* and state and territory human rights instruments. It is envisaged that states and territories will consider the statement in the context of their mental health operations, policy, legislative, prevention, promotion, education, quality improvement and workforce development initiatives. Service providers and peak consumer and carer bodies will play an important role in supporting the implementation of the statement.

While recognising that some rights are subject to modification by legislation, the intent of the statement continues to be the promotion of social justice, equity, access and a compassionate society with mental health as its primary goal.¹

A handwritten signature in black ink, consisting of a large, stylized loop followed by a horizontal line extending to the right.

Dr Peggy Brown

Chair

Mental Health, Drug and Alcohol Principal Committee

¹ Raphael B. in the 1991 *Mental Health statement of rights and responsibilities*, Commonwealth of Australia, Canberra, p. v.

Contents

Part I: Inherent dignity and equal protection	6
Part II: Non-discrimination and social inclusion	7
Part III: The promotion of mental health and the prevention of mental illnesses	9
(i) The promotion of mental health	9
(ii) The prevention of mental health problems and illnesses	9
(iii) Access to services and opportunities	10
(iv) Recognition and referral	11
Part IV: The rights and responsibilities of individuals who seek assessment, support, care, treatment, rehabilitation and recovery	12
(i) The provision high-quality, integrated, recovery-focused and accountable services	12
(ii) The right to mental health care	13
(iii) Involuntary admission and treatment	15
(iv) Children and young people	16
Part V: Rights and responsibilities of carers and support persons	19
Part VI: Rights and responsibilities of people who provide services	21
Part VII: Rights and responsibilities of the community	24
Part VIII: Governance	25
(i) Standards and accountability	25
(ii) Mental health legislation	26
(iii) Mental health and forensic matters	26
Glossary	28
Bibliography	32

Mental health statement of rights and responsibilities

Part I: Inherent dignity and equal protection

- (1) All people have inherent dignity and worth and are entitled to the equal protection of their human rights and fundamental freedoms without discrimination of any kind.
- (2) This statement aims to ensure that:
 - (a) members of society recognise their responsibility to respect the human worth and dignity of mental health consumers
 - (b) mental health consumers are aware of their rights and responsibilities and are able to exercise them
 - (c) mental health consumers with reduced capacity, including through intellectual disability and cognitive impairment, are supported to understand and exercise their rights
 - (d) mental health consumers, families, carers, support persons and service providers are aware of each other's rights and responsibilities, and support each other to realise them
 - (e) culturally and linguistically diverse communities receive culturally and linguistically appropriate services
 - (f) Aboriginal and Torres Strait Island communities have their distinctive rights respected in relation to status, culture and the land.

Part II: Non-discrimination and social inclusion

- (3) Non-discrimination and social inclusion are fundamental to the mental health of the whole community. There is a recognised correlation between severe mental illness, low socio-economic status and social exclusion.
- (4) Mental health consumers have the right to social inclusion and participation in social life on an equal basis with others without discrimination of any kind.
- (5) Mental health consumers have the right to:
 - (a) respect for their individual human dignity and worth at all ages and stages of life
 - (b) respect for their privacy and confidentiality
 - (c) respect for their health, safety and welfare
 - (d) equal enjoyment of the highest attainable standard of physical and mental health
 - (e) equal recognition before the law and the equal protection of the law
 - (f) an adequate standard of living and social protection
 - (g) equal opportunities to access and maintain
 - health and mental health care
 - housing
 - education and training
 - work and employment
 - legal services
 - income maintenance
 - insurance
 - (h) respect for their family life

- (i) have their sexual orientation, gender and gender identity taken into consideration when receiving social support, health and mental health services
- (j) have their social, economic, cultural background and family circumstances taken into consideration when receiving social support, health and mental health services
- (k) contribute to and participate in the development of social, health and mental health policy and services.

Part III: The promotion of mental health and the prevention of mental illnesses

- (6) Mental health problems and mental illnesses may occur at any age and affect all social and cultural groups.

(i) The promotion of mental health

- (7) Australian governments have the responsibility to support the development, implementation and evaluation of programs that promote mental health according to best practice standards within a population health framework across the public, private and non-government sectors.
- (8) Programs that promote mental health should:
 - (a) be an integral component of all health promotion programs
 - (b) include a sustained and comprehensive strategy to reduce stigma and discrimination.

(ii) The prevention of mental health problems and illnesses

- (9) Australian governments and communities have the responsibility to support the development, implementation and evaluation of programs for preventing mental health problems and mental illnesses across the public, private and non-government sectors.
- (10) Australian governments have the responsibility to work with early childhood and education settings, workplaces and communities to:
 - (a) develop programs for preventing mental health problems and mental illnesses, including the prevention of suicide
 - (b) develop programs that facilitate early access to mental health services
 - (c) support strategies that help coordinate social support, health and mental health services

- (d) identify factors that may contribute to mental health problems/ illnesses or indicate relapse. Such factors may include
- homelessness
 - substance use
 - unemployment
 - poverty
 - lack of family or social support
 - problematic gambling
 - age (in particular with respect to children, young people and older people)
 - poor physical health
 - physical, financial, emotional or sexual abuse
 - sexual orientation, gender or gender identity
 - intellectual, physical or psychosocial disability including acquired brain injury
 - poor communication skills, including poor language proficiency
 - exposure to trauma
 - being a refugee
 - exposure to violence or bullying in the workplace (including cyber bullying)
 - coming into contact with or exiting the criminal justice system
 - being a veteran of military service
 - experience of major life crises (including bereavement, relationship breakdown, accidents, natural disasters or life-threatening illness)
 - being a migrant
 - belonging to a community of another culture or speaking a language other than English at home
 - other social, economic, cultural and geographical barriers (in particular with respect to indigenous populations).

(iii) Access to services and opportunities

- (11) Australian governments have the responsibility to support the ongoing development of comprehensive, flexible, integrated community and hospital-based social support, health and mental health services.

This support must be accessible across the care spectrum, taking into account the differences in or the effect of:

- (a) geographic location
- (b) social, economic and cultural factors
- (c) changing demographic patterns of need, age and stage of life
- (d) communication abilities and skills, including language skills
- (e) consequences of the mental health problem or the mental illness itself
- (f) sexual orientation, gender and gender identity
- (g) substance use
- (h) interactions with the criminal justice system
- (i) physical illness
- (j) disabilities arising from other sources such as acquired brain injury.

(iv) Recognition and referral

- (12) Australian governments have the responsibility to support individuals, groups and workplaces that may be the first point of contact for people with mental health problems or mental illnesses, such as teachers, police/correctional officers, emergency service workers, welfare workers and clergy, to respond appropriately to people with mental health problems or mental illnesses and, where appropriate, provide referrals to social support, health and mental health services on a non-discriminatory basis.
- (13) Australian governments have the responsibility to assist primary health care services to further develop their ability to:
 - (a) recognise mental health problems and mental illnesses
 - (b) respond appropriately to people with mental health problems or mental illnesses
 - (c) facilitate access and referral where appropriate to social, health and mental health services on a non-discriminatory basis
 - (d) respect the rights and responsibilities contained in this statement.

Part IV: The rights and responsibilities of people who seek assessment, support, care, treatment, rehabilitation and recovery

- (14) Australian governments have a primary responsibility to develop and maintain high-quality health and mental health systems.
- (15) Mental health consumers have the right to access assessment, support, care, treatment, rehabilitation and services that facilitate or support recovery and wellbeing on an equal basis with others. They are entitled to participate in all decisions that affect them, to receive high-quality services, to receive appropriate treatment, including appropriate treatment for physical or general health needs, and to benefit from special safeguards if involuntary assessment, treatment or rehabilitation is imposed.

(i) The provision high-quality, integrated, recovery-focused and accountable services

- (16) Australian governments have a responsibility to support the ongoing development of a range of timely, high-quality, evidence-based services, built around community-based and specialist social support, and integrated with mental health, general health, disability, and drug and alcohol services.

Services have the responsibility to:

- (a) be responsive to the mental health consumer, and to facilitate and support their recovery
- (b) respect the mental health consumer's abilities and skills
- (c) respect the skill and abilities of families, carers and support persons and be responsive to them
- (d) take the mental health consumer's wishes and lived experience into account
- (e) consider the views of families, carers and support persons

- (f) provide support to the mental health consumer, including decision-making support
- (g) provide a range of coordinated service options across social support, health and mental health domains
- (h) provide continuity of care
- (i) improve communication between and among services and across different sectors and jurisdictions
- (j) improve communication between services and families, carers and supporters
- (k) provide appropriate and current education and training to the staff of the service about mental health problems and mental illnesses, including education and training about the rights and responsibilities as expressed in this statement
- (l) involve mental health consumers, families, carers and support persons in the design, delivery and evaluation of services
- (m) ensure the safety of mental health consumers, their families, carers, support persons and service staff in the workplace.

(ii) The right to mental health care

- (17) Mental health services are responsible for ensuring assessment, individualised care planning, support, care, treatment, rehabilitation and recovery is carried out within a coordinated and multidisciplinary framework that is appropriate to the mental health consumer's care needs and wishes.
- (18) The right to mental health care applies to voluntary and involuntary assessment, treatment and rehabilitation, and includes additional safeguards if a mental health consumer is subject to involuntary treatment.
- (19) Mental health consumers have the right to:
 - (a) be considered capable of making a decision (by the service or person providing care)
 - (b) consent to, or refuse, medical treatment and other services, unless their consent is governed by mental health or guardianship legislation
 - (c) have their wishes respected and taken into account

- (d) have their lived experiences respected and taken into account
- (e) receive the support that they determine is necessary to assist them to make decisions about health care
- (f) receive appropriate and comprehensive information about their diagnosis, options for care and treatment and the availability of services
- (g) obtain timely, appropriate treatment, care and support
- (h) have their age, social, economic, cultural/geographical background and spiritual preferences taken into consideration in their treatment, support and care
- (i) have their sexual orientation, gender and gender identity taken into consideration in their treatment, support and care
- (j) have their right to privacy respected
- (k) have their right to confidentiality respected
- (l) be treated in the most facilitative environment with the least restrictive or intrusive response or treatment
- (m) receive services in a safe environment that protects them from physical, sexual and emotional harassment, abuse and violence
- (n) have families, carers and support persons involved in their assessment, support, care, treatment, recovery and rehabilitation to the extent requested by them
- (o) be given appropriate reasons for the refusal of treatment
- (p) be referred to alternative or complementary services
- (q) where appropriate, receive mental health assessment, support, care, treatment, rehabilitation and recovery that is coordinated with alcohol and drug use services
- (r) seek a second opinion
- (s) signify their wishes and preferences in regard to future treatment, support and care
- (t) be provided with information about ongoing assessment, support, care, treatment, rehabilitation and services that support recovery
- (u) make a complaint regarding any facet of their assessment, support, care, treatment, rehabilitation and recovery

- (v) have their complaint dealt with fairly and promptly without fear of compromising treatment or care
 - (w) continue to live, work and participate in the community to the fullest extent possible without discrimination, stigma or exclusion
 - (x) contribute to and participate in the development and evaluation of social, justice, health and mental health policy and services.
- (20) Mental health services are responsible for ensuring any communication with a mental health consumer is carried out in a form and language that the mental health consumer understands and must, if required, include the use of professional interpreters.
- (21) Mental health consumers, their families, carers and support persons have the responsibility to:
- (a) respect the human worth and dignity of other people
 - (b) respect their own health safety and welfare, and that of others
 - (c) respect the rights contained in this statement.

(iii) Involuntary admission and treatment

- (22) If the severity of a mental health consumer's mental illness requires involuntary treatment, such treatment should be the least restrictive option, be for the shortest period of time that is appropriate, should be recovery-focused and should be governed by the requirements of mental health or guardianship legislation.
- (23) Services have the responsibility to ensure the aim of all involuntary treatment is to preserve life and enhance the recovery of mental health consumers.
- (24) In addition to the rights that are listed above, and except where they are modified by legislation that is consistent with human rights principles, mental health consumers who are subject to involuntary treatment should have the right to:
- (a) be informed of their rights and responsibilities as expressed in this statement
 - (b) be informed of the reasons for the involuntary treatment
 - (c) be provided with an explanation of their condition and plans for the management of the condition, including after admission
 - (d) participate in all treatment and care decisions

- (e) have their wishes and preferences taken into account
- (f) contact support persons, carers, advocates, families and friends, if they so choose
- (g) have available to them someone independent who will represent them and whose task it is to advise them and protect their rights
- (h) be clearly informed of and offered the availability of representation
- (i) be supported to make an unhindered and informed decision about whether to accept representation
- (j) a timely, independent and impartial review as soon as practicable after they have been admitted for involuntary treatment and at regular intervals thereafter
- (k) be ensured continuity of care
- (l) be offered discharge planning and pathways for re-entry into the community including assessment, care, support, treatment, rehabilitation and recovery
- (m) where required, be transported in the least restrictive manner.

(iv) Children and young people

- (25) This statement recognises that children and young people have special needs in relation to mental health.
- (26) Australian governments have a responsibility to ensure that health and mental health services respond appropriately to the needs of children and young people, including recognition of the potential vulnerability of children of mental health consumers.
- (27) Australian governments have a responsibility to ensure that matters involving children and young people conform with the United Nations *Convention on the Rights of the Child*.
- (28) In decisions involving children, governments and services have a responsibility to ensure the best interests of the child are the primary concern.
- (29) This Statement acknowledges that the families, carers and the support persons of children and young people play an important role in the health and mental health care of children and young people.

- (30) The families, guardians, carers and support persons of children and young people have the right to:
- (a) be confident that the child or young person will receive the most appropriate assessment, individualised care planning and treatment, taking into account the child or young person's age, any special circumstances, and the presentation and nature of their health or mental health problems or mental illnesses
 - (b) be informed about the child or young person's diagnosis, treatment options and management plans for ongoing care
 - (c) participate in decisions about the child or young person's care in accordance with the age, maturity and needs of the child or young person
 - (d) receive the support they need to make health decisions and to participate appropriately in the decision-making process
 - (e) receive independent support and advice.
- (31) Young people who are able to make decisions for themselves have the rights and responsibilities that are set out in this Statement subject to relevant legislation.
- (32) A child or young person should never be denied assessment, individualised care planning, support, care, treatment, rehabilitation or recovery services on the grounds that a family member, guardian, carer or support person has refused to participate in a specific treatment approach.
- (33) In addition to the above, children and young people who are admitted to a mental health facility have the right to:
- (a) continue to benefit from the involvement and support of their families, guardians, carers and support persons
 - (b) access an independent advocate whose role is to protect the child or young person's rights
 - (c) benefit from other special protections and safeguards as determined by legislation and policy
 - (d) be separated from adult patients and provided with accommodation and programs appropriate to their age and development.

- (34) A child or young person has the right to expect that their family, guardian, carer and support persons will obtain appropriate professional assistance if they have reason to believe that the child or young person has a mental health problem or mental illness.
- (35) Families, guardians, carers and support persons of children and young people have a right to be provided with information necessary for their support role. They should expect to be involved to an appropriate extent consistent with relevant privacy and guardianship legislation in decisions about assessment, individualised care planning, support, care, treatment, rehabilitation and recovery services.

Part V: Rights and responsibilities of carers and support persons

- (36) This statement acknowledges the contributions and expertise of informal, professional, non-professional and statutory carers and support persons.
- (37) Australian governments and the Australian community should endeavour to assist carers and support persons in their respective roles.
- (38) Carers and support persons who are young have special needs and are entitled to special support and consideration.
- (39) Carers and support persons have the right to:
 - (a) respect for their individual human worth and dignity
 - (b) respect for their privacy
 - (c) respect for their confidentiality
 - (d) comprehensive information, education, training and support to facilitate their care and support roles
 - (e) receive services that assist them to provide care and support
 - (f) contribute to and participate in the development of social, health and mental health policy
 - (g) place limits on their availability to the mental health consumer
 - (h) access mechanisms of complaint and redress if they are dissatisfied with the treatment or support provided to the mental health consumer
 - (i) receive support for their own difficulties that may be generated through the process of supporting, caring for or acting as an advocate for the mental health consumer
 - (j) provide information concerning family relationships and any matters relating to the mental state of the mental health consumer to health service providers.

- (40) With the consent of the mental health consumer, and where it is appropriate to do so in accordance with legislation and policy, guardians, carers and support persons have the right to:
- (a) contact the mental health consumer while they are undergoing treatment
 - (b) participate in treatment decisions and decisions about ongoing care
 - (c) seek and receive additional information about the mental health consumer's support, care, treatment, rehabilitation and recovery
 - (d) be consulted by service providers about treatment approaches being considered for the mental health consumer
 - (e) arrange support services for the mental health consumer, such as respite care, counselling and community care facilities
 - (f) be provided with any information that the mental health consumer requests they should receive.
- (41) Carers and support persons have the responsibility to:
- (a) respect the humanity and dignity of the mental health consumer
 - (b) consider the opinions and skills of professional and other staff who provide assessment, individualised care planning, support, care, treatment, recovery and rehabilitation services to mental health consumers
 - (c) cooperate, as far as is possible, with reasonable programs of assessment, individualised care planning, support, care, treatment, recovery and rehabilitation.
- (42) Families, guardians, carers and support persons of children and young people have the responsibility to obtain appropriate professional assistance if they believe that a child or young person has a mental health problem or a mental illness.

Part VI: Rights and responsibilities of people who provide services

- (43) This statement acknowledges the qualifications and expertise of service providers in the private, public and non-government sectors and recognises their contribution to planning with, and the assessment, support, care, treatment, rehabilitation and recovery of mental health consumers.
- (44) People who provide services throughout the social, justice, health and mental health systems are entitled to:
 - (a) have their professional qualifications and capabilities acknowledged
 - (b) have their contribution to the assessment, support, care, treatment, rehabilitation and recovery of mental health consumers recognised
 - (c) work in optimal conditions of service delivery and employment including the right to ongoing training and a safe and supportive work environment
 - (d) be actively involved in the planning and management of services
 - (e) contribute to the development and regular review of standards for evaluating services including both the process of service provision and the outcome of assessment, individualised care planning, support, care, treatment, rehabilitation and recovery
 - (f) participate in the development of social, health and mental health policy and service delivery guidelines
 - (g) access mechanisms of complaint and redress if they feel they have been treated unfairly in the workplace
 - (h) expect that social, health and mental health services will be integrated and coordinated while retaining their specialised focus, identity and funding.

- (45) People who provide services throughout the social, justice, health and mental health systems have the responsibility to:
- (a) provide the highest quality, evidence-based, best practice, assessment, individualised care planning, support, care, treatment, rehabilitation and recovery services to mental health consumers without stigma and discrimination
 - (b) provide the least restrictive assessment, support, care, treatment, rehabilitation and recovery responses
 - (c) ensure mental health consumers and/or their carers and support persons participate in the decisions that affect them
 - (d) respect the wishes of mental health consumers, unless legislation requires otherwise
 - (e) take into account the wishes, lived experiences, skills and abilities of mental health consumers
 - (f) take into account the economic, social, cultural and geographical factors relevant to each mental health consumer having particular regard for the needs and experiences of Indigenous people
 - (g) take into account the sexuality, gender and gender identity of mental health consumers
 - (h) inform mental health consumers and/or their carers and support persons about the services that are available to them
 - (i) be responsive to the diverse social, cultural, spiritual, emotional and physical experiences, needs and disabilities of mental health consumers and their carers and support persons
 - (j) inform mental health consumers and their support persons, carers and advocates about their rights and responsibilities, including mechanisms of complaint and redress
 - (k) recognise the role of carers and support persons and be responsive to their needs
 - (l) respect the privacy of mental health consumers
 - (m) respect the confidentiality of mental health consumers
 - (n) respect the privacy of carers and support persons
 - (o) respect the confidentiality of carers and support persons

- (p) deal with the care complaints of mental health consumers fairly, promptly and without retribution
- (q) deal with the care complaints of carers and support persons fairly, promptly and without retribution
- (r) promote the best interests of children or young people when a family member, guardian or carer is suffering from mental health problems or a mental illness
- (s) ensure the involvement of mental health consumers and their carers and support persons in the planning, management and evaluation of social support, health and mental health services
- (t) keep adequate information systems including accurate and timely record keeping and to monitor the outcomes for mental health consumers
- (u) ensure their own knowledge base reflects current accepted best practice in assessment, individualised care planning, support, care, treatment, recovery and rehabilitation
- (v) participate in the development of professional ethical standards that accord with international human rights principles
- (w) ensure consideration of the physical wellbeing and physical health needs of mental health consumers in their care.

Part VII: Rights and responsibilities of the community

(46) The community has the right to:

- (a) be informed and educated about mental health issues
- (b) participate in community programs that address mental health and wellbeing
- (c) have the amenity and safety of their neighbourhood protected.

(47) The community has the responsibility to:

- (a) treat mental health consumers, carers and support persons with dignity and respect
- (b) accept programs for the assessment, support, care, treatment, recovery, rehabilitation, employment and accommodation of mental health consumers into their local area and communities.

Part VIII: Governance

(i) Standards and accountability

- (48) This statement recognises that services of a high standard facilitate the planning with, and the referral, assessment, support, care, treatment, rehabilitation and recovery of mental health consumers.
- (49) Australian governments have the responsibility to:
- (a) fund, administer and coordinate high-quality, integrated, recovery-focused and accountable services
 - (b) develop, implement and review explicit standards for all sectors of service delivery that are consistent across states and territories and ensure such standards have operational criteria by which they can be assessed
 - (c) encourage, promote and evaluate a continuous culture of quality improvement among services and for service outcomes to meet standards
 - (d) provide access to mechanisms of complaint and redress regarding standards of service delivery
 - (e) provide services that are subject to quality assurance, to identify inadequacies and to ensure standards are met
 - (f) ensure there are adequate levels of professionally trained and qualified staff in mental health services
 - (g) ensure a capacity for, and a commitment to, the maintenance and further development of staff knowledge and skills
 - (h) provide optimal work conditions to staff providing mental health services
 - (i) provide ongoing training and a safe and supportive work environment to staff providing mental health services.

- (50) Mental health consumers, families, carers, support persons and service providers should be involved in the development and regular review of standards and should be informed and consulted about proposed changes to services and standards.

(ii) Mental health legislation

- (51) This statement recognises that mental health and related legislation in each state and territory should protect the rights and support the responsibilities contained in this statement. This includes relevant Commonwealth legislation such as those regulating privacy and freedom of information.
- (52) Australian governments have the responsibility to review and update mental health and related legislation at regular intervals. They should consider adopting mental health legislation that:
- (a) complies with international human rights principles
 - (b) is capacity-based
 - (c) recognises advance instructions.
- (53) The review process should consider the views and opinions of mental health consumers, families, carers, support persons, service providers and others who are involved with mental health service delivery.
- (54) Mental health legislation should be underpinned by consistent principles that support, wherever possible, mental health consumers moving between jurisdictions.

(iii) Mental health and forensic matters

- (55) Mental health consumers who come into contact with the criminal justice system, including the forensic mental health system, may have special needs in relation to the law. This should include consideration of their ability to comprehend and take responsibility for their actions at the time of the misdemeanour.
- (56) Australian governments have the responsibility to ensure the law does not discriminate against mental health consumers in the criminal justice or the forensic mental health system.

- (57) Mental health consumers who come into contact with the criminal justice or the forensic mental health system have the right to access:
- (a) specialist justice programs that respond to their mental and physical health needs where this is reasonable and appropriate
 - (b) referral, assessment, individualised care planning, support, treatment, rehabilitation and services that facilitate or support recovery
 - (c) their carers and support persons.
- (58) Australian governments have the responsibility to adopt legislation and develop policies that:
- (a) protect and promote the rights of mental health consumers in the criminal justice and forensic mental health system
 - (b) support the movement of mental health consumers between jurisdictions to meet their personal needs and that those movements are made with minimal interruptions to their care.

Glossary

The key terms that are used in this statement are explained below.

Advance instruction

The term 'advance instruction' is used to indicate an instruction about care, support, treatment, recovery or rehabilitation that is made by a mental health consumer before he or she becomes unwell.

Advocate

An advocate is a person who has been appointed, or has been chosen by a mental health consumer, to speak on his or her behalf and to represent his or her concerns and interests as directed. Advocates support mental health consumers to seek the outcomes the consumer desires. Advocates are directly accountable to mental health consumers.

Australian governments

The term 'Australian governments' includes all Australian state governments, the two territory governments, the Commonwealth Government and local governments.

Capacity-based mental health laws

Mental health laws are referred to as 'capacity-based' when they enable those mental health consumers who retain the capacity to make decisions to make their own decisions about assessment, support, treatment, care, rehabilitation and recovery for themselves on an equal basis with others.

Carer

A carer is a person of any age who provides personal care, support and assistance to another person because the other person has a disability, a medical condition, a mental illness or is frail. Carers may include the consumer's family as well as other people significant to the consumer.

The term carer does not apply if the personal care, support and assistance is provided under a contract of service in the course of undertaking voluntary

work for a charitable, welfare or community organisation, or when the person is completing requirements of a course of education or training.

An individual is not a carer merely because he or she is the spouse, de facto partner, parent, child or other relative of an individual, guardian of an individual or lives with an individual who requires care.

Disability

A disability arises when a person's physical, mental, intellectual or sensory impairments hinders the person's full and effective participation in society on an equal basis with others. This definition includes but is not limited to the definition of 'disability' in the *Disability Discrimination Act 1992 (Cwlth)*.

Discrimination on the basis of disability

Discrimination on the basis of disability refers to any distinction, exclusion or restriction on the basis of disability that has the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field. It includes all forms of discrimination, including denial of reasonable accommodation. This definition includes but is not limited to the definition of 'discrimination on the basis of disability' in the *Disability Discrimination Act 1992 (Cwlth)*.

Mental health

Mental health refers to the capacity of individuals and groups to interact with one another in ways that promote subjective wellbeing, optimal development and the use of mental abilities (cognitive, affective and relational), and the achievement of individual and collective goals consistent with the law.

Mental health consumers

The term 'mental health consumers' refers to people who are currently using, or have previously used, a mental health service and includes people who have accessed general health services for a mental health problem. For the purposes of this statement, this term includes those with emerging or established mental illness for which they have not yet sought treatment, or for whom treatment has not yet been provided.

Mental health consumer advocates

Mental health consumer advocates are advocates, as defined above, who also advocate for systemic change.

Mental health problem

A mental health problem occurs when a person experiences a diminished state of mental health.

Mental health services

Mental health services are those with the primary function of providing treatment, rehabilitation or community health support to mental health consumers. They include services or facilities that provide a mental health function, whether or not they are provided by organisations operating in the public, private and non-government sectors.

Mental illness

A mental illness is a clinically diagnosable disorder that significantly interferes with an individual's cognitive, emotional or social abilities.

Recovery

Recovery is a personal process of changing one's attitude, values, feelings, goals, skills and/or roles. It involves developing new meaning and purpose as the person grows beyond the effects of psychiatric disability.

Rehabilitation

Rehabilitation refers to the restoration of capacity and ability. It generally applies to individually tailored processes that a person may require to re-adapt to society after acquiring a disability.

Representative

The term 'representative' refers to a person who has been given the power by a mental health consumer to speak on his or her behalf, to represent the concerns and interests of the mental health consumer as directed by the mental health consumer, to advocate for the mental health consumer, to seek the outcomes desired by the mental health consumer, and who is directly accountable to the mental health consumer.

Service provider

A service provider is a person (usually with professional qualifications) who receives remuneration for providing services to mental health consumers.

Social inclusion

Social inclusion refers to policies and programs that promote the reversal of circumstances or habits that lead to social exclusion, which is associated with disadvantage. Indicators of social inclusion are that all Australians are able to secure a job, access services, and connect with family, friends, work, personal interests and local community.

Support persons

Support persons are people who assist mental health consumers in ways that are requested by the mental health consumer, including being a representative or advocate for the person or assisting the mental health consumer to make decisions about his or her support, care, treatment, recovery and rehabilitation. Support persons should be taken to include families, advocates and mental health consumer advocates.

Bibliography

Australian Government 1992, *Disability Discrimination Act*, Commonwealth of Australia, Canberra.

Australian Government 2008, *National Mental Health Policy*, Commonwealth of Australia, Canberra.

Australian Health Ministers' Advisory Council 2006, *National Statement of Principles for Forensic Mental Health 2006*.

Department of Health and Ageing 2010, *National Standards for Mental Health Services*, Australian Government, Canberra.

United Nations General Assembly 1989, *Convention on the Rights of the Child*, United Nations, Geneva.

United Nations General Assembly 1992, *Resolution on the Protection of Persons with Mental Illness and the Improvement of Mental Health Care*, United Nations, Geneva.

United Nations General Assembly 2006, *Convention on the Rights of Persons with Disabilities*, United Nations, Geneva.



www.health.gov.au

All information in this publication is correct as at November 2012