

Consumer Rights and Responsibilities

This statement should be read with the Dignity of Risk Policy, Service Entry Policy, Individual Supports Policy, Feedback & Complaints Policy, Family & Carers Policy and Privacy & Confidentiality Policy.

1. Considerations

All [insert organisation name] staff, Board members, students and volunteers are given this statement as part of their induction.

People with lived experience of mental illness are given this statement as part of their orientation to the service.

2. Background

People with lived experience of mental illness/recovery enjoy the same rights as anyone else in the community. These include the right to self-determination and to go freely about daily activities without undue interference.

However, a mental health crisis may, at times, bring circumstances which lead to those rights being curtailed. These circumstances are set out in the Mental Health Act 2007 (NSW), which provides a framework of checks and balances to minimise impacts on a consumer's rights, dignity and self-respect.

- The right to liberty is expressed in the principle of the least restrictive environment consistent with safe and effective care and treatment.
- The right to procedural fairness is expressed by the sections of the Act that require specific procedures for involuntary admission and external review.
- The right to information is expressed through the Statement of Rights (Schedule 3 of Mental Health Act 2007 – see Appendix 1), which explains procedures that must be followed once a consumer has been detained, and a consumer's rights throughout the process of involuntary detention

Further, the Act states that interpreters be used at medical examinations when the person is unable to communicate adequately in English, that it is an offence to ill-treat patients, and that a range of notifications and other information is to be provided to primary carers including information about magistrate inquiries, medication, and discharge planning.

The Mental Health Act 2007 (NSW) Statement of Rights applies to people who have been placed in a mental health facility against their will.

The **[insert organisation name]** Statement of Consumer Rights and Responsibilities applies to all people who access its services.

3. Statement of Consumer Rights and Responsibilities

The key rights which affect individuals seeking, and receiving, support from **[insert organisation name]** are:

- the right to respect for individual human worth, dignity and privacy;
- the right equal to other citizens to:
 - health care,
 - income maintenance,
 - education,
 - employment,
 - housing,
 - transport,
 - legal services,
 - leisure appropriate to one's age;
- the right to appropriate and comprehensive information, and education about:
 - their mental health problem
 - specific treatment, medication, supports and services available to meet their needs;
- the right to timely and high quality treatment and support;
- the right to interact with health care providers, particularly in decision making regarding treatment, care and rehabilitation;
- the right, during times of limited decision-making capacity, to a substitute decision-maker who acts in the consumer's best interests;
- the right to mechanisms of complaint and redress;
- the right to refuse treatment (unless subject to mental health legislation);
- the right to advocacy;
- the right to access family and friends;

- the right to have their cultural and religious background and gender taken into consideration in the provision of mental health services.
- the right to contribute and participate as far as possible in the development of mental health policy, provision of mental health support and representation of mental health consumer interests; and
- the right to live, work and participate in the community to the full extent of their capabilities without negative discrimination.

Responsibilities

All members of Australian society have responsibilities in relation to health care.

Specifically, people accessing mental health support have a responsibility to:

- respect the human worth and dignity of other people;
- participate, as far as possible, in recovery;
- when required, provide details of the primary carer;
- comply with any applicable community treatment order, breach notice or breach order issued under the NSW Mental Health Act (2007).

4. Consumer Rights and Responsibilities - [insert organisation name] Programs

Consumers have the **right** to:

- Be treated with respect and dignity at all times.
- Not be discriminated against by the organisation on the grounds of class, race, religion, disability, illness, sexuality, HIV-status or age, *and the responsibility not to discriminate against others on those grounds.*
- Change the type and level of involvement with the Program through review and negotiation, *and the responsibility to participate in negotiating, reviews and changes to involvement with the Program*
- The right to withdraw at any time *and the responsibility to negotiate withdrawal*
- Re-apply to the program providing you meet the eligibility criteria.
- Expect that information is accessible (including being culturally appropriate), and interpreters are available as required
- Access information about **[insert organisation name]** (e.g.: how programs are funded, their aims)
- Be informed about decisions and decision-making processes
- Make a complaint, to have a fair hearing and to have it kept confidential
- Seek assistance with advocacy issues

- Have all personal information kept private and confidential and *the responsibility to disclose personal information which may support collaborative work with other services and supports.*

Consumer **responsibilities** are to:

- Treat staff and other service users with respect and dignity.
- Be as highly involved as possible in designing and participating in your recovery plan.
- Provide information that enables the worker to provide adequate advice and support.
- Keep appointments unless something unexpected happens.
- A minimum of 24 hours, and if possible 48 hours, notice is preferred to cancel an appointment.
- Respect the privacy of others you may come in contact within your interactions with **[insert organisation name]** services.
- Follow safety procedures as requested
- Never use unsafe actions, such as:
 - Threats or other intimidating behaviours, threats with a weapon or object
 - Intentional physical attacks e.g., hitting, pinching or scratching
 - Bullying, harassment and/or sexual assault
 - Damage to the organisation's, or another person's, property.
 - Staying on program premises after hours when programs have ceased
 - Using or distributing drugs whilst on the premises

Appendix 1. Consumer Rights at a Mental Health Facility (Section 74 (3) and Schedule 3) of the NSW Mental Health Act (2007).

Mental Health Act 2007 No 8: **Schedule 3 Statement of rights** (Section 74 (3))

Statement of rights

What happens after I arrive at a mental health facility?

You must be seen by a facility doctor not later than 12 hours after you arrive at the mental health facility.

If you are a person who is already in a mental health facility as a voluntary patient, and you have been told you are now to be kept in the facility against your will, you must be seen by a facility doctor not later than 12 hours after it is decided to keep you in the facility.

When can I be kept in a mental health facility against my will?

You can be kept in a mental health facility against your will if you are certified by the facility doctor as a mentally ill person or a mentally disordered person. The doctor will decide whether or not you are a mentally ill person or a mentally disordered person.

A mentally ill person is someone who has a mental illness and who needs to be kept in a mental health facility for his or her own protection or to protect other people. A mentally disordered person is someone whose behaviour shows that he or she needs to be kept in a mental health facility for a short time for his or her own protection or to protect other people.

The facility cannot continue to keep you against your will unless at least one other doctor also finds that you are a mentally ill person or a mentally disordered person. At least one of the doctors who sees you must be a psychiatrist.

How long can I be kept in a mental health facility against my will?

If you are found to be a mentally disordered person, you can only be kept in a mental health facility for up to 3 DAYS (weekends and public holidays are not counted in this time). During this time you must be seen by a doctor at least once every 24 hours. You cannot be detained as a mentally disordered person more than 3 times in any month.

If you are found to be a mentally ill person, you will be kept in the mental health facility until you see a Magistrate who will hold a mental health inquiry to decide what will happen to you.

How can I get out of a mental health facility?

You, or a friend or relative, may at any time ask the medical superintendent or another authorised medical officer to let you out. You must be let out if you are not a mentally ill person or a mentally disordered person or if the medical superintendent or another authorised medical officer thinks that there is other appropriate care reasonably available to you.

Can I be treated against my will?

The facility staff may give you appropriate medical treatment, even if you do not want it, for your mental condition or in an emergency to save your life or prevent serious damage to your health. The facility staff must tell you what your medical treatment is if you ask. You must not be given excessive or inappropriate medication.

Can I be given electro convulsive therapy (ECT) against my will?

Yes, but only if the Mental Health Review Tribunal determines at a hearing that it is necessary or desirable for your safety or welfare. You have a right to attend that hearing.

Statement of rights - continued

More information

You should read the questions and answers below to find out about Magistrates' mental health inquiries and when you may be kept in a mental health facility against your will after an inquiry.

When is a Magistrate's mental health inquiry held?

A Magistrate's mental health inquiry must be held as soon as possible after it is decided to keep you in a mental health facility against your will because you are a mentally ill person.

What happens at a Magistrate's mental health inquiry?

The Magistrate will decide whether or not you are a mentally ill person.

If the Magistrate decides that you are not a mentally ill person, you must be let out of the mental health facility.

If the Magistrate decides that you are a mentally ill person, the Magistrate will then decide what will happen to you. Consideration must be given to the least restrictive environment in which care and treatment can be effectively given. The Magistrate may order that you be kept in a mental health facility as an INVOLUNTARY PATIENT for a set time (not more than 3 months) or the Magistrate may order that you be let out of the mental health facility. If you are let out, the Magistrate may make a community treatment order requiring you to have certain treatment after you are let out.

The Magistrate may adjourn the inquiry for up to 14 days where he or she considers that it is in your best interests.

If the Magistrate makes an order that you are to remain in a mental health facility as an involuntary patient, the Magistrate must also consider whether you are capable of managing your financial affairs. If the Magistrate is not satisfied that you are capable, an order must be made for the management of your affairs under the *Protected Estates Act 1983*.

What rights do I have at a Magistrate's mental health inquiry?

You can tell the Magistrate what you want or have your lawyer tell the Magistrate what you want. You can wear street clothes, be helped by an interpreter and have your primary carer, relatives and friends told about the inquiry. You can apply to see your medical records.

What are my rights of appeal if I have been made an involuntary patient?

You (or a carer or friend or relative) may at any time ask the medical superintendent or another authorised medical officer to discharge you. If the medical superintendent or authorised medical officer refuses or does not respond to your request within 3 working days you (or a carer a friend or relative) may lodge an appeal with the Mental Health Review Tribunal.

You will be given a notice setting out your appeal rights.

What happens when the time set by an order making me an involuntary patient has nearly ended?

The facility medical staff will review your condition before the end of the order and the mental health facility may either discharge you or apply to the Mental Health Review Tribunal for a further order. The Tribunal must let you out of the mental health facility if it decides that you are not a mentally ill person or if it feels that other care is more appropriate and reasonably available.

Who can I ask for help?

You may ask any facility staff member, social worker, doctor, official visitor, chaplain, your own lawyer or the Mental

References

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