Review of the *Mental Health Act 2009* (SA)

Fact Sheet 9 – Guiding Principles and Accountability Mechanisms

Guiding Principles

The *Mental Health Act 2009* (SA) ('*MHA*') contains a number of guiding principles, which form the basis of mental health laws in South Australia. They represent fundamental human rights and best practices, which should be embedded within the care and treatment of people with a lived experience of mental illness. Under the *MHA*, those who work within mental health, such as the Chief Psychiatrist, health professionals and the South Australian Civil and Administrative Tribunal, must be guided by these principles. Some examples present in the current law state mental health services should:[1]

- Lead to the best treatment outcome, promoting recovery;
- Meet the highest standard of quality and safety;
- Ensure the least restrictive practices are used; and
- Consider the age of a person, gender, sexuality, disability, culture, language and past trauma.

These guiding principles may attempt to act as accountability measures for health professionals. However, if these principles are not translated into practice, this may prevent the consumer from receiving care and treatment which is person-centred, promoting supported decision-making and reinforced by effective accountability mechanisms.

Current Issues

The Royal Commission into Victoria's Mental Health System recommended the introduction of a new Mental Health and Wellbeing Act.[2] The intended changes to the law aim to strengthen the objectives and principles, support access to care and treatment which is rights-based and enforce accountability mechanisms and monitoring arrangements. This was recommended in response to the lack of clear accountability mechanisms ensuring mental health principles are translated into practice.[3] This included supported decision-making (see Fact Sheet 2), recovery-oriented practice and restrictive practice (see Fact Sheet 5).[4] In the absence of strategies to monitor and implement these principles, a consumer's experience may be impacted. For example, this may be observed when applying the *MHA* provisions where the cause of a consumer's mental health challenge is unclear. The practice around the use of control powers, as opposed to making an Inpatient Treatment Order, may affect access to a mental health bed and services. As a result, SALRI will consider ways in which the *MHA* imposes barriers, if any, for consumers to access services or can facilitate access to services.

Consultation Questions

1. How can these guiding principles be enforced into practice?
2. If applied or not in practice, do these guiding principles impact access to services?
3. How might the *MHA* provisions be changed to improve consumer's access to service?
4. What, if any, measures for accountability and monitoring should be included in the *MHA*?

[1] *Mental Health Act 2009* (SA) s 7.
[2] See Recommendation 42 of the Royal Commission into Victoria's Mental Health System.
[3] *Royal Commission into Victoria's Mental Health System* (Final Report, February 2021) vol 4, 32.
[4] Ibid.

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