



***Carers ACT response to the
Draft Mental Health Facilities Bill 2016
Mental Health, Justice Health, Alcohol and Drug Service Division,
ACT Health***

February 2016

Carers ACT acknowledges that modern day Canberra has been built on the traditional lands of the Ngunnawal people. We offer our respects to their Elders past and present, and celebrate the Ngunnawal people's living culture and valuable contribution to the ACT community.

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Who is Carers ACT?

Carers ACT is a non-profit, community-based, incorporated association and registered charity dedicated to improving the lives of the estimated 43,000 carers living in the Australian Capital Territory.

These carers provide ongoing unpaid care for people with disabilities, mental illness, chronic conditions, who have palliative care needs, or who are aged and frail. Carers ACT currently provides direct support to around 8000 families through our counselling, information, respite support, education, social support and case coordination services. We continue to meet national accreditation standards for delivery of our services to carers at a high level.

Carers ACT has a constitutional mandate to represent the voices of carers to government and the wider community. We actively consult with a wide diversity of caring families on an ongoing basis to enable improved understanding of their needs, and enable better inclusion for them and the people they care for. Policy work in consultation, research and representation is kept separate from service delivery to ensure that the privacy of individual service recipients is respected. All carer participation in policy work is voluntary.

Carers ACT is a member of the National Network of Carers Associations, and works actively with other States and Territories to share knowledge and facilitate improved health and wellbeing outcomes for caring families.

Introduction

Carers ACT welcomes the opportunity to comment on the draft Mental Health Facilities Bill 2016 (The Bill). Our response has been prepared in consultation with carers. Carers ACT would like to thank and acknowledge the valuable input from carers who contributed to this response.

Carers ACT understand that The Bill is for the operation and management of secure mental health facilities in the ACT. A secure mental health facility is defined as a mental health facility approved under the *Mental Health Act 2015*¹ for the involuntary detention and treatment of people. In a focus group facilitated by Carers ACT, with ACT Health present, the following themes emerged from the comments of participants;

- Access to facility and treatment and recovery
- Recording devices and privacy
- Ambiguity surrounding young people as visitors to facility

This document is structured in consideration of each of these themes.

Access to Facility and Treatment and Recovery

Carers ACT commends the delicate balance that has been achieved by The Bill between ensuring the safety of patients and staff in the unit and respecting the rights and liberties of the individual. Under s 14 *Contact – General Considerations*, when exercising the function, the benefits of contact with family are acknowledged but are to be balanced with the privacy needs of patients, the safety of patients and the general security and management of the facility. This message is consistent throughout the document. Ongoing contact with and support from family and friends supports people's health and wellbeing and is important in supporting people to transition back into the community. Facilities that enable family and friends to permeate into service are associated with higher positive outcomes for patients².

Recovery can be considered as a social, as well as a medical process, and therefore the quality of social relationships contributes importantly to a therapeutic setting. Therefore accessibility of a service to family and friends is not only therapeutic for the service user but also relieves some of

^{1.} *Mental Health Act 2015*. Available at: http://www.legislation.act.gov.au/b/db_51861/

^{2.} Wood, V. J., Curtis, S. E., Gesler, W., Spencer, I. H., Close, H. J., Mason, J., & Reilly, J. G. (2013). Creating 'therapeutic landscapes' for mental health carers in inpatient settings: A dynamic perspective on permeability and inclusivity. *Social Science & Medicine*, 91, 122-129.

the distress and pressures felt by the carer³.

In focus group discussion it was noted that many elements of The Bill surrounded how visitors and service users entered and exited the facility whilst managing the safety and operations of the facility. It was recognised by carers that when family or friends were visiting the facility it was important to ensure the safety of the patients and staff within the facility. The Bill focuses primarily on operations; and therapeutic treatments/patient care are outside the scope of the document. However, as secure mental health facilities are considered medical facilities first and foremost, the importance that the therapeutic nature of the facility be protected as well as the safety of the patient seems beneficial. For example in s 39 (2b) *Scanning, frisk and ordinary searches of patients*, grounds for a search are warranted when there is a risk of things entering the facility that could be a risk to 'personal safety of the patient or anyone else; or security or good order at an approved mental health facility.' It was recommended in the discussion with carers that in sections such as these, things that would be a risk to 'the therapeutic environment of the facility' also be incorporated. Through discussion it was believed that including the protection of the therapeutic environment would instill in The Bill more resolutely the treatment and recovery focus of the facilities and decrease the emphasis on containment

Recommendations

That the Mental Health Facilities Bill 2016;

- Incorporates the '*protection of the therapeutic environment*' in addition to the protection of people and the protection of the orderly running of the building.

Recording devices and privacy

The Bill provides a detailed outline of the manner for electronic communications to be utilised and restricted. In Division 3.2 *Contact – monitoring electronic communications* the ability for patients to have contact with people outside the facility through electronic communications is balanced against the patients' right to have their reputation protected. Carers ACT supports the inclusion of an *electronic communications area* where these facilities are made available to patients. Contemporary research has demonstrated that access to electronic communication methods can complement treatment by keeping patients in touch with social supports outside the facility between face-to-face visits. It can also facilitate planning for discharge, empowering patients to be

³. Gesler, W. (2003). *Healing places*. Oxford UK: Rowman & Littlefield Publishers. pp. 14-15

more involved in the planning process⁴.

It is also noted that there needs to be the provision for limitations on the use of electronic communication devices (ie. mobile phones, smartphones etc.) within the facilities. There is a responsibility of the facility to protect the privacy of patients within the facility. Electronic devices can capture recordings to a high quality and also transmit information quickly. The Bill states that the director general must ensure that 'patients do not use an electronic communication device to capture visual data of the patient or another person' (s 21 (2c)).

In focus group discussion carers emphasised the stigma that can surround mental illness and that being in the facility should be a safe and constructive experience, whereupon leaving the facility, patients are more equipped to live full lives. Carers commented that if people could be recorded whilst in the facility, and that information shared, it could negatively impact the patient's reputation including impeding their abilities to find employment or housing following discharge. In addition, it was noted that The Bill only comments on visual data of patients and not audial data recordings. It was recommended that the wording be generalised to include both visual and audial data.

Recommendations

That the Mental Health Facilities Bill 2016;

- Expands the restriction on use of electronic communication devices to ensure that patients do not capture visual and/or audial data of the patient or another person.

Ambiguity surrounding young people as visitors to facility

In the focus group in January 2016 it was raised that there was uncertainty surrounding young carers visiting the secure mental health facilities. The carers at the focus group observed that people being detained in these facilities may have children who wish to visit and who provide care and support to their parent as a young carer. The Bill does not restrict people under 18 from visiting the facility and also asserts protections for children who attend including specific searches on entering. *S 33 (3) Directions to visitors* states "If a direction is given in relation to a visitor who is a child, the director must tell the child's parent or someone with parental responsibility for the

⁴. Montague, A. E., Varcin, K. J., Simmons, M. B., & Parker, A. G. (2015). Putting Technology Into Youth Mental Health Practice. *SAGE Open*, 5(2), 2158244015581019.

child about the direction and the need for it.” This section raised a number of questions for young carers, namely;

1. Can a young person attend the facility without a person with parental authority escorting them?
2. If yes, what age/circumstances can a young person attend without a person with parental authority escorting them?

Carers ACT support young carers to be included in the discussion and treatment of their mentally ill parents, siblings etc. at an appropriate level for their age. In recent studies including children and young adults in the process was associated with improved progress towards recovery for the patient⁵ and improved wellbeing for the child or young person⁶. It was recommended at the focus group that The Bill should further assess how to balance the benefits of young carers visiting the person they care with the responsibility to protect people under the age of 18.

Recommendations

That the Mental Health Facilities Bill 2016;

- Should differentiate between children and young people
- Should provide framework for young people visiting facilities alone

Recommendations and Conclusion

In consultation with carers it was considered that this Bill provides a good framework for what powers are available for operating secure mental health facilities. Recommendations were made as follows;

The Mental Health Facilities Bill 2016 should;

- Incorporate the ‘*protection of the therapeutic environment*’ in addition to the protection of people and the protection of the orderly running of the building.
- Expand the restriction on use of electronic communication devices to ensure that patients do not capture visual and/or audial data of the patient or another person.
- differentiate between children and young people

⁵ Biebel, K., Nicholson, J., Williams, V., & Hinden, B. R. (2004). The responsiveness of state mental health authorities to parents with mental illness. *Administration and Policy in Mental Health*, 32, 31–48.

⁶ Brockington, I. A. N., Chandra, P., Dubowitz, H., Jones, D., Moussa, S., Nakku, J., & Ferre, I. Q. (2011). WPA guidance on the protection and promotion of mental health in children of persons with severe mental disorders. *World Psychiatry*, 10(2), 93-102.

- provide a framework for young people visiting facilities alone

Finally, it is important to note that participants in the focus group found that The Bill provides an important first layer of managing secure mental health facilities. Implementation was considered key to how the functions of the Mental Health Facilities Bill will be experienced by carers. It was important for carers that implementation was well-planned and consulted on, especially for new facilities such as the Secure Mental Health Unit. Carers felt that this document provides a strong starting point and that internal operating procedures, staff training etc. will be more indicative of the experience for patients and their carers.