



## **SUBMISSION**

### **CONSULTATION ON THE POSSIBLE RATIFICATION OF THE:**

### **UNITED NATIONS CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES**

### **NATIONAL INTEREST ANALYSIS**

We thank the Australian Government Attorney-General's Department and the Department of Families, Housing, Community Services and Indigenous Affairs for the invitation to provide comment on the consultation on the possible ratification of the *United Nations Convention on the Rights of Persons with Disabilities* (hereinafter Convention) – National Interest Analysis.

The *Private Mental Health Consumer Carer Network (Australia)* (hereafter Network) represents Australians who have private health insurance and/or who receive their treatment and care from private sector settings for their *mental illnesses or disorders*. As our title implies, the Network is the authoritative voice for consumers and carers of private mental health settings.

#### **1. General comments**

The Network strongly supports the Convention and Australia's signature of 30<sup>th</sup> March, 2007. We strongly support the ratification of the Convention by the Australian Government. We believe that as minimum standards, we expect that what is put in place, would be delivered by all countries that are signatories to the Convention. We expect however, that in Australia, Governments of all levels would achieve a higher standard than that articulated within the Convention.

With regard to 'persons with disabilities' articulated within *Article 1- Purpose*, we note that this encompasses people who have long-term mental impairments and in regard to our Submission herewith, our comments relate entirely to these people that is, the people that our organisation represents.

Historically, the word 'asylum' has been used within Australia and around the world in reference to a mental hospital (lunatic asylum), however the Network would like to raise this word in the context of a 'sanctuary, a shelter or refuge' (Collins English Dictionary) We feel that for a very small number of people, the concept of a sanctuary, shelter or refuge offer them better quality of life with de-institutionalisation contributing somewhat to homelessness and unreported rates of suicide.

We also believe that in terms of people with a mental illness, Australia would not be completely compliant with the Convention. Indeed people with a mental illness would not necessarily be free from or protected from, certain situations or abuse of human rights or discrimination. Australia would find it difficult to meet certain rights articulated within the convention including each criterion within each Article because of the uniqueness of mental illness.

## 2. Consultation issues

With regard to the Convention, we accept the generic references to access, non-discrimination, work/employment and housing as capturing the spirit of the document. However we would like to raise the following as it relates to mental illness and the specific areas requested by the Australian Government.

### 2.1 The obligations imposed by the Convention:

#### 2.1.1 Employment.

The Network believes that all people with a mental disability have a right to employment and the right of encouragement by Governments and the community to undertake employment by the availability of appropriate training, appropriate employment opportunities, non discriminatory work places and without disincentives by Government which impact negatively on an individual's welfare payments because they are trying to enter the workforce, often under very difficult circumstances.

Government Departments should lead as an example, but unfortunately, in many situations this is not currently the case for people with a mental disability.

#### 2.1.2 Discrimination.

The Network believes that frequently, discrimination against people with a mental disability is shown by Australian Government Departments, themselves.

Discrimination, whether we like to believe this or not, still exists against people with a mental illness. People distance themselves from those with a mental disability perceiving them to be 'dangerous and unpredictable' with those with schizophrenia, alcohol abuse and substance dependence problems all too often on the receiving end of a number of forms of discrimination within Australia.

#### 2.1.3 Involuntary admissions and treatment.

The Network believes that the involuntary admission, treatment, restraint and seclusion of persons with a mental illness under mental health legislation in Australia is potentially at odds with several articles of the convention. As part of implementation of the convention, a review of mental health legislation must be undertaken to ensure that it is consistent with several articles of the convention. Mental health legislation should be drafted in a manner that provides the greatest possible protection to the rights of persons with a mental illness, including their right to consent to or refuse medical treatment.

Attention is drawn particularly to the following Articles:

- *Article 5: Equality and non-discrimination-* The Network wishes to draw attention to the rights of people who are detained i.e. admitted on an involuntary basis under the various jurisdictional Mental Health Acts. There have been various studies undertaken with the Department of Health and Ageing as the lead agency and the Minister

needs to ensure that the general principles emerging nationally need to be included within any implementation strategy.

- *Article 14: Liberty and security of the person* – The Network again wishes to highlight the rights of people with a mental illness being detained against their will under mental health legislation within Australia. The Network acknowledges that there are circumstances in which this may be required but that the rights of persons with a mental illness must be respected to the greatest extent possible.
- *Article 15: Freedom from torture or cruel, inhuman or degrading treatment or punishment* – The Network wishes to raise the issue of restraint and seclusion of people with a mental illness, which continues to take place. The Network very strongly supports the ethos of the Australian Government in the push for the elimination of seclusion and the minimising and elimination of restraint including both by mechanical or medication means.
- *Article 25: Health* – The Network believes that dot point 4 is particularly relevant to people with a mental illness and the particular issues of involuntary admissions, treatment, restraint and seclusion. The article emphasises that persons with a disability should only receive medical treatment to which they agree, however persons with a mental illness can receive treatment involuntarily under mental health legislation. The Network acknowledges that in some circumstances involuntary treatment may be necessary, such as when a person is not well enough to consent to treatment, but strong safeguards must be in place. In addition the previously expressed choices of such persons about treatment should be respected as much as possible, i.e. advance directives.

#### **2.1.4 What's missing.**

The Network considers important omissions are those relating to Housing, and the care and support of carers/families. The wording of the United Nations Charter cannot be amended, however within the implementation processes, the Australian Government and their relevant Departments must take these two areas into consideration and address the issues of the rights of people with a mental disability to access safe, clean and supportive housing free from discrimination, and the carers/families of people with a mental disability are supported in their caring roles.

## **2.2 What will need to be done to implement the Convention:**

In terms of implementation of the Convention, the Network reiterates that we believe this is a minimum standard document with Australia struggling to meet all of the criteria contained therein. We believe that implementation of the Convention is the obligation of the signatories thereto.

*Article 8 – Awareness-raising* The Network draws attention to the distinct hierarchy of health even with the area of disability. Mental illness is the most stigmatised and least understood health condition/disability and there are

particular challenges to the rights of the mentally ill eg. involuntary treatment and restraint. Initiatives designed to raise awareness must specifically address the stigma associated with mental illness and provide specific education about the rights of people with mental illness. The Australian Government in any implementation of the Charter must address and continue to address this issue.

### **2.3 Foreseeable economic, environmental, social and cultural effect of implementing the Convention:**

People with a mental illness should indeed have the same rights as everyone else to live, take part and be included in the community. The fact is this does not always apply to persons disabled by a mental illness.

Legal issues impact on people with a mental disability. They can lose the right to decide to, or not to, take medications and under a *Community Treatment Order/ Involuntary Treatment Order*, treatment is forced upon them often via depot injections. If people do not voluntarily attend a mental health service for medications, health professionals seek them out in their place of residence and require them to comply. Similarly, people disabled with a mental illness lose the right to attend to their own finances with Guardianship/Trustee Boards, determining under an *Administrative Order* who will act on their behalf, and what they will do with their monies.

### **3. Conclusion:**

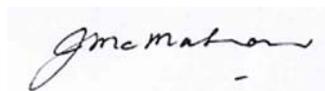
*Article 19: Living independently and being included in the community* – In many ways, the Network believes that this Article encapsulates the essence of the Convention as it applies to people disabled with a mental illness. Australia must take notice of the specific points articulated with this Article, in particular:

Australia must ensure that all levels of Government, and all relevant Departments take appropriate steps to ensure people with a mental disability via a mental illness or disorder, enjoy:

- The opportunity to choose where they live and who they live with;
- Support services delivered within mental health services, community services, residential and other supports provided within the community;
- Prevention from isolation; and
- Equal access to health services, community services, employment and any other services and facilities available to other Australians.

As a recognised peak body, the Network would be very pleased to participate in any processes or opportunities to provide information, advice or commentary to the Australian Government in regard to this Convention, or indeed any matter relating to mental health.

The Network has been pleased to provide this Submission. Should you have any queries relating to any aspect of this Submission, please contact the undersigned.



Janne McMahon  
Independent Chair  
**14<sup>th</sup> March, 2008**