NTLEN POSITION: CHANGES TO THE MHRS ACT (1998)

The NT Lived Experience Network has adopted the format used in the Discussion Paper for the Review of the NT Mental Health and Related Services Act (1998)[36] to present its position. Additional responses to issues not addressed in the Discussion Paper have been incorporated into the section deemed most appropriate.

General Matters

Do you think the current legislation is effective in regulating mental health treatment and care?

NTLEN takes the position that the current legislation is not effective regulating mental health treatment and care to modern standards.

The existing Act was bought into effect in 1998, when states and territories were tasked under the First National Mental Health Plan, to update their mental health legislation in alignment with the 1991 Mental Health Statement of Rights and Responsibilities and United Nations Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care.[4]

In 2008, Australia ratified the protocol for the United Nations Convention on the Rights of Persons with Disabilities (CRPD) which was created in 2006. The CRPD lists the explicit rights of people with disabilities within international law and came into effect 10 years after the NT Mental Health Act was last updated. All other states and territories have mental health legislation that has been updated since the CRPD was ratified. It is appropriate that the Northern Territory does also.

We asked Territorians at our Lived Experience Consultation and in our online survey whether they felt their rights as listed in the CRPD were upheld by NT Government mental health services. Overwhelmingly the response was 'no'. The top responses included:

1. The right to access mental health treatment when needed (was not upheld)
2. The right to physical and mental safety (was not upheld)
3. The right to have access to health care (was not upheld)
4. The right for others to respect my privacy (was not upheld)
5. The right to freedom and safety (was not upheld)
6. The right to not experience abuse, violence or be taken advantage of (was not upheld)
7. The right to be treated equally before the law without discrimination (was not upheld)

In general, NTLEN recommends that changes to the NT Mental Health Act should include introducing elements of legislation to promote recovery using a rights-based framework,[14] as well as increased transparency and accountability for NT Government mental health services to work in ways that promote people's rights.

NTLEN recommends changing the NT Mental Health Act to increase the authority and remit of the Community Visitor Program and introducing legislation to capture the role of Chief Psychiatrist.

NTLEN believes this is also an opportune time for the NT Mental Health Act to legislate evidence-based strategies that align with national policy and health care standards for utilizing lived experience experts in ways to that promote recovery including:

- The employment of people with lived experience and appropriate qualifications within NT Government mental health services including Social and Emotional Wellbeing Workers and Mental Health Peer Workers.
- The engagement of more people with lived experience of mental distress (and treatment by NT Government mental health services) in governance activities that provide strategic guidance to the Chief Psychiatrist, NT Government mental health inpatient facilities and outpatient services.
- Legislating a place on the NT Mental Health Tribunal that is reserved for representatives that have lived experience of mental distress and treatment under the NT Mental Health Act.

NTLEN acknowledges that changing the NT Mental Health Act, will not be enough to ensure the rights of Territorians experiencing mental distress will be upheld. Additional measures may include:

- Updating operational policies and procedures for NT Government mental health services to reflect changes to the Act,
- The creation (and ongoing delivery) of professional development for staff that reflects changes to the Act and builds the recovery orientation of services,
- Increasing funding for staff and infrastructure at NT Government mental health services that is commensurate with the level of unmet need within the NT health and justice systems,
- Nominating Key Performance Indicators for NT Government services to progressively reduce restrictive practices and increase the number of treatment plans that align with patients will and preference.
- Increasing resources for the Community Visitor Program to ensure that sufficient resources are available for individual advocacy, monitoring services and to drive improvement at NT government services where people are treated for mental distress, which must include NT detention centers.

Do you think the MHRS Act needs amendments, or does the Northern Territory need to make an entire new Act for mental health?

NTLEN takes the position that the NT requires an entire new Mental Health Act.

Further, the NT Government should provide sufficient opportunity for stakeholders to respond to a draft of the new Act, and the draft consultation process should be repeated if stakeholders recommend significant changes. This must include broad engagement with people with lived experience.

It is unclear why the NT Government has not made a more concerted and informed approach to consult with people with lived experience in this, the first stage of the review.

The United Nations says that limited resources are not an excuse to delay the implementation of the CRPD and one of its recommended strategies for the effective use of limited resources is to involve people with disabilities at all stages.[19]

NTLEN recommends that the NT Government takes a more focused approach and demonstrates a genuine commitment to be guided by people with lived experience for future consultations relating to the draft NT Mental Health Act. NTLEN is available to share its expertise in relation to how this can be achieved.

NTLEN members have voluntarily contributed their skill, resources, and relationship with the NT Lived Experience community to make this submission. Our contribution represents hundreds of hours of volunteer time translating the Discussion Paper[36] into language that was accessible to the general public, developing

and facilitating a consultation and online survey, then communicating the information we have received in this report.

Our results are imperfect because we had to rely on social media promotion, as a low-cost mechanism to reach as many people in the broader lived experience community as possible. Consequently, we have a disproportionately higher number of responses from women compared with men, because this is the demographic of people who access social media.

However, we believe that our submission is likely to be the only independent submission that represents the collective views of more than 100 people in the NT who have lived experience. We hope that the NT Government recognizes the value of our submission to inform the review of the NT Mental Health and Related Services Act (1998).

Does another Australian jurisdiction have laws about mental health that you think the Northern Territory should look at?

NTLEN representatives read both the summary and full Discussion Paper[36] created by the NT Government for the Review of the Mental Health and Related Services Act (1998). We valued the opportunity to review the summary provided of the legislative approach taken in other states and territories.

In our response, we have recommended certain approaches adopted by other state or territories as cited in the Discussion Paper.[36] NTLEN does not include people with specific legal expertise or detailed knowledge of the content of the NT Mental Health and Related Services Act (1998).

In general, we have sought to advocate for approaches that promote the rights of individuals experiencing mental distress and their families/support people, plus increased accountability, and transparency of health services.

New Recommendation: Immediate action to investigate and address the reported inhumane treatment of people experiencing mental distress in the detention

NTLEN is deeply concerned for the human rights and reported inhumane treatment of people experiencing mental distress and detained within the NT justice system.

Based on the feedback we received in our survey, NTLEN recommends that this issue is investigated and addressed urgently by the NT Government to meet its obligations within international law.

NTLEN suggest that the Community Visitor Program (or other appropriate body) is immediately provided with additional resources and the level of authority required to access NT detention centers and forensic facilities, to inspect the care and treatment provided to people experiencing mental distress in detention. Further, that the NT Government respond immediately to address any issues of concern that are raised.

The human rights of people in detention who experience mental illness or distress are made clear within the 1991 United Nations Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care.[6] The standard of care should be no different to that made available to people who are not in detention.

Part 1: Principles and Rights of the Patient

Section 1.1: 'Recovery'

How can we use the legislation to promote the rights of the voluntary consumer or involuntary patient when they are receiving care?

NTLEN recommends changing the NT Mental Health Act to strengthen and promote the rights of individuals receiving treatment from NT Government services and the rights of their families/support people.

We know that people need to understand their rights to effectively self-advocate. Empowering people to self-advocate is an evidenced based strategy that promotes recovery. In addition, it is a mechanism to drive mental health reform from the bottom up. For self-advocacy to occur, it is essential that people's rights are highly visible and are communicated using accessible language.

NTLEN recommends the following inclusions to the NT Mental Health Act:

1. A definition for recovery and a list of enablers that promote recovery based on international research.
2. The rights of people *seeking* treatment from NT Government mental health services.
3. The rights of people *receiving* treatment from NT Government mental health services.
4. The rights of people in the NT justice system who experience mental illness and distress.
5. The rights of families/support people for a person that is seeking access to, or being treated by, NT Government mental health services.
6. The obligations and responsibilities of NT government mental health services working with people who experience mental distress and their families.
7. The obligations and responsibilities of NT government services within the justice system who are working with people who experience mental illness and distress.
8. A code of conduct to be signed by any worker at NT government services which enforces staff obligations to treat people experiencing mental distress (and their families/support people), in a way that promotes respect for their inherent dignity.

NTLEN recommends that the NT Mental Health Act goes one step further, and requires that the aforementioned items be:

- Transcribed into a format that can be understood by the public,
- Highly visible at every location where individuals experiencing mental distress and their families/support people are seeking access to, or receiving treatment from, a NT Government mental health service,
- Made available in printed form and in all languages spoken in the NT,
- Made available online (including in audio) by displaying QR codes that can be scanned and direct a person to the appropriate online resource.

NTLEN recommends that the rights of people listed in the NT Mental Health Act incorporate/reflect the United Nation's conventions and principles for treating people:

- With mental illness,
- With disability,
- Who are in detention,
- Who are children, and

- Who are First Nations people.

Should the NT Government adopt these recommendations, NTLEN suggests that it would be beneficial to prepare a separate statement of rights for 1) people detained in the justice system, 2) people attending court, 3) young people under the age of 18 years, and 4) everyone else. In each situation, the corresponding statement of rights for families and support people should also be created.

NTLEN recommends additional consultation with the broader community of Territorians with lived experience is undertaken before finalizing any information in the NT Mental Health Act that relates to recovery, rights, service provider and worker obligations.

If targeted consultation of people with lived experience is not undertaken, then their perspectives will be overwhelmed by the perspectives of others, and the NT Government will miss an opportunity for people with lived experience to be active in decisions that relate to their treatment and care.

Will incorporating the concept of 'recovery' into the legislation change how treatment and care is administered? Why do you think so?

Yes, incorporating the concept of recovery into legislation is the best way to change how treatment and care is administered at NT Government services.

Unless the NT Mental Health Act includes the type of objects that we have described to promote recovery and the people's rights, then NT Government mental health services (and services operating within the justice system), will not change the ways they operate.

Based on the feedback we have received; we think it is imperative for services to make significant changes in the way that they work with individuals and families to promote recovery and healing.

We recommend that following inclusions are made to the NT Mental Health Act to facilitate the changes required:

- Legislating a list of people's rights, the rights of their families/support people, and the obligations and responsibilities of services and staff.
- Legislating a definition for recovery and a list of enablers demonstrated by the evidence to promote recovery.
- Legislate the right for people to access support from the lived experience workforce (Social and Emotional Wellbeing and Mental Health Peer Workers).
- Legislating lived experience roles on the governance bodies that provide strategic direction and oversight to NT Government mental health services and the Chief Psychiatrist.
- Legislating a dedicated role on the Mental Health Tribunal for someone with lived experience of mental distress and treatment from NT Government mental health services.
- Legislating expanded powers to the Community Visitor Program and Chief Psychiatrist to ensure NT Government services meet their obligations.

The Discussion Paper[36] presented the language used to incorporate the concept of recovery in other states and territories. NTLEN does not feel that legislation used in other states and territories is sufficient to capture the notion of recovery, the enablers for recovery or the rights of individuals and their families/support people.

NTLEN recommends adopting a rights-based framework for recovery in the NT Mental Health Act as recommended by the World Health Organisation.[14] Our recommendation is based on the number of people who expressed to us the ways in which their rights were not upheld.

The NT Mental Health Strategic Plan (2019-2025)[26] provides the following definition for recovery:

> *"Recovery means gaining and retaining hope, understanding abilities and disabilities, engagement in an active life, personal autonomy, social identity, meaning and purpose in life and a positive sense of self."*

We note that this definition reflects elements of Bill Anthony's internationally accepted definition for recovery:[20]

> *"Recovery is a deeply personal, unique process of changing one's attitudes, values, feelings, goals, skills and roles. It is a way of living a satisfying, hopeful and contributing life even with the limitations caused by illness."*

However, NTLEN recommends that a definition for recovery in the NT Mental Health Act should go further and reflect the United Nation Convention on the Rights of Persons with Disabilities (CRPD):

> *"To promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity."*

Further, we recommend the NT Mental Health Act should include a list of enablers for recovery based on international evidence, including respect for culture and spirituality, and ways to address stigma.[21]

Do you have any suggestions for how the legislation can be changed to include the concept of recovery?

NTLEN recommends that the NT Government further consult with the broader population of Territorians with lived experience of mental distress and their families/support people before defining the concept of recovery in the legislation.

However, in the interim we suggest that the following elements are considered for incorporation in the draft NT Mental Health Act to define and promote recovery:

- Recovery is deeply personal, unique for an individual and may change over time.

- Recovery is facilitated when others promote and protect a person's human rights, fundamental freedoms and respect for their inherent dignity, culture, and the important people in their lives.

- Recovery is facilitated when a person is supported to:
    - Rebuild and strengthen their connections with people, places, community and cultural or spiritual beliefs that are important to them.
    - Understand their strengths, and how they can live their best life even with the limitations caused by illness.
    - Regain their identity and build a positive sense of self.
    - Connect with people who have lived experience and can role model that recovery is real.
    - Recognise and respond to stigma.
    - Regain hope and aspirations, and to take steps toward achieving their goals.

    - Regain autonomy, direct decisions that impact their life, and at a minimum, to be an active partner in decisions relating to their treatment and care.
    - Understand their rights, self-advocate, and have access to advocacy when they need it.

- Recovery is facilitated when a person's family or support people are:
    - Are respected and supported to work collaboratively with health services and their family member to maximise recovery outcomes.
    - Are embraced by services to support communities that share a collectivist notion of recovery.
    - Have the means to understand their rights, self-advocate and have access to advocacy when they need it.

Section 1.2: Capacity and informed consent

Do you think the legislation considers the right criteria when determining if someone has capacity?

No, NTLEN recommends that the criteria are amended.

Does the legislation need to include any other steps to make sure that a person has given informed consent? Do any steps need to be removed?

NTLEN recommends updating the requirements in the NT Mental Health Act to presume that the person has decision making capacity unless proven otherwise, and for the introduction of safeguards that reduce potential for bias by doctors/decision makers who may determine that someone does not have capacity because they are making a decision that might be considered 'unwise'.

At the NTLEN Lived Experience Consultation, participants reviewed and discussed content from the ACT Mental Health Act (2015) in relation to decision making capacity as described in the Discussion Paper,[36] i.e.

Someone has 'decision-making capacity' if that person can, with assistance if needed:

a) understand when a decision about treatment care or support for the person needs to be made; and
b) understands the facts that relate to the decision; and
c) understand the main choice available to the person in relation to the decision; and
d) weigh up the consequence of the main choices; and
e) understand how the consequences affect the person; and
f) on the basis of paragraph (a) to (e), make the decision; and
g) communicate the decision in whatever way the person can.

Such principles include the presumption that someone has decision-making capacity

- *unless the contrary is established;*
- *capacity is particular to the decision the person is about to make;*
- *a person must not be treated as not having capacity only because the person makes an unwise decision;*
- *or if the person has impaired decision-capacity under another Act, in relation to another decision.*

Participants at the consultation felt that these were useful inclusions/considerations for the NT Mental Health Act. However, participants also noted that there is a high probability that some Territorians are at risk of providing consent that is not informed.

This might occur when a) the person has limited English and does not comprehend the information provided to them, or b) the person comes from a different cultural background, and they do not want to contradict the person in charge.

It was suggested that the "Talkback" method is adopted, with the intention to ensure that people who are from culturally and linguistically diverse backgrounds have every opportunity to understand the information that is provided to them, and to provide informed consent.

What is your opinion about introducing the concept of investigating the 'will and preference' of someone to help make decisions about mental health treatment and care?

NTLEN supports including 'will and preference' in the NT Mental Health Act.

We believe the same steps to explore a person's will and preference should be taken irrespective of whether the person is being treated voluntarily, as an involuntary patient, under a community treatment order or as a voluntary consumer of the service.

NTLEN has anecdotal evidence that people treated by NT government mental health services are:

- Not provided with information about other options for treatment (especially in relation to medication),
- Not explained side effects to medications,
- Minimized or dismissed when conveying their concerns about the impact of side effects, and
- Dismissed if they expressed a treatment preference (especially in relation to medication) that did not align with the opinion of the treating doctor at the time.

In addition, some people have communicated to NTLEN that their prescribed medications (and often diagnoses) were changed each time they saw a different treating doctor at NT Government outpatient services. Due to the transient nature of the NT workforce, this has meant that some people were exposed to repeated re-diagnosis and medication changes.

It is our opinion that this impacts far more than the people's neurochemistry: it profoundly impacts their understanding of their mental health journey to date, their sense of self and identity, and has been observed to have significant and detrimental impacts to people's recovery.

NTLEN believes that if an audit of medications prescribed at inpatient wards, or by individual treating doctors at outpatient services was undertaken, it is likely to demonstrate dominant patterns in relation to prescribed medications. This would illustrate that people being treated by NT Government mental health services have had little to no input to their medical treatment regime, especially in relation to prescribed medications.

In our experience many Territorians have disengaged from pharmacotherapy treatment immediately or shortly after treatment orders were lifted because they experienced disempowerment and were discouraged from being active partners in decisions relating to their treatment. Further, the legacy of treating people in this way has generated ongoing barriers to help seeking for people who experience severe mental illness.

NTLEN recommends that NT Government mental health treatment services:

- Have operational guidelines (governed by legislation) and an organisational commitment to respect people's inherent dignity and autonomy.
- That treating clinicians are provided with professional development to recognise the importance of empowering people to active partners in decisions relating to their treatment.
- That treating psychiatrists are provided with professional development to recognise their potential to negatively impact to a person's recovery by providing an unsolicited change to the person's diagnosis and/or unsolicited change to a person's medication.

What steps should be taken to find out someone's will and preference?

NTLEN recommends that the NT Mental Health Act should include processes that obligate treating doctors to document the process they have taken to obtain informed consent and to determine a person's will and preference. Documentation should include:

- Evidence of the ways in which a person's will and preference were explored,
- Details of the different treatment options that were presented to the person,
- Details of the side effects that were explained to the person,
- Any information that the person (or their family/support people) communicated about their experience of side effects, and
- The justification for making treatment decisions that do not align with a person's will and preference.

Decisions that go against a person's will and preference should be reportable to the Community Visitor Program and Chief Psychiatrist.

NTLEN reviewed the approaches outlined in other states and territories for determining a person's will and preference. At the Lived Experience Consultation, the ACT Mental Health Act (2015) approach to will and preference was presented and discussed, i.e.

Will and preference should include:

- *Advance health directive;*
- *Enduring power of guardianship;*
- *Anything that the person says or does that is relevant to the matter around that time;*
- *Any other things are relevant to ascertaining those wishes, e.g. Wellness Plan;*
- *A psychiatrist must have regard to the patient's wishes to the extent that it is practicable to ascertain.*

Psychiatrist must make a record that details:

- *The patient's wishes, to the extent they were able to be ascertained by the medical practitioner; and*
- *The things to which the medical practitioner had regard in ascertaining the patient's wishes; and*
- *If the decision made by the medical practitioner is inconsistent with a treatment division in an advance health directive, made by the patient - the reasons the decision was made.*

The consensus at our consultation was this was generally a good approach; however, the NT Mental Health Act should incorporate special considerations (i.e., caution) or exceptions to the implementation of an Advanced Care Plan that is several years old or does not align with recent significant changes in a

person's life (e.g., a person has separated from their partner who is the nominated decision maker in the plan).

At the NTLEN Lived Experience Consultation one participant shared their personal experience of the misuse of an Advanced Care Plan by NT Government mental health services. The person's experience included admission as a voluntary patient, yet staff gave no consideration to anything the person said regarding their treatment and care, deferring entirely to the person's nominated decision maker in their Advanced Care Plan for all matters relating to their treatment and care.

NTLEN also notes that Advanced Care Plans were originally created for people with degenerative illnesses or who have experienced a sudden critical injury or illness. In many of these circumstances, the person is not able to regain the ability to provide informed consent. Many Advanced Care Plans, including the NT Plan, do not have a recovery orientation or mental health focus more broadly.

Many people who have been inpatients have communicated their experience of being changed suddenly from involuntary to voluntary treatment (and vice versa). NTLEN assumes that this would also change the health service's legal obligation to follow a person's Advanced Care Plan (based on the person's change in capacity to provide informed consent).

Patients who are made voluntary may feel no more empowered to communicate their wishes for treatment despite the change in their admission. NTLEN proposes that the NT Mental Health Act include a provision for voluntary patients to determine whether they want health services to continue following all or parts of their Advanced Care Plan.

Finally, NTLEN believes that Advanced Care Plans are good in theory, but are unlikely to be a useful in practice in the NT unless the government:

1. Takes the approach of co-designing a template for a mental health and recovery specific Advanced Care Pan in partnership with people with lived experience of mental distress,
2. Provides an ongoing investment in resources and services to support Territorians to create (and update) their mental health and recovery specific Advanced Care Plan,
3. Creates a central repository for storing mental health and recovery Advanced Care Plans, which is convenient for NT Government mental health services to search on admission.

NTLEN notes that the Queensland Government has taken a similar approach to that described above, and that the National Safety and Quality Health Service Standards, User Guide for Health Services Providing Care for People with Mental Health Issues[40] includes an example of a Wellness Plan in Appendix C. The Wellness Plan incorporates many good elements to capture a person's will and preference in a way that promotes recovery.

Part Two: Person-centred approach

Section 2.1: Will and preferences

NTLEN members have historically shared their experience of

- Poor information sharing by doctors to families, and
- Doctors ignoring important information shared by families.

These experiences have been shared predominantly by families/support people, but also by individuals receiving treatment.

At the Lived Experience Consultation participants explored the current legislation which allows discretion for the "practitioner, person in charge or NTCAT" to disclose or withhold information from "person's primary carer, parent or guardian", dependent on whether disclosure would be in persons "best interests".

The experience of some participants at the consultation was that confidentiality had been used as a tool to push families out and that families were also excluded from sharing valuable information that they had which could support the person's treatment.

All participants at the consultation acknowledged the imperative and responsibility of mental health services to protect patients from the mental or physical harm by sharing information inappropriately.

NTLEN recognizes the significant and substantive role that families and support people undertake supporting their loved one to recover after a mental health crisis, long after they have been discharged from hospital. Further, in many circumstances it is families and support people who provide safety, comfort and care coordination, after their loved one has sought access to mental health services and been denied access to treatment.[35]

The online survey that NTLEN created after the lived experience consultation asked a series of questions related to information sharing with families. The findings support our position that:

1. Family relationships are important for recovery and that mental health treatment services should work in ways that promote healing for families after a mental health crisis. (Qu 13)
2. Unless there is a risk of harm, the doctor should encourage information sharing with families. (Qu 14)
3. The doctor should ask a person if there is someone that they definitely DO NOT want their confidential information to be shared with. (Qu 15)

NTLEN recommends the following changes to the NT Mental Health Act to promote the engagement of families by mental health services to facilitate recovery:

- Doctors and decision makers should ask a person if there is anyone that that they DO NOT want their information to be shared with, this information should be recorded and adhered to by mental all mental health staff.
- Doctors and decision makers should be required to record and justify decisions for excluding families from information sharing where it is determined to be in the patient's best interests. On these occasions, the details should be reportable to the Chief Psychiatrist.
- Doctors and mental health services should be obligated to receive information that families/support people share with them and to consider its importance for treatment decisions, even when the determination has been made not to share information with the family/support person in return.
- Where it has been determined that it is a person's best interest to not share treatment information with their family/support people, then mental health services should still be required to provide non-specific information about the experience mental illness and distress (per the Practical Guide for Working with Carers of People who Experience Mental Illness[41]), and information about where they can access support for their own needs.
- All families/support people should be provided with an up-to-date copy of the Mental Health Carers Guide created for the NT Mental Health and Related Services Act.[42]

Section 2.2: Nominated support persons

Should the Northern Territory introduce a 'nominated support person' into the mental health legislation?

NTLEN agrees that nominated support people should be introduced into the NT Mental Health Act.

How many nominated support persons should a voluntary consumer or involuntary patient have?

NTLEN recommends that every person treated by NT Government mental health services should have the option to nominate a support person, and more than one nominated support person if that is what they want.

We understand that people's admissions can be changed suddenly from voluntary to involuntary and vice versa, with no perceived change in the person's need to access support to from someone to exercise their will and preference.

It is for this reason that people being treated both voluntarily and involuntarily by NT Government mental health services should have access to a nominated support person/s. Further, this should apply to both inpatient facilities and outpatient services.

What kind of roles should the nominated support person have?

NTLEN recommends the following inclusions in the NT Mental Health Act:

- If a person is being treated under an involuntary order, then their nominated support person/s should receive all information that would normally be provided to the person's legal advocate.
- If a person is being treated voluntarily, then they should be asked which items of information they would like shared with their nominated support person/s, this should be adhered to by the mental health service and if not, the service should document and justify why the persons wishes were not followed (reportable to the Chief Psychiatrist).
- Nominated support person/s should be supported by NT Government mental health services to understand the content and meaning of all treatment related information that they are entitled to receive.
- Nominated support person/s should be provided with a printed resource and explanation of their role and responsibilities within the Act. This should include a point of contact, to provide further advice if they require.
- Nominated support person/s should sign an agreement that outlines their responsibility to represent the will and preference of the person they are supporting, and they should have the option to opt out of their role at any time.
- NT Government mental health services should be obligated to involve nominated support person/s that cannot attend meetings in person using telecommunication.

NTLEN would like to highlight that our lived experience consultation confirmed what we knew anecdotally: people who have motivated and capable family carer advocates are more likely to receive better treatment and recognition of their rights from mental health services.

We believe that introducing nominated support people will introduce further inequity between cohorts of Territorians that are treated by NT Government mental health services, in particular it will disadvantage people who:

- Normally live in a location that is far away from where they are being treated.
- Come from a family or community where English is not their first language.
- Do not have a support person that has requisite literacy skills.
- Do not have family/friends with the skills (or motivation) to promote the person's will and preference.
- Do not have family or friends.

Unless an additional solution is proposed, then the introduction of nominated support people will perpetrate disadvantage for the most vulnerable people being treated by NT Government mental health services.

NTLEN recommends that every person being treated by a NT Government mental health inpatient facility or outpatient service, should have the option to access support from a default Nominated Support Service that is legislated in the NT Mental Health Act. Further, the Nominated Support Service should be legislated to:

- Operate as an opt-out service so that it is automatically available to someone, unless they say that they don't want to receive support from the service.
- Ensure that the person's rights are being upheld.
- Have a recovery orientation and provide support for the person's recovery and wellbeing.

The concept for a recovery oriented Nominated Support Service was overwhelmingly supported at our lived experiencing consultation and in the online survey.

We also proposed that the support service should be staffed by people with lived experience including Mental Health Peer Workers and Social and Emotional Wellbeing Workers, providing a valuable opportunity for the NT Mental Health Act to legislate the use of the lived experience workforce which is recognized as an enabler for recovery. This was also overwhelmingly supported.

To preserve the independent advocacy function of the Nominated Support Service, NTLEN recommends that the Mental Health Peer Workers and Social and Emotional Wellbeing Workers it employs, are not employed by NT Government mental health services.

Further, the Nominated Support Service should be appropriately financed and established to align with the delivery of clinical services to ensure that it is able to deliver its intended function: i.e., support people to exercise their will and preference. However, we believe that if the Nominated Support Service is implemented, then the NT Government has the potential to save money by reducing the number of Personal Care Assistants employed at inpatient facilities.

Reducing the number of unskilled Personal Care Assistants and introducing Peer Workers and Social and Emotional Wellbeing Workers, will make a significant improvement to the recovery orientation of NT Government mental health services.

Lastly, we recommend that the proposed Nominated Support Service could work with people in the following ways to promote recovery in NT Government mental health services:

Advocacy:

- Receive information and communicate the will and preference of the person in matters relating to their care.

- Collaborate with family, carers and other nominated support people.
- Promote cultural security, human rights and recovery-oriented practice within service.

Capacity Building:

- Provide information and support to the person about their experience of ill-health.
- Build understanding of recovery and explore early warning signs and recovery strategies with the person (e.g., Wellness Planning).
- Promote healing and positive relationships with family, carers and community.

Care Planning:

- Support care planning during treatment at the service.
- Support referral processes and continuity of care relating to discharge from services.
- Support development of an Advanced Care Directive.
- Support referral of family and carers to appropriate support services.

Quality Improvement:

- Support the person to submit a Patient Experience Survey.
- Support communication with CVP for complaints.
- Support families and carers to submit a Carer Experience Survey.

Should special provisions apply for children when determining capacity and making treatment decisions, or applying to be admitted as a voluntary patient

Refer to NTLEN's response provided at Section 3.3.

Section 2.3: Cultural security

NTLEN is not an Aboriginal Community Controlled Organization so will not make recommendations regarding improvements to the NT Mental Health Act for the purpose of providing cultural security.

We believe recommendations related to cultural security are best provided by Aboriginal and Torres Strait Islander organisations and leaders.

Instead, we will offer feedback for consideration, shared at the Lived Experience Consultation and in response to our online survey:

- At the consultation, the use of cultural advisors by NT Government mental health services was proposed to increase the cultural security of services.
- Our survey indicated that at least one First Nations person was not provided with access to an interpreter when they needed one.

In addition, NTLEN would like to acknowledge:

- Information about rights in accessible format is an essential first step to facilitate empowerment and self-determination.
- Ways to promote healing for Aboriginal and Torres Strait Islander people in the NT Mental Health Act should include much broader considerations than simply the provision of Aboriginal interpreters.

- Spirituality and culture are important elements to facilitate recovery for people from collectivist cultures.
- First Nations people should have the right to access spiritual healers in accordance with their cultural practices.
- The employment of Social and Emotional Wellbeing Workers to promote recovery for people accessing NT Government mental health services would have a significant impact to recovery outcomes for First Nations people.

Part Three: Admission and Treatment

Section 3.1: Involuntary admission

What do you think about the current process of assessment and examination for involuntary admissions?

NTLEN feels that the NT Mental Health Act is not clear about the distinction between voluntary and involuntary admissions. There was significant confusion at the NTLEN Lived Experience Consultation about how the NT Mental Health Act is applied to determine whether a person is treated voluntarily or involuntarily.

Based on the wording in the Discussion Paper,[36] it was interpreted that a person will be admitted voluntarily if they 'agree' to going to hospital at the time of admission, making their admission theoretically 'less restrictive'.

However, NTLEN has concerns that people are not fully informed about the nature of their admission and their right to access leave once they agree to be admitted voluntarily at an inpatient facility.

This is because the NTLEN has received anecdotal information from people who were voluntary patients and told they would be changed to involuntary patients if they attempted to exercise the right to go outside or take leave.

Section 3.2: Voluntary admission

Do you have any feedback on the current voluntary admission process?

International law is clear that voluntary patients are allowed to come and go from treatment facilities. NTLEN believes this should be reflected in the NT Mental Health Act.

NTLEN is also concerned that a dearth of mental health treatment services in the Northern Territory coupled with a person's ability to provide informed consent (which determines their eligibility as a voluntary patient instead of an involuntary patient), is used as the grounds to deny a person access to treatment. This contravenes the persons rights to access health treatment when needed[12] and to access mental health care as part of the health and social care system in accordance with the same standards as other ill persons.[6]

Section 3.4: Apprehension by the Police

What do you think about the current power of Police to apprehend a person in order to take them to be assessed?

Given the reliance on NT Police to respond to people experiencing mental health crises, NTLEN believes it should be an imperative of the NT Government to ensure that all NT Police are provided with adequate

training, resourcing, and professional skill development to respond in a way that respects a person's autonomy and human rights.

Training should incorporate lived experience perspectives and ways for NT Police to work so there is reduced potential for individuals and their families/support people to experience unnecessary trauma during a mental health crisis that involves a police response.

Ideally, NTLEN would like the Darwin Co-Response Pilot expanded to operate 24 hours/day, 7 days/week in Darwin and expanded to more urban locations. However, given the movement of NT Police around the Territory, their ongoing role responding to mental health crisis, should be recognised and their professional development prioritized.

Section 3.3: Youth

NTLEN provided an open-ended question in its survey about sharing information when a person is under the age of 18 years of age.

> *If the person is under the age of 18, what do you think should be considered when sharing information with their parents or adult guardians?*

This question provided more qualitative responses than any other text-based question or opportunity to comment in the survey and a range of opinions were expressed. This reflects the complexities of working with young people and their families or guardians.

Without sufficient time to undertake a thematic analysis of the data submitted, the NTLEN can only recommend that the NT Government reviews the survey responses we have received to the 31st of May to closely explore the needs and experiences of Territorians families.

Further, we recommend that the NT Government undertakes a specific consultation with the young people, and the families/adult guardians of young people, who have been treated under the NT Mental Health Act to create the most appropriate legislation for the treatment of young people by NT government mental health services in the NT.

Section 3.5: Leave

What do you think about the current approach under the MHRS Act that grants leave to involuntary patients?

The United Nations Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care states that people with mental illness who are treated at mental health facilities have the right to access an environment as close as possible to that of their normal life.[6]

It is reasonable to assume, that in a location such as the Northern Territory, this includes the right to access a safe outdoor environment, and the ability to smoke tobacco if that is the person's preference.

However, we are aware that people staying at NT Government mental health inpatient facilities do not have access to either of these freedoms, unless their doctor/treating team has deemed that they have earned the ability to take ground leave.

In addition, participants at our lived experience consultation and several who responded to our online survey, confirmed the occurrence of NT Government mental health staff using leave privileges as a mechanism to threaten or exert control over patients.

NTLEN recommends that this type of coercion is treated as restrictive practice. NTLEN further recommends that mental health inpatient facilities are improved and can operate in a way that meets international law for people to participate in daily activities as close as possible to their everyday life, including the right to access a safe outdoor environment and the right to smoke tobacco.

What do you think about including the granting of leave for voluntary patients in the legislation?

The Discussion Paper[36] makes it clear that there is no legal basis in international law to prevent a voluntary patient from leaving a facility if, and when, it suits them.

Yet NTLEN has evidence that a proportion of voluntary patients are told that they will be changed to involuntary patients if they attempt to take leave without approval from a NT mental health inpatient ward.

NTLEN recommends that the NT Mental Health Act is updated to reflect international law for leave for voluntary patients. If doctors have the opinion that a voluntary patient should be changed to involuntary if they attempt to take leave, then perhaps they should be admitted as an involuntarily patient in the first instance?

Section 3.6: Search and seizure powers

What do you think about regulating the power to search someone and seize property under the MHRS Act?

NTLEN believes that search and seizure powers should be restricted and that the NT Mental Health Act define a list of search and seizure powers which aligns with international law.

Further, it should be legislated that the list of search and seizure powers is made available in accessible language and is displayed at NT mental health treatment facilities.

Part Four: Monitoring

Section 4.1: The Chief Psychiatrist

The Discussion Paper proposes existing legislative functions to transfer to the Chief Psychiatrist, what do you think about these proposals?

NTLEN recommends that the role of the Chief Psychiatrist should be included in the NT Mental Health Act.

NTLEN recommends that Chief Psychiatrist is supported by a governance body that includes people with lived experience. This will support the Chief Psychiatrist to maintain a recovery orientation in the administration of their role. The governance body should include the following lived experience positions (at a minimum):

- A person who has experienced mental illness or mental distress and treatment under the NT Mental Health Act, and
- A family member/support person of someone who has been treated under the NT Mental Health Act.

In addition, NTLEN recommends that the NT Mental Health Tribunal should include a dedicated role for people with lived experience of mental illness or distress and treatment under the NT Mental Health Act.

Section 4.2: Regulating restrictive practices

What do you think of the current approach to regulating the use of restrictive practices under the MHRS Act?

NTLEN supports the approach to regulate restrictive practices under the NT Mental Health Act.

We presented a list of items that might be included as restrictive practices in our online survey. Based on the responses that we received NTLEN recommends that the definition for restrictive practices is updated to include/reflect:

- When a person is given medication without their permission.
- When a medication is given to a person without an explanation of how it will make them feel.
- When a medication is given to a person using physical force.
- When staff use physical force against a person.
- When a person is locked in a room or an enclosed space.
- When a person is restrained to a bed or handcuffed.
- When a person loses access to personal items that are important to them and don't pose a risk to anyone's safety.
- When a person loses access to leave or privileges even though there is no risk to anyone's safety.

How do you think the legislation can further promote the elimination of restrictive practices?

The legislation can include Key Performance Indicators for

- The reduction of restrictive practices (e.g., they should halve every five years) and
- The increase of treatment decisions that align with a person's will and preference.

Section 4.3: Electroconvulsive therapy (ECT)

What do you think about how the legislation regulates electroconvulsive therapy (ECT)?

NTLEN does not have sufficient information from people in the lived experience community to comment specifically in relation to the application of ECT in the Northern Territory.

However, given the significance of side effects experienced by people who receive ECT, NTLEN recommends that the Chief Psychiatrist provides oversight for treatment plans that involve the use of ECT paying particular attention to the processes involving acquiring informed consent, and will and preference.

Part Five: Forensic Provisions

Section 5.1: Procedure for summary criminal offences (Local Court)

Can we make improvements to the legislation?

Yes.

NTLEN is alarmed that the current legislation relating to criminal offenses in the Local Court includes multiple references to the 'availability of resources' in relation to the provision of court ordered mental health assessments and treatments.

This statement contravenes international law[6] and NTLEN recommends that all references related to 'available resources' are removed from the NT legislation. If waitlists for assessment and treatment options are impacting the Local Court, then the NT Government has a responsibility to increase the number of resources provided to support people to progress through the system.

Section 5.2: Procedure for indictable criminal offences (Supreme Court)

NTLEN understands that procedural fairness for indictable offences in the NT Supreme Court under the NT Mental Health Act are better aligned with people's rights under the CRPD.

However, NTEN has grave concerns for the treatment of people in NT detention centers who are experiencing mental distress.

The circumstances described by one survey respondent in relation to their care and treatment wen experiencing suicidal ideations indicate clear human rights violations.

NTLEN recommends that the NT Government provide an independent investigator to inspect mental health treatment facilities at NT detention centers and to remedy any human rights violations immediately.

Section 5.3: Clinical pathway for forensic clients

Is the current legislation effective in regulating forensic mental health? Should forensic provisions be contained in its own piece of legislation? Do you think the legislation provides effective and appropriate clinical pathways for forensic clients? How can the Northern Territory improve this?

NTLEN understands that the onus is on forensic clients to prove that they should no-longer be treated under a forensic treatment order. Given the potential for people on forensic treatment orders to be detained indefinitely, NTLEN believes that the obligation should be on the NT government to prove that a person should stay on a treatment order.

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