



Response to:

***Review of the ACT Mental Health
(Treatment and Care)
Act 1994***

The Youth Coalition of the ACT is the peak youth affairs body in the Australian Capital Territory and is responsible for representing the interests of people aged between 12 and 25 years of age and those who work with them. The Youth Coalition works to actively promote the well being and aspirations of young people in the ACT with particular respect to their political, cultural, economic and social development.

9.1 Definitions

It is widely accepted that children and young people have particular needs and may require specialised service delivery. This is demonstrated by the United Nations *Convention on the Rights of the Child 1989* (CROC), the *ACT Children and Young People Act 1999* and Principle 2 of the United Nations *Principles for the Protection of Persons with Mental Illness and for the Improvement of Mental Health Care 1991*. These documents recognise that children and young people require special provisions in legislation and in practise that recognise these differences and support young people while accessing services.

As the discussion paper has raised, this is not currently recognised in ACT legislation and children and young people accessing ACT Mental Health clinical services do not have any special protection or special provisions in legislation that aim to ensure their contact with ACT Mental Health services occurs in the most appropriate and supportive manner. This is contrary not only to the evidence and principles that suggest that children and young people have special needs, but also to Article 20 of the CROC, stating that a child/young person deprived of their family environment “shall be entitled to special protection and assistance provided by the state”.

As it has been recognised that children and young people require special protection and treatment in mental health services, it is clear that a distinction must be made not just between those who are aged under/over 18 but also between those under 18. The Youth Coalition supports moves made by the Western Australian Government to further define the relationship and interaction between those aged under 18 and mental health services. However, the definition of competency employed should reflect children and young people’s ability to make informed and competent decisions and not arbitrary distinctions such as the age of any particular individual.

Therefore, we support models of competency assessment that are based on an evaluation by health care professionals – for example General Practitioners and Psychiatrists. This is a more accurate and appropriate measure of determining competency than simply on the age of any particular child or young person.

Questions

42. Should the new Act contain definitions for the different groups of children and young people aged less than 18 years?

Yes.

Children and young people aged under 18 are not homogeneous and have special needs and may require specialised treatment in accessing mental health services.

43. If so, what definitions should this review consider?

Definitions should be based on competency of young people to make informed and competent decisions.

9.2 Voluntary Admission

As has already been stated, those aged under 18 may be able to make competent decisions regarding their health needs and have a right to access health care services. For children and young people who are competent in making an assessment of their mental health care needs, it is unquestionable that they have a right to access mental health care.

Services, however, must be able to provide treatment and/or care to children and young people that is appropriate and assists children and young people in their recovery. This requires specialised services that are adequately funded and targeted.

The Youth Coalition supports an assessment of competency that is based on actual ability and not on characteristics such as age, as it is widely recognised that not all young people develop at the same rate. Therefore, to suggest that all those over 18 have an appropriate level of competency to make decisions regarding their mental health care while all those aged under 18 do not is obviously erroneous. It is similarly erroneous to suggest that simply because a young person is not 16 that they cannot make informed and competent decisions regarding their healthcare. The central flaw in such concepts is not the age at which competence is determined, but rather that age is used as a defining characteristic when determining competency.

It is similarly recognised that while children and young people have different experiences that result in a varied ability to make competent decisions, they also have different relationships with their parents. To suggest that because a child or young person is of a particular age, their parents have the right to authorise them to receive psychiatric treatment and/or care does not conform with other principles established in legislation surrounding children and young people nor with the philosophy of this discussion. Any such admittance to treatment and/or care should be based primarily on the best interests of the child or young person. If it is determined that the child or young person is competent to make a decision then the parent should not be required to consent and if the child is not competent, then the decision should be made in conjunction with a parent/guardian and a medical professional.

Questions

44. Should the new Act contain provisions for voluntary treatment of children and young people aged under 18 years?

Yes.

45. If so, at what age should a minor be considered capable of giving informed consent to voluntary admission and/or treatment?

Age should not be a determining characteristic, this should be based on competence.

46. *Up to what age should a parent or guardian be able to authorise psychiatric treatment and/or care?*

Age should not be a determining characteristic; this should be based on competence and the best interests of the individual if the child or young person is not competent to give consent.

9.3 Involuntary Admission – Treatment and Care of Children and Young People

This submission has already established the need for special provisions for children and young people accessing mental health services and the use of a situationally based assessment rather than a rigid and absolute assessment model.

The establishment of particular provisions for children and young people within the Act is vital in ensuring that there is protection for the rights and wellbeing of children and young people involuntarily admitted to mental health service. Currently, there are no additional provisions to ensure that children and young people's rights and well being are ensured even though it has been established that they have special needs that can be different for the rest of the population.

Extra provisions to ensure that children and young people's rights and wellbeing is ensured should make reference to principles of the welfare and care for children and young people that are established in the *ACT Children and Young People Act 1999*, particularly, consideration should be given that any actions should be in the best interests of the child.

In addition to the centrality of the best interest principle, a range of other provisions should also be enacted in this legislation. As specified in the CROC under Article 25, children and young people have the right to periodic review of their treatment. Also important in any consideration of involuntary admittance is the ability for children and young people to express their views and have these taken into consideration under Article 12 of the CROC. This should be ensured through a legislative requirement and should follow the general principle set out in the *ACT Children and Young People Act 1999* Section 272 that ensures a child or young person's right to be heard when decisions are made affecting their lives via any medium deemed appropriate by the child or young person.

The importance of appropriate treatment and/or care that is in the best interests of the child or young person is also highly relevant in consideration of involuntary treatment. The Northern Territory legislation relating to the voluntary admission of children and young people (section 26) specifies that a voluntary admission cannot be made unless the person can be cared and treated in a way that gives "due regard to the person's age, gender and maturity and, where appropriate and possible, separately from adults". The Youth Coalition believes this principle must be applied to both voluntary and involuntary care and that the best interests of the child should prevail above any other consideration.

The Youth Coalition believes that the current treatment of children and young people in clinical care in the ACT Mental Health system is not an appropriate delivery of mental health services given that young people and adults are not segregated. The principles that have been applied under the ACT *Human Rights Act 2004* to ensure that children and young people are not mixed with adults in remand or detention facilities stem from the importance of the best interests of the child. While there are significant differences between justice and mental health, the principle of segregation should be recognised in treating children and young people in psychiatric mental health care.

The CROC also provides that states recognise the rights of children and young people to enjoy “the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health”. This is currently not the case with children and young people admitted – at times involuntarily – to a mental health institution that could be providing a higher level of health care if a separate facility for children and young people existed. This therefore requires an immediate response by ACT Government to establish a facility appropriate for the treatment of children and young people.

Questions

47. Should the new Act contain specific provisions for involuntary treatment of children and young people aged under 18 years?

Yes.

48. If so, for which age groups?

Age should not be a determining characteristic, this should be based on competence.

49. Should the review processes be the same for children and young people as they are for adults who are involuntarily admitted and/or treated?

Yes. They should ensure that all people have their rights and wellbeing upheld to the highest possible degree whilst receiving clinical mental health care.

50. Should any special protections be provided for children and young people in relation to involuntary admission, treatment and care?

Yes. These should be based on the best interest principle, right of young people to express their views and the most appropriate treatment options.

9.4 Children and Young People and the Children and Young People Act 1999

The principles of the ACT *Children and Young People Act 1999* should be applied in matters relating to young people. However, the Youth Coalition believes that it would be more appropriate to enshrine the principles concerned – for example the best interest and the expression and consideration of young people’s views principles – within the ACT *Mental Health Act 1994* in a separate section concerning children and young people. In this way, the rights and wellbeing of children and young people are best served, as these principles will be shown to apply in a range of matters concerning children and young people and not simply in the context of care and protection and youth justice.

Questions

51. Under which legislation are the interests of minors requiring involuntary admission and treatment best served?

Both. Principles of the ACT *Children and Young People Act 1999* should be enshrined in the ACT *Mental Health Act 1994* in order to guarantee young people’s rights and wellbeing when receiving mental health treatment.

*52. What should be the relationship between the ACT *Children and Young People Act 1999* and provisions in mental health legislation concerning the admission and treatment of minors?*

Principles of the ACT *Children and Young People Act* should form the foundation of the ACT *Mental Health Act 1994* in matters applying to children and young people receiving mental health treatment.

9.5 Rights and Interests of Children and Young People under the Act

Should minors receiving mental health treatment and care under the Act be provided with specialist advocacy?

The importance of the roles of the Official Visitor appointed under the ACT *Mental Health Act 1994* for those receiving mental health treatment and/or care cannot be understated. They provide a vital function in ensuring that the rights and wellbeing of children and young people are upheld.

It is the view of the Youth Coalition that the demonstrated importance of this roles for children and young people - who face potentially higher levels of vulnerability in the mental health system - requires that the role of the Official Visitor have a specialised children and young people’s role. This would allow for children and young people to be visited by an individual with specialised training and knowledge around matters concerning children and young people in mental health facilities.

This has been proposed in the review of the Western Australia mental health legislation and a detailed outline of their duties is listed in these documents.

The Official Visitor does not specifically involve individual advocacy, particularly holistic advocacy and therefore this role is not intended to replace the Public Advocate or any other services, rather it would be an additional compliance mechanism.