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Compulsory Mental Health Treatment in NSW – *the Legal Framework and the Practical Realities*

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[Abstract]

Mental illness does not discriminate. It impacts people across the globe. However, the approaches to treating and supporting those living with mental illness vary across cultures and nations. From my reading of the Korean *Act On The Improvement Of Mental Health And The Support For Welfare Services For Mental Patients 2016* ("the Korean Act"), there are many similarities in the legislation which governs mental health care in Korea and NSW. Like NSW, the Korean legislation sets out the legal tests that must be met before a person can be required to receive involuntary mental health treatment, as well as arrangements for the independent review of the decisions to require a person to have involuntary treatment.

The Korean Act includes some very important human rights provisions that the NSW legislation does not. I was impressed to read of the requirement for community education, human rights training and the obligation on government to offer people living with mental illness opportunities that will allow them to live full lives in the community, through work, education and activity.

Across the world, there is a strong movement to recognise that people living with mental illness have the right to participate in the decisions that are

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made about their treatment, and where possible, to make those decisions themselves.

The stigma of mental illness is alive and well in Australia. It impacts on people's ability to obtain and maintain employment, to have secure and safe housing, to maintain social connections and to live a fulfilling life.

Despite the legislative focus on recovery and supporting people to live a full and satisfying life, there is a lack of community services and funding in NSW to achieve this. There remains too much focus and funding for inpatient treatment at the expense of community care and support. More generally, there is a lack of funding for social and economic participation, education, employment and stable housing for people living with mental illness.

Both NSW and Korea have hard work ahead to fulfil the promise of their legislative schemes and to accord people living with mental illness their full human rights.

Keywords: Mental illness, NSW Mental Health Act 2007 , Compulsory mental health treatemt, Human rights, The Support For Welfare Services For Mental Patients 2016.

I. Introduction

Mental illness does not discriminate. It impacts people across the globe.[1] However, the approaches to treating and supporting those living with mental illness vary across cultures and nations.

I am honoured to have been invited to speak at this Conference, to discuss the arrangements in NSW for the care, treatment and support for people living with mental illness, and to learn more about the approaches taken in Korea.

From my reading of the Korean *Act On The Improvement Of Mental Health*

1) "Prevalence, severity, and unmet need for treatment of mental disorders in the World Health Organization World Mental Health Surveys" JAMA. 2004 Jun 2;291(21):2581-90; "The global burden of mental disorders: An update from the WHO World Mental Health (WMH) Surveys" Epidemiol Psichiatr Soc. 2009 Jan-Mar; 18(1): 23-33

And The Support For Welfare Services For Mental Patients 2016 ("the Korean Act"), there are many similarities in the legislation which governs mental health care in Korea and NSW. Like NSW, the Korean legislation sets out the legal tests that must be met before a person can be required to receive involuntary mental health treatment, as well as arrangements for the independent review of the decisions to require a person to have involuntary treatment.

The Korean Act includes some very important human rights provisions that the NSW legislation does not. I was impressed to read of the requirement for community education, human rights training and the obligation on government to offer people living with mental illness opportunities that will allow them to live full lives in the community, through work, education and activity.

Across the world, there is a strong movement to recognise that people living with mental illness have the right to participate in the decisions that are made about their treatment, and where possible, to make those decisions themselves. The slogan of this movement, led by those who experience mental health difficulties, is

1. Nothing about us without us

So, while legal rights are important, the real question is how those rights work in practice and if they make a difference to the experience of people living with mental illness.

In this paper, I will begin with a discussion of the NSW legislative framework, starting with the general principles that apply to mental health care and treatment.

I will then move to discuss each of the legal requirements for compulsory treatment in more detail. I will consider some of the statutory and practical aspects of the NSW mental health system which enhance the human rights of people living with mental illness. I will finish with outlining some of the areas

in NSW where more work needs to be done.

The ultimate challenge, in both NSW and Korea, is to change the community's approach to people living with mental illness.

II. General principles for care and treatment of people living with mental illness

Before starting, it is worth noting that while the NSW *Mental Health Act* 2007 governs all mental health care in NSW, in practice compulsory care is only provided by public (government) run hospitals or services. Mental health treatment which is provided in a private hospital or by private doctors is all provided on a voluntary basis, although the person may be admitted under a guardianship order.

The objects of the NSW Mental Health Act 2007 are set out in s. 3 of the Act:

> (a) to provide for the care and treatment of, and to promote the recovery of, persons who are mentally ill or mentally disordered, and
>
> (b) to facilitate the care and treatment of those persons through community care facilities, and
>
> (c) to facilitate the provision of hospital care for those persons on a voluntary basis where appropriate and, in a limited number of situations, on an involuntary basis, and
>
> (d) while protecting the civil rights of those persons, to give an opportunity for those persons to have access to appropriate care and, where necessary, to provide for treatment for their own protection or the protection of others, and
>
> (e) to facilitate the involvement of those persons, and persons caring for them, in decisions involving appropriate care and treatment.

These principles are supplemented by the principles found in s. 68 of the

Act, which are guide care and treatment of people with a mental illness or mental disorder, which read:

> (a) people with a mental illness or mental disorder should receive the best possible care and treatment in the least restrictive environment enabling the care and treatment to be effectively given,
>
> (b) people with a mental illness or mental disorder should be provided with timely and high quality treatment and care in accordance with professionally accepted standards,
>
> (c) the provision of care and treatment should be designed to assist people with a mental illness or mental disorder, wherever possible, to live, work and participate in the community,
>
> (d) the prescription of medicine to a person with a mental illness or mental disorder should meet the health needs of the person and should be given only for therapeutic or diagnostic needs and not as a punishment or for the convenience of others,
>
> (e) people with a mental illness or mental disorder should be provided with appropriate information about treatment, treatment alternatives and the effects of treatment and be supported to pursue their own recovery,
>
> (f) any restriction on the liberty of patients and other people with a mental illness or mental disorder and any interference with their rights, dignity and self-respect is to be kept to the minimum necessary in the circumstances,
>
> (g) any special needs of people with a mental illness or mental disorder should be recognised, including needs related to age, gender, religion, culture, language, disability or sexuality,
>
> (g1) people under the age of 18 years with a mental illness or mental disorder should receive developmentally appropriate services,
>
> (g2) the cultural and spiritual beliefs and practices of people with a mental illness or mental disorder who are Aboriginal persons or Torres Strait Islanders should be recognised,
>
> (h) every effort that is reasonably practicable should be made to involve persons with a mental illness or mental disorder in the development of

> treatment plans and recovery plans and to consider their views and expressed wishes in that development,
> (h1) every effort that is reasonably practicable should be made to obtain the consent of people with a mental illness or mental disorder when developing treatment plans and recovery plans for their care, to monitor their capacity to consent and to support people who lack that capacity to understand treatment plans and recovery plans,
> (i) people with a mental illness or mental disorder should be informed of their legal rights and other entitlements under this Act and all reasonable efforts should be made to ensure the information is given in the language, mode of communication or terms that they are most likely to understand,
> (j) the role of carers for people with a mental illness or mental disorder and their rights under this Act to be kept informed, to be involved and to have information provided by them considered, should be given effect.

The s.68 principles echo the principles found in the *Convention on the Rights of Persons with Disabilities*.

Read together ss. 3 and 68 set important guidance for the provision of mental health care in NSW:

- Compulsory mental health treatment is a last resort, and should only be used if voluntary treatment has not been successful or is likely to put the person or others at risk of serious harm.
- A person living with a mental illness is to be kept informed of treatment options and their choices about treatment must be given serious consideration.
- The goal of treatment should be to support the person to live, work and participate in the community.
- Treatment is not just medication. It should also encompass psychological support, support with restoring living skills, accessing education or employment and maintaining physical wellbeing.

- Australia is a culturally diverse nation. Cultural and spiritual perspectives on mental health differ enormously. So any care or treatment should be tailored to the culture of the person receiving treatment.
- Family and close friends (carers) can play a vital role in a person's recovery from mental illness. Carers have a right to be informed, to remain involved in their loved one's care and to have their views considered by mental health clinicians offering care.

1. Voluntary treatment

The majority of mental health treatment in NSW is undertaken voluntarily, mostly whilst the person still lives at home in the community.[2)]

Sometimes voluntary treatment is not effective or not safe, and involuntary treatment needs to be considered. In NSW involuntary treatment can start either in hospital or in the community.

1) Criteria for involuntary treatment in hospital

In NSW, a person can arrive at hospital in one of several ways.[3)]

- Many people in mental distress attend the Emergency Department of their local hospital voluntarily, often with family or friends. Their mental health is assessed by a mental health clinician, either a doctor or another qualified person. A certificate is written if the assessor considers that the person meets the legal test for an involuntary admission into a mental health facility.
- A person might also be brought to hospital by an ambulance or the police.
- A qualified person in the community (including the person's usual

2) Australian Institute of Health and Welfare 2014. Mental health services—in brief 2014. Cat. no. HSE 154. Canberra: AIHW

3) Section 19 of the *Mental Health Act* 2007

medical practitioner) can also write a certificate that authorises the person being taken to hospital for assessment.

Once at hospital, the person is then assessed by at least two further doctors, one of whom must be a psychiatrist. Each doctor must decide if the person is a) mentally ill or b) mentally disordered. Provided that one of the doctors considers that the person is mentally ill, the person is admitted as a mentally ill person. The first assessment must take place within 12 hours of the person arriving at a mental health facility. The second assessment must take place as soon as practicable.[4)]

2) Legal criteria for involuntary admission as a mentally ill person

There are three criteria which must be met before a person can be admitted as an involuntary mental health patient.[5)]

- The person must be suffering from a "mental illness". There is no need for the person to have a particular mental health diagnosis. Instead, the person must have:
  - a condition which seriously impairs their mental functioning (either temporarily or permanently) and
  - experience particular symptoms, including delusions, hallucinations, serious disorders of thought form or severe disturbance of mood. Alternatively, a person may be behaving in a sustained or repeatedly irrational way which indicates the presence of these symptoms.
  - The person's mental illness must put him or herself or others at risk of serious harm. Serious harm is not defined in the Mental Health Act, but has been interpreted to include physical harm, the harm that a person may experience from the distress of the mental distress, harm

4) Section 27 *Mental Health Act* 2007

5) Sections 12 – 14 *Mental Health Act* 2007

to the person's reputation, financial harm or a risk of harm through misadventure.

- There must be no other form of safe and effective care. This means that the doctors must be satisfied that the person could not be safely or effectively treated as a voluntary inpatient, or as a compulsory or voluntary patient in the community.[6]

If these criteria are met, the person can be detained for involuntary mental health treatment. Once detained, a doctor can authorise any mental health treatment, including medication.

When considering whether the legal criteria continue to be met, the doctors are entitled to consider the continuing condition of the person, including any likely deterioration in the person's condition and the likely effects of any such deterioration.[7]

A person's mental state may have stabilised whilst they are in the controlled environment of a hospital, with staff monitoring their medication and staff available to speak with if the person is distressed. They may no longer be experiencing symptoms of mental illness, that is, delusions, hallucinations, serious disorders of thought form or severe disturbance of mood.

However, a person may relapse quickly if discharged from hospital. This is particularly so if the discharge is abrupt or if there has not been a chance to make arrangements for support on discharge. The doctor's right to consider the person's continuing condition can justify continuing an involuntary admission even if the immediate symptoms of mental illness have subsided.

The first time the Tribunal reviews a patient, it can make an order for a maximum of 3 months. If the person is still detained at the end of the 3 months, they must be seen again by the Tribunal, every 3 months at least for

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6) Section 84 *Mental Health Act* 2007

7) Section 14 *Mental Health Act* 2007

the first 12 months of an involuntary admission. After that the Tribunal reviews their ongoing detention every 6 months.

3) Involuntary treatment in hospital – human rights safeguards

There are a number of safeguards in the *Mental Health Act* which protect the rights of involuntary patients.

- Whenever a person is admitted as a voluntary patient, the treating doctors must always consider if the person has sufficiently recovered to allow them to receive treatment as a voluntary patient. If so, the person must be made voluntary and can choose whether to continue treatment or not.[8)]
- A detained person must also be brought before the Mental Health Review Tribunal as soon as practicable.[9)] Generally speaking, this occurs within 7-21 days of the person being admitted to hospital. The work of the Tribunal will be discussed more below.
- A standard information brochure, called a Statement of Rights, must be provided to anyone detained in a hospital.[10)]
- The person has a right to ask the doctor to discharge them. If they are not satisfied with the doctor's response, they may bring an appeal to the Mental Health Review Tribunal.[11)]
- There is also a right to ask the Supreme Court of NSW to discharge the person.[12)]
- A person's family must be involved in hospital care, unless the person concerned specifically excludes them.[13)]

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8) Section 12 *Mental Health Act* 2007
9) Section 27(1)(d) *Mental Health Act* 2007
10) Section 74 and Sch. 3 of the *Mental Health Act* 2007
11) Section 44 *Mental Health Act* 2007
12) Section 166 *Mental Health Act* 2007
13) Sections 71 - 79 *Mental Health Act* 2007

- Carers must be told that the person has been detained in a mental health facility (within 24 hours of that detention occurring).
- Carers must be notified if the person is absent from the facility without leave or does not return from leave.
- Carers must also be told when the person is to be discharged from hospital, or if they are made a voluntary patient.
- Carers should be given information about discharge arrangements and support in the community before the person is discharged.
- Carers should be told of the time and date of Tribunal hearings.

• The information provided by carers about the patient must be taken into account in the doctor's decision to discharge the patient.[14)]

4) Involuntary treatment as a mentally disordered person

Sometimes, a person does not meet the criteria for involuntary admission as a mentally ill person. This may be because they are not exhibiting the symptoms of a mental illness.

Nonetheless, the person's behaviour may be so irrational that there are reasonable grounds for believing that temporary care or treatment is needed to protect the person or others from serious harm.

In that case, the *Mental Health Act* 2007 authorises the person's detention and treatment but only for 3 business days at a time, and then only 3 admissions within the space of one month.[15)]

5) Involuntary treatment in the community

Compulsory treatment in the community can occur under a community treatment order. Only the Mental Health Review Tribunal can make a

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14) Section 72B *Mental Health Act* 2007

15) Sections 15 and 31 *Mental Health Act* 2007

community treatment order. A community treatment order requires a person to accept treatment while living in the community. The treatment could be in the form of medication, regular appointments with a psychiatrist, a counsellor, or to attend other rehabilitation services.

A community treatment order can be made for a person who is in hospital, but it has the effect of discharging the person from hospital. A community treatment order can also be made for a person who is already living in the community. Community treatment orders can be renewed.

Community treatment orders are usually made for 6 months. However, they can be made for up to 12 months.

In 2015/2016, the Tribunal made 5,500 community treatment orders.

6) Legal criteria for compulsory community treatment

The criteria for making a community treatment order are:[16)]

- That the person would benefit from the order.
- That a local (government) community mental health team has a plan in place that can be implemented.
- That there is no other care of a less restrictive kind is appropriate and reasonably available.
- If the person has previously been diagnosed with a mental illness, the Tribunal must be satisfied that
  - the person has a previous history of refusing appropriate treatment.
  - that the refusal of treatment has led to a relapse into an active phase of illness
  - that relapse would have justified an involuntary admission.

Community treatment orders can be helpful where a person is not convinced that medication assists them or struggles to remember to take

16) Section 53 *Mental Health Act*

medications. In that case, the person may be required to regularly attend appointments to receive injectable medication.

A community treatment order also offers an important opportunity for support workers to build a therapeutic relationship with the person, and to start to support the person to work on their own recovery goals such education or employment.

7) Involuntary treatment under a Community Treatment Order – human rights safeguards

The person concerned must be given a copy of the community treatment order plan and told of the date and time of the Tribunal hearing. Usually the person must be given 14 days notice of the hearing. However, the Tribunal can shorten this timeframe.[17)]

Unlike any other Tribunal hearing, a community treatment order hearing can go ahead, even if the person does not attend.[18)] The Tribunal usually tries to contact the person by phone to see if they would like to participate, and many people are willing to participate if contacted by phone.

If a person is not complying with the treatment ordered under the community treatment order, they must be given notice of their failure to comply and given an opportunity to attend for treatment before they are taken to hospital for assessment.[19)]

Form of a community treatment order

A community treatment order usually looks like this:

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17) Section 52 *Mental Health Act*

18) Section 55 *Mental Health Act*

19) Section 58 *Mental Health Act*

TREATMENT PLAN

Client's Name:

Date of Birth:

Client's Address:

Mental Health Facility:

Treating Doctor/Psychiatrist:

Psychiatric Case Manager:

Date:

GOALS OF TREATMENT

RESPONSIBILITIES OF THE COMMUNITY MENTAL HEALTH SERVICE

CLIENT'S OBLIGATIONS

Current Medication:

Medication	Dose	Oral/Intramuscular	Frequency

- Client must meet with treating doctor or delegate at least (frequency, eg monthly)
- Client must attend reviews with case manager or delegate at least (frequency, eg weekly)

Signed and dated:

Case Manager or Delegate

Director (or Deputy Director) of Community Treatment

Date:

Date:

8) Electro-convulsive therapy

Electro-convulsive therapy (ECT) is a relatively common therapy which can be very effective for particular kinds of mental illnesses.

Many people agree to ECT either as part of their inpatient recovery or as a maintenance treatment every few weeks whilst they live in the community.

If a person has an involuntary admission, ECT can only be given with the permission of the Mental Health Review Tribunal.

If a person is an involuntary patient, the Tribunal will first decide if the person is capable of consenting to ECT. If the person is capable and does consent, then ECT can go ahead. If the person is not capable of consenting the Tribunal decides if ECT is a reasonable and proper treatment and is necessary or desirable for the safety or welfare of the patient. The Tribunal may also order ECT if the person is capable of consenting to ECT but does not in fact consent to that ECT.

There are strict safeguards about the arrangements for a Tribunal hearing about ECT. An ECT hearing is only held if two doctors (one of whom must be a psychiatrist) certifies that ECT is a reasonable and proper, necessary or desirable treatment. The person concerned must participate as far as they are able to do so. There is a requirement to explain to the person the possible benefits, discomforts and risks of the treatment. Their carer must be notified of the hearing.[20)]

If the Tribunal is making an order for ECT, the Tribunal will determine how many ECT treatments are appropriate (up to a maximum of 12) and the timeframe within which treatment can be given (a maximum of 6 months).

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20) Sections 87 to 96 *Mental Health Act*

Ⅲ. The legislative and practical enhancement of human rights under the Mental Health Act in NSW

There are a number of important structural aspects of the mental health regime in NSW which work to protect the human rights of people who experience mental ill health.

These are enhanced by the focus that the Tribunal places on the person at the centre of the hearing.

1. Defined criteria for compulsory treatment and a focus on the least restrictive option.

As discussed above, there are strict statutory criteria for involuntary mental health treatment, in the Mental Health Act. The criteria require constant consideration of whether there are other less restrictive means of implementing safe and effective treatment. These safeguards include:

- The Tribunal applies the same statutory criteria as the treating clinicians, and so helps to guide their interpretation.
- A person can be admitted for involuntary treatment by doctors, but must be seen by the Tribunal as soon as practicable. After being presented to the Tribunal, involuntary treatment can only continue if the Tribunal is satisfied that the statutory criteria are met.
- The Tribunal's orders have a time limit.
- There is a right of appeal to the Supreme Court against decisions of the Tribunal.

2. Decisions about compulsory treatment are made by an independent Tribunal

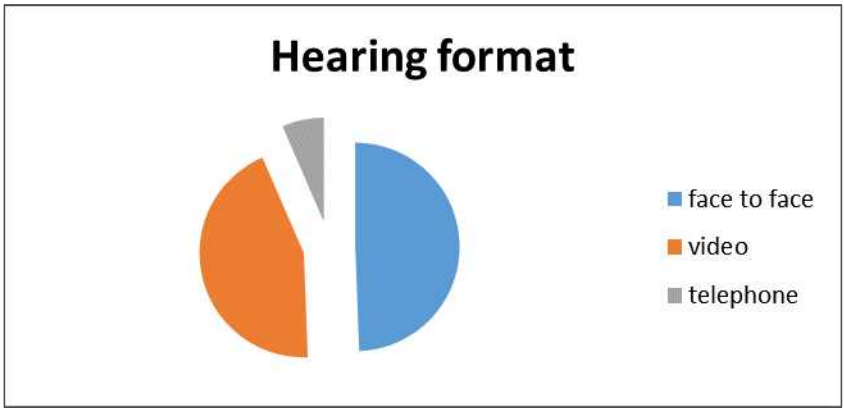
The Mental Health Review Tribunal is independent from government,

although its members are appointed by the Minister for Mental Health. Tribunal members are appointed by the Minister for Mental Health, after an open recruitment process which takes place every 4 years. There are 140 part-time members and 3 full time members of the Tribunal. The Tribunal's current President is a District Court Judge.

The Tribunal usually sits as a 3 person panel, comprised of a lawyer, a psychiatrist and another person with mental health experience and expertise. Many Tribunal members also have their own experience of living with mental illness or caring for family or friends that do.

The Tribunal does not have to comply with the formal rules of evidence, but it does have to make sure that its hearings are procedurally fair.

About one third of the Tribunal's hearings are held face to face inside a hospital. The Tribunal attends 42 venues across the Sydney metropolitan area and regional New South Wales. The immediacy of this face to face connection is significantly better than a video connection, despite the improvement in video quality in recent years.



Tribunal hearings are open to the public. This is consistent with the

principle of the open administration of justice, which allows for public and professional scrutiny of Tribunal proceedings and offers a safeguard against abuse. In practice it is rare for members of the public to attend as most hearings are held inside a hospital, or via a videolink from the Tribunal's offices in the suburbs of Sydney.

The treating team provides reports and copies of the hospitals file in advance to the Tribunal and the patient's lawyer. Staff of the hospital attend the hearing to present their case to the Tribunal. Tribunal members use their experience and clinical expertise to question the evidence that treating team has presented. The patient's lawyer also has the opportunity to ask questions of the treating team.

3. Focus on the person concerned

The legislation requires that the person concerned must attend a Tribunal hearing if the Tribunal is the person, unless the hearing is to consider a community treatment order.

If the person is too unwell to attend, the hearing may be adjourned or if the matter is urgent (for example ECT) then the person may attend via a telephone link.

The focus of the Tribunal hearing is on the person concerned. The Tribunal tries to use ordinary English words, without legal or medical jargon, so that the person is able to understand the role of the Tribunal and the concerns of the treating clinicians. The Tribunal also tries to use language that is not degrading or stigmatising.

The person is asked for their views on treatment, about the kinds of supports that have worked well for them in the past and what their goals are for the future. This allows a person who is potentially being coerced into treatment the opportunity to talk about their hopes for the future in a public

forum. It hopefully facilitates future conversations with treating clinicians who will can support those aspirations. It allows the person's own goals to be taken into account when prioritising the goals of treatment.

Some people appearing before the Tribunal struggle to express themselves. This may be because of ongoing symptoms of illness, the stress of Tribunal hearings or the impact of medication. The clinical Tribunal members (the psychiatrist and other suitably qualified members of the Tribunal) are experts in assisting a person in mental distress to speak to the Tribunal. In my experience, their questions are often simple, polite and focussed and effective. Sometimes, it is simply a matter of being patient, and giving a person the time to be able to gather their thoughts and respond.

Interpreters are freely available for Tribunal hearings. In 2015/16, 623 hearings (or 3% of the total hearings) included an interpreter, speaking 49 different languages.

This is important because Australia is a country made up of people from many different nations. Half of the people living in Australia were born overseas, including 98,000 people who were born in Korea. About 30% of households do not speak English at home.

4. Access to a lawyer

At most Tribunal hearings (77%) the person concerned is represented by a lawyer, which is paid for by the NSW government. The person can also arrange and pay for their own legal representation.

A legal representative will have a private conference with the person concerned before the hearing and will also be given an opportunity to review the person's clinical file. Legal representatives are then able to convey their client's wishes to the Tribunal, even if the client is too overwhelmed by the hearing to be able to communicate those concerns.

5. Family and friends are able to be involved in Tribunal hearings

The role of family and friends in a hearing can be a difficult one. Sometimes, the support is welcomed. On other occasions, those closest to the person concerned are the ones most quickly attacked when that person's mental health deteriorates. Family and friends may also have been the instigators of the compulsory mental health treatment.

Carers should be notified of Tribunal hearings, which are open to the public.

Family or friends are generally invited to offer their thoughts at a Tribunal hearing, if they feel comfortable doing so. They often have valuable longitudinal information they can provide about the person's experiences of mental illness and recovery, which can significantly alter the path of the decision making process. This information is an important part of making a good and fair decision, and ultimately maintaining trust in the Tribunal's processes. However, it may also be seen by the person concerned as a betrayal. Pressure to provide information to the Tribunal could fracture important family relationships.

Often a middle way can be achieved. The Tribunal may be able to obtain some evidence by asking family members about the things that a person likes to do ordinarily (ie when they are not unwell). Above all, the Tribunal must not disrupt these important relationships by pressing for evidence, unless it is critical to the Tribunal's ultimate decision.

6. Official visitors program

The *Mental Health Act* also establishes an Official Visitors Program.[21] The aim of the program is to safeguard standards of treatment and care, and

21) Sections 128-139 *Mental Health Act*. See also www.ovmh.nsw.gov.au

advocate for the rights and dignity of people being treated under the *Mental Health Act*.

The Official Visitors are independent from the health system, appointed by the Minister for Mental Health and paid by the NSW government. They have a range of cultural, professional and personal backgrounds.

Official visitors make regular visits to all inpatient psychiatric facilities across NSW. They talk to patients, inspect records and registers, and report on the standard of facilities and services. They liaise with staff about any issues or concerns and report any problems to the Principal Official Visitor and/or the Minister for Mental Health.

7. Challenges for the NSW mental health system

I would not like to leave you with the impression that the NSW system is perfect.

The stigma of mental illness is alive and well in Australia. It impacts on people's ability to obtain and maintain employment, to have secure and safe housing, to maintain social connections and to live a fulfilling life.[22)]

Despite the legislative focus on recovery and supporting people to live a full and satisfying life, there is a lack of community services and funding in NSW to achieve this. There remains too much focus and funding for inpatient treatment at the expense of community care and support. More generally, there is a lack of funding for social and economic participation, education, employment and stable housing for people living with mental illness.[23)]

The physical wellbeing of people with mental illness is also often

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22) *Reavley, N.J., Jorm, A.F. (2011) National Survey of Mental Health Literacy and Stigma*. Department of Health and Ageing, Canberra

23) NSW Mental Health Commission (2014). Living Well: A Strategic Plan for Mental Health in NSW. Sydney, NSW Mental Health Commission

overlooked. There is also a significant gap in the life expectancy of people living with mental illness and those without. This has been variously estimated as between 14-23 years.[24)]

Some of this may be about to change with the roll out of the National Disability Insurance Scheme, which offers government funding to support those with psychosocial disabilities to live contributing lives. We will wait and see.

Ⅴ. Conclusion

Both NSW and Korea have hard work ahead to fulfil the promise of their legislative schemes and to accord people living with mental illness their full human rights.

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24) NSW Mental Health Commission (2014). *Living Well: A Strategic Plan for Mental Health in NSW*. Sydney, NSW Mental Health Commission at 69

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Section 44 *Mental Health Act 2007*

Section 166 *Mental Health Act 2007*

Sections 71 – 79 *Mental Health Act 2007*

Section 72B *Mental Health Act 2007*

Sections 15 and 31 *Mental Health Act 2007*

Section 53 *Mental Health Act*

Section 52 *Mental Health Act*

Section 55 *Mental Health Act*

Section 58 *Mental Health Act*

Sections 87 to 96 *Mental Health Act*

Sections 128-139 *Mental Health Act*. See also www.ovmh.nsw.gov.au

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