

INQUIRY INTO SUBSTITUTE DECISION-MAKING FOR PEOPLE LACKING CAPACITY

Organisation: NSW Health, Sydney West Area Health Service
Name: Associate Professor Abd Malak, AM
Position: Executive Director, Workforce and Organisational Development
Telephone: (02) 9840 3800
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Standing Committee on Social Issues
Legislative Council
Parliament House
Macquarie Street
Sydney
NSW 2000 Australia

To Whom It May Concern:

RE: Inquiry into substitute decision making for people lacking capacity

The NSW Transcultural Mental Health Centre (TMHC) wish to thank the Standing Issues Committee on Social Issues, Legislative Council, for the opportunity to have our views considered regarding the inquiry into substitute decision making for people lacking capacity.

TMHC is committed to improving mental health outcomes and services for all communities, with a particular focus on culturally and linguistically diverse (CALD) communities. As a statewide specialist service, the needs of CALD communities should be considered in any revision/amendment to NSW legislation.

Some issues for the Committee to consider:

- Older People from culturally and linguistically diverse (CALD) communities represent a significant proportion of the older population living in NSW with predictions that by 2011, nearly one in four of the older population will be from CALD communities. It is widely recognised that the older population as a whole, have potential stressors and mental health concerns facing them in their older years. In addition to these, older people from CALD communities may experience problems such as loss of language, cultural identity, social isolation and limited access to services. This may have a significant impact on managing their personal affairs.
- Data projections for 1996-2011 in NSW suggest that although the overall ageing population will increase by around 35%, the ageing population from CALD communities will increase close to 100%. These findings have a number of implications, for older people from CALD communities accessing and utilising mental health services (Gibson, Braun, Benham, & Mason, 2001) and therefore impact on their capacity to make decisions regarding their affairs.
- A literature review conducted by the TMHC indicated that there are particular stressors experienced by older people from CALD communities, which may vary, according to their migration, refugee and re-settlement experience. These include:
 - Many older people from CALD communities experience isolation and loneliness, and often do not have extended families to support them.

ABN 70667812600
PO Box 63 Penrith NSW 2751

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- Grief, loss, shame and stigma may be experienced as part of the migration experience and psychological distress may take the form of depression (Livingston & Sembhi, 2003).
 - Ageing in an unfamiliar cultural environment can be challenging (Thomas, 2003; Chou, 2007).
 - Frequently, mental health issues may not be recognised, may be incorrectly assessed, or not assessed at all. This may result in older people from CALD communities not being referred to an appropriate service and/or treatment.
 - Cultural and linguistic issues can become more salient in older people as both English language and first language skills may be diminished or lost, especially with the onset of dementia e.g. by referring back to early years.
- The management of estates should consider strengthening the following areas:
 - Improved access to bilingual/bicultural resources and interpreter services.
 - Delivering culturally appropriate assessment, management and care.
 - Increasing cultural competency of those involved in managing estates and guardianship.
 - TMHC recognises the specific needs of communities and it is suggested that:
 - Culturally relevant services and practices are developed.
 - Access and equity principles are addressed when considering CALD communities in people lacking capacity.
 - Services and practices need to be aware of the complexities of engaging with CALD individuals and their families.
 - TMHC also recommends:
 - Research be conducted, which is able to inform the development and implementation of future policy and practice, and which focuses on both risk and protective factors.
 - A prevention and early intervention approach.
 - A range of strategies and initiatives be developed, which enhance the capacities of individuals, communities and service providers and are considerate of the age, culture, language abilities, etc.
 - All community based services need to be designed in such a way to address the complexities and multiple barriers that CALD communities face. The function of TMHC is to facilitate access, quality and safety in mental health service provision through the provision of capacity building initiatives (including education and training for professionals) and a Clinical Consultation and Assessment Service.
 - TMHC also recommends that the Standing Committee consults people from a CALD background with mental health issues who have experienced guardianship and management of estates legislation.
 - In the 'declaration of incapacity' TMHC recommends that the Committee recognizes that mental illness may be episodic in nature and that this may impact on the guardianship and management of estates and the people effected by decisions made whilst not having the capacity to make decisions. Currently under the Guardianship Act the person subject to the termination of a management order require that person to have the language, skill and know how to do so, further impacted on by little knowledge/understanding of their rights and the processes to exercise these rights.
 - In developing/reviewing any materials for guardianship or management of estates, TMHC recommends improved access to information this may be achieved by writing in simple/plain English and being available in a number of community languages. Any information being provided to a person lacking capacity should be completed in a

culturally relevant and appropriate manner this applies to informal family based support through to institutional support.

As the statewide organisation focusing on the mental health and wellbeing of people from diverse communities, TMHC urges the Committee to be considerate of the unique and varied needs of NSW's CALD communities when reviewing and amending legislation so that is reflective of the NSW population and its needs.

If you would like to discuss any aspects of this response further, please do not hesitate to contact me on Ph: (02) 9840 3800 or Maria.Cassaniti@swahs.health.nsw.gov.au .

Yours sincerely

A handwritten signature in blue ink, appearing to read 'A. Malak', is positioned above the printed name.

A/Prof Abd Malak AM
Executive Director
Workforce and Organisational Development

25 September 2009