



NMHCCF Advocacy Brief

Issue: Duty of Care – Duty to Care

Duty of Care means the extent to which a healthcare provider must reasonably ensure that no harm comes to a patient under the provider's care.¹

But a **Duty to Care** also means that governments, their bureaucracies, service organisations and individual service providers have a duty to take positive action to ensure the provision of health care services are of a proper standard. This means that they comply with agreed upon written professional and generic standards of practice, evidence based practice, legislative obligations and appropriate government and organisational policies.

In practice, a **Duty of Care** means that all clinical and non-clinical staff, collectively and individually, has a responsibility to take reasonable steps to ensure mental health consumers are:

- Safe;
- Unharmmed;
- Protected from abuse;
- Receive a standard of care and treatment that is evidence based; and
- Receive a quality of care and treatment that complies with profession specific and generic standards of practice.

If subject to a state/territory **Mental Health Act**, a duty of care exists to ensure that the above care is delivered, and that:

- Consumers are treated with respect and dignity;
- Consumers' rights are protected and respected;
- The standards of care and treatment are equal to that of patients in the general health care system; and
- Clinical compliance with all the provisions outlined under Mental Health Act.

Federal, state and territory governments have a responsibility to establish legislation that ensures a high standard of duty of care and provide sufficient funding to allow for compliance and accountability of their legislation, policies and practices.

¹ Jonas: Mosby's Dictionary of Complementary and Alternative Medicine. (c) 2005, Elsevier.

There are many examples of consumers being denied a clinical service and a proper duty of care. No government – current or past – can sit back and claim, “we have fixed mental health” or “we provide a proper duty of care”.

Delivering a proper duty *of care* requires the provision of a transparent level of accountability.

Accountability means being responsible for your actions or inactions. Governments are accountable not only for their successes in mental health care, but also for their failures. Past and current governments, at all levels and of all persuasions, have failed people with a mental illness, many of whom are the most vulnerable in our community.

Notwithstanding systemic government failures, service providers are also failing the mental health consumer and carer community when they fail to protest and note the negative impact a lack of resourcing has on their ability to deliver a high standard duty *of care*.

While clinical and non-clinical services have a legal duty of care, equally, all governments have a **duty to care**.

Key points for consumers and carers

Over the years, both Australian and state/territory governments have failed to provide adequate funding to meet the needs of people experiencing mental illness and provide an accountable duty of care. In failing to provide adequate duty *of care*, governments and some service providers have contributed to the following problems:

- Breaches of Mental Health Acts;
- Non compliance with both profession-specific and generic standards of clinical practice;
- Neglect of consumer and carer rights;
- Non compliance with Chief Psychiatrist guidelines;
- Non compliance with government policy;
- Refusing consumers clinical services when unwell;
- Discharging patients from hospital while still unwell without adequate clinical and non-clinical following up in the community;
- Secluding consumers who are suicidal instead of providing a one-on-one nurse;
- Limiting therapeutic interventions to medication only;
- Neglect of physical health;
- Unrealistic clinical and non-clinical workloads;
- Over burdened service systems;
- Increased stress levels of clinical and non-clinical staff;
- Increased marginalisation and stigmatisation of consumers and their carers; and
- Lack of recognition and support of the role of mental health carers and the affect duty of care has on them.

*Prepared by National Mental Health Consumer & Carer Forum
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Where the provision of services precludes clinicians and other service providers from complying with those duties and responsibilities outlined under *Duty of Care*, individual service providers are obligated to do at least one of the following:

- Notify their line manager;
- Document failings either in letter form or incident report form;
- Utilise the provisions of the state or territory Whistleblowers Protection Act;
- Notify the state or territory Office of Chief Psychiatrist;
- Make a complaint to the state or territory independent complaints agency;
- Notify the Australian Health Practitioner Regulation Authority;
- Notify the union;
- Notify the Ombudsman;
- Notify the Human Rights Commission; and/or
- Contact the Mental Health Council of Australia.

Recommendations for advocacy

1. Send this statement along with a personal letter to your state and federal member of parliament asking them to outline what they are doing about the parlous state of mental health in their electorate.
2. Send this statement along with a personal letter to the President of your local hospital Board of Management asking what they are doing to ensure a transparent and proper *duty of care* is being provided to all consumers.
3. Send this statement along with a personal letter to your state and federal Minister for Mental Health highlighting your concerns about the lack of adequate mental health services in your community and how their failure to properly fund mental health impacts on standards of patient care.
4. Write to your local state and federal member of parliament urging them to undertake mental health education (first aid) programs.

Name of Nominated NMHCCF contact on this issue

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Please contact NMHCCF Secretariat (details below)

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