

4. AUSTRALIAN POLICY, LEGISLATION AND PRACTICE IN REGARD TO IDENTIFICATION OF CARERS

4.1 CONTEXT

Australian policy and legislation support carers as partners in the delivery of services to improve outcomes for people with a mental illness.

The contribution that carers make to the support and care of people with mental illness was recognised by the Australian Government in the *Mental Health Statement of Rights and Responsibilities* (1991). This document, together with the *National Mental Health Policy* (1992, revised 2009), has been the cornerstone of the *National Mental Health Strategy* since its inception in 1992.

The *Mental Health Statement of Rights and Responsibilities* acknowledges that caring and advocacy roles are complex and the relationship between carers and consumers can change frequently and may also vary according to the age of the consumer. The following statement, taken directly from the document, talks of the rights of carers but can only be fully realised through a process of identification:

“With the consent of the consumer, carers and advocates are entitled to:

- have access to the consumer;*
- be consulted by service providers about measures under consideration for treatment of the consumer or for his or her welfare;*
- arrange support services such as respite care, counselling and community nursing facilities;*
- exchange information with those providing treatment concerning the consumer’s lifestyles and their relationships with others.”*

Page 17, *Mental Health Rights and Responsibilities*, 1991

The document also acknowledges that there may be circumstances where the consumer is unable to give consent or may refuse consent because of their disturbed mental state. In such cases it may be appropriate for service providers and carers to initiate contact and involve those who may be able to assist with the consumer’s diagnosis and care.

“Carers and advocates have the right to put information concerning family relationships and any matters relating to the mental state of the consumer to health service providers.

Carers and advocates have a right to help with their own difficulties which may be generated by the process of caring for or acting as an advocate for a person with a mental health problem or mental disorder.”

Page 17, *Mental Health Rights and Responsibilities*, 1991

This Statement has been flagged for review as part of the *Fourth National Mental Health Plan – An agenda for collaborative government action in mental health – 2009 – 2014*.

A number of activities at national, state and territory levels have occurred in recent years that mandate carer engagement in all levels of service delivery. These changes include:

- Development in some states of state based Carers Recognition Legislation;
- Development of the national *Carer Recognition Act 2010*;
- Development of a specific Carer Standard in the revised National Standards for Mental Health Services, 2010;
- Revision of mental health legislation in some States and Territories to mandate identification in a variety of forms;
- Revision of the *National Mental Health Policy (2009)* and funding of the *Fourth National Mental Health Plan, (2009–2014)*; and
- Publication of the RANZCP Guidance Notes, *Involving Families*, 2000.

In addition, the 2007 National Mental Health Survey brought to government attention the significant size of the population caring for people with mental health problems and mental illness. This survey found 40% of the adult population have at least one relative with a mental illness and 15% of the Australian adult population (approximately 2.4 million individuals) provide care for one or more people with a mental illness.

These carers provide a range of emotional and practical support to people who may be unlikely to access support elsewhere. This support makes a crucial difference to the wellbeing, ability to cope and likelihood of recovery of the person with the mental health problem or mental illness.

The size of the carer population and the impact that the caring role has on people was reinforced by data contained within the 2009 *Report on the Inquiry into better support for carers, Who Cares...?* undertaken by the House of Representatives Standing Committee on Family, Community, Housing and Youth.

The revision of the National Standards for Mental Health Services, 2010, has resulted in the development of a specific carer standard. Standard 7 states:

‘The Mental Health Service recognizes, respects, values and supports the importance of the role of carers to the wellbeing, treatment, rehabilitation and recovery of people with a mental illness.

In the context of this Standard ‘carer’ refers to family members or friends of people with a mental illness whose life is affected by the mental illness and includes the partner, parent, friend or child of the consumer.’

The needs and rights of carers of people with a mental illness have been very comprehensively described. Following such comprehensive description one would expect a plethora of information and activities designed to meet these needs. This does not appear to be the case and while some States and Territories have developed guidelines for consumers, family carers and mental health professionals to work together in collaboration and partnership few changes have occurred at a practical level. Many would argue this relates to lack of processes to identify who carers actually are.

4.2 STATE AND TERRITORY POLICIES AND PRACTICE

States and Territories in their policies support the position that ‘Carers are partners in the provision of healthcare to those they care for. Identifying and supporting them is a sound investment in continuity of care.’

Some jurisdictions have developed practical Guidelines on how to work with carers. However, it is difficult for these guidelines to be implemented in the absence of mechanisms to identify carers and to seek permission from consumers for the involvement of their carers in ongoing care.

These documents support involvement of carers at both individual and organisational levels. Over this period there has been an increase in consumer specific activity at local and state levels. However, opportunities for carer participation in activities that impact on them at local and state levels have not continued to develop in the manner initially hoped.

At the individual care level the policies require carer participation in all aspects of care with the consumers consent or at the clinician’s discretion in certain circumstances such as involuntary detention. These policies require that services assist carers to manage their caring role and the impacts of mental illness on them and their family.

The policies also recognise carers as key stakeholders in the planning, development, delivery and evaluation of mental health services at a system-wide and local service level. Some distinct policies and programs exist in some states and territories including the one-off training of variable length and content offered to mental health staff to assist them to engage with carers. These programs have positive impacts, but generally appear to lack the capacity to reinforce practice changes though follow-up training, in-service sessions or consultation.

Feedback from carers indicates that both public and private mental health systems have been slow to implement these policies.

Engagement of carers to enable the implementation of legislation, policies and programs continues to be dependent on:

- **Identification of the carer by the consumer;**
- **Self identification as a carer; or**
- **Identification by a service provider**

4.3 SUMMARY OF STATE POLICIES AND LEGISLATION

4.3.1 Queensland (QLD)

In 2003 the Queensland Government released a Carer Recognition Policy. This was a whole of government policy that was followed by a *Carers (Recognition) Act, 2008*. A Consumer, Carer and Family Participation Framework is currently in the final stages of review. This aims to provide public mental health services across Queensland with clear guidelines regarding consumer and carer participation. An audit tool is included to ensure carers are identified and engaged by the mental health service.

The *Mental Health Act 2000* mandates that each consumer provided for under the Act, is to be linked with an Allied Person to ensure that their wishes are made known to the mental Health Review Tribunal. However, it is not a requirement for the Allied Person to be the consumer's carer, nor is it considered always desirable.

The Mental Health Directorate's Statutory Administration Policy Unit (SAPU), which leads mental health legislative policy analysis and development, is currently piloting the Audit Tool 7 – Carer Survey. SAPU has also agreed to investigate alignment between The Carer (Recognition) Act 2008 and the Mental health Act 2000. Additional work is also underway to ensure alignment with the Consumer, Carer and Family Participation Framework.

Queensland has identified that there are barriers that exist in identifying carers, especially in rural and remote areas. Carer workers from across the State were recently asked to detail strategies they have employed to identify and engage with carers. Their responses were collated and widely circulated to promote and improve consistency across the State. These strategies have been reported as Good Practice Examples at the end of this section.

In 2008 Queensland Health introduced a Carers Matter component to their web site. This was reviewed in 2009 and contains a range of information regarding mental illness, access to services, issues carers may face etc. It has been supported by the development of a range of brochures. This development is ongoing.

There is also a commitment to increasing carer involvement in mental health services as reflected in the following practice guidelines.

- Carer involvement should be negotiated at the earliest possible stage between the consumer, the carer and the mental health service.
- Carers should be engaged in a partnership with the consumer and the mental health service to support and assist the consumer in their recovery from mental illness.
- Carers should have access to a mental health professional who has been designated as a contact person.

- Carers should be provided with information, support and options that will enhance and maintain their own well-being.

The web site contains a number of practical tips for carers, however neither the web site nor the pamphlets address the issue of identification.

However, some very interesting work has been undertaken in Townsville, Northern Queensland where practice standards have been developed for family/carer participation in mental health care. The standards are based on a recognition that mental health outcomes are improved when there is full sharing of information in partnership between consumers, families/carers and clinicians.

Flow charts have been developed to assist clinicians in decision making regarding sharing of information in situations where consumers do, or do not give consent.

4.3.2 New South Wales (NSW)

Mental Health Services in NSW are currently delivered within the context of the five year plan launched by NSW Health in 2006 and summarised in the document: *NSW: A new direction for Mental Health – a five year plan to improve care for people with mental illness*.

Individual Area Mental Health Services generally have specific local policy documents associated with carer participation although it is not known if these specifically address the issue of identification.

In addition, NSW has a whole of government approach to identifying, recognising the needs of, and supporting carers. This is documented in the *NSW Carers Action Plan 2007–2012*. As part of the funding allocation to Carer Support Services, Area Health Services are required to develop a local Carer Action Plan that outlines the carer support strategies it will implement to address the five priorities for action outlined in the Plan.

As part of this approach NSW Health funds four Non Government Organisations (NGOs) to provide Mental Health Family and Carer Support Services across NSW. There is one NGO service provider in each Area Health Service. It is the role of these NGOs to provide:

- Education and training packages which teach families and carers about mental illness and its management and help to build coping skills and resilience;
- Individual support and advocacy services for families and carers of people with a mental illness; and
- Infrastructure support for peer support groups.

A key role for the NGOs delivering support services under this program is to provide support and information to families and carers during the early stages of diagnosis and treatment.

The *Mental Health Act 2007* (NSW) also recognised the notion that families and carers of someone with a mental illness need greater access to information about the consumer. This legislation recognises how important it is that carers, including family members, are given access to information that would assist them in providing care. However, the legislation also acknowledges the need for consumers to maintain control regarding who is to be provided with information about them.

The 2007 Act balances these views by:

- Enabling consumers to nominate a particular person to be their 'primary carer' so this person can receive information and be involved in treatment planning;
- Establishing a process for identifying who will be the primary carer when the consumer is not able to or does not nominate a particular person; and
- Enabling consumers to exclude a person or persons who they do not wish to receive information about them or their treatment.

4.3.3 Australian Capital Territory (ACT)

ACT Mental Health Services are currently directed in their service delivery by *Mental Health – Building A Strong Foundation: A Framework for Promoting Mental Health and Wellbeing in the ACT, 2009–2014*.

The purpose of this framework is to guide investment in the development and implementation of activities to promote mental health and wellbeing in the ACT over the next five years. The framework does not specifically address the issue of carers.

Mental Health ACT undertook a project to develop a model for engaging consumers and carers across all levels of Mental Health, ACT.

The Framework that has been developed sets out principles for participation and the structures required for continuous improvements to the quality of relationships between consumers, carers and staff of Mental Health ACT, and the quality of services. The Framework also acknowledges the need for systemic change that will support genuine consumer participation and carer participation, with a focus on organisational development, workforce development and re-sourcing that will build capacity within Mental Health ACT and the community.

The Framework details strategies for consumer participation and carer participation in policy development, service planning, implementation and evaluation, individual advocacy and systems advocacy, staff development and research. It does not address the issue of carer identification.

The Mental Health (Treatment & Care) Act 1994 is also being reviewed to ensure the Act reflects best practice in mental health law as it has developed over the last 10 years.

4.3.4 Northern Territory (NT)

The Mental Health and Related Services Act (2006) has provided significant impetus for changes in attitude and clinical practice regarding the identification and engagement of carers in the delivery of services in the Northern Territory.

Under the Act, in most situations, the same information is provided to a person's primary carer as is provided to the person receiving treatment. Generally carers can expect to be provided with this information unless the consumer says they do not want this to happen and their doctor believes that it is not in their best interests to do so. In situations where the consumer actively refuses consent the doctor responsible for his/her care will decide if providing the information is in the person's best interests. If it is, the information can be given to carers. However, if it is not, the doctor can withhold the information. If this happens, the doctor is required to inform carers of their options, which may include applying to the Mental Health Review Tribunal for a review of the decision.

Carers have wide ranging options to information including that they are:

- Notified of an involuntary order;
- Given information about how make an application to or give evidence to the Tribunal;
- Given information about rights under the Act;
- Notified of a Tribunal decision following a review;
- Given information regarding the availability of legal and support services;
- Provided with information about medication under **s88**;
- Included in discussions regarding treatment options;
- Provided with information about discharge planning under **s89**;
- Given information on how to make a complaint; and
- Given information on how to contact the Community Visitor.

Carers may also seek information from NTMHS about their relative/friend and where this information is provided, they can expect that the information will be in a form that they can understand.

In 2009 a *Carers Guide to The Mental Health and Related Services Act (2006)* was released. This is a very comprehensive document that currently sets the benchmark within Australia. This guide has drawn on existing documents including some excellent stories that were included in a publication produced by *Lifeline* for carers of people with a mental illness. More information regarding this document can be found in the section on Good Examples. The NT Guide for carers has contributed to the development of the welcome pack for carers developed as part of this project.

The term 'carer' is defined in a very inclusive manner reflecting the Northern Territory population profile.

It would appear from discussions undertaken during consultation that there has been significant change in clinical practice towards a more carer inclusive partnership approach to service delivery since the introduction of *The Mental Health and Related Services Act (2006)*.

4.3.5 Western Australia (WA)

WA was the first State in Australia to pass the Carers Recognition Act in 2004. This legislation recognises the significant role that carers play in the community and provides a mechanism for their involvement in services that impact on them. All public health services are obliged to comply with the Act.

The following information guides, specifically for use in the mental health area, were published in 2007 as part of the implementation of the Act:

- *Carers guide to information sharing with mental health clinicians; and*
- *Communicating with Carers and Families.*

These Guides have contributed to the development of similar information in some other states.

In 2009 the WA Government announced the establishment of a Mental Health Commission (MHC) as a separate department from March 2010. In order for the MHC to lead reforms of the mental health system throughout the State, minor amendments will be required to the draft *State Mental Health Strategic Plan and Policy, 2010–2020*.

The MHC will undertake work on the draft Plan to agree on priority actions for mental health reform. It is proposed that the draft Plan document previously developed by Pricewaterhouse Coopers is considered a 'green paper'/consultation document and placed on an internet website for public comment.

In 2004 Service Standards for Non–Government Providers of Community Mental Health Services was released. Standard 5 relates to 'Participation of Carers and Significant Others'. In order to achieve this Standard services are required to have in place a range of policies and practices including 5.1 which states:

Processes to Identify and Inform Carers

The service has a process in place to identify carers/significant others when the consumer enters the service, and to make information about carers' rights and responsibilities available to them.

The degree to which this standard is audited is not known.

Carers are also recognised by the Carers Recognition Act 2004 and Carers Charter. There are government agencies and non–government advocates that can assist with complaints of discrimination or inequity.

Carers WA is funded to support the representation of carers' perspectives on mental health issues. This is primarily achieved through carers' participation in governmental committees or advisory groups for the planning, development and delivery of mental health services.

4.3.6 Victoria (VIC)

Specific Victorian State Government policy or protocols regarding the identification of carers has yet to be developed however the issues are discussed in: *Review of the Mental Health Carer Support Program and carer support and resource workers (mental Health), Final Report – 2008* and *Caring together – An action plan for carer involvement in Victorian public mental health services – 2006*.

The *Mental Health Reform Strategy 2009–2019, Implementation Plan 2009–2011* provides a succinct statement of actions to be undertaken by government and key partners over the next two years. The plan forms the basis for an annual reform activity report and a three-year progress report covering 2009–2012.

A whole-of-government mental health outcomes framework (with agreed measures) is being developed and is expected to be available in early 2010. The purpose of the framework is to provide a shared basis for planning and monitoring progress across government and the various levels of the service system that impact on, or are directly targeted to, people affected by mental illness. This includes people with or at risk of mental health problems, their families and the broader community.

The Victorian *Mental Health Act 1986* has recently been reviewed and in July 2009 the Government made a commitment to repeal the current Act and to introduce a modern Act that improves safeguards, protects human rights, promotes supported decision making and greater carer involvement. The Government is currently finalising its policy for new mental health legislation. It is anticipated that the Mental Health Bill will be considered by Parliament in 2010 with full implementation expected to occur from 2012. The likely changes in the treatment of involuntary clients will reflect the strategy's emphasis on supporting consumer participation in decision making and the more meaningful involvement of carers and families in treatment and recovery planning.

The recently developed *Caring Together: a Carer Participation Action Plan* reaffirms the importance of effective and responsive partnerships between consumers, carers and professionals. A key strategy to improve carer participation described in the Action Plan is the identification of best practice examples in clinical mental health services and the psychiatric disability rehabilitation and support services.

In addition specific information for carers is distributed via area mental health services in the booklet: *Information for families and carers of people with a mental illness – 2004*. This may be supplemented by additional local carer support information compiled by individual area mental health services.

Victoria has established approximately 30 part-time Carer Consultant positions. It was reported to us however that this program requires further development by way of increased training and support to minimise turnover and to ensure consistency in approach across services.

Examples of 'good practice' were found in Victoria in the form of *Psychiatric Medication Information, A Guide for Patients and Carers* at St Vincent's Mental Health Service.

4.3.7 Tasmania (TAS)

Tasmania's *Mental Health Consumer and Carer Participation Framework* was developed in 2006. This provides the overarching policy framework for engagement with carers. The Department of Health and Human Services' (DHHS) *Consumer and Community Engagement Strategy and Policy*, which is still in draft, identifies who carers are and in what circumstances they should be included. Once endorsed, the DHHS Engagement Policy will inform the development of specific mental health policies.

At a service delivery level, Mental Health Services does not currently have policies and procedures that identify a person's carer and the information to be shared with this carer, as part of the admission process. It is envisaged that such matters will be considered as part of the implementation of the recommendations of the Consumer and Carer Participation Review.

The *Tasmanian Mental Health Act 1996* provides 'persons responsible' with a number of roles including the ability to apply for a person's involuntary admission to hospital. A person responsible may also give consent to medical treatment on behalf of a person with a disability who is incapable of giving his or her own consent to the treatment, by virtue of the *Tasmanian Guardianship and Administration Act 1995*.

Tasmania is in the process of drafting a new Mental Health Act. It is anticipated that the new legislation will refer to 'support persons', rather than 'carers' to ensure broader inclusion of all relevant support people. It is also envisaged that the new legislation will clarify the role of support persons by, for example, requiring them to be provided with a range of information at key points along the person's treatment pathway.

Separate information packs are not currently provided to carers at the time of admission to services.

4.3.8 South Australia (SA)

The *SA Health Consumer and Community Participation Policy Directive, 2009* defines carers, and clearly indicates that "for the purpose of this policy, "carers" are included in the category of consumers." There is not such a distinction made for particular identification and participation of carers within treatment and care processes. This policy emphasises Consumers (including Carers) and community.

South Australian Mental Health Services emphasise and recognise more specifically the distinct role of carer in *the Southern Mental Health Consumer and Carer Participation Framework May 2009*. There is also an acknowledgement within the Framework that:

Recognises that working in partnership with our consumers and carers requires a cultural change, and that different strategies are required to support the partnership.

There is also a clear expectation that services will adhere to, and report on, the principles of the “SA Carers Recognition Act 2005 and Carers Charter”, by “involving carers in the planning, delivery and evaluation of policies, programs and services”.

In Mental Health some good carers packages of information have been formulated for provision to carers. Currently distribution is reliant on self identification as a carer.

The State also supports the inclusion of the specific Carer Standard (7) in the revised National Standards for Mental Health Services.

The report *Stepping Up: A Social Inclusion Action Plan for Mental Health Reform 2007–2012*, by the South Australian Social Inclusion Board made the following recommendation relating to carer participation.

The carers and families of consumers must be seen as partners in the care process. They should be included in care planning processes and, with the agreement of the consumer, receive timely and appropriate information and support.

The issue of how carers are identified in order to be given this information or to be engaged as partners has not been addressed.

A number of part-time Carer Consultant positions have been established in South Australia. Over the last year the role and function of these positions has been reviewed and increased support structures put in place. This has led to greater stability for people appointed to these positions.

4.4 PRIVATE HOSPITAL SECTOR

Letters were sent to Chief Executive Officers (CEO's) of all private psychiatric hospitals seeking information regarding current policies and practice regarding identification of carers. Responses were received from a small number of hospitals.

Admissions to the private hospital sector are primarily voluntary. As a result, State and Territory Mental Health Legislation has little impact in this sector. There has also been a reluctance within this sector to undertake accreditation processes against the National Standards for Mental Health Services. Private hospitals are also not under an obligation to meet State policies regarding carer participation.

However it is pleasing to note, as recommended in the *Identifying the Carer Report 2007*, that a number of private hospitals have included as part of their formal admission process, a form based on the one developed by the Ramsay Health Care New Farm Clinic. This form is colour coded and audited on a regular basis. It invites consumers to identify people they would like to have involved in their care, and to nominate the level of involvement they endorse. Some hospitals then seek separate consumer permission to contact family members/carers to invite them to participate in Support and Education Programs.

One hospital also informed us that as part of their admission procedure consumers are asked about their living arrangements, the existence of carers, as well as the health and willingness of the carer to assist the consumer post discharge. These questions are documented in the admission assessment format.

In some hospitals, carers have access to resources located in patient's lounges and brochure stands with some information provided in a number of languages other than English. These brochures have primarily been developed on an individual basis by hospitals and rely heavily on information supplied by the Commonwealth Respite and Carelink Centre. A specific Carers Lounge is offered in one private hospital. This area allows carers a space for some time out and offers privacy for attending to any phone calls that need to be made.

Identification of carers in the private hospital sector appears to hinge almost exclusively on consumer consent. Little assistance is provided to encourage carers to self identify.

Consumer/carers participation has been slow to develop in the private hospital sector. The recommendations and materials produced during the course of this project may provide examples to encourage and increase the identification and engagement of carers. And reinforce the role that carers have in consumer recovery in both the public and private sectors.

4.5. SUMMARY OF STATE AND TERRITORY LEGISLATION

| JURISDICTION | MENTAL HEALTH ACT REVIEW | NAME | CARER RECOGNITION ACT |
|--------------|--|---|---|
| QLD | Completed 2000. Minor amendment 2007 related to forensic patients and victims of crime | Mental Health Act 2000 | Carer (Recognition) Act 2008 Carer Action Plan 2006–2010 |
| NSW | Review completed. | Mental Health Act 2007 | Whole of Government Carer Action Plan, 2007–2012 |
| ACT | Currently being reviewed | Mental Health (Treatment and Care) Act 1994 | No Act, principles included in Mental Health – Building A Strong Foundation: A Framework For Promoting Mental Health And Wellbeing In The ACT, 2009–2014. |
| VIC | Act reviewed 2009, new legislation being developed | Mental Health Act 1986 | Caring together – An action plan for carer involvement in Victorian public mental health services – 2006. |
| SA | New Act is due to be proclaimed on 1 July 2010 and will replace the Mental Health Act 1993 from midnight on 30 June 2010 | Mental Health Act 2009 | Carers Recognition Act 2005 Whole of Government Carer Policy Implementation Plan 2006 |
| WA | Review ongoing | Mental Health Act 1996 | Carer Recognition Act 2004 |
| TAS | Amended 2005 | Mental Health Act 1996 | Mental health Consumer and Carer participation Framework 2006 |
| NT | Review completed | Mental Health and Related Services Act as in force 1 February 2010. | Carer Recognition Act 2006 Carers Guide 2009, to The Mental Health and Related Services Act (2006) |

As indicated in the Network's Identifying the Carer Project 2007 Report, the purpose of the various Mental Health Acts is primarily to protect the rights, articulate treatment, assessment and care provisions of the consumer. The purpose of these Acts is not primarily to identify or address the needs and rights of carers, even though they are integral to the care and safety of the consumer. Recent reviews of the Acts have increasingly identified the importance of the role of carers and their access to information, which allows them to provide care, but do not address the issue of identification.

Some Mental Health Acts specifically define carers, however, provisions that allow for information to be shared with other people, or for treatment to be initiated, are drafted in ways that do not adequately define a process for identifying or defining a "carer." For example, these include the concept of an "allied person" (*Queensland Mental Health Act 2000*), or "a person assuming the responsibility" for the care of the

patient (*Western Australia Mental Health Act 1996*). These provisions focus on notification of information, usually after an event such as an involuntary admission and do not say how carers will be identified in order to fulfil this provision of the legislation.

The Northern Territory's *Mental Health and Related Services Act 2006*, is somewhat different in that it addresses the issue of carers' rights in relation to information, admission, treatment and discharge of the patient. This legislation, is first in Australia to balance the rights of both carer and consumer.

The *NSW Mental Health Act (2007)* makes provisions for a primary carer to receive information. The primary carer is defined primarily according to their relationship with the consumer with the emphasis on family, however, the concept of that relationship being 'close and continuing' was introduced which was an important innovation

The Queensland Mental Health Act 2000 does not specifically identify carers although involuntary patients are entitled to nominate an 'allied person'.

All legislation defines carers but none address the issue of identification.

4.6 IMPACT OF LEGISLATION ON CARERS

4.6.1 Carer Recognition Legislation

There is now a move towards a whole of government approach to recognise, support and meet the needs of carers. The table above illustrates the fact that some states and territories have enacted Carer Recognition Acts and carer recognition policies are in place or about to be introduced in others. This ensures a whole of government approach to ensuring that policy, program and service development meets the needs of carers. However, while these Carer Recognition Acts provide legislative recognition for carers they do not address the issue of identification, particularly in the mental health area where there is a balance that has to be achieved between the right to privacy for the consumer, and the carers' need for information in order to achieve better outcomes for the consumer.

The National Carer Recognition Bill 2010 was tabled in Parliament in March 2010. The Bill establishes a definition of *carer* and sets down ten principles, including the fundamental principle that all carers should have the same rights, choices and opportunities as other Australians.

The Bill also means that all public service agencies will need to make sure staff have an awareness and understanding of the principles. Any public service agencies with responsibility for policies, programs and services that affect carers and the people they care for will need to ensure their staff take actions to reflect the principles, report on how they meet the principles, and consult with carers and representative bodies on issues.

While this is a crucial piece of legislation, it does not address the issue of identification.

4.6.2 Privacy Legislation

The Carers Australia Senate Inquiry submission [2007] states:

An unexpected outcome of the complex interaction of the Privacy Act 1988, the Freedom of Information Act 1988 and Mental Health Acts is that carers denied information about a consumer are still “expected” to care for and support the consumer upon discharge.

They go on to say:

...systemic misunderstanding of the rights, obligations and responsibilities of carers, consumers and service providers exists within all relevant services. This lack of understanding leads to inconsistencies in application and frustrating interactions between carers and mental health service providers.

There is an urgent need for programs to ensure that carers’ rights, obligations and responsibilities are understood and that mental health service providers comply.

Attempts have been made in the public sector in Victoria in the Chief Psychiatrists Guidelines regarding confidentiality and in the private sector by way of the *Privacy Kit for Mental Health Service Providers* to clarify issues regarding confidentiality for clinicians. This issue has also been addressed by other states and territories by the development of policies and guidelines however it appears that this has resulted in little change in practice at service delivery level. Current practice indicates that the legislation continues to be used as the reason for not sharing information with carers.

The Australian Law Reform Commission undertook a review of privacy law in 2008 and recognized that disclosure of information to ‘a person responsible for an individual’ can occur within privacy law. The need for legislative reform in this area was also recognized by the 2009 House of Representatives Inquiry into Better Support for Carers. Recommendation 14 of that report called for investigation of whether privacy and mental health *legislation ‘adequately allows carers to be involved in the treatment of the individuals for whom they care’.*

Identification is a pre-cursor to sharing information and providing support.

Some states and territories already support carers and provide information to assist them understand their rights to access information within the existing legislative framework. **However, these processes pre-suppose identification.**

4.7 CONCLUSION

Government legislation, policy and standards clearly mandate that services are expected to engage with carers. There is increasing pressure on services to demonstrate they are able to meet these requirements. Clear identification of carers is central to this process if services are to fulfil requirements