

On the edge of justice: the legal needs of people with a mental illness (2006) Cite this report

Ch 1. Introduction

What is mental illness?

*Definitions of mental illness are notoriously difficult to draft. If they are framed too narrowly they deny services to people. If they are too broad they may result in unnecessary intervention.*³

Problems and mental illness refer to a range of cognitive, emotional and behavioural disorders that affect the lives and productivity of people. There is, however, no one single definition of mental illness, as definitions vary across jurisdictions and professions. In determining an appropriate definition of mental illness for the purposes of the Act, legal, clinical and social approaches to defining mental illness were taken into consideration.

Definitions of mental illness

The *Mental Health Act 1990* (NSW) sch. 1, “mental illness” is defined as a condition characterised by the presence of one or more of the following: delusions, hallucinations, serious disorder of thought form, a severe disturbance of mood, or repeated irrational behaviour, which seriously impairs, either temporarily or permanently, the mental capacity of the person.⁶ A “mentally ill person” is someone who suffers a mental illness where, owing to that illness, there are reasonable grounds for believing that care, treatment or control of the person is necessary, for their own or the safety of others. This determination must take into account the person’s continuing condition, including the effects of the illness on their condition.⁷

That the above-named symptoms, listed in the *Mental Health Act 1990* (NSW), are most often associated with a diagnosis of psychosis, a particular and more severe form of mental illness. Other more common symptoms such as anxiety disorders, depression and substance abuse may not necessarily fit the definition of mental illness in the Act.⁸

Classifications of mental illness

The focus of clinical practice is on prevention and control of mental illness through treatment, but the legal definitions of mental illness are far broader than their legal counterparts. It is rare to find a single definition in the literature. In this context, a definitive statement about what is mental illness is often less helpful than determining who should be classified and treated.

There are two main international medical standards used in the classification of mental illness. The first of these is the World Health Organisation’s International Classification of Diseases (ICD-10), last revised in 1992 and widely used internationally in Europe. The ICD-10 defines “mental disorder” as “a general term which implies the existence of a clinically significant set of symptoms or behaviour associated ... with ... interference with personal functions”.⁹

The other international standard is the American Psychiatric Association’s Diagnostic and Statistical Manual of Mental Disorders (DSM-IV), revised in 2000 and used more frequently in the UK and the US. According to this system, “mental disorder” must comprise a manifestation of “behavioural, psychological, or biological dysfunction in the individual”.

*... a clinically significant behavioural or psychological syndrome or pattern that occurs in an individual and that is associated with either (a) current or past distress ... or disability ... or with a significantly increased risk of suffering death, pain, disability, or an important loss of freedom ...*¹⁰

Classification systems have been adopted by key Australian agencies. The Australian Bureau of Statistics (ABS) has adopted a modified version of the ICD-10 for its surveys (such as the 2001 National Health Survey (NHS)).¹¹ In the National Health Plan 2003–08,¹² both the ICD-10 and DSM-IV classification systems are cited.

The Health Department of Health and Aged Care’s Mental Health Branch makes the further distinction of mental illnesses as either psychotic—including schizophrenia and some forms of depression—or non-psychotic—including phobias, anxiety, some forms of depression, eating disorders, physical symptoms involving

in, and obsessive-compulsive disorder.¹³

ons of mental illness

hiatric disability' is a narrower term than mental illness, as not all people with a mental illness will elves, or be considered, to have a psychiatric disability. This is reflected, for example, in the *Disability 1986* (Cth), where the very narrow definition of "disability" is restricted to those conditions which are likely to be permanent".

It is important to consider the social model of disability, which though subject to constant evolution, is d by disability advocates. While not denying the individual's limitations, the social model understands unction of "society's failure to provide appropriate services and adequately ensure the needs of e are fully taken into account in its social organisation".¹⁴ This is in contrast to "official" definitions, which r in the individual's pathology or biology.¹⁵ One important Australian study which applied the social Disability Council of NSW's (Disability Council) 2003 *A Question of Justice* report.¹⁶ Here, the model hift the focus from issues of individual impairment to issues of systemic disablement", identifying as the ility not impairment itself, but socially and economically constructed discrimination and exclusion, that es of society *towards impairment*. Carney suggests that the social model has now gained wide hin disability literature, with policy also moving away from the traditional medical model and towards a understanding, whereby the emphasis is on "participation" rather than "impairment".¹⁷

ition of mental illness for this project

SM-IV is somewhat more commonly used in clinical settings in Australia, the Project has adopted the on, which is used by the ABS and so enables the use of ABS data. The Project did not adopt the *Mental 0* (NSW) definition due to its more limited scope.

Interest to the Project were the disorders with the highest prevalence in Australia and NSW, namely, rs, affective disorders and substance use disorders. As the next section indicates, a significant number iW are affected by these disorders. Recent literature has focused on the social and economic that those suffering from these disorders can face.¹⁸ Despite their lower prevalence, psychotic also of interest, given their strong association with high levels of social, economic and, at times, antage.¹⁹ While the above-named disorders were of particular interest, no mental illnesses were our study. In accordance with the design of this research, those we interviewed and consulted were free ver mental illnesses they felt were relevant.

r the purposes of the Access to Justice and Legal Needs of People with Mental Illness Project, 'mental the existence of a clinically recognisable set of symptoms or behaviour associated in most cases with th interference with personal functions'.²⁰ While not an exhaustive list, the following clinically sorders were of particular interest in our study:

/ disorders: social phobia, agoraphobia, panic disorder, generalised anxiety disorder, obsessive-sive disorder, and post-traumatic stress disorder.

/e disorders: major depressive disorder (depression), dysthymia, mania, hypomania, and bipolar mood r.

nce use disorders: alcohol and drug abuse and dependence.

ctic disorders: schizophrenia and substance-induced psychotic disorders.

With this definition, the social model of disability—explained above—was also drawn upon. This model nderstanding of the social and environmental factors that contribute to the lived experience of people rders.²¹

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alth Ministers, National Mental Health Plan 20032008, Australian Government, Canberra, 2003, p. 5.

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Act 1990 (NSW), sch. 1.

Act 1990 (NSW), s. 9.

ital Health and the Criminal Justice System, p. 8. According to Carney, conditions such as addictions and co- always taxed the law and service systems, and the lack of coordination in many jurisdictions fails both people erness and the community. While the NSW model in regards to such complex needs clients is broader and well lly in comparison to many others, there remains a need for greater linkages and accountability as between

s, perhaps through a legislative regime like Victorias Human Services (Complex Needs) Act 2003. See T Carney, at the Boundaries of Mental Health, Justice and Welfare: Gatekeeping Issues in Managing Chronic Alcoholism Current Issues in Criminal Justice, (in press), 2006.

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standing Disability.

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