

# **Preliminary Finding Report – Advance Statements Under the Mental Health Act 2014**

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## 1 Introduction

Mental health law can be viewed as an ongoing process of finding a balance between an individual's right to make their own decisions, and the responsibility of the State to intervene when that individual's mental health poses a risk to themselves or others. Advance statements are a way of maintaining a person's right to be involved in decisions about their treatment even when their mental health deteriorates.

In Victoria, since 2014 the *Mental Health Act 2014* (the Act) has provided for people subject to compulsory treatment under the Act to complete an advance statement. Defined in s 19 of the Act;

*An advance statement is a document that sets out a person's preferences in relation to treatment in the event that the person becomes a patient.*<sup>1</sup>

Under the Act, advance statements must be in writing, signed and properly witnessed. When making decisions about a person's treatment under the Act, authorised psychiatrists must 'have regard' to a person's treatment preferences expressed in their advance statement. This means that a person's treatment preferences must be considered but can be overridden by an authorised psychiatrist, even if the person could be legally assessed to have decision-making capacity when they created the advance statement. Despite the ease with which they may be overridden, advance statements can support human rights and assist with compliance with international human rights law.

Advance statements featured heavily in the lead up to the new legislative regime, mentioned 174 times in 18 separate parliamentary speeches during the passage of the *Mental Health Bill 2014*.<sup>2</sup> Advance statements also feature prominently in the Act, referred to in 23 distinct sections.<sup>3</sup> Despite this legislative focus, uptake has been very low, with only 2.34% of adults in Victorian public mental health services having an advance statement on record.<sup>4</sup>

In 2015 the Helen Macpherson Smith Trust granted \$250,000 over two years to the Mental Health Legal Centre (MHLC) to support people to complete advance statements.<sup>5</sup> As part of this project, the MHLC has partnered with RMIT University's Social and Global Studies Centre to explore the experience of people who have completed an advance statement with a view to informing future policy and practice directions. This brief summary document outlines the preliminary findings from this research project.

## 2 Method

This project used qualitative semi structured interviews to collect data with 10 participants, all recruited through the MHLC Advance Statements Project. All consumers (n= undisclosed) who had completed an advance statement through the MHLC were sent letters inviting them to participate in the research, with MHLC contacting consumers via telephone with follow up invitations.

Participants were compensated with \$50 gift vouchers. Interviews were between 26 and 46 minutes in length and were all conducted by the lead researcher. Participants were asked to provide consent to access their advance statement. Interview recordings were transcribed before being analysed by three members of the research team using well-rehearsed coding conventions of content analysis in NVivo.

Limitations of this paper include the small sample size, and sample bias introduced through recruitment via the MHLC. It should be noted that the majority of advance statements in Victoria are not drafted through the MHLC, and are drafted either without assistance, or with assistance from treating clinicians or other support people.

Ethics approval for this project was granted by RMIT University's Human Research Ethics Committee (#20891/2017).

## 3 Results

Overall, participants found having an advance statement to be positive, and a support to their recovery. Not all had used their advance statement, but all expressed reassurance that it was there if they needed it. Three participants had received compulsory treatment since drafting their advance statement, however they were unsure if it had been considered by the treating team. No

participant could conclusively say that their advance statement had been used by the treating team and that their preferences had been taken into account.

Preliminary findings of the content analysis show two clear emergent themes, with all participants using their advance statements to *authorise* future treatment or to *limit* the power of their treating team. These are overlapping but distinct concepts, with authorisation pertaining to active participation in the process, particularly in giving guidance to treating teams in terms of most effective treatment options. Limitation, conversely, was more likely to feature the exclusion of certain treatment options, treatment settings or specific people. Those participants who focused on authorisation used their advance statements as a sort of letter to their treating team, whereas those who focused on limitation used their advance statement as a kind of shield, to protect them from iatrogenic trauma.

A clear example of a participant authorising treatment is participant #10, who used her advance statement to express a clear preference for electroconvulsive therapy (ECT) over medication. This participant had developed this preference over some years of experiencing side effects of psychotropic medication and a number of experiences of being “immediately snapped back to reality” with ECT. Other examples of authorisation were participants who had a preference for a certain type of medication, or had food allergies or food preferences, or one participant communicating to the treating team that any medication prescribed needed to not interfere with her breastfeeding.

Participant #1, on the other hand, demonstrated clear attempts to limit her treating team, not just inform the judgement of the treating team:

*...my biggest fear is my control being taken away... you're only voluntary because you are agreeing to be voluntary... (#1)*

Those who sought to limit their treatment often had negative past experiences with the mental health system, such as one participant (#2) who had a traumatic experience at a certain hospital, and identified that that hospital would not be a therapeutic space for her in the future. This was also related to a sense of not being heard, and of iatrogenic trauma not being addressed by the mental health system:

*I came to doing an advance statement because I had a really bad experience where I was involuntary admitted into hospital and I obviously didn't want to be there. I felt at the time that I could express what I wanted but I didn't feel that I was listened to. (#3)*

For those who expressed the theme of authorisation, they tended to have had overall positive experiences with the mental health system, such as this participant:

*I tend to believe that the team, the treating team psychiatrist, psychologist, nurse whatever, social worker, OT, everyone is, has my best interest at heart. (#4)*

Aside from the main themes of authorisation and limitation, there was a real diversity in the content of advance statements, particularly in aspects which did not relate to their treatment preferences. Participants wanted to express preferences about who would be contacted, excluding ex-partners or estranged family members. They also focused on broader aspects of their recovery, such as care for pets and houseplants, or personal items such as breast pumps.

## 4 Discussion

The themes of limitation and authorisation also have profound lessons for policy and practice. The impact of unaddressed iatrogenic trauma appears to have driven many of the participants into a defensive posture and limited their inclination to cooperate with their treating teams. The positive benefits of clear communication with treating teams are well documented,<sup>6</sup> and advance statements present an opportunity to assist this process, and to reduce future coercive interventions.<sup>7</sup> If, however, people are using advance statements to defend themselves from iatrogenic harm, rather than participate in dialog about their treatment, this opportunity is limited. Finally, these preliminary findings highlight the diversity of recovery journeys, and the importance participants place on aspects not directly related to their treatment, such as care for pets. This highlights the necessity of consumer driven care which allows people to highlight what is most

important to them for their own recovery. Advance statements created by the MHLC are written without input from the treating team and are as such unadulterated expressions of a person's preferences, and provide an excellent opportunity to facilitate person-centred care.<sup>8</sup> The key finding from this study was that while the participants explained the way they have benefited from having an advance statement – even if they had not yet used it – the overall take up of advance statements is very low. More work is clearly required to increase the take up of advance statements, both in regard to supports for drafting the documents, and in regard to the reception they receive from treating teams. This issue is not limited to this jurisdiction,<sup>9</sup> and has proven difficult to address elsewhere,<sup>10</sup> with psychiatrists specifically showing limited support for advance statements.<sup>11</sup>

## 5 Conclusion

The opportunities presented by advance statements are clearly present in these preliminary findings. These opportunities can only be realised when people are assisted to create an advance statement,<sup>12</sup> and when the advance statement is considered by the treating team. The low take up of advance statements, and the indication from participants that consideration of their advance statements did not feature in their discussions with the treating team indicate that there is much work to be done to increase prevalence and acceptance into the future.

## 6 Notes

- <sup>1</sup> A patient, under the Act, is a person who is subject to compulsory treatment.
- <sup>2</sup> Parliament of Victoria. Legislative Council. (2014). Parliamentary debates (Hansard). Melbourne, Australia.
- <sup>3</sup> *Mental Health Act 2014* (Vic) ss 3, 19, 20, 21, 22, 46, 48, 55, 64, 65, 71, 73, 82, 88, 93, 94, 281, 287, 291, 307, 321, 323, 346.
- <sup>4</sup> DHHS, 'Victoria's Mental Health Services Annual Report 2016-17' (Melbourne, Australia: Department of Health and Human Services, October 2017), <https://www2.health.vic.gov.au/mental-health/priorities-and-transformation/mental-health-annual-report>.
- <sup>5</sup> Helen Macpherson Smith Trust, 'Advance Statements for Improved Recovery Journeys', 2015, <http://hmstrust.org.au/case-studies/mental-health-legal-centre-inc/>.
- <sup>6</sup> Michael H. Allen et al., 'What Do Consumers Say They Want and Need during a Psychiatric Emergency?', *Journal of Psychiatric Practice* 9, no. 1 (January 2003): 39–58.
- <sup>7</sup> Jeffrey W. Swanson et al., 'Psychiatric Advance Directives and Reduction of Coercive Crisis Interventions', *Journal of Mental Health* 17, no. 3 (1 January 2008): 255–67, <https://doi.org/10.1080/09638230802052195>.
- <sup>8</sup> Anna M. Scheyett et al., 'Psychiatric Advance Directives: A Tool for Consumer Empowerment and Recovery', *Psychiatric Rehabilitation Journal* 31, no. 1 (2007): 70–75, <https://doi.org/10.2975/31.1.2007.70.75>.
- <sup>9</sup> Mimi M. Kim et al., 'Understanding the Personal and Clinical Utility of Psychiatric Advance Directives: A Qualitative Perspective', *Psychiatry* 70, no. 1 (1 March 2007): 19–29, <https://doi.org/10.1521/psyc.2007.70.1.19>; Jeffrey W. Swanson et al., 'Facilitated Psychiatric Advance Directives: A Randomized Trial of an Intervention to Foster Advance Treatment Planning Among Persons with Severe Mental Illness', *American Journal of Psychiatry* 163, no. 11 (1 November 2006): 1943–51, <https://doi.org/10.1176/ajp.2006.163.11.1943>; Bronwyn Wauchope et al., 'Advance Agreements for Mental Health Care: An Examination of Process and Outcomes', *Australian & New Zealand Journal of Psychiatry* 45, no. 4 (1 April 2011): 281–88, <https://doi.org/10.3109/00048674.2010.534072>.
- <sup>10</sup> Maria J. O'Connell and Catherine H. Stein, 'Psychiatric Advance Directives: Perspectives of Community Stakeholders', *Administration and Policy in Mental Health and Mental Health Services Research* 32, no. 3 (1 January 2005): 241–65, <https://doi.org/10.1007/s10488-004-0843-4>; Debra Srebnik and Lisa Brodoff, 'Implementing Psychiatric Advance Directives: Service Provider Issues and Answers', *The Journal of Behavioral Health Services & Research* 30, no. 3 (1 July 2003): 253–68, <https://doi.org/10.1007/BF02287316>.
- <sup>11</sup> Marcus Sellars et al., 'Australian Psychiatrists' Support for Psychiatric Advance Directives: Responses to a Hypothetical Vignette', *Psychiatry, Psychology and Law* 0, no. 0 (20 July 2016): 1–13, <https://doi.org/10.1080/13218719.2016.1198224>.
- <sup>12</sup> Jeffrey W. Swanson et al., 'Psychiatric Advance Directives: A Survey of Persons With Schizophrenia, Family Members, and Treatment Providers', *International Journal of Forensic Mental Health* 2, no. 1 (1 April 2003): 73–86, <https://doi.org/10.1080/14999013.2003.10471180>.