

FLAGRANT VIOLATIONS OF BASIC HUMAN RIGHTS IMMINENT IN THE NEW W.A. MENTAL HEALTH ACT

Legislation is *now* being drafted on the new Mental Health Act. There may be no opportunity for further public consultation.

The following are certain human rights violations that the Citizens Committee on Human Rights Inc (CCHR) thought you may wish to be informed of, so that you can take action by contacting the Health Minister and your Member of Parliament.

- INVOLUNTARY COMMITMENT: There is still little or no recourse for people who are being accused of having a mental illness and being detained against their will, by law, as involuntary patients. In fact the recommendations erode human rights yet further by proposing to give psychiatrists and mental health workers the power to detain someone if *suspected* of being mentally ill, rather than currently only having the power to refer the person for an examination. The recommendations state now that there should be a maximum of 35 days before the initial review of a person's status as an involuntary patient. This is still too long. No recommendations have been made to implement a court in which people have the right to defend themselves against incarceration. So a person will still have to wait up to 35 days with no right to defend themselves in a court BEFORE incarceration. No person other than a judge or magistrate should have the right to order imprisonment of a person. (Recommendations 3.2 & 6.1B)
- CHILDREN AND INVOLUNTARY COMMITMENT: The recommendations and ramifications for children concerning involuntary commitment are now worse. Involuntary commitment of a child, regardless of age, will now be done under mental health legislation. This means involuntary commitment of a child will be the same as for adults, with the only difference being a recommendation for shorter review times.

So if a psychiatrist decides a child should be made involuntary, the child could be given mind-altering drugs, restrained and secluded, and, if they are over 12, given electroshock treatment *all* without fully informed parental consent even being required. The right to visit, phone or write to your child may be withdrawn if a psychiatrist decides it is in the best interest of the child to have no contact with their parents or guardians. Also, children could be put on Community Treatment Orders, which means they will be required by law to take drugs at home. (Recommendations Y.5, Y.3, Y.7, Y.8 & Y.9).

Parents' or legal guardians' informed consent should always be obtained for psychiatric treatment. The parent or legal guardian must have guaranteed access to the child and should be the only person who can admit a child. There should be no involuntary admittance of a person under 18. There should be no difference in parental rights with psychiatric treatment than there is with any other medical treatment. It is completely unacceptable to remove parental rights over their children where those parents are not subject to legal orders preventing them access to their children.

No child, regardless of age, should be made involuntary. According to United Nations Principles, special care must be taken in regards to children. Involuntary commitment can be a traumatic experience for an adult. The effect it may have on a troubled child is incalculable.

- PLACING CHILDREN WITH ADULTS: Children should not be treated in hospital with adults, and especially not in a hospital holding unstable adults. There is now a very real possibility that no legislation will be passed to ensure this does not happen. To consider exposing children to such an environment displays pitiful respect for them and lays them open to abuse in an environment where there is insufficient supervision. Legislation **MUST** be passed to ensure children are not placed with adults. (Recommendation Y.6)
- AGE OF A CHILD: The age of a minor is already determined by existing laws. How is it then that there is still a recommendation that a 14-year-old child could be considered *competent* by psychiatrists, who represent only one section of society? While the rest of society restricts 14-year-olds from smoking cigarettes, drinking alcohol, wagging school, having sex and driving a vehicle, psychiatry wants them to be allowed to consent to mind-altering drugs and electric shock treatment. (Recommendation Y.2)
- THE USE OF REASONABLE FORCE FOR DELIVERY OF TREATMENT:
Recommendation 5.16 still authorises the use of ‘reasonable force’ for the delivery of involuntary treatment. So not only could you or your child be detained against your will, but if you/they protest, ‘reasonable force’ could be used to force treatment on you or your child. This can only further overwhelm the person. This recommendation *legitimises* an existing practice, one that is already a serious human rights violation. Except in cases of extreme violence, this recommendation takes away the civil rights of a patient *and* provides legal protection for criminal assault against patients by staff, all in the name of medical treatment.
- ENFORCED DRUGGING: This still remains in the recommendations. People admitted to psychiatric hospitals, either voluntarily or involuntarily, are often forced to take medication they may not want or need. This is often justified as an emergency measure to quieten someone who may only be protesting being held against his or her will. These drugs are not like medical drugs, which commonly treat, prevent or cure disease or improve health. Psychiatric drugs only suppress symptoms – symptoms that can return once the drug has worn off. These drugs also have horrific side effects including suicidal thoughts, hostility and manic reactions to name a few. The use of these drugs in treating mental symptoms should be abolished, or at the very least should only be prescribed with fully informed consent. Currently this is denied and hence is a gross human rights violation. (Recommendation: 5.3)
- ELECTRO CONVULSIVE THERAPY (ECT): There are still no recommendations to fully outlaw ECT. Applying up to 460 volts of electricity to the head causes brain damage and permanent memory loss, and is not a therapy but a

barbaric torture. It should be banned from use on *all* persons, but it is especially destructive when used on the elderly, pregnant women and children. Psychiatrist Lee Coleman says “*the brain for a while is so injured that the patient is too confused to know or remember what is troubling him. Unfortunately when the brain begins to recover somewhat, the problems usually return since electricity has done nothing to solve them. This is why electro shock is given repeatedly to patients over many years*”.¹ (Recommendation 5.8 states it will still not be used as emergency psychiatric treatment, and Recommendation Y.9 still states it will be banned on children under 12, but it does need to be fully banned.)

- **RESTRAINTS**: Restraint will remain legal practice. The use of restraints should be abolished, and especially should be penalized where use on children occurs. People need to be dealt with as humans, not animals. Restraint is dangerous and simply would not be necessary if effort were made to develop techniques in which to train mental health workers to effectively handle people.
- **COMMUNITY TREATMENT ORDERS**: Community Treatment Orders, where a person is required by law to take drugs at home, should be abolished. They merely enforce drugging upon a person with them having no right to defend themselves in a court of law before being put on the order. The new proposals offer no improvement to human rights.
- **CLINICAL TRIALS ON INVOLUNTARY PATIENTS**: Recommendation 5.18 stated there had been discussion about using involuntary patients for clinical trials and experimental treatment without the consent of the patient, where approval is given by certain committees/boards. Though there is now to be no legislation written on this at this point, there is to be "further consideration and reporting" on the use of clinical trials. In the recommendation there is no indication that children will be excluded from this. It is appalling that any person would even consider that this be done. This is a throw back to the Nazi era where adults and children were experimented on by psychiatrists in the thousands, behind locked doors, the truth of which the world only found out years later. In fact NO treatment of an experimental nature should be conducted on vulnerable people. The fact of the situation is that if they are involuntary they are NOT able to leave when they wish to, nor refuse treatment. Experimental and trial treatment within psychiatry should be fully outlawed, and severe penalties enacted for any violation. Deep sleep ‘therapy’ was a psychiatric experiment that killed 48 people before any action was taken by authorities to halt it. The further “consideration & reporting” on this must cease. The government needs to ensure there is no possibility of this ever occurring.
- **DEFINITION OF TREATMENT**: The definition proposed for “treatment” – “...any therapy, whether a medical, psychological or social or other therapeutic intervention, whether alone or in combination, that is intended to alleviate or prevent deterioration of a mental illness” – in this case is extremely unsuitable, and is not a definition of psychiatric treatment in any case. The definition goes way outside psychiatric treatment and it would mean that psychiatry would have authorisation to use treatments outside its field. When this is combined with the latest “comment” in

the government's response: "the Chief Psychiatrist will be enabled to advocate for patients and ensure that further steps are taken when an unacceptable practice is identified or where an alternative practice is indicated" would appear to mean that psychiatry is still trying to gain control over other therapies that it has no training or expertise in. Psychiatric treatment is exactly what it is and the definition should be confined to such. (Recommendations 2.2 & 5.1)

- DEFINITION OF MENTAL ILLNESS: Psychiatrists still cannot agree on a definition of mental illness, yet they insist on having full power to "treat it". There is still no information as to what exactly the "NEW" definition will be, except that it will be based on international standards. Usually "international standards" refers to or includes the Diagnostic and Statistical Manual of Mental Disorders (DSM) which is used to "diagnose disorders." These disorders in the DSM are actually voted on by a show of hands and then placed in the DSM. There are no tests for any of the "disorders" in the DSM. Some of the disorders include: "Non Compliance with Treatment Disorder" (including not wanting to have ECT or drugs as the side-effects are bad); "Conduct Disorder"; and "Written Expression Disorder." Will the definition remain too broad and allow arbitrary opinion as it is based on the DSM? The definition should rule out the possibility of a treatable physical condition being the cause of the person's mental disturbance, as obviously if the person is physically unwell, then they are not mentally unwell. If this is not ruled out it can then result in unnecessary drugging or even electric shock treatment. (Recommendation 1.3).
- PSYCHOSURGERY: Psychosurgery should be banned, as it is in the Northern Territory. There is no new information regarding psychosurgery in the recommendations, so psychosurgery will still remain legal practice except on children under 12 years. It injures the healthy brain tissue, can cause memory loss, irreversible brain damage, destruction of basic social skills, suicide and post-operative death. Something else can always be done for the patient, and regardless of how few are performed today it should be a prohibited treatment. Why does the Chief Psychiatrist require this barbaric procedure to be *available* should the psychiatric industry choose to use it in the future? (Paragraph: 5.10 page 43 of *The Way Forward Synthesis of Review of Mental Health Act* & Recommendation Y.9)
- OTHER MENTAL HEALTH PROFESSIONALS: It is still recommended to allow certain nurses the power to restrain, detain and seclude. Additionally, the recommendation that allows psychiatrists to approve nurses over the phone to administer psychiatric drugs can only further erode basic human rights, especially when the person has not been physically seen and checked by a doctor. (Recommendation: 1.1, 1.2, 2.3 & 5.15).

SOLUTIONS

There is no dispute that at times some people who are troubled require special care. What that care is or should be is the point of contention.

Institutions should be turned into safe havens where people will voluntarily seek help without fear of indefinite incarceration. If admitted, they need a quiet environment, nutrition, good food, rest, exercise and work that boosts morale. Such institutions also should be well fitted with medical diagnostic equipment.

With proper medical – *not psychiatric* – screening, a majority of people brought to institutions could avoid the life of mind-altering drugs and destitution that psychiatry delivers.

Extensive medical evidence proves that *underlying and undiagnosed physical illnesses* can manifest as “psychiatric” symptoms, and therefore should be addressed with the correct *medical* treatment. Studies show that once the physical condition is handled, the mental symptoms disappear. Thus, by being properly treated medically, people can lead healthier, happier lives.

In order to ensure basic human rights, the following should be implemented with regards to involuntary commitment:

1. The right to a full physical examination by a qualified medical practitioner who can determine whether an underlying and untreated physical condition is causing the mental state or emotional symptoms, and that no involuntary commitment procedure can occur without this. A GP is a specialist in medical conditions and a psychiatrist is not and should not perform this examination.
2. The right to defend oneself against involuntary incarceration in a court of law where full laws of evidence and the right to legal representation apply, as is done in other states and countries.
3. The full right to refuse psychiatric drugs or electroconvulsive therapy and the right to have all consent and issuing of rights procedures videotaped for the medical records.

**For further information please contact the CCHR office on
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i Lee Coleman M.D. “Introduction” *The case against ECT* National Research Office. Los Angeles California (ca 1977)

The full report of the “The Way Forward for Mental Health Legislation in Western Australia. Report on the Review of the Mental Health Act 1996 - The Government’s Response to the Review Recommendations,” is available on the features page of the following website: <http://www.ministers.wa.gov.au/mcginty>. Or contact Kathy at Parliament House on 9222 7390 for a copy.