

New WA Mental Health Bill just lodged in parliament will erode children and parental rights

14 year olds can agree to electroshock and 16 year olds to psychosurgery, both without parental consent!

The WA Mental Health Act has been under review and the new Bill has just been lodged in parliament. The Bill could be passed in the lower house as early as the 13th November 2013. Please take action before then to ensure that children are protected and parental rights are upheld. Below are areas of grave concern:

16 YEAR OLDS TO CONSENT TO PSYCHOSURGERY:

Correctly banned in NSW and the NT for all ages, psychosurgery irreversibly damages the brain by incision, burning or inserting electrodes through which an electrical current is sent as in deep brain stimulation (DBS). It can cause memory loss, irreversible brain damage, bleeding in the brain and post-operative death. The new WA Bill allows for a 16 year old child, if considered by a psychiatrist to have the capacity to consent, to consent to psychosurgery. Parental consent is not needed. Once the child has consented it goes before a Mental Health Tribunal (MHT) for approval. Parental consent is also not needed for the MHT to approve the psychosurgery. The MHT can make an order excluding anyone (including parents) from this or any other hearing if any person including the treating psychiatrist says it is not in the child/adults best interest for them to attend the hearing and the Tribunal agrees.

Astoundingly the WA Bill allows for psychosurgery to be done more than once. The \$30,000 fine for performing psychosurgery outside the law in a previous draft bill has been dropped. DBS is not a government approved treatment for mental health in Australia. It is experimental and is only being done in Victorian trials. It costs around \$70,000. DBS is the reason why WA psychiatrists want to be able to perform psychosurgery. The WA Children's Commissioner called for the banning of psychosurgery and electroshock in children under 18. The Government has ignored this. **Psychosurgery including DBS should be completely banned.** [s205, s207, s208, s302, s417, s454(2) of *WA Mental Health Bill 2013* (MHB 2013), compare s205 of MHB 2013 & s167 of *Mental Health Bill 2011: Draft for public comment.*]

14 YEAR OLDS TO CONSENT TO ELECTROSHOCK (ECT):

Electroshock is the application of hundreds of volts of electricity to the head which can cause memory loss, brain damage and sometimes death. Any child aged 14 and over who is considered by a psychiatrist to have the capacity to consent, will be able to consent to electroshock. The same consent procedures apply as for psychosurgery above. Parental consent is not needed at any point. If a child (14 and over) is involuntarily detained they can be given electroshock with Mental Health Tribunal approval, no parental consent is needed. The new Bill says that "guidelines" should be followed with regards to administering the

electroshock, but it is not known what these guidelines contain as they have not been made public. In 2012 there were 2,593 Medicare funded electroshocks given in WA. **Electroshock should be banned for all age groups, but especially for children, the elderly and pregnant women.** [s302(3), s195, s286, s196(2)(a)(b), s199(2), s411, s417, s454(2) of MHB 2013]

RESTRAINT OF CHILDREN: Any child regardless of age can be restrained in a psychiatric institution with the use of mechanical restraint (manacles, belts, straps, etc.) and bodily restraint. Only an oral order is required for the restraint of a child. Force can be used to restrain or seclude a child which adds to the trauma. Chemical restraint – the use of strong psychiatric drugs to subdue and control the person – has no legal safeguards in the new Bill, but the Bill allows it as "emergency psychiatric treatment." Restraint is not therapeutic. Death can and does result from all forms of restraint. **The use of restraint in children should be illegal.** [s230, s214, s225, s202, s203, p. 60 of *Mental Health Bill 2013: Explanatory Memorandum* (MHB 2013 EM)]

INVOLUNTARY COMMITMENT OF CHILDREN: A medical practitioner can legally order any child (under 18) they "suspect" has a mental illness for examination at a psychiatric hospital. The medical practitioner can decide not to notify the parents this has occurred if they decide it is not in the child's best interest. After psychiatric examination, the child could then be involuntarily detained for up to 14 days. Parents will not be able to discharge their child and take them home. Parental consent is not required for transport, detainment or for any treatment while the child is involuntarily detained (which can include the child being drugged, restrained or secluded and if the child is 14 or over, they could be given electroshock). Parents lose all rights. The psychiatrist can also make a "Continuation Order" for continued detention in up to 28 day blocks of time. Psychiatrists also have the power to prevent parents from seeing or communicating with their child and will have the power to prevent a lawyer from visiting the patient if they consider it is a risk to the lawyer. The MHT hold hearings on the initial detainment of the child, but there is no guarantee the child will be allowed to go home. In 2011/12 there were 1,135 hearings for all ages and only 47 people had their involuntary status changed to voluntary. There is a \$6,000 fine if parents or anyone obstructs or hinders a person from performing any action under the Mental Health Act, this could include a parent trying to stop their child from being taken. **The term "suspected" (to have a mental illness) must be removed from the Bill. Parents should always have access to their child and be able to consent to their treatment unless they have a legal order preventing them access. Police should be contacted if there are any allegations of abuse by the**

patient. Only a judge or magistrate should have the right to detain anyone and then only with full legal representation for the person facing deprivation of liberty, paid for by the State. [s26(1)(2), p.16 of MHB 2013 EM, s142, s140, s170(b), s52 (1)(b), s61(1)(2), s87(a)(b), s89(3)(a)(b), s178, s262, s424, s426, s385, s34(1)(3), s576 of MHB 2013]

DETENTION BECAUSE OF PHYSICAL CONDITION: Outside of psychiatry, if anyone wants to force normal medical treatment on anyone it goes through the court system. The new Bill still allows for anyone to be detained and sent for a psychiatric examination if they have a physical condition. It is possible, if you refuse medical treatment for a physical condition, a psychiatrist or medical practitioner could “suspect” you of having a mental illness. This could lead not only to detainment and psychiatric treatment, but also having the unwanted medical treatment forced on you. The Mental Health Commission said in December 2012 that this was on a list of issues to be rectified *before* the Bill entered Parliament, but it has not been done. [s28, s26, s242 of MHB 2013 and Page 95, 110ZH of the *Guardianship and Administration Act, 1990*]

FULLY INFORMED CONSENT DENIED: A previous draft Bill had an excellent informed consent provision. This new Bill decimates this. Even the requirement for a signed written consent form has been removed. Consent has now been generalised and does not mandate parents and patients are provided all the necessary information including side-effects and alternatives, now leaving it up to the mental health worker to decide on how much information they want to give. This is unacceptable. There is a Charter of Mental Health Care Principles in the new Bill which includes a clause that patients must be told clearly about psychiatric treatments including any side-effects and alternatives. While in the Bill, it is NOT enshrined in the Bill simply because services and mental health staff only have to “have regard to” and “make every effort” to comply with the Charter. The law needs to make them comply with the excellent clauses in the Charter. [Compare pages:12 to 14 of the Draft Mental Health Bill 2011 to pages 18 & 19 of MHB 2013, page 11 of MHB 2013 EM, s11, s12 of MHB 2013]

DEFINITION OF MENTAL ILLNESS: “Internationally accepted standards” will be used to decide if a person has a mental illness or not. This includes the use of the *Diagnostic and Statistical Manual of Mental Disorders* (DSM 5). Its use will be the basis for involuntary detainment and psychiatric treatment for many. DSM 5 has been the subject of ridicule across the world including in Australia as it has “problems” and “loose diagnostic criteria.” It

medicalises normal life conditions such as “eating to excess more than 12 times in 3 months,” screaming by toddlers and grief over the loss of a loved one as well as such conditions as stuttering and difficulties in learning. Psychiatrist Professor Allen Frances (chair of the taskforce for DSM 4) said the following about the release of DSM 5, “Millions of people went to sleep last night thinking they were normal and woke up this morning with a new mental disorder.” To be detained there also needs to be a risk of “serious harm.” Serious harm would be determined solely by a psychiatrist and could include harm to property, finances, reputation or relationships. [pages 5 & 14 of (MHB 2013 EM)]

CARERS RIGHTS: The new Bill states that a carer, close family member, other personal support person or person nominated by the child or adult is to be notified if the patient has been detained, transported, released or been provided with urgent non-psychiatric treatment. However this can be completely overridden if a psychiatrist decides it is not in the patients’ best interests for the carer or nominated person to be notified. There is no circumstance valid to warrant not informing a carer unless they already have legal restrictions placed on them to prevent contact with the child or adult. [s142(1)(2), pages 390 to 392, s292(1), s266, s269, s285(3) of MHB 2013]

MENTAL HEALTH STAFF PROTECTED FROM LIABILITY IF THEY CAUSE HARM: The new Bill prevents anyone who has been harmed by a mental health worker from civilly suing them except for the use of harm from bodily restraint in a person suspected of being mentally ill. Only the State can be sued. [s579, s580(3) of MHB 2013]

DEATHS IN WA MENTAL HEALTH SYSTEM HIGHER THAN ROAD TOLL: Despite a skyrocketing mental health budget of over half a billion dollars, up 40% between 2008/09 and 2011/12, there was an increase in deaths in mental health services of 25% during the same time period (up from 163 to 204). Deaths have now reached 245 in 2012/13 which is higher than the 2012 road toll of 187. The money is being wasted and costing lives and this new Bill will make it worse. The money needs to be spent helping children and adults with workable solutions. Medical studies show that underlying and undiagnosed medical conditions can manifest as psychiatric symptoms and should be addressed with correct medical treatment. Care should be holistic and humane and involve finding the actual cause of the problem and rectifying that. With proper medical treatment and real help with the actual cause of the problem, children and adults can lead happier, healthy lives.

WHAT YOU CAN DO:

Phone, visit, write, email your objections by 13th November 2013 to:

Mental Health Minister, The Hon. Helen Morton, 7th floor, Dumas House 2 Havelock St West Perth WA 6005 • Phone: 08 6552 6900 • Email: Minister.Morton@dpc.wa.gov.au
Health Minister, The Hon. Dr Kim Hames, 13th floor, Dumas House 2 Havelock St West Perth WA 6005 • Phone: 08 6552 5300 • Email: Minister.Hames@dpc.wa.gov.au
Your local Member of Parliament: Find their addresses at: www.parliament.wa.gov.au/parliament/memblist.nsf/WAIIIMembers • The draft bill can be viewed at http://www.mentalhealth.wa.gov.au/mentalhealth_changes/mh_legislation.aspx

For more information on the new Bill, contact the Citizens Committee on Human Rights (CCHR) Australian National Office on (02) 9964 9844 or email: national@cchr.org.au