

# NEW VICTORIAN MENTAL HEALTH BILL IN PARLIAMENT WILL HARM CHILDREN AND ERODE PARENTAL RIGHTS

**Children will be able to agree to electroshock and psychosurgery without parental consent!**

The Victorian Mental Health Act has been under review. Public consultation occurred and a Draft Bill was written and released to the public for further feedback in 2010. The 2010 Draft Bill had proposals to ban electroshock and psychosurgery for children under 13, but has since been thrown out and the proposed bans dropped. **The New Bill has already been passed by the Lower House of Parliament and could be debated and passed in the Legislative Council as early as the 3rd April 2014.** Please take action starting now to ensure that children are protected and parental rights are upheld. Below are areas of grave concern:

**CHILDREN TO CONSENT TO PSYCHOSURGERY:** Psychosurgery is currently, and correctly, banned in NSW and the NT for all age groups. Psychosurgery can involve cutting or burning the brain or electrodes can be permanently placed in the brain sending an electrical current through it, as in the case of deep brain stimulation (DBS). It can cause memory loss, irreversible brain damage, bleeding in the brain and post-operative death. While the earlier 2010 Draft Bill proposed to ban psychosurgery for under 13 year olds, this New Bill keeps psychosurgery legal for all ages. It also allows for children to consent to psychosurgery without parental approval, if they are considered to have the "capacity to give informed consent." Once the child consents it goes before a Tribunal for approval. Parental consent is also not needed for the Tribunal to approve the psychosurgery.

DBS is the latest form of psychosurgery and is what is being performed in Victoria (the only place in Australia where psychosurgery is currently being done for mental illness). DBS is not an approved mental health treatment, is experimental, costs around \$70,000 and is being done in Victorian trials. Experts criticise DBS as a costly mistake, as it has not been proven to be safe and effective. Psychosurgery is being re-named to "neurosurgery" in the New Bill. This is an attempt to hide the true nature of this practice. The fines and prison terms for performing psychosurgery outside the law in the previous Draft Bill have been dropped. **Psychosurgery including DBS must be completely banned and criminal fines and penalties are crucial for psychosurgery being performed against the law.** [s68, s100, s102 of the *Mental Health Bill 2014* (MHB 2014) and s146 of the *Mental Health Bill: Exposure Draft* (MHBED)]

**CHILDREN TO CONSENT TO ELECTROSHOCK (ECT):** In this day and age, it is appalling that the New Bill still allows for children to be electroshocked – the brutal application of hundreds of volts of electricity to the head potentially causing brain damage, memory loss and sometimes death. ECT will be able to be given to children of any age in this New Bill. Children considered to have the "capacity to consent" will be able to do so without the need for any parental consent. If a child is involuntarily detained they could also be given ECT without parental consent. Final approval is given by a Tribunal and again parental consent is not needed for Tribunal approval. The previous proposed ban for under 13 year olds has been dropped out of the new Bill. In 2011/12 there were 18,803 electroshock treatments given in Victoria. In 2009/10, Victorian children aged 11-15 were given 48 electroshock treatments, 36 of these without parental consent being required. All proposed fines and prison terms for performing electroshock outside the law have been dropped. **ECT must be banned for use on children, pregnant women and the elderly. ECT should never be given without the full informed consent of involuntary patients. Criminal fines and penalties are needed for performance of ECT outside the law.** [s91(2), s94, s68 of MHB 2014 and s143, s144, s142 of MHBED]

**RESTRAINT OF CHILDREN:** Any child regardless of age can be restrained in a psychiatric institution with the use of mechanical restraint (manacles, harnesses, sheets and straps) and bodily restraint in the New Bill. Restraint can be used to administer psychiatric treatment in the New Bill. The New Bill fails to provide legal safeguards against children and adults being subjected to chemical restraint (the use of psychiatric drugs to subdue and control) in psychiatric institutions. Yet the Bill even allows for sedation to transport a child or adult to a psychiatric hospital. Restraint is not therapeutic and is very traumatic for an adult let alone a child. Death can and does result from all forms of restraint. There were 593 instances of mechanical restraint used in 2011/12 in Victoria, a 15 % increase on the previous year. Times of restraint ranged from one minute to 5.5 days with the average time being just over 6 hours. **It is outrageous there are no criminal penalties for illegally restraining (mechanically, physically or chemically) patients, where it results in harm, damage or death in the New Bill.** [s113, s350 of MHB 2014]

**CHILDREN PLACED IN PSYCHIATRIC WARDS WITH ADULTS:** There are no provisions in the New Bill that rule out children being held in wards with adults. Not



having legal protections that prevent children from being exposed to such an environment leaves them open to physical and sexual abuse in an environment where there can be insufficient supervision. **The New Bill must be amended to ensure that children are not placed in adult wards.**

**INVOLUNTARY COMMITMENT OF CHILDREN:** In the New Bill, a medical practitioner or mental health practitioner can write a legal order for a child to be taken to a psychiatric institution where they can be detained for up to 72 hours for psychiatric assessment if it appears that the child is mentally ill. During the 72 hours the child could be given potentially dangerous psychiatric drugs, secluded and restrained. Once the child has been "assessed" they can be further detained for up to 28 days. Not only can the child be taken, detained and treated without parental consent but a psychiatrist could also prevent the parents from visiting, phoning or writing to their child. If this situation were not abhorrent enough, there is no guarantee that when parents appeal their child's detention to a Tribunal or if a hearing is held by a Tribunal within 28 days per the law, the child will be allowed to return home. The Tribunal hearing could result in further detainment of the child for up to another 3 months which can then be done again in more 3 month blocks. At any time after the initial assessment including at the time of discharge, the child could be placed on a legal order to receive psychiatric treatment at home, usually including psychiatric drugs. Parental consent is also not needed for this. Parents and others will need to pay for their own legal advice if they don't qualify for Legal Aid. In comparison, the SA Government provides funding for a lawyer of the person's choice for mental health tribunal hearings. No child or adult should be detained and treated without parental consent. **Only a judge or magistrate should have the right to detain someone and then only with full legal representation for the person facing deprivation of liberty, paid for by the State. Criminal penalties are needed in the New Bill for illegally detaining a child or adult who could be subjected to physically invasive and damaging treatments.** [s28, s29, s34(1)(b)(2)(3), s37,s38(b), s51, s53, s55, s57, s60 of MHB 2014]

**DEATHS, ACCOUNTABILITY AND SEXUAL ASSAULT:** The Victorian mental health budget has soared since 2007/08, up from \$837 million to \$1.2 billion for 2013/14. With a soaring budget of this size one would not expect a further 211 deaths in the Victorian Mental Health Services in 2011/12. A recent report by the Victorian Mental Illness Awareness Council found 45% of the women they surveyed who had been in Victorian psychiatric hospitals, had been sexually assaulted. 61% reported the assault to nurses and 18% found the nurses "slightly helpful" while 82% found them "not at all helpful." **The New Bill does not have any requirements for alleged sexual assault or abuse of a patient by a mental health worker or another patient to be reported to the police.**

**ALTERNATIVES:** There is no doubt that some children who are troubled require special care. But they should be given holistic, humane care that improves their condition. Institutions should be safe havens where children and adults voluntarily seek help for themselves or their child without fear of indefinite incarceration or harmful and terrifying treatment. They need a quiet and safe environment, good nutrition, rest, exercise and help with life's problems. 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, not psychiatric techniques. Studies show that once the physical condition is addressed, the mental symptoms can disappear. With proper medical treatment and real help people can lead healthier, happier lives.

## WHAT YOU CAN DO?

**Please phone, visit, fax, write or email your objections to:**

Members of the Legislative Council available on this link: <http://www.parliament.vic.gov.au/members/council>

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**Shadow Health and Mental Health Minister:  
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The Bill can be downloaded from: [www.health.vic.gov.au/mentalhealth/mhactreform/](http://www.health.vic.gov.au/mentalhealth/mhactreform/)

**For more information or further copies of this summary, contact the Citizens Committee on Human Rights (CCHR)**

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