

# Restraint & Electroshock are Legal for Children in *NSW Mental Health Act*

## *Parental consent not needed*

**In June 2021, The World Health Organization (WHO)** released guidelines that lashed out against coercive psychiatric practices such as restraint, seclusion, forced electroshock and forced detainment and treatment, that it says **“are pervasive and are increasingly used in services in countries around the world, despite the lack of evidence that they offer any benefits, and the significant evidence that they lead to physical and psychological harm and even death.”**

The WHO highlighted the fact that coercive practices occur because **“they are mandated in the national [or state] laws of countries.”** Despite the challenges to changing laws and treatment paradigms, WHO says **“it is important for countries... to eliminate practices that restrict the right to legal capacity, such as involuntary admission and treatment.”** Coercive psychiatric practices continue to be rife in NSW.

**ELECTROSHOCK OF CHILDREN:** It is appalling that the current *NSW Mental Health Act* allows for children to be electroshocked (ECT) – the brutal application of hundreds of volts of electricity to the head potentially causing brain damage, memory loss and sometimes death.

In NSW an involuntarily detained child can be given electroshock without parental consent required at any stage of the approval process including at a Tribunal who give final approval. There were 6,846 Medicare funded electroshocks given in NSW in 2022/23. In 2018, there were 156 electroshocks given to teens aged 15-19 years old. As far as forced electroshock is concerned, in 2021/22, there were 804 Tribunal Hearings to consider applications for forced electroshock of involuntarily detained patients, 90% of which were approved including 3 for girls under 16 years of age. **ECT must be banned for all ages including children, the elderly and pregnant women.** [s89, s94, s96 of *NSW Mental Health Act 2007* (NSW MHA)]

**RESTRAINT AND SECLUSION OF CHILDREN:** The current *Mental Health Act* does not cover and provide protections against the use of mechanical restraint (the use of belts, harnesses, manacles, straps etc.) and chemical restraint (the use of psychiatric drugs to subdue and control) or seclusion, leaving these traumatic and abusive procedures in place without legal safeguards. Yet the Act allows for the use of reasonable force and the administration of sedatives while transporting someone to a mental health facility. Instead of legal protections covered by law, restraint usage is covered under a NSW Health Policy Directive plan. In 2021/22, the average duration of a seclusion in NSW was 10 hours, the longest in Australia and NSW had the highest rate of mechanical restraint. **Legal safeguards for restraint and seclusion are needed. Chemical, mechanical and physical restraint must be banned with criminal penalties for their use.** [s81 of NSW MHA]

**STERILISATION (Special Medical Treatment):** Can be performed on involuntarily detained patients over 16 years of age. Consent is not required from the patient or their carer. A psychiatrist applies to the Mental Health Review Tribunal to have the sterilisation performed. **Sterilisation should be completely removed from the *NSW Mental Health Act*.** [s98, s103 of NSW MHA]

**CHILDREN IN WARDS WITH ADULTS AND SEXUAL ABUSE:** The *NSW Mental Health Act* does not 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 is insufficient supervision. Also there is no mandatory reporting of sexual abuse or criminal fines in place to ensure reporting of alleged sexual assault of patients in the *NSW Mental Health Act*. **The *NSW Mental Health Act* must be amended to ensure children are not placed in wards with adults and to ensure mandatory reporting of alleged sexual abuse to the police.**

**INFORMED CONSENT DENIED:** The Act provides “Principles for Care and Treatment” [s68] which outline 10 points of care, including that patients should be provided with information about treatments, alternatives, the effects of treatment and informed of their legal rights. However, another clause [s195] states that these principles, including informed consent, are not a “right or entitlement enforceable at law.” **All fundamental patient rights must be enforceable by law.**

**CHILDREN CAN BE INVOLUNTARY DETAINED AND TREATED WITHOUT PARENTAL CONSENT:** A staggering 12,869 NSW people were taken to a psychiatric institution involuntarily in 2021/22. The law allows for children to be involuntarily detained and treated without parental consent. Parents are not able to discharge their involuntarily detained child and parental consent is not needed for further detainment or treatment including psychiatric drugs, restraint, seclusion and electroshock. While this situation is abhorrent enough, parents who wish to appeal to a Tribunal to have their child discharged have no guarantee that an appeal will result in the child allowed to return home. Of the 5,667 initial involuntary treatment detainments the Tribunal reviewed in 2021/22, only 57 were discharged (1%).



896 of these resulted in a legal order to receive drugs/treatment at home. **No child should be treated without parental consent.** [s12, s13, s14, s15, s34, s35, s84, s94 of NSW MHA]

**CRUELTY TO AN ANIMAL CARRIES AN 8 TIMES GREATER MONETARY FINE AND LONGER JAIL TERM THAN ILL-TREATING A PSYCHIATRIC PATIENT:** Under the *NSW Prevention of Cruelty to Animals Act*, if someone is cruel to an animal it carries a maximum penalty of \$44,000 or imprisonment for 1 year or both. Yet in stark contrast, if a psychiatrist or mental health worker ill-treats a psychiatric patient it carries a penalty of only \$5,500 or imprisonment for 6 months or both under the current *NSW Mental Health Act*—significantly less than the penalty for being cruel to an animal. Between 2011/12 and 2021/22, the NSW Health Care Complaints Commission reported complaints in psychiatry increased 67% and complaints for mental health medical practitioners increased 135%.

**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.



For references and more information go to: [cchr.org.au/nsw-mental-health-act](https://cchr.org.au/nsw-mental-health-act)

## TAKE ACTION

**Please phone, visit, write or email the below and your local Member of Parliament asking for changes to be made to the *NSW Mental Health Act*.**

### The Premier:

The Hon. Chris Minns MP  
GPO Box 5341, Sydney NSW 2001  
• Phone (02) 7225 6000  
• Email via: <https://www.nsw.gov.au/nsw-government/premier-of-nsw>

### The Minister for Health:

The Hon. Ryan Park MP  
GPO Box 5341, Sydney NSW 2001  
• Phone: (02) 7225 6050  
• Email via: <https://www.nsw.gov.au/nsw-government/ministers>

### The Minister for Mental Health:

The Hon. Rose Jackson MLC  
52 Martin Place Sydney NSW 2000  
• Phone: (02) 7225 6190  
• Email via: <https://www.nsw.gov.au/nsw-government/ministers>

**The NSW Mental Health Act can be found on this link:** [http://www9.austlii.edu.au/cgi-bin/viewdb/au/legis/nsw/consol\\_act/mha2007128/](http://www9.austlii.edu.au/cgi-bin/viewdb/au/legis/nsw/consol_act/mha2007128/)

### The Leader of the Opposition:

The Hon. Mark Speakman MP, Parliament of New South Wales, Macquarie Street, Sydney NSW 2000  
• Phone: (02) 9230 2104  
• Email: [liberal.leader@parliament.nsw.gov.au](mailto:liberal.leader@parliament.nsw.gov.au)

### The Shadow Minister for Health & Mental Health:

Ms Robyn Preston MP  
PO Box 505 Richmond NSW 2753  
• Phone: (02) 4578 0300  
• Email: [hawkesbury@parliament.nsw.gov.au](mailto:hawkesbury@parliament.nsw.gov.au)

**Local Legislative Assembly Members of parliament can be found on this link:**

<https://www.parliament.nsw.gov.au/members/pages/all-members.aspx>

**You can contact any or all of the Members of the Legislative Council as they each cover all of NSW. Their offices are at Parliament House. Their contact details are on this link:**

<https://www.parliament.nsw.gov.au/members/pages/all-members.aspx?house=LC>



For more information contact CCHR: Email: [national@cchr.org.au](mailto:national@cchr.org.au)

Phone: 02 9964 9844 • web: [cchr.org.au](https://cchr.org.au)

CCHR was co-founded in 1969 by the Church of Scientology and Professor of Psychiatry the late Dr Thomas Szasz to investigate and expose psychiatric violations of human rights.