

VICTORIAN ROYAL COMMISSION ON MENTAL HEALTH

TAKE ACTION TO STOP PSYCHIATRIC ABUSE SUBMISSIONS CLOSE 5 JULY 2019

This long-awaited opportunity for a full investigation into abuses in the psychiatric system is welcomed by everyone. \$13.6 million has been allocated to conduct the Royal Commission. It is vital that everyone advise them of areas of abuse that must be rectified so that urgently needed changes are made to protect vulnerable children and adults. Until there are laws to protect vulnerable children and adults, there are no real safeguards.

PSYCHIATRY AND MENTAL HEALTH WORKERS NEED TO BE MADE CRIMINALLY ACCOUNTABLE FOR DEATHS AND ABUSE UNDER THEIR CARE



Psychiatry needs to be held criminally accountable in mental health law:

Victorian psychiatrists are exempt from criminal fines and prison terms in the Victorian Mental Health Act. This is in stark contrast to other mental health acts in Australia. In South Australia, anyone who ill-treats or wilfully neglects a patient can be fined up to \$25,000 or imprisoned for 2 years; in W.A. if a patient is ill-treated or wilfully neglected there is a maximum penalty of \$24,000 or 2 years imprisonment; in QLD it is a \$26,110 fine or 2 years imprisonment for ill-treatment. In NSW, if anyone employed at a mental health facility wilfully strikes, wounds, ill-treats or neglects a person there is a \$5,500 fine and/or 6 months imprisonment.¹

In Victoria, under the *Prevention of Cruelty to Animals Act*, if a person commits an act of cruelty on any animal that wounds, mutilates, abuses, worries, torments or terrifies the animal, they can be fined up to \$40,297 or imprisoned for up to 12 months. If it is aggravated cruelty that results in death or serious disablement of an animal, they can be fined up to \$80,595 or imprisonment for up to 2 years.² Yet mistreatment of psychiatric patients continues without criminal penalty in the *Victorian Mental Health Act*.

Again, unlike other states of Australia, there are also no criminal fines or prison terms in the *Victorian Mental Health Act* related to electroshock, psychosurgery, restraint, seclusion or excessive or inappropriate use of psychiatric drugs. In fact there are no criminal fines or prison terms at all to protect patients who have been abused. The only criminal fines that exist in the Act relate to disclosing medical information, preventing someone from making a complaint, giving false information to the Mental Health Review Tribunal and similar.

Recommendation: The Royal Commission can make recommendations to reform the Victorian Mental Health Act under their official terms of reference. The Royal Commission recommends that psychiatrists and all psychiatric staff be held criminally responsible for the deaths and damage they cause to patients, with mandatory reporting to police of all crimes/suspected crimes and criminal fines and prison terms for all forms of abuse to be included in the *Victorian Mental Health Act*.

PSYCHIATRY HAS PROVEN IT CANNOT POLICE ITSELF

Previous Inquiries: A Victorian inquiry was called in late 2011 after exposure of high rates of unexpected and unnatural deaths in the state's mental health wards, which also raised serious questions about standards of care and allegations of cover-ups.³ It was led by the then Chief Psychiatrist Ruth Vine, and looked at 41 deaths in psychiatric facilities including 8 suicides between 2008 and 2010.⁴ There were another 45 unexpected and unnatural deaths in psychiatric facilities including 36 suicides between 2011 and 2014.⁵ The deaths continued with 36 including 12 suicides in 2017/18.⁶ Clearly the investigation was a white-wash as the deaths continued.

Despite the fact that Australia's drug regulatory agency has issued 3 psychiatric drug warnings for the risk of suicidal behaviour with antidepressants, there was no evidence that the Chief Psychiatrist looked into the link between suicides and psychiatric drugs being taken by those who took their lives.⁷

Federally there have been 32 statutory inquiries into mental health between 2006 and 2012 alone but very little changes to protect children and adults from abuse.⁸

Sexual Abuse: A 2013 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 and 82% of those who reported a sexual assault were not helped by nurses. The study also found more than 67% had been sexually harassed and 85% reported feeling unsafe in a psychiatric hospital.⁹ Nothing has changed. In December 2017, Victoria's chief psychiatrist conceded that the number of serious incidents



that land on his desk continues to rise. In the *WA Mental Health Act* there is a \$6,000 criminal fine for failing to report unlawful sexual contact with a patient by staff. In contrast there is no mandatory reporting of sexual assault in the *Victorian Mental Health Act*.¹¹

Australian psychiatrist Prof. Carolyn Quadrio's research found that one in every ten male therapists will have sex with or develop an intimate link with a female patient.¹² The findings of a study of 958 patients who had been sexually involved with a therapist suggested that 90% were harmed and about 14% will attempt suicide.¹³ The only way to rectify this is enacting laws like the *New York Penal Code* which says that psychiatrists, psychologists and therapists are guilty of statutory rape if they have sex with a patient during a course of treatment.¹⁴ Consent is not a valid excuse.

In no other area of the community would any form of sexual abuse be tolerated.

Recommendation: The Royal Commission recommends that sexual contact, sexual exploitation, sexual misconduct or sexual relations with a patient or former patient specifically by a psychiatrist, psychologist or other behavioural therapist are made criminal offences in the *Victorian Crimes Act*. "Therapeutic Deception," where the therapist made the patient think the sexual activity was part of their treatment should carry higher penalties. Consent of the victim shall not be a defence in prosecution. In addition, the *Victorian Mental Health Act* is amended so that concrete safeguards exist to mandatory report unlawful sexual contact with a patient by a staff member of a psychiatric facility.



PSYCHOSURGERY

All forms of psychosurgery are correctly banned in NSW and the NT for all age groups and the forms involving burning or cutting the brain are banned in Qld for all ages. It is banned in SA and WA for under 16's.¹⁵ There are no bans in Victoria. Psychosurgery can also involve electrodes being inserted 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. In 2014 the NSW Ministry of Health commissioned an investigation into the efficacy of DBS which concluded, "*There is insufficient evidence at this point in time to support the use of DBS as a clinical treatment for any psychiatric disorder.*"¹⁶

The *Victorian Mental Health Act* allows for children to consent to all forms of 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, again parental consent is not needed.¹⁷ In 2017/18 there were 8 people who received deep brain stimulation in Victoria.¹⁸ Unlike every other state in Australia, incredibly, Victoria has no criminal fines or prison terms if psychosurgery is performed outside the law.¹⁹

Recommendation: The Royal Commission recommends to Parliament that the *Victorian Mental Health Act* is amended to ban all forms of psychosurgery for all ages with criminal fines and prison terms for violation of the ban.

TORTUROUS ELECTROSHOCK (ECT)

Electroshock is the application of hundreds of volts of electricity to the brain. It can cause severe and permanent memory loss, brain damage, suicide, cardiovascular complications, intellectual impairment and even death. One Victorian woman who was forced to undergo electroshock said she has had security guards wheel her down to the treatment room holding her down so she didn't escape. "I felt like I was being wheeled down to the gas chamber really," she said. She would even eat from a stash of food to avoid the general anaesthetic and when staff found her food, she resorted to eating grass to avoid the electroshock.²⁰



In 2017/18 there were 13,281 electroshock "treatments" given to Victorians including 2 children under 18.²¹ This is by no means all the electroshock given in Victoria. For example, in 2013/14 there were 21,755 electroshocks including those given in private facilities, 145 of these given to children aged 10-19.²²

Since 1 July 2014, when the new *Victorian Mental Health Act* came into force, electroshock given in private facilities has no longer been required to be reported to the Chief Psychiatrist. Only public facility electroshock statistics are reported to the Chief Psychiatrist and published in their annual report.²³

A 2010 study involving a literature review of ECT studies on the efficacy of ECT concluded there is no evidence at all that it prevents suicide. It also found that there have been significant new findings confirming that brain damage, in the form of memory dysfunction, is common, persistent and significant and that it is related to ECT rather than depression. Further it stated, "The continued use of ECT therefore represents a failure to introduce the ideals of evidence-based medicine into psychiatry."²⁴

The United Nations Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment in 2013 reported to the United Nations on abuse in health care settings. Mr Juan Mendez stated, "*States should impose an absolute ban on all forced and non-consensual medical interventions against persons with disabilities, including the non-consensual administration of psychosurgery, electroshock and mind-altering drugs, for both long and short-term application.*"²⁵

W.A. bans the use of electroshock on children under 14 and A.C.T. bans its use on children under 12.²⁶ Sicily and Slovenia have banned electroshock completely and there are other bans and restrictions around the world.²⁷

Under the *Victorian Mental Health Act* children under 18 can consent to electroshock and parental approval is not needed at any stage including when it goes before the Mental Health Tribunal for final approval. Electroshock can also be given to involuntarily detained children, again no parental consent is needed.²⁸ This is despite in 2005 the World Health Organization stating, "There are no indications for the use of ECT on minors, and hence this should be prohibited through legislation."²⁹

There were over 600 applications approved for forced electroshock in Victoria in 2017/18. Unlike in South Australia, legal representation is not an automatic right in Victoria if one is involuntarily detained and electroshock is proposed. Only 15% of patients being forcibly treated, including with electroshock, had legal representation at their Mental Health Review Tribunal hearings.³⁰

In 2016 Victorian Legal Aid lawyer Chris Povey said there were serious human rights implications posed by compulsory treatment orders, particularly electroshock orders, "It's hugely concerning that we are forcing people to accept ECT and hundreds are missing out on legal representation."³¹ In 2018 the Victorian coroner ruled that the death of a Melbourne grandfather who attempted suicide and later whose life support system was turned off, was a preventable death. He was submitted to more than 200 electroshocks and the coroner found that there was no evidence the electroshock would provide any relief and it had become largely experimental.³²

In November 2018 Justice Bell of the Supreme Court of Victoria ruled that the orders forcing two Victorian patients to undergo electroshock were made in breach of their human rights. He said, "A person does not lack the capacity to give informed consent simply by making a decision that others consider to be unwise according to their individual values and situation."³³

Recommendation: The Royal Commission recommends that electroshock is banned for all ages in the *Victorian Mental Health Act* with criminal fines and prison terms for violation of this.

RESTRAINT AND SECLUSION

The terror experienced by those forcibly restrained in a psychiatric ward can have a deep and lasting impact on an already fragile and vulnerable person. From the patient's perspective, if they don't die, they certainly never forget a restraint experience. Restraint use is legal for everyone including children, pregnant women and the elderly in Victoria.

- Physical restraint is being forcibly held/held down by a person to immobilise.
- Mechanical restraint is the use of devices such as belts or straps, often used to tie the person to a bed or chair.
- Chemical restraint is the use of psychiatric drugs to subdue or control.

Damning comments in 2013 by the United Nations Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, leave no doubt as to the cruelty of restraint:

"Furthermore, deprivation of liberty that is based on the grounds of a disability and that inflicts severe pain or suffering falls under the scope of the Convention against Torture. In making such an assessment, factors such as fear and anxiety produced by indefinite detention, the infliction of forced medication or electroshock, the use of restraints and seclusion, the segregation from family and community, should be taken into account.

"The mandate has previously declared that there can be no therapeutic justification for the use of solitary confinement and prolonged restraint of persons with disabilities in psychiatric institutions; both prolonged seclusion and restraint constitute torture and ill-treatment. In my 2012 report (A/66/88) I addressed the issue of solitary confinement and stated that its imposition, of any duration, on persons with mental disabilities is cruel, inhuman or degrading treatment."

For the last 3 years, Victoria had the highest physical restraint rate in Australia in public acute psychiatric facilities (Queensland did not report) and the highest use of mechanical restraint rate in 2017/18 of all states of Australia. Chemical restraint is not covered in the *Victorian Mental Health Act* and is not reported.³⁴

As far as seclusion is concerned, Victoria had the longest average seclusion duration (hours) in Australia for the last 5 years in public acute psychiatric facilities.³⁵

There are humane ways to assist patients in distress and these need to be implemented.

Recommendation: The Royal Commission recommends the *Victorian Mental Health Act* is amended so that all forms of restraint of a psychiatric patient are banned and it is classed a criminal offence. Seclusion should also be illegal with criminal penalties.

PSYCHIATRIC DRUGS

In 2016/17 there were a staggering 1.009 million Victorians on a psychiatric drug, up from 943,327 in 2013/14.³⁶

There have been 67 warnings issued for psychiatric drugs by Australia's drug regulatory



agency, the Therapeutic Goods Administration (TGA). These warnings include the risk of hallucinations, increased blood pressure, agitation, akathisia (inability to remain motionless), aggression, life threatening heart problems, addiction, suicidal ideation and possible death.³⁷

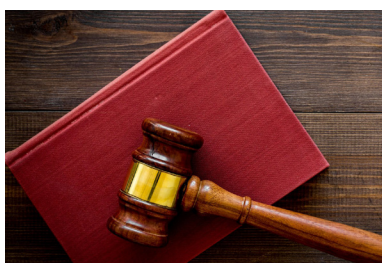
As of December 2017 there were 41,317 adverse drug reactions linked to psychiatric drugs reported to the TGA, 1,439 of these were deaths.³⁸

The TGA's adverse drug reaction database for antidepressants reveals that as of Oct 2016 there have been 94 suicides linked to antidepressants, an increase of 118% since April 2011. Of these, four were children aged 14 to 16. There were 848 reports in total for suicide attempts, suicidal ideation and suicidal behaviour.³⁹

Side effects are not required by law to be reported (except for manufacturers who must) and the general public don't always know that they can report them directly. Experts say that only between 1% and 10% of side effects are reported to the TGA.⁴⁰ The number of side effects and deaths can only be much higher.

In 2015 there were 10,948 Victorian children aged 16 and under on antidepressants. Of those, 385 were aged between 2 and 6 years old. Despite the fact no antidepressant has been approved for use on children under 18 for depression. A further 123,341 Victorians were on an antipsychotic drug, 3,303 aged 16 and under with 368 of those aged 2–6 years old.⁴¹

Recommendation: The Royal Commission recommends that 1) for every child and adult suicide, autopsies need to include tests for the presence of psychiatric drugs. 2) Subsequent Coroner's reports need to indicate the presence of a psychiatric drug at time of suicide (by methods other than drug poisoning). This will then give a true picture of the harm these drugs actually cause to children and adults. 3) Each child and adult death resulting from psychiatric drug related causes is investigated for criminal culpability.



INVOLUNTARY COMMITMENT

Involuntary commitment is when a child or adult is locked up in a psychiatric hospital. No consent is required, the person can be forcibly treated against their will and they are not allowed to go home. There are also legal orders that require someone to take psychiatric drugs or treatment by law at home, again no consent is required. In Victoria these legal orders are called Involuntary Treatment Orders.

In 2017/18 in Victoria, there were 26,098 hospitalisations in acute mental health units. More than 13,000 of these admissions were compulsory with involuntary treatment given.⁴² In the same year 1,766 involuntary admissions in a psychiatric facility had an appalling duration of 21-26 weeks. While a person can appeal to the Mental Health Tribunal to be released from the forced treatment orders, only 5% or 340 Involuntary Treatment Orders of the total 6,127 made for 2017/18 were revoked.⁴³

Recommendation: The Royal Commission recommends that the *Victorian Mental Health Act* is amended so that only a judge or magistrate has 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 to be recommended in the *Victorian Mental Health Act* for illegally detaining a child or adult who could be/ is subjected to physically invasive and damaging treatments.

ESCALATING COST OF MENTAL HEALTH AND CONSTANT DEMANDS FOR MORE MONEY

For years experts have said there is inadequate or no accountability for the money spent on mental health.⁴⁴ Despite the lack of accountability, funding continues to soar and still the psychiatric system has not improved. Spending on mental health by the Victorian government increased by over 16% in just 3 years from 2015/16 to 2017/18 (up from \$1.312 billion to \$1.525 billion).⁴⁵ Factually, if the money spent on psychiatry were working there would be a decline in those who need care.



Complaints to the Victorian Mental Health Complaints Commissioner continue to increase. They received 1,963 complaints in 2017/18, a 19% increase on the previous year (1,638) and a staggering 96% increase since 2014/15 (999).⁴⁶ A shocking 14.6% (3,256) Victorians patients discharged from an acute psychiatric unit were re-admitted within 28 days.⁴⁷

The Productivity Commission's Report on Government Services 2019, reveals that in 2016/17 (the latest year reported on) 42.5% of Victorian children aged 0-17 discharged from a psychiatric ward did not significantly improve. Furthermore, 55.9% of children of the same age also did not significantly improve after receiving short term community care and 62.7% did not significantly improve after long term community care.⁴⁸

With psychiatry having no real workable humane solutions, a continual cry for more funding and the lack thereof being blamed as the cause of the problem, proven solutions that help and don't harm must be implemented. The existing money must be spent on solutions that do work.

No other industry would be allowed such a poor performance for money invested. In contrast, money given to other areas of medicine shows noticeable progress, such as improving survival rates from cardiovascular disease over the past 20 years.⁴⁹

It is not sound economic practice to continue to increase funding where a lack of improvement and ineffective solutions are forthcoming.

Recommendation: The Royal Commission's recommendations to include redirection of budget money spent to implement proven non-harmful solutions to help vulnerable children and adults.

ALTERNATIVES- RESTORING HUMAN RIGHTS AND DIGNITY

There is no doubt that some children and adults who are troubled, sometimes severely so, require special care. But they should be given holistic, humane care that improves their condition. Institutions should be safe havens where people 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.

The key is finding the cause of the problem for each child and adult and helping them to rectify the cause. The cause of the problem can vary greatly from person to person and no one should be satisfied with a mere explanation of symptoms.

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.

In general medicine the standard for informed consent includes communicating the nature of the diagnoses, the purpose of a proposed treatment or procedure, the risks and benefits of the proposed treatment, and informing the patient of alternative treatments, so they can make a fully informed, educated choice.

Psychiatrists routinely do not inform patients of non-drug treatments, nor do they conduct thorough medical examinations to ensure that a person's problem does not stem from an untreated medical condition that is manifesting as a "psychiatric symptom." They do not accurately inform patients of the nature of the diagnoses, which would require informing the patient that psychiatric diagnoses are completely subjective (based on behaviours only) and have no scientific/medical validity (no X-rays, brain scans, chemical imbalance tests to prove anyone has a mental disorder).⁵⁰

All patients should have what is called a "differential diagnosis." The doctor obtains a thorough history and conducts a complete physical exam, rules out all the possible problems that might cause a set of symptoms and explains any possible side effects of the recommended treatments.

There are numerous alternatives to psychiatric diagnoses and treatment, including standard medical care that does not require a stigmatising and subjective psychiatric label or a mind-altering drug. People do need help with life's problems also. Governments should endorse and fund non-drug treatments as alternatives to potentially dangerous psychiatric drugs and treatments that have been proven to seriously harm and even cause death.



TAKE ACTION NOW SUBMISSIONS CLOSE 5 JULY 2019

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The Victorian Mental Health Act can be found at: http://www5.austlii.edu.au/au/legis/vic/consol_act/mha2014128/index.html

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

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