

# Psychiatrists Want Ban on Dangerous Psychosurgery Lifted under Current NSW Mental Health Act Review.

Public consultation may be denied prior to the draft legislation/amendments being placed before Parliament.

The NSW Mental Health Act is under review and some of the points raised in the Discussion Paper for the review are of considerable concern. Clear protections and full transparency are called for so that patient and parental rights are protected in our mental health law. This is a summary of key points proposed or currently in the existing law that need to be changed.

**PSYCHOSURGERY:** Psychosurgery is currently and correctly banned in NSW and the NT for all age groups, yet psychiatrists want this ban lifted so they can perform brain-damaging surgery and deep brain stimulation (DBS), which even a leading US DBS psychiatrist, Steven Rasmussen admits: "This really is a kind of mind control. . . ." Experts criticize DBS as a costly mistake, as it has not been proven to be safe and effective. Psychosurgery destroys healthy brain tissue and is an obsolete and dangerous—even deadly—practice. 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 DBS. It can cause memory loss, irreversible brain damage, bleeding in the brain and post-operative death. Psychosurgery must remain prohibited in NSW. [Discussion Paper [DP]: September 2012, Issues arising under the NSW Mental Health Act 2007, pp.41, 42 and s83 (1) of NSW Mental Health Act 2007 (MHA 2007)]

**ELECTROSHOCK (ECT) OF CHILDREN:** In this day and age, it is appalling that the current law 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. The current law allows for 14-year-old voluntary patients considered to have the capacity to consent, to agree to ECT if two medical practitioners (one a psychiatrist) sign a certificate saying it is needed. No further consent is needed, including the child's parents. ECT can also be given to children and adults who are involuntary patients without personal or parental consent, if two medical practitioners (one a psychiatrist) sign a certificate saying it is needed and apply to the Mental Health Review Tribunal (MHRT) for consent. A total of 30,539 electroshocks were given in NSW in 2009/10. ECT should be banned, but especially for use on children, pregnant women and the elderly. Should it remain, ECT should never be given without the full informed consent of involuntary patients. [s93, s94, s96 of MHA 2007 and DP, p. 40]

**STERILISATION (Special Medical Treatment):** Can currently be performed on involuntarily detained patients over age 16. Consent is not required from the patient or the primary carer. An authorised medical practitioner applies to the MHRT to have the sterilisation performed. Sterilisation should be completely removed from the Mental Health Act, as has been done in WA's proposed new Mental Health Act. It is a gross human rights violation to enforce sterilisation. The state should not have the right to supersede patient/guardian consent for an irreversible medical procedure. [s102, s103 of MHA 2007 & Mental Health Review Tribunal Hearing Kit, Section 7, p. 7.4]

**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. The Act allows for the use of reasonable force and the administration of sedatives while transporting someone to a mental health facility, which could constitute chemical and physical restraint. Instead of legal protections covered by law, restraint usage is covered under a NSW Health Policy Directive, compliance of which is a condition of subsidy for public health organisations. Private health organisations do not have to adhere to this Policy Directive but are expected to have policies in place. The NSW Ministry of Health does not collect or report publicly data on the number of mechanical restraints administered in psychiatric institutions. In 2009/10 there were 6,522 seclusions in NSW psychiatric facilities. The Mental Health Act needs to provide legal safeguards for restraint and seclusion, including prohibiting the use of punitive restraint. Both chemical and physical restraint needs to be prohibited for use on children, pregnant women and the elderly. [s81 (3), of MHA 2007 & Policy Directive, Aggression, Seclusion & Restraint in Mental Health Facilities in NSW, NSW Government Ministry of Health, pp. 5, 29]

**INVOLUNTARY COMMITMENT OF CHILDREN:** Under the current Mental Health Act, a medical practitioner can legally order a child or adult to be sent for a psychiatric examination, at which point a second legal order (called a Form 1) can detain them in a psychiatric institution if two medical practitioners (one a psychiatrist) agree the child or adult should be involuntarily committed. The child can be initially detained for three days (if considered 'mentally disordered') or if 'mentally ill,' they can be detained until the MHRT holds a Mental Health Inquiry (usually this takes two – three weeks) to decide if the child/adult should be detained for up to a further three months. If a child is admitted voluntarily, psychiatrists can change their status to involuntary and detain them. Parents are not able to discharge their child and take them home and parental consent is not needed for further detainment or treatment including psychiatric drugs, restraint, seclusion and electroshock.



**APPEALS:** While this situation is abhorrent enough, parents who wish to appeal to have their child discharged have no guarantee that a Mental Health Inquiry or appeal will result in the child allowed to return home. The Tribunal can also refuse to hear the appeal before the date on which the child is to be next reviewed, leaving the child to be “treated” without parental consent. Of the 4,130 individuals the MHRT held a Mental Health Inquiry for in 2011/12 after their initial detention, only 50 were discharged (1.2%). Another 581 were discharged on a legal order to receive drugs/treatment at home. NSW does not keep public figures regarding the number of children involuntarily detained. No child should be involuntarily detained and treated without parental/guardian consent and adjudicated only by judge or magistrate, with the parents and child legally represented., Parents should have the same rights regarding psychiatric treatment as that provided for them deciding medical treatment for their child. The Mental Health Act needs to be changed accordingly. [s18, s19 (4), s27, s31, s 30, s34, s35 (5) c, s44, s150]

**CHILDREN AND COMMUNITY TREATMENT ORDERS (CTO):** A CTO is a legal order that the MHRT issues to force a child or adult to take psychiatric drugs or accept treatment at home, which can be for a period up to 12 months. Parental consent is not required in the case of a child. Psychiatrists now want community or health care agencies to have the power to forcibly treat a child or adult without a CTO, disingenuously calling it an “Initial Involuntary Treatment Order.” Drugs could be forcibly administered for at least 14 days while the child/adult is awaiting a MHRT Inquiry. No child should be placed on a CTO. Initial Involuntary Treatment orders should not be written into the Mental Health Act. [s51, 53(6) of MHA 2007 & p. 27 of DP]

**INFORMED CONSENT DENIED:** The current 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.” These fundamental rights should be enforceable by law.

**CONFLICTS OF INTEREST FOR ECT AND PRESCRIBING OF PSYCHIATRIC DRUGS:** The current Mental Health Act states that full disclosure must be made on the consent form signed by the patient of any financial relationships between the person proposing or administering electroshock and the facility where he or she works. Psychiatrists want this transparency and accountability removed. Yet the current clause should go a great deal further to declare if the administering psychiatrist or family members have any financial relationships with the makers of the ECT device or any devices that are used to administer brain-intervention procedures. The conflict disclosure should not be limited to ECT, but to all psychiatric treatments administered, especially for psychiatric drugs and affiliations with pharmaceutical companies that manufacture them. There is no valid justification to hide these potential conflicts of interest. Patients have a right to know. A register of pharmaceutical company conflicts of interest could be kept at all psychiatric facilities that patients could view and sign as part of their consent form that they have read the applicable entries. [s91 (2) & (3)]

**PUBLIC CONSULTATION MAY NOT OCCUR PRIOR TO A DRAFT BILL/AMENDMENTS BEING VOTED ON IN PARLIAMENT:** In 2012 the public was asked to provide feedback on the current NSW Mental Health Act. The NSW Ministry of Health is currently preparing a report on the feedback, which will be provided to Parliament in mid June 2013 and will be used to draft legislation/amendments. No guarantee has been given that the public will be able to see and comment on any proposed legislation or amendments before going to Parliament for vote. Any draft legislation or amendments must be made public. [DP, p.12]

**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 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 procedures that mask but never cure their problems. 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.

## ACTIONS YOU CAN TAKE

**Please write to the Minister for Mental Health and Health Minister expressing your objections and what you would like changed in the current NSW Mental Health Act by June 12th 2013**

**The Minister for Mental Health:** The Hon. Kevin Humphries, MP, Level 33 Governor Macquarie Tower, 1 Farrer Place, Sydney NSW 2000.  
Email: [office@humphries.minister.nsw.gov.au](mailto:office@humphries.minister.nsw.gov.au)

**The Minister for Health:** The Hon Jillian Skinner, Level 33 Governor Macquarie Tower, 1 Farrer Place, Sydney NSW 2000.  
Email: [office@skinner.minister.nsw.gov.au](mailto:office@skinner.minister.nsw.gov.au)

**And your local Member of Parliament:** Find their contacts at: <http://www.parliament.nsw.gov.au/prod/parlament/members.nsf/V3ListDownloads>

The current NSW Mental Health Act 2007 can be viewed at: [http://www.austlii.edu.au/au/legis/nsw/consol\\_act/mha2007128/](http://www.austlii.edu.au/au/legis/nsw/consol_act/mha2007128/) and the Discussion Paper can be viewed at: <http://www.health.nsw.gov.au/mhdao/Pages/Review-of-the-NSW-Mental-Health-Act-2007.aspx>

**For more information on this summary contact:**  
**The Citizens Committee on Human Rights (CCHR) NSW office on Phone: (02) 9211 3673 Email: [enquiry@cchrnsw.org.au](mailto:enquiry@cchrnsw.org.au) or the CCHR Australian National Office on Phone: (02) 9964 9844 Email: [national@cchr.org.au](mailto:national@cchr.org.au)**