

# Victorian Mental Health Act Allows Children of Any Age to Consent to Electroshock, Psychiatric Drugs and Psychosurgery Without Parental Consent

Below are areas of grave concern in the current Victorian Mental Health Act that need to be changed to protect children and parental rights:

**CHILDREN CAN CONSENT TO ELECTROSHOCK (ECT):** In this day and age, it is appalling that the 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 World Health Organization stated, “There are no indications for the use of ECT on minors, and hence this should be prohibited through legislation.” Sicily banned ECT completely in October 2013. Western Australia has recently banned the use of ECT on children under 14 years of age and there are other bans and restrictions around the world.

**ECT** can currently be given to children of any age in Victoria. Children considered by psychiatry to have the “capacity to give informed consent” are 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. In 2013/14 there were 21,755 electroshock treatments given in Victoria, 134 of those to children aged 10-19. Unlike six other states in Australia who have fines and prison terms of up \$50,000 or four years imprisonment for performing ECT outside of the Act, there are no fines or prison terms at all related to ECT in the Victorian Act. **Electroshock needs to be banned. Its use should be prohibited immediately 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 Act.** (Part 5, Div.1: s68, s69, s70, s71; Part 5, Div.5: s90, s94, s96 of *Victorian Mental Health Act 2014* [MHA 2014])

**CHILDREN CAN CONSENT TO PSYCHOSURGERY:** Psychosurgery is currently, and correctly, banned in NSW and the NT for all age groups. It is banned in SA and recently in WA for under 16’s and the forms involving burning or cutting the brain are proposed to be banned in Qld for all ages. 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. 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.

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. Currently psychosurgery is only being performed in Victoria. Despite this, Victoria is the only state in Australia where there are no criminal fines or prison terms for performing psychosurgery outside the law. Psychosurgery was re-named “neurosurgery” in 2014. This was and is an attempt to hide the true nature of this practice. **Psychosurgery including DBS must be completely banned and criminal fines and penalties implemented for performing psychosurgery outside of the law.** (Part 5, Div.1: s68, s69, s70, s71; p.9, p.10; Part 5, Div. 6: s100, s102 of MHA 2014)

**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 physical restraint in the new Act. Restraint can be used to administer psychiatric or medical treatment. The Act 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 Act 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 631 instances of mechanical restraint used in 2013/14 in Victorian, a 15 % increase on the previous year. 189 of these restraints were used to force treatment on a patient. The average time of restraint was just under 6 hours. **Criminal penalties for illegally restraining (mechanically, physically or chemically) patients, where it results in harm, damage or death in the Act are needed.** (Part 6, Div. 3: s113; Part 15, Div. 3: s350 of MHA 2014)

**CHILDREN PLACED IN PSYCHIATRIC WARDS WITH ADULTS:** There are no provisions in the Act 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 Act must be amended to ensure that children are not placed in adult wards.**

**INVOLUNTARY COMMITMENT OF CHILDREN:** 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 24 hours (which can be extended up to another 48 hours) for psychiatric assessment if it “appears” that the child is mentally ill. During the assessment period, 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. As if this situation were not abhorrent enough, there is no guarantee 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 that 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. 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. **No child 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 Act for illegally detaining a child or adult who could be subjected to physically invasive and damaging treatments.** (Part 4, Div. 1: s28, s29, s34,s38,; Part 4, Div. 2: s37; Part 4, Div. 3, s45, s48,s51; Part 4, Div. 4: s53, s55, Part 3, Div.2: s15,s16 s18; Part 4, Div. 4: s57)

**DEATHS, ACCOUNTABILITY AND SEXUAL ASSAULT:** The Victorian mental health budget has soared since 2007/08 up from \$819 million to 1.26 billion for 2014/15. With a soaring budget of this size one would not expect a further 333 deaths in the Victorian Mental Health Services in 2013/14. A report released by the Victorian Mental Illness Awareness Council in 2013 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 Act must have 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 with life’s problems, people can lead healthier, happier lives.

## WHAT YOU CAN DO

Please phone, visit, fax, write or email requesting amendments to the Mental Health Act to:

**Health Minister: The Hon. Jill Hennessy**  
Level 22, 50 Lonsdale Street, Melbourne, Vic 3000.  
Email: minister.health@health.vic.gov.au  
Phone: (03) 9096 8561 Fax: (03) 9096 3373

**Shadow Mental Health Minister: The Hon. Timothy Bull**  
143 Main St, Bairnsdale, Vic. 3875.  
Email: tim.bull@parliament.vic.gov.au  
Phone: (03) 5152 3491 Fax: (03) 5152 2023

**Premier: The Hon. Daniel Andrews**  
Level 1, 1 Treasury Place, East Melbourne, Vic 3002  
Email: daniel.andrews@parliament.vic.gov.au  
Phone: (03) 9651 5000 Fax: (03) 9651 5054

**Mental Health Minister: The Hon. Martin Foley**  
Level 22, 50 Lonsdale Street, Melbourne, Vic 3000  
Email: martin.foley@parliament.vic.gov.au  
Phone: (03) 9096 7500 Fax: (03) 9646 8737

**Please log onto [cchr.victoria.org.au](http://cchr.victoria.org.au) or [cchr.org.au](http://cchr.org.au) to see the references for the above information**

The Act can be found on: <http://www.parliament.vic.gov.au/static/www.legislation.vic.gov.au-lawtoday.html>

For more information or further copies of this summary, contact CCHR

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