VMIAC Policy Position Paper #3: Seclusion and Restraint

Purpose

To eradicate the restrictive practices of seclusion and restraint.

The Problem

People who seek help or receive treatment for mental health challenges and emotional distress often face the widespread and unnecessary restrictive interventions of seclusion and restraint. Seclusion is defined as 'the sole confinement of a person to a room or any other enclosed space from which it is not within the control of the person confined to leave.'[1] Bodily restraint is the use of either mechanical restraint (the act of being tied down with straps[2]) or physical restraint (being forcibly held down by staff).[3] Seclusion and bodily restraint are defined as restrictive interventions by the *Mental Health Act 2014* (Vic). Other types of restraint include both chemical restraint (the use of sedatives to control a person's behaviour[4)] and psychological restraint (the use of threats or emotional control).[5]

The use of restrictive practices, as defined by the Act, within mental health services is reported publicly by the Victorian government via the Victorian Agency for Health Information (VAHI). However, many aspects of seclusion (such as seclusion length) are not disclosed. Furthermore, both chemical and psychological restraints, which fall outside the definition of the Act are not publicly recorded, reported, or regulated. This limited scope of reporting equates to hidden and unregulated use of restraint which is likely to increase mental health consumers' risk of extreme harm and, in some cases torture.[6i]

Our Position

- **VMIAC is concerned at the high level of seclusion rates in Victoria.** Hospitals in Victoria have some of the highest seclusion rates in Australia and indicate serious problems in their culture and practice. Furthermore, the available data shows that some of these hospitals have repeatedly failed to even meet state key performance indicators for as long as two years, with no explanation as to why improvements have not been made.[7]
- **VMIAC is alarmed at the lack of accountability.** The Office of the Chief Psychiatrist (OCP) of Victoria has a statutory responsibility for oversight of restrictive interventions. Consumers can also make complaints to the Mental Health Complaints Commission (MHCC). Reports of inappropriate use of restrictive interventions, however, are not publicly investigated and it is unclear as to whether recommendations for improvements are acted upon by services. Lack of transparent accountability, such as the release of complaints data about each mental health service, has led to an alarming lack of consumer confidence in public mental health services and oversight mechanisms.
- **VMIAC is troubled by the gaps in public reporting of seclusion and restraint incidents.** Data that can be accessed is often cryptic. Basic, accessible data such as the number of people secluded within a certain time period, the length of each seclusion event, or the type of restraint used is not made known to the public. There is no information on service

[1] "Mental Health Act 2014." Vers. 22. *State Government of Victoria.* Accessed March 2020, 14. https://www.legislation.vic.gov.au/in-force/acts/mental-health-act-2014/022.
[2] *Ibid*, 4.
[3] *Ibid*, 4.
[4] "Seclusion Report; How Safe is My Hospital?" *vmiac.org.au.* 2019, 10. https://www.vmiac.org.au/wp-content/uploads/Seclusion-Report_VMIAC_Vic-mental-health-hospital-services_APRIL_2019_FINAL.pdf.
[5] *Ibid*, 10.
[6] Report of the Special Rapporteur on torture and other cruel inhuman or degrading treatment or punishment. 2013, 14. A/HRC/22/53 (United Nations General Assembly, February 1).
[7] "Seclusion Report #2; How Safe Is My Hospital" *vmiac.org.au.* 2020.

compliance with the Act's seclusion requirements, nor is there data on the impacts of seclusion such as physical injuries, psychological injuries or consequences for services who fail to meet KPI's on restrictive interventions.

- **VMIAC sees the use of seclusion and restraint as a breach of our right to liberty, our right to bodily integrity, and our right to freedom from torture, cruel, inhuman and degrading treatment.**
- **Zero seclusion is only a success if there is also zero restraint.** It is the only way to ensure that all harmful interventions in mental health care are eradicated and not replaced by other damaging forms of control.[8]
- **VMIAC believes that the use of seclusion and restraint should be abolished.** There is no therapeutic benefit from seclusion or restraint. In fact, it is a sign of a failure of care.

VMIAC's Recommendations

The Victorian government should:

1. **Set a deadline to eliminate all seclusion and restraint in mental health services**
   The Health and Quality Safety Commission (HQSC) in New Zealand has committed to eliminating the use of seclusion by this year, 2020. The Royal Commission into Victoria's Mental Health System provides a genuine opportunity to make the necessary changes to mental health service provision to eliminate the use of seclusion and restraint.
2. **Take serious action to reduce these harmful practices until they are eliminated**
   The Office of the Chief Psychiatrist (OCP) must fulfil its statutory responsibility to provide clinical leadership and promote continuous improvement in the quality and safety of the sector. The OCP must work to improve service culture to protect peoples' safety and fundamental human rights as a priority. Protecting and upholding human rights must be regarded as a crucial element to the provision of the highest quality mental health treatment.
3. **Hold mental health services publicly accountable for their use of these practices**
   Data should be straightforward and accessible to the public, and chemical and psychological restraints must be included. People discharged from services should be surveyed or interviewed in regard to their experience of any restrictive interventions used during their admission. All recommendations, undertakings and directions about seclusion and restraint from oversight bodies to services must be made public. Services which fail to minimise the use of seclusion and restraint must be investigated, penalised, and put under special measures until rates of seclusion and/or restraint are reduced.
4. **Publicly acknowledge and compensate for the damaging impacts on individuals, including human rights breaches, physical and emotional harm**
   The Victorian government must restore individuals' faith in the mental health system by acknowledging the traumatic impact of restrictive interventions and by addressing those personally harmed by these practices by means of financial and other supports where appropriate.

Background

- The United Nations' Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment states that 'It is essential that an absolute ban on all coercive and non-

[8] "Seclusion Report; How Safe is My Hospital?" vmiac.org.au. April 2019, 11-12.

consensual measures, including restraint and solitary confinement of people with psychological or intellectual disabilities, should apply in all places of deprivation of liberty, including in psychiatric and social care institutions..'[9] The UN clearly recognises that mental health services who use restrictive practices under the guise of 'medical necessity' or 'best interests' of the patient may well be putting their patients at risk of extreme harm including torture.' [10]

- Although purportedly human rights-based, the *Mental Health Act 2014* (Vic) (the Act) is non-compliant with the intent of the United Nations' Convention on the Rights of Persons with Disabilities Article 15 – Freedom from torture or cruel, inhuman or degrading treatment or punishment'[11] in that the Act allows for restrictive practices and interventions to be specifically used on people who present as having a mental illness. This is discriminatory practice towards people based on a perceived disability.[12]
- The knowledge of the existence of these practices creates a culture of fear, coercion and feeling unsafe.
- The Royal Commission in to Victoria's Mental Health System identified in its interim report that the use of cruel and degrading interventions such as seclusion and restraint can have a 'profound and dehumanising impact' on people.[13] People living with mental health and emotional distress used terms such as 'triggering', 'disempowering', 'traumatizing' and 'controlled'[14] to describe their experiences of physical restraint.
- Our membership express concerns about the effectiveness of existing safeguards and oversight mechanisms written into the Act intended to protect consumer rights[ii] and enforce service responsibilities. These comments include:

> *'There should be more investigations and public reports on rights.'*
> *'Why isn't anyone interviewing us a year or so after discharge to see the impacts of how you treat us?'*
> *'Is anyone watching what they do?'*
> *A mental health service must commit to 'establishing humane alternatives to restraint and seclusion' by eradicating the 'prison-like atmosphere of the ward' and the cruelty of people in need being 'trapped in seclusion cycles' or being 'locked up on the word of one person.'*

[i] Torture, as the most serious violation of the human right to personal integrity and dignity, presupposes a situation of powerlessness, whereby the victim is under the total control of another person. Deprivation of legal capacity, when a person's exercise of decision-making is taken away and given to others, is one such circumstance, along with deprivation of liberty. (Report of the Special Rapporteur on torture and other cruel inhuman or degrading treatment or punishment. 2013)

[ii] Such as informed consent, advance statements, nominated persons scheme, supported decision making and access to a second psychiatric opinion.

[9] Report of the Special Rapporteur on torture and other cruel inhuman or degrading treatment or punishment. 2013, 14.

[10] *Ibid,* 7.

[11] UN General Assembly. 2007. "Convention on the Rights of Persons with Disabilities : resolution / adopted by the General Assembly." 24 January. Accessed 6 April, 2020. https://www.refworld.org/docid/45f973632.html.

[12] *ibid*

[13] State of Victoria. 2018-2019. *Royal Commission into Victoria's Mental Health System, Interim Report*. Melbourne: Parliament Paper No. 87, 231.

[14] *Ibid*, 232.