Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (SPT)
Human Rights Council and Treaty Mechanisms Division
Office of the United Nations High Commissioner for Human Rights (OHCHR)
Palais Wilson - 52, rue des Pâquis
CH-1201 Geneva (Switzerland)

19th September 2022

To the Subcommittee on the Prevention of Torture and other cruel, inhuman or degrading treatment or punishment,

The Victorian Mental Illness Awareness Council (VMIAC) is the Peak Consumer body for Victoria. VMIAC provides peer led services and supports using a rights-based approach to mental health advocacy. We recognise the importance of empowering consumers to build their own capacity to self-advocate and actively participate in opportunities to improve the quality and breadth of services they use.

VMIAC undertake individual, group and systemic advocacy. Our work includes policy, support to consumer led research and evaluation projects, training, consumer information provision and resource development, as well as specialist advocacy support programs. We have a strong and continuous focus on engagement with our members, and on informing and supporting consumers to be empowered and have their voices heard.

VMIAC welcome the Subcommittee's upcoming visit to Australia and note mental health facilities are within the Subcommittee's mandate to visit. Victoria has so far failed to take steps to implement a National Preventive Mechanism (NPM), and subsequently Victoria's mental health inpatient units sorely need better oversight and safeguards.

Victorian law currently permits compulsory (forced) treatment and restrictive practices, including seclusion and restraint. While this is clearly in breach of the Convention on the Rights of People with Disabilities (CRPD), the process to stop these practices has been slow, and insufficient to create much needed change. Many people who receive treatment at mental health inpatient units are not in a position to exercise their rights, even if they are aware of them – including some people who attend voluntarily.

Following the recent Royal Commission into Victoria's Mental Health System, our mental health legislation has undergone some positive reforms which VMIAC welcomed. However, neither the compulsory treatment nor restrictive practice provisions have markedly changed.

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There will be a review of Victoria's compulsory treatment laws beginning next month, and VMIAC believe recommendations from the Subcommittee could be highly persuasive in reforming our compulsory treatment laws.Therefore, we would like to highlight three issues we believe are important and relevant to the mandate of the Subcommittee: **compulsory treatment, restrictive practices and oversight and safeguards.**

Compulsory treatment in Victoria

Recent statistics in Victoria suggest just over half of the people in mental health facilities are there against their will, which is higher than the national average. This statistic is even greater for First Nations Australians.[1] Furthermore, VMIAC know from our advocacy work, many people who are in mental health facilities 'voluntarily' can experience coercion or the threat of compulsory treatment from clinicians.

UN Special Rapporteurs and treaty bodies alike have established that involuntary treatment and other psychiatric interventions in healthcare facilities are forms of torture and ill-treatment. However, in Victoria, it is lawful to detain and forcibly treat a person based on an assessment they have a mental illness despite the fact this is expressly in breach of the CRPD.

Under the Mental Health Act 2014, psychiatrists are granted wide powers to assess a person and make decisions about; whether to detain them, what treatment they should have, whether they have capacity, and to prescribe/administer a treatment. The Act governing their actions permits these powers to be exercised with little oversight for up to 28 days.

Capacity is also largely irrelevant under the Mental Health Act. For example, a capacious person who refuses to provide informed consent to the treatment suggested by the psychiatrist can still be forced to have that treatment [2]. This means any person who is admitted to a mental health facility, whether voluntary or not, is completely under the power of the clinician treating them.

It is also worth noting Victorian law does not distinguish between 'mental' and 'legal' capacity, instead conflating the two concepts to mean 'decision-making' capacity [3]. This results in a reduced use of decision-making practices, with clinicians and the Tribunal instead favouring the rationale of 'best interests' or 'medical necessity' to justify forced treatment.

In Victoria, people held in mental health facilities are routinely forced to take medications, given injections of medication by force, and forced to undergo electroconvulsive therapy. Many medications used in mental health facilities have serious physical side effects such as diabetes, thyroid dysfunction, or kidney damage [4]. Electroconvulsive therapy has been identified as causing significant memory loss, cognitive dysfunction, and for people who are

[1] Australian Institute of Health and Welfare, *Restrictive Practices in Mental Health Care* (AIHW, 2021) <https://www.aihw.gov.au/reports/mental-health-services/mental-health-services-in-australia/report-contents/restrictive-practices>
[2] *Mental Health Act 2014* (Vic) s 71.
[3] *Mental Health Act 2014* (Vic) s 68.
[4] See, for example: JF Hayes et al, 'Adverse Renal, Endocrine, Hepatic, and Metabolic Events during Maintenance Mood Stabilizer Treatment for Bipolar Disorder: A Population-Based Cohort Study' (2016) 13(8) *PLOS Medicine* 1, 1.

forced to have it, trauma [5]. For many, the psychological suffering caused by forced treatment can be worse than the condition they were initially treated for.

In addition to issues relating to forced treatment, mental health facilities forcibly detain people in environments that put them at significant risk of harm and violations of privacy, dignity and sexual integrity. Sexual violence is a common experience in mental health facilities as noted by the recent Royal Commission into Victoria's Mental Health System,[6] by people who have been admitted to mental health facilities, and staff who work there. Forcing someone to stay in a facility where there are known risks to sexual violence amounts to cruel, inhuman, and degrading treatment at the least, and a breach of the CRPD.

Furthermore, mental health facilities vary considerably in terms of their physical condition, with many older facilities in particular being inappropriate to recovery (e.g. concrete surroundings with limited space to move about or exercise). Many contain locked wards, and have shared mixed gender rooms, and consumers that stayed there have told us of broken doors and locks on bathrooms that do not allow privacy, and staff failures to ensure hygienic facilities.

Seclusion and restraint

In 2020 – 2021, restrictive practices (including seclusion, mechanical and physical restraint) were used 7,461 times in Victorian mental health facilities and the rate they were used varies significantly between different hospitals. Our recent Seclusion Report highlights not only are these practices used regularly, but they are consistently used at a higher rate and for a longer duration than national averages in Victoria.

There is no publicly available data on either the number or condition of seclusion rooms in Victoria. However, VMIAC know the condition of seclusion rooms varies. For example, some newer facilities contain a window and toilet, while others do not contain windows and have only cardboard bedpans.

The Special Rapporteur has previously stated seclusion and restraint may amount to torture and called for an immediate ban on restrictive practices in all places of detention, specifically including psychiatric and social care institutions. The new Mental Health and Wellbeing Act 2022, which will come into effect next year, clearly acknowledges there is no inherent therapeutic benefit to restrictive practices.

Despite this, they will remain legal under the reformed system while work is underway to develop a strategy for their reduction over the next 10 years. *VMIAC believes 10 years is too long and will result in innumerable more people being subjected to harm.*

Oversight and safeguards

Despite Australia having ratified OPCAT in 2017, Victoria has yet to implement the NPM. This means mental health facilities are subject to very little oversight or safeguarding. The

5 Porter, R. J., Baune, B. T., Morris, G., Hamilton, A., Bassett, D., Boyce, P., ... & Malhi, G. S. (2020). Cognitive side-effects of electroconvulsive therapy: what are they, how to monitor them and what to tell patients. BJPsych open, 6(3).

6 State of Victoria, Royal Commission into Victoria's Mental Health System, *Final Report: Volume 4* (2021) 250; The Mental Health Complaints Commissioner, *The Right to Be Safe Report* (March 2018) Mental Health Complaints Commissioner, 17.

oversight system in Victoria is reactive in nature, relying on complaints being made before it is able to take action and having virtually no preventive powers.

The Mental Health Complaints Commissioner is the main body responsible for overseeing mental health facilities in Victoria. However, it relies on an alternative dispute resolution approach to complaints which is entirely inappropriate in circumstances where someone has been harmed by a mental health service provider.

While there are some changes under the new Act, the focus will still be on conciliation of complaints, and it does not expressly include preventive powers. Furthermore, misuse of forced treatment or restrictive practices is not an offence in Victoria (as it is in some other Australian states). This means people who have experienced ill-treatment in a mental health facility have no recourse for what happened to them, violating the right to equality before the law under the CRPD.

VMIAC request that the Subcommittee visits a mental health inpatient unit in Victoria and we would welcome recommendations in relation to the treatment of people being detained there, particularly with regard to compulsory treatment, restrictive practices, and oversight.

Attached to this submission is a copy of our most recent Seclusion Report, which provides data and statistics relating to the use of restrictive practices in mental health facilities in Victoria. We thank you for your consideration of our submission. Please do not hesitate to contact us if you have any queries or would like advice in relation to your visit.

Kind regards,

Craig Wallace

CEO - VMIAC