Sub #19 to AHRC OPCAT NGO Consultation from Being

Being – Mental Health and Wellbeing Consumer Advisory Group.

Submission to Australian Human Rights Commission Consultation: OPCAT in Australia - July 2017

Introduction

Being is the independent, state-wide peak organisation for people with a lived experience of mental illness (consumers). *Being's* purpose is to ensure that mental health consumer views are heard by policy makers, service providers and the community, through promoting consumer participation in relevant policy making and service development decisions.

The lived experience of people is fundamental to all that *Being* does and our work is underpinned by a commitment to upholding international human rights.

Key *Being* values of inclusion, and social justice and equity to ensure participation, underscore the importance of consumers being involved in decision making processes.

As part of the National OPCAT Network, *Being* strongly endorses the joint submission. *Being's* individual submission seeks to expand upon the issues that relate to people with a lived experience of mental illness with regards to the ratification of the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT), and the creation of a National Preventive Mechanism (NPM).

We welcome the Australian Governments moves to ratify OPCAT and the Australian Human Rights Commision's consultation of relevant stakeholders, especially civil society. Ratifying OPCAT will ensure oversight, monitoring and compliance of the Convention, as well as strengthen the ability for Australia to meet the the obligations set out in the Convention on the Rights of Person's with Disabilities (CRPD).

Question 1. What is your experience of the inspection framework for places of detention in the state or territory where you are based, or in relation to places of detention the Australian Government is responsible for?

Being agrees with the gaps in the monitoring framework as set out in point 2.1 of the National OPCAT Network's Joint Submission. In addition to those set out[1] we would like to see the inclusion of ambulance transport for people who are involuntary patients under Mental Health Legislation, and Emergency Departments in hospitals, including Childrens Hospitals, designated as places of detention. Consumers having reported experiences that fall within OPCAT, and not including these places in the remit of the NPM excludes vulnerable people from having their rights upheld.

Question 3. What are the most important or urgent issues that should be taken into account by the NPM?

The current review into practices of seclusion and restraint in Mental Health facilities by NSW Health[2] demonstrates the importance and urgency of addressing the issue of seclusion and restraint, including chemical restraint, in not only mental health facilities, but in all places of detention. This needs a particular focus due to the widespread nature of this issue, and the trauma that this is causing people with a lived experience of mental illness. In a recent survey we conducted regarding the issue of seclusion and restraint, numerous people reported experiences of seclusion and restraint including children and adolescents aged between seven and fifteen. These examples demonstrate breaches of not only CAT, but articles 15[3], 12[4], 13[5], 14[6], and 16[7] of the CRPD. A related systemic issue is the availability of properly trained mental health staff, as that has been shown to significantly reduce the rates of seclusion and restraint[8]. The NPMs focus on seclusion and restraint should not be merely reactive but proactive to prevent these abuses, using a systemic approach, including looking at issues such as properly trained staff.

Currently due to bed shortages children are being placed in adult mental health facilities. Young consumers have told us of the additional trauma this causes, regardless of whether there is use of seclusion or restraint. Research has shown this

[1] Australian OPCAT Network, Joint Submission to Australian Human Rights Commission Consultation: OPCAT and Civil Society, section 2.
[2] NSW Health http://www.health.nsw.gov.au/patients/mentalhealth/Pages/default.aspx
[3] Article 15 – The right of persons with disability to freedom from torture or to cruel, inhuman or degrading treatment or punishment. UN Convention on the Rights of Persons with Disabilities.
[4] Article 12 - The rights to equal recognition before the law. UN Convention on the Rights of Persons with Disabilities.
[5] Article 13 – The right of access to justice. UN Convention on the Rights of Persons with Disabilities.
[6] Article 14 – The right to liberty and security of person. UN Convention on the Rights of Persons with Disabilities.
[7] Article 16 – The right to freedom from exploitation, violence and abuse. UN Convention on the Rights of Persons with Disabilities.
[8] A Snapshot of Six Core Strategies for the Reduction of S/R (Revised 11/20/06 by Kevin Ann Huckshorn). https://www.nasmhpd.org/sites/default/files/Consolidated%20Six%20Core%20Strategies%20Document.pdf

can be similar to trauma associated with experiences of abuse[9]. This should also be an urgent matter for review by any NPM body.

Attention should be paid to the issue of involuntary treatment, both in hospitals and in community settings[10]. *Being* strongly believes that the use of forced psychiatric intevention breaches international human rights law, with the exception of when it is necessary to save the person's life or prevent serious damage to the person's health. People with a lived experience of mental illness have told us during consultations that some use of forced intevention may be acceptable to a sub-section of consumers. However, there is a strong consensus that if forced treatment has to be used, it needs to be the least restrictive option with strictly enforced monitoring. Many people with a lived experience of mental illness feel that the use of mind-altering drugs can be tantamount to chemical restraint.

The UN Special Rapporteur for Torture has called on all countries to:

> "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 such as neuroleptics, the use of restraint and solitary confinement, for both long- and short- term application".[11]

We understand that a complete ban cannot be achieved immediately without severe consequences. In order to elimate these practices, a process of reduction needs to occur. Processes and policies need to be put into place to change the culture of mental health care, and the disability and aged care sectors as a whole[12]. As a priority, any NPM needs to proactively promote and monitor these changes with the goal of elminate forced and non-consensual treatment.

Being conducted a comprehensive consultation in forensic mental health units, and produced a submission to the Senate Standing Committee on Community Affairs inquiry on the Indefinite detention of people with cognitive and psychiatric impairment in Australia[13]. Forensic consumers have told us that there is much uncertainty about how long they will be held in forensic mental health services. There are no release

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[9] Wolff, N., & Shi, J. (2012). Childhood and Adult Trauma Experiences of Incarcerated Persons and Their Relationship to Adult Behavioral Health Problems and Treatment. International Journal of Environmental Research and Public Health, 9(5), 1908–1926. http://doi.org/10.3390/ijerph9051908

[10] E Light et al, 'Community Treatment Orders in Australia: Rates and Patterns of Use' (2012) 20(6) *Australasian Psychiatry* 478, 49.

[11] JE Méndez, Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, UN Doc A/HRC/22/53 (1 February 2013) [81].

[12] Australian Department of Social Services, 2014. National Framework for Reducing and Eliminating the Use of Restrictive Practices in the Disability Service Sector. https://www.dss.gov.au/our-responsibilities/disability-and-carers/publications-articles/policy-research/national-framework-for-reducing-and-eliminating-the-use-of-restrictive-practices-in-the-disability-service-sector

[13] *Being*. Indefinite detention of people with cognitive and psychiatric impairment in Australia.12 April 2016, prepared by Karina Ko.

dates for people in the forensic system. People also feel uncertain about what their rights are and what they need to do to get out of the system. This leads to feelings of frustration and powerlessness. People can be detained for much longer periods in the forensic mental health system than if they had been detained in the prison system[14]. The NPM must investigate ways to ensure that forensic mental health facilities comply with CAT, and are included in any monitoring mechanisms.

Question 4. How should Australian NPM bodies engage with civil society representatives and existing mechanisms (eg NGOs, people who visit places of detention etc)?

Being's work is underpinned by the principles of consumer participation, co-design and recovery.

The CRPD clearly states that people with disabilities and their representative organisations, should be consulted and actively involved in the development of policy and legislation that affects them[15]. Therefore, co-design with people with lived experience of mental illness in the development of the NPM and associated legislations, along with the implementation mechanisms, is something that needs to occur in order to fulfil the requirements of the CRPD. Civil society representative organisations can be involved in ensuring that the co-design process is effectively utilised.

Being is in agreement with other Disabled Persons Organisations (DPOs) submissions that NPMs should have advisory bodies consisting of people with a lived experience of mental illness, a lived experience of disability, and/or lived experience of being held in places of detention. In addition to advisory panels, monitoring bodies charged with responsibility for institutions where persons with psycho-social impairment are detained should ideally include a mix, including persons with professional expertise in mental illness, persons with lived experience of mental illness and skilled advocates with experience working with people with mental illness.

Currently Official Visitor programs run in each state to safeguard standards of treatment and care, and advocate for the rights and dignity of people being treated under relevant Mental Health Acts. In NSW they are appointed by the Minister for Mental Health, and have access to not only people who are in inpatient facilities, but also those on community treatment orders[16]. It is vitally important that any NPM body engage with, learn from, and work cooperatively with the Official Visitors to ensure that existing mechanisms can be used to feed into the establishment, legislative changes and the practices of the NPM.

[14] … p.3.
[15] Articles 4 and 33. UN Convention on the Rights of Persons with Disabilities.
[16] Official Visitors Program http://www.ovmh.nsw.gov.au/about-us/who-are-the-official-visitors.html

Many representative organisations, NGOs and other members of civil society are not aware of the consultations, ratification of OPCAT, and the development of NPM's that is taking place in Australia.

Being strongly advises that the Australian Government, the Australian Human Rights Commission, and any NPM body that is established, work to broadly raise awareness. This needs to be directed toward civil society, any organisation or body that can be seen to be a key stakeholder for people with a lived experience of being in a relevant place of detention, or is in identified groups that may be affected by OPCAT.

This submission was compiled on behalf of *Being* by:

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