



Submission
to
Health and Disabilities Committee
on
Severe Substance Dependence -
A model for involuntary detoxification and
rehabilitation.

3 February 2012

1. Background

- 1.1. The Anti-Discrimination Commission (the ADCQ) is established under the *Anti-Discrimination Act 1991* (the *AD Act*). One of the functions of the ADCQ is to promote an understanding and acceptance, and the public discussion of human rights in Queensland.
- 1.2. A major purpose of the AD Act is to promote equality of opportunity for everyone by protecting them from unfair discrimination in the areas of the provision of goods and services, and the administration of State laws and programs.
- 1.3. In passing the AD Act in 1991, the Queensland Parliament cited its support of the Commonwealth in ratifying a number of international instruments. Those instruments include the International Covenant on Civil and Political Rights, and the Declaration on the Rights of Mentally Retarded Persons¹
- 1.4. Article 9 of the International Covenant on Civil and Political Rights states:

(1): Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

.....

(4): Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that the court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.

¹Proclaimed by the UN General Assembly in 1971.

- 1.5. On 30 March 2007 the Australian Government signed the United Nations Convention on the Rights of Persons with Disabilities (the Convention) and Australia ratified the Convention, with a reservation, on 17 July 2008. On 21 August 2009 Australia ratified the Optional Protocol to the Convention without reservation.
- 1.6. Subject to the reservation, both Australia and the State of Queensland have a duty to ensure that domestic laws conform to the obligations contained within the Convention.
- 1.7. Article 12 of the Convention concerns equal recognition before the law and states inter alia:
 1. States Parties reaffirm that persons with disabilities have the right to recognition everywhere as persons before the law.
 2. States Parties shall recognize that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life.
 3. States Parties shall take appropriate measures to provide access by persons with disabilities to the support they may require in exercising their legal capacity.
 4. States Parties shall ensure that all measures that relate to the exercise of legal capacity provide for appropriate and effective safeguards to prevent abuse in accordance with international human rights law. Such safeguards shall ensure that measures relating to the exercise of legal capacity respect the rights, will and preferences of the person, are free of conflict of interest and undue influence, are proportional and tailored to the person's circumstances, apply for the shortest time possible and are subject to regular review by a competent, independent and impartial authority or judicial body. The safeguards shall be proportional to the degree to which such measures affect the person's rights and interests.
- 1.8. Article 17 concerns protecting the integrity of the person and states:

Every person with disabilities has a right to respect for his or her physical and mental integrity on an equal basis with others.

- 1.9. The United Nations Principles for the Protection and Care of People with Mental Illness² contains provisions as follows:

Principle 1

Fundamental freedoms and basic rights

.....

6. Any decision that, by reason of his or her mental illness, a person lacks legal capacity, and any decision that, in consequence of such incapacity, a personal representative shall be appointed, shall be made only after a fair hearing by an independent and impartial tribunal established by domestic law. The person whose capacity is at issue shall be entitled to be represented by a counsel. If the person whose capacity is at issue does not himself or herself secure such representation, it shall be made available without payment by that person to the extent that he or she does not have sufficient means to pay for it. The counsel shall not in the same proceedings represent a mental health facility or its personnel and shall not also represent a member of the family of the person whose capacity is at issue unless the tribunal is satisfied that there is no conflict of interest. Decisions regarding capacity and the need for a personal representative shall be reviewed at reasonable intervals prescribed by domestic law. The person whose capacity is at issue, his or her personal representative, if any, and any other interested person shall have the right to appeal to a higher court against any such decision

Principle 6

Confidentiality

The right of confidentiality of information concerning all persons to whom these Principles apply shall be respected.

Principle 7

Role of community and culture

1. Every patient shall have the right to be treated and cared for, as far as possible, in the community in which he or she lives.

²Adopted by General Assembly Resolution 46/119 of 17 December 1991

2. Where treatment takes place in a mental health facility, a patient shall have the right, whenever possible, to be treated near his or her home or the home of his or her relatives or friends and shall have the right to return to the community as soon as possible.
3. Every patient shall have the right to treatment suited to his or her cultural background.

Principle 8

Standards of care

1. Every patient shall have the right to receive such health and social care as is appropriate to his or her health needs, and is entitled to care and treatment in accordance with the same standards as other ill persons.
2. Every patient shall be protected from harm, including unjustified medication, abuse by other patients, staff or others or other acts causing mental distress or physical discomfort.

Principle 9

Treatment

1. Every patient shall have the right to be treated in the least restrictive environment and with the least restrictive or intrusive treatment appropriate to the patient's health needs and the need to protect the physical safety of others.
2. The treatment and care of every patient shall be based on an individually prescribed plan, discussed with the patient, reviewed regularly, revised as necessary and provided by qualified professional staff.
3. Mental health care shall always be provided in accordance with applicable standards of ethics for mental health practitioners, including internationally accepted standards such as the Principles of Medical Ethics adopted by the United Nations General Assembly. Mental health knowledge and skills shall never be abused.
4. The treatment of every patient shall be directed towards preserving and enhancing personal autonomy.

Principle 11

Consent to treatment

1. No treatment shall be given to a patient without his or her informed consent, except as provided for in paragraphs 6, 7, 8, 13 and 15 below.

This is the context in which the ADCQ makes this submission

2. Issues for Comment

2.1. Effectiveness: What practical approaches to involuntary detoxification and rehabilitation are considered most effective?

As the Information Paper makes clear, there is very limited research on the effectiveness of involuntary treatment for substance dependence.³ Accordingly, the ADCQ does not intend to comment upon what approaches would be most effective. However, if legislation is to be passed that does permit the involuntary detention of individuals, the first consideration ought to be the purpose underpinning the legislation. Depriving a person of their liberty, autonomy and ability to make their own decisions ought not occur without clear grounds and justification. There must be a very clear and transparent legislative object and purpose to justify such involuntary detention. A primary purpose must include preserving and enhancing the personal autonomy of the individual concerned.⁴

Evaluation of the effectiveness of the legislative purpose and whatever service framework is adopted is also of critical importance. The legislative framework ought to be underpinned with evidence based service and treatment guidelines; integrated service delivery; and be properly resourced.

³ Qld Parliament Health and Disabilities Committee Information paper, Dec 2011, p. 4

⁴ This is discussed in greater detail at 2.2.2 below.

Given the lack of research and evidence on effectiveness, regular mandatory reviews of the legislation and the service models ought to be prescribed in the legislation, to ensure ineffective regimes and practices are identified and do not continue without a clear and transparent justification.⁵

2.2. Models

2.2.1. Criteria-What should be the criteria to require a person to undergo involuntary detoxification and rehabilitation?

The human rights principles outlined above indicate that stringent criteria ought to apply before any person who has not breached the law is involuntarily detained/and or treated.

The ADCQ agrees with the approach taken in Australian National Council on Drugs 2007 report, that the following four criteria must be met before a decision to commit a person to involuntary care is made:

- Severe substance dependence as diagnosed by an internationally recognised tool such as the Diagnostic and Statistical Manual of Mental Disorders, fourth edition(DSM IV): substance dependence or use alone is not sufficient
- Serious harm to self(including injury, illness and self-neglect) experienced, or immediate risk thereof
- Lack of capacity to consent to treatment; and

⁵ The independent evaluation due to be undertaken on the effectiveness of the trial being conducted in NSW under the *Drug and Alcohol Treatment Act 2007* ought to be considered as part of this process.

- Treatment plan outlining expected benefit and rationale for proposed period of involuntary detention.⁶

In addition the following criteria from the Victorian *Severe Substance Dependence Treatment Act 2010* (the Victorian Act) should also apply:

- That treatment can only be provided by admission and detention; and
- There is no less restrictive means reasonably available.

2.2.2. Purpose

The primary purpose should be to protect people with severe substance abuse from harm, and to restore decision making capacity (harm minimisation). Given that there is some evidence that involuntary detoxification and rehabilitation may be effective in preventing death and minimising harm, there is justification for the exercise of the legislative power.⁷

Involuntary detention and treatment ought not occur where a person retains capacity, but chooses to refuse treatment. Nor should involuntary treatment be ordered for any purpose other than for assisting and minimising harm to that individual. The fact that a person who has a chronic problem with substance abuse, who may also be homeless, and whom many in the community may prefer to see being removed from public space or view,

⁶ E Pritchard, J Mugavin and A Swan, *Compulsory Treatment in Australia: A Discussion Paper on the Compulsory Treatment of Individuals Dependant on Alcohol and /or Other Drugs* (Australian National Council on Drugs, 2007)

⁷ Information Paper page 5 referencing Broadstock, M Brinson, FI Weston, A(2008) *The effectiveness of compulsory residential treatment of chronic alcohol and drug addiction in non-offenders; a systemic review of the literature*, Health Service Assessment Collaboration, University of Canterbury, New Zealand.

should not be a justification for involuntary treatment and detention.

The ADCQ supports the approach taken by the Victorian parliament.

The Victorian Act sets out the objects of the legislation as:

Objectives of Act

- (1) The objectives of this Act are-
 - (a) to provide for the detention and treatment of persons with a severe substance dependence where this is necessary as a matter of urgency to save the person's life or prevent serious damage to the person's health; and
 - (b) to enhance the capacity of those persons to make decisions about their substance use and personal health, welfare and safety.
- (2) This Act must be interpreted, and every function conferred or imposed by this Act must be performed or exercised, so that-
 - (a) detention and treatment is a consideration of last resort; and
 - (b) any limitations on the human rights and any interference with the dignity and self-respect of a person who is the subject of any actions authorised under this Act are kept to the minimum necessary to achieve the objectives specified in subsection (1).

2.2.3. Period of involuntary treatment.

To comply with human rights principles, the period of involuntary detention should be for the shortest time possible and be subject to regular review by a competent, independent and impartial authority or judicial body.

2.2.4. Who decides on detention

Given the serious impingement upon a person's human rights in making a decision to involuntarily detain and treat them, the ADCQ is of the view that the decision should be made by a magistrate. The ADCQ endorses the approach taken in the Victorian Act.

2.3. Other protections

The ADCQ endorses the approach taken in the Victorian legislation which requires checks to be made as to whether a guardian has been appointed for the person about whom an order is sought, and to inform them of the application. The person about whom the application is sought should be entitled to legal representation, and/or to an advocate/support person at the hearing.

3. Other Issues

As a matter of practice, the resources dedicated to persons receiving voluntary treatment ought not be diverted to involuntary treatment regimes, resulting in fewer services for those receiving voluntary treatment. Any new involuntary treatment regime ought to be allocated additional resources to ensure this does not occur.