MENTAL HEALTH LAW CENTRE (WA) Inc.

ABN 40 306 626 287

THE INVOLUNTARY OR COERCED STERILISATION OF PEOPLE WITH DISABILITIES IN AUSTRALIA

MENTAL HEALTH LAW CENTRE (WA) SUBMISSION TO THE SENATE COMMUNITY AFFAIRS REFERENCES COMMITTEE
8 March 2013

Inquiries
Sandra Boulter
Principal Solicitor/General Manager
Mental Health Law Centre (WA) Inc.
08 9328 8266
office@mhlcwa.org.au

Acknowledgements

Sandra Boulter Principal Solicitor at the Mental Health Law Centre, Philip Vincent Barrister, Mental Health Law Centre Solicitors: Jackie Musk, Lee Vickers, Nikki Wilson, Deneale Perkins, Melissa Sandars, and Nicole Young, all Mental Health Law Centre Volunteer contributors including PLT placements Frances Allam and Amanda Silla

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INTRODUCTION AND SUMMARY CONTENTS

The Mental Health Law Centre (WA) Inc. (the Centre) makes this submission to the Senate Community Affairs References Committee in its inquiry into involuntary or coerced sterilisation of people with disabilities in Australia.

The Centre is a state-wide community legal centre specialising in the provision of free legal advice to and legal representation of people affected by the symptoms of their mental illness or impairment in Western Australia.

The Centre makes this submission pursuant to the Senate Committee's invitation for comment on the important matter of involuntary or coerced sterilisation of people with disabilities in Australia.

The Centre consents to this submission being published. The Centre can make further confidential submissions about our experiences, which would not be appropriate to write in this submission given the client confidentiality framework within which we work.

SUBMISSION

1. **Sterilisation must not be authorised under any Mental Health legislation as a treatment for mental illness, implied or express, even if it is believed to be necessary because of medications with which the patient is being treated for their mental illness.**

2. **If sterilisation is believed to be necessary as a treatment for mental illness, it must be decided independently of the treating psychiatrist, the Chief Psychiatrist and the mental health service altogether, and be at least subject to the approval of SAT sitting in its *Guardian and Administration Act 1990* jurisdiction on which SAT members should include an obstetrician/gynaecologist, a psychologist and a judge.**

3. **Any application for approval for sterilisation or long term involuntary contraception should require that the person, the subject of the application, is legally and expertly represented.**

4. Long-term involuntary contraception should treated in the same way as sterilisation.

BACKGROUND

1. The Centre is concerned about the sterilisation and contraception practices it has observed in the WA authorised psychiatric hospitals.

2. The Mental Health Commission of WA (the Commission) has been engaged in a three year process of trying to introduce a new Mental Health Act in Western Australia. The Mental Health Bill 2011 introduced sterilisation as a treatment for mental illness and the Mental Health Bill 2012 removed the express authorisation but left treatment to be interpreted to include sterilisation and involuntary contraception as possible treatments for mental illness.

3. At page 15 of the Commission's paper Update from Feedback on Draft Mental Health Bill 2011, the Commission advised that about half of the 1,200 submissions it received on the 2011 Bill related to the issue of greater control regarding the approval of sterilisation for involuntary patients. The Commission advised that in response "all reference to sterilisation has been removed". These submissions are available on the MHC website and will make interesting reading for the Senate committee.

4. In her Ministerial Statement on the 2012 Bill of 7 November 2012 (the Bill), the Minister advised on the subject of sterilisation as follows: "*There are appropriate safeguards in other legislation to make inclusion in this Bill unnecessary*". With respect to the Minister, this is an insufficient response for the following reasons. It is important to examine the effect of the lack of any reference to sterilisation in the Bill and the current Act.

5. Clause 171 of the Bill states that involuntary patients and mentally impaired accused patients can be provided with treatment without informed consent.

6. By cl 4 of the Bill:

> 'Treatment' means the provision of a psychiatric, medical, psychological, social or other therapeutic intervention intended

(whether alone or in combination with one or more other therapeutic interventions) to alleviate or prevent the deterioration of—

i. mental illness; or

ii. condition that is a consequence of a mental illness,

and does not include bodily restraint or seclusion; …

7. It is evident that sterilisation and contraception in the Bill could come within the definition of "treatment" if it was intended as treatment to "alleviate or prevent the deterioration of a mental condition or a condition that is a consequence of a medical condition". As there are no controls contemplated in the Bill on sterilisation, involuntary patients or mentally impaired accused patients could be sterilised without their consent and without any oversight or control simply as part of treatment.

8. The Centre is not aware of what "appropriate safeguards in other legislation" are referred to by the Minister in her statement. Although Part 5 Division 3 of the *Guardianship and Administration Act 1990* places limits on sterilisation, namely the consent of SAT is required, the Division applies only to adults in respect of whom a guardianship order is in force or an application for guardianship has been made.

9. Under the Bill as it stands, all involuntary patients – children and adults- do not necessarily fall into that category.

10. Further, with regard to children, the welfare jurisdiction under the *Family Law Act 1975* (Cth) does not necessarily fetter State law relating to sterilisation of children. (see N. O'Neill, C. C Peisah referring to the effect of the High Court decision of *P v P [1994] HCA 20*, (1994) 181 CLR 583 in Chapter 15 – Sterilisation [2011]SydUPLawBk17; in Capacity and the Law (2011) at 15.4 - URL:http://www.austlii.edu.au/au/journals/SydUPLawBk/2011/17.html)

11. Given the finality of the procedure of sterilisation, and potential finality of long term involuntary contraception, and the concern evidenced by the many submissions on the 2011 WA Mental Health Bill, we urge and recommend that the Senate have regard to all these concerns in is deliberations.

12. If sterilisation is sought as a treatment of any patient of the mental health service – private or public - a guardian should be appointed, legal representation for the patient should be obtained, and approval should first be required from the SAT exercising jurisdiction under the *Guardianship and Administration Act 1990*.

13. Similar issues apply to long-term involuntary contraception. This is sometimes included as involuntary "treatment" and is in fact a form of sterilisation. Various grounds may be advanced for it, some of which may have little validity, although they may be under the guise of being psychiatric considerations. If the purpose of sterilisation is merely to prevent someone conceiving a child because they will not be able to care for it or it will be affected by the mother's medication, the grounds are social or medical, and the decision should rest only with SAT.

14. Thus, long term involuntary contraception should also only be authorised by SAT, and only ordered if there are clear grounds for it and only in circumstances where the person proposed to be sterilised or placed on long term contraception is legally advised and represented.

15. We attach for your information our submission to the WA government on our proposal for CCTV surveillance in locked wards of psychiatric hospitals. Within that submission is evidence of abuse of involuntary patients and which may be helpful in deliberating on your decision having regard to the question: "WHY WOULD IT BE NECESSARY TO PLACE INVOLUNTARY PATIENTS IN LOCKED WARDS ON CONTRACEPTION OR 'TREAT' THEM WITH A STERILISATION PROCEDURE?"