



Submission to the Parliament of South Australia Social
Development Committee on the Potential for a Human
Rights Act for South Australia

*Experiences of human rights violations and the urgent
need for a Human Rights Act in South Australia to
protect and uphold the rights of people who experience
mental and emotional distress.*



Introduction

Aspire Recovery Connection (ARC) is a 100% Lived Experience organisation, delivering peer support, counselling and group therapy to people living with mental and emotional distress. We are a community made up of fifty Lived Experience practitioners and 250 people who access our services. We have a board of community representatives who govern the quality of our services and co-design our policies. Our community is made up of people who are culturally, gender, and sexually diverse, unbelievably resilient, and overwhelmingly talented. Our community cares deeply about their human rights and that of their peers. We also at times experience mental and emotional distress related to unusual thoughts, feelings and beliefs, that at times lead to forceful interventions and significant breaches of our human rights.

We are excited that there is momentum towards a Human Rights Act in South Australia and pleased to have the opportunity to provide this submission. The submission is based on extensive consultation with the ARC community on our experiences of access to human rights within the context of the State based mental health system. Most recently a focus group was held with our Community Advisory Board to provide specific input into this submission. The submission includes shared experiences from our community on how our human rights have been breached within the mental health system in South Australia and the importance of legislating for Human Rights in South Australia to protect people who live with mental and emotional distress.

The Need for a Human Rights Approach in Mental Health

There is a growing global movement, led by people with lived experience, their carers, psychiatrists, psychologists, social workers, and other mental health professionals advocating for a paradigm shift in the way we understand people's experiences of emotional distress, unusual experiences, and troubling behaviors (Johnstone and Boyle.M, 2018). This movement, also backed by the World Health Organisation asserts our over-reliance on the medical model in mental health is a key driver of human rights abuses and calls for a paradigm shift so that we recognise the influence of social determinants in a person's mental well-being. As Eleanour Langdon so eloquently stated, telling her story of human rights breaches in the UK mental health system *"it's what happened to you that matters, not what is wrong with you"* (Langdon, 2013).

The World Health Organization (WHO) takes a firm stance on the need for a global focus on human rights for people living with mental distress. The WHO emphasizes that individuals experiencing mental distress possess the same inherent human rights as everyone else, as articulated in the Universal Declaration of Human Rights. The Convention on the Rights of Persons with Disabilities (CRPD), specifically addresses the rights of people with disabilities,

including those living with mental distress. The CRPD promotes a paradigm shift in mental health in line with the Universal Declaration of Human Rights, challenging traditional practices such as involuntary treatment and institutionalization and ensuring individuals living with mental distress are given self determination and the same opportunities as everyone else.

Involuntary treatment and restrictive practices can subject people to arbitrary restraint or detention and take away a person's dignity and right to choose the treatment that they engage in, their right to freedom, and where they reside. In South Australia there is a gap in advocacy and legal assistance for people subject to this treatment under the Mental Health Act and the need to legislate access to and resource independent advocacy for people whose human rights are impinged under the Mental Health Act.

Aboriginal South Australians are disproportionately impacted by human rights breaches within the mental health system. The South Australian Office of the Chief Psychiatrist's (OCP) Annual Report (OCP, 2022) (Office of the Chief Psychiatrist, 2022) reports the number of involuntary treatment orders made in a year. In 2021-22 there were 12,174 involuntary treatment orders made for 5,851 individuals. Of those orders, 2533 were for Community Treatment Orders and 9641 for Inpatient Treatment Orders. Aboriginal people were overrepresented in the use of involuntary treatment orders, with 11.6% of people under Community Treatment Orders identifying as Aboriginal and 8.7% of people under Inpatient Treatment Orders, compared to the proportion of Aboriginal people in the South Australian population of 2.4%.

The United National Special Rapporteur on the right to health, psychiatrist Dainius Parus in 2017 takes a strong stance on right to informed consent with regards to mental health treatment *"Informed consent is a core element of the right to health, both as a freedom and an integral safeguard to its enjoyment. The right to provide consent to treatment and hospitalization includes the right to refuse treatment. The proliferation of paternalistic mental health legislation and lack of alternatives has made medical coercion commonplace"* (p.14).

In 2013 United Nations Special Rapporteur on the independence of judges and lawyers, Gabriela Knaul, called for effective legal aid systems that are broader than just criminal proceedings. Knaul stated, *"legal aid is both a right in itself and an essential precondition for the exercise and enjoyment of a number of human rights, including the rights to a fair trial and to an effective remedy"*. Knaul further recommended that legal aid be broad as possible and be available for any *'judicial or extra-judicial procedure aimed at determining rights and obligations'*. (United Nations, 2013).

Furthermore the Productivity Commission Inquiry Report into Mental Health (Commission, 2020) made a series of recommendations in relation to the justice system, including that people subject to orders made under state mental health legislation have access to advocacy and legal representation. Recommendation 21 states that:

State and Territory Governments should ensure that people appearing before mental health tribunals, and other tribunals hearing matters arising from mental health legislation, have a right to access legal representation. To facilitate this, State and Territory Governments should adequately resource legal assistance services for this purpose (page 80), and;

Supported decision-making by and for people with mental illness should be promoted through improved access to individual non-legal advocacy services (page 80).

Experiences of Harm and Calls for Action on Human Rights

As a community we have collectively experienced the excessive use of restrictive practice and reported multiple and repeated experiences of coercion within the South Australian Mental Health System. Our community members report experiencing great difficulty accessing mental health services when they need them and the use of force and restrictive practices when reaching a 'point of crisis'. Decisions to involuntarily detain someone are made hastily and the person's right to freedom not prioritised.

"The current (Mental Health Act) legislation is misused. People are determined they are 'a danger to others or themselves' and then locked up when this isn't the case, they're just distressed but not a risk and they get detained just for being unwell" (ARC Community Member)

Our community also report experiences of trauma when in hospital due to involuntary treatment, including chemical restraint, ECT, as well as seclusion. One person described the sedating medication they were repeatedly (involuntarily given) as a terrifying experience of being "trapped in your own mind" where "one second feels like one day". They described the purpose of those medications to be for "control and not care". Another person stated "I am overdosed with PRN just for smiling in a ward"

Our community also describe the coercion experienced when not on involuntary treatment orders, which means people feel they have no choice but to comply with treatment they do not want because of the threat of orders being put in place.

"I'm told if you don't come in and have your treatment you'll be locked up (when not under an order)" (ARC Community Member)

"If I ignore their calls (mental health services) they call the police, handcuff me and march me through the hospital" (ARC Community Member)

"The way we are treated when on an Involuntary Treatment Order is inhumane, our phones are taken away, we have no access to the outside world" (ARC Community Member)

Our community has also shared their perspectives on the matter of determining a person's capacity under the Mental Health Act and Guardian and Administration Act. We feel the current legislation and interpretation of it is far too simplified and restrictive. We need a better, more sophisticated understanding, that a person can still have the capacity to make decisions when they're distressed and if a person's capacity is diminished, a supported decision making process should be in place. A Human Rights Act has the potential to influence legislation that impacts our community, to better protect our human rights including our right

to make decisions about treatment we receive and the way in which we are treated when in the care of the mental health system.

“Implement and uphold supported decision making, not this ‘black and white you have capacity or you don’t approach” (ARC Community Member)

“Recognise and respect that people still have capacity to make decisions even then they are really unwell” (ARC Community Member)

The ARC community is in full support of Human Rights Act in South Australia and believes it has great potential to protect the rights of people who experience mental and emotional distress. We want to see human rights legislation introduced in South Australia that can:

- ❖ Uphold a person’s right to freedom and make it harder to detain people and force involuntarily treatment.
- ❖ Ensure the right to informed consent is realised equally for Aboriginal South Australian’s
- ❖ Improve access to mental health services that are available before someone’s wellbeing is diminished and they are in crisis
- ❖ Make it significantly harder to take away a person’s autonomy and ensure if it is determined a person (at a particular point in time) can’t make decisions independently, that supported decision making processes are in place, well resourced and there is strong transparency and accountability to follow proper process.
- ❖ Ensure people whose rights or decision making is removed have access to an independent advocate and legal support to challenge such decisions

References

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