SUBMISSION OF THE HUMAN RIGHTS AND EQUAL OPPORTUNITY COMMISSION

TO

THE SENATE SELECT COMMITTEE ON MENTAL HEALTH

Human Rights and Equal Opportunity Commission
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Part One: Mental Health Services Generally

1. There are now numerous reports of inquiries detailing inadequate services and neglect of human rights affecting people with a mental illness and their families around Australia. Prominent among these is the Commission's 1993 report of its National Inquiry into the Human Rights of People with a Mental Illness (the Burdekin Inquiry).

2. This Inquiry was conducted by reference to human rights instruments developed through the United Nations system and to which Australian governments are committed either as a matter of legal obligation or as a matter of policy.

3.Australia is a party to the International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Covenant on Civil and Political Rights (ICCPR), and the Convention on the Rights of the Child (CRC). These instruments recognise the following rights, amongst others:

- The right to the highest attainable standard of physical and mental health (Article 12 ICESCR, Article 24 CRC)
- The right of children with disabilities to access appropriate health and rehabilitation services (Article 23 CRC)
- The right to freedom from cruel, inhuman or degrading treatment (Article 7 ICCPR; Article 37 CRC)
- The right to liberty and security of person (Article 9 ICCPR; Article 37 CRC)
- The right to be treated with respect for dignity and with humanity when deprived of liberty (Article 10 ICCPR; Article 37 CRC)

4. In addition to the fundamental human rights enshrined in these Covenants, there are specific UN Principles that deal with some of the particular issues facing people with mental illness. The UN Principles for the Protection of Persons with Mental Illness and for the Improvement of Mental Health Care (the UN Mental Health Principles) were adopted by the United Nations in 1991. These principles were developed at an international level at the same time as the HREOC Inquiry was taking place.

While not a binding instrument in itself, the Commonwealth, State and Territory governments have recognised the value of incorporating those principles into policy and attempted to do so in the First National Mental Health Strategy (see further below).

The UN Mental Health Principles reinforce the rights enshrined in the International Covenants and provide valuable guidance as to how those rights ought to apply to people with mental illness. Principle 8(1) makes clear that people with mental illness have the right to the same standard of health care as other ill persons and Principle 14 states that mental health facilities should have the same level of resources as any other health facility. Additionally, Principle 7 emphasises the right to be treated and cared for as far as possible in the community and Principle 9 emphasises the importance of 'the least restrictive alternative' in relation to treatment.

7. The Burdekin Inquiry conducted hearings around Australia and extensive research, and received hundreds of submissions. The findings of the HREOC Inquiry's two volume report may be briefly summarised as follows:

- The Burdekin Inquiry found that people affected by mental illness suffered from widespread systemic discrimination and were consistently denied the rights and services to which they are entitled.
- The Burdekin Inquiry recommended a major government effort to redress negative community attitudes towards people with a mental illness.
- The Burdekin Inquiry found that although the movement towards community care and mainstreaming of mental health services had reduced the stigma associated with psychiatric care, in general the money saved by deinstitutionalization had not been redirected into mental health and related services in the community.
- The Burdekin Inquiry found that health services and other services which would enable people with a mental illness to live effectively in the community were seriously under funded or in some areas just not available at all.
- Crisis services were found to be inadequate.
- Treatment and discharge planning was found to be in need of major improvement.
- Mental health professionals and allied staff working both in institutions and the community were found to require education and training in the delivery of community based services, and needs for improved education and training were identified throughout the sector.
- The Burdekin Inquiry also recommended added emphasis in health budgets for prevention and for mental health research.
- Governments were found to be relying increasingly on NGOs to provide services but to be treating NGOs as peripheral in the allocation of funds.
- Accommodation for people with a mental illness was found to be particularly inadequate, with government housing support programs either excluding

people with mental illnesses or failing to address their specific needs. The Burdekin Inquiry found that the absence of suitable supported accommodation was the single biggest obstacle to recovery and effective rehabilitation.

- In the employment area, people affected by a mental illness were found to be disadvantaged by negative attitudes, a lack of awareness of means of accommodating employees with a psychiatric disability, and by inadequate vocational and rehabilitation services.
- Families and carers were found to be badly overstretched and insufficiently supported. As well as improved crisis facilities and other community mental health services the Burdekin Inquiry recommended better information for carers and greater provision for involvement in decisions.
- Mental health services for children and young people were found to be seriously under developed. There were also recommendations for improvements in services for women.
- The Burdekin Inquiry also made recommendations on culturally appropriate services for Aboriginal and Torres Strait Islander people and people from non-English speaking backgrounds.
- Specialist services for the many thousands of Australians affected by mental illness and some other form of disability were found to be almost non-existent, and services in either the mental health or disability sectors to be inadequately prepared to deal with the needs of this group, with the result that people with dual or multiple disabilities were often bounced from agency to agency without finding anyone who would assume responsibility for care or support for them.
- The Burdekin Inquiry found that mentally ill people detained by the criminal justice system are frequently denied effective health care and human rights protection. Procedures for detecting and treating mental illness and disorder in the Australian criminal justice system were found inadequate in all jurisdictions.
- The Burdekin Inquiry recommended consistent accountability mechanisms and service standards.
- Laws regulating mental health services were found to be badly in need of reform.
    - On one hand, laws failed to recognise sufficiently the principle of applying the “least restrictive alternative” and gave wide discretionary powers of detention without sufficient provision for review of decisions for detention or compulsory treatment. Yet on the other hand there was inadequate provision for treatment as a voluntary patient, much less a recognised legal right to access treatment.
    - Laws providing safeguards regarding hospital treatment generally failed to extend to community treatment.

    - The relationship between the administration of mental health law and guardianship law was found to need further development to provide for appropriate decisions to be made on behalf of people at times when they lacked capacity to make their own decisions.

- The Burdekin Inquiry also recommended removal of discriminatory restrictions on access to some government programs, and the enactment of protection against discrimination on the grounds of psychiatric disability in any jurisdictions which lacked that protection.

5. Unfortunately, subsequent inquiries since 1993 have continued to find similar problems.

6. In the time since the Burdekin Inquiry, the Commission has had insufficient resources to continue a detailed monitoring role on mental health issues. The Commission has also been mindful of views expressed by mental health consumers, carers and professionals that their urgent need was for action to implement strategies already identified and indeed committed to in principle by Governments, rather than a further process of inquiry being needed to identify issues and solutions. Effective implementation of human rights, in relation to mental health and in other areas, also requires that human rights be taken on as the responsibility of the mainstream agencies which control resources and policy agendas and deliver services, rather than being seen as mainly or solely the responsibility of a small human rights agency.

7. Some of the most significant and lasting effects of the Commission's 1993 Inquiry were in its contribution to the development of a national mental health strategy. The Strategy was under negotiation before the Burdekin Inquiry's report was published, but was clearly influenced by the impact the Burdekin Inquiry had on perceptions and policies. The Strategy defined the directions for reform of mental health policy and services and established a framework for collaborative effort between Commonwealth, State and Territory Governments to pursue these directions over a six year period.

8. It must be acknowledged that increased resources for mental health and related services did in fact accompany the new approach. In particular, the Commonwealth Government allocated funds for the first time specifically for mental health services. Federal initiatives in response to the national inquiry report included $200 million over 4 years for services either directly targeted at, or providing substantial benefit to, people affected by mental illness.

9. Legislative reform was an especially important element of the Mental Health Strategy. An evaluation of Australian mental health legislation was conducted by an independent consultant in 2000 for the Australian Health Ministers Advisory Council, by reference to a "rights analysis instrument" based on international standards. This evaluation shows that there has been significant progress. Every state and territory has amended or is amending its mental health legislation to move away from an emphasis on detention to a model based more properly on human rights – although the same evaluation showed that no Australian jurisdiction had achieved full compliance with the UN Mental Health Principles. All State and Territory jurisdictions – except South Australia - now also cover disabilities from mental illness within their equal

opportunity or anti-discrimination laws in broadly similar terms to those contained in the national Disability Discrimination Act which entered force in 1993.

10. In summary, it would be possible to draw a picture of the Burdekin Inquiry and the developments which followed from it as having transformed life for people with mental illness and their families: with increased emphasis on community care, improved legal rights and protections, and increased resourcing of services. And yet – despite a policy framework often described as world leading, and particular successes in legislative reform, ten years after the HREOC inquiry we continue to see reports describing a situation of ongoing crisis.

11. In December 2002 a NSW Parliamentary inquiry reported a range of concerns which bear a striking resemblance to those identified in 1993 by the Commission. These negative findings were made notwithstanding many positive initiatives described in that report. It indicated an 18% per capita increase in mental health spending since 1992, and a significant increase over that time in the proportion of mental health spending going towards community services (41% compared to 30%).

12. Yet overall the picture from this and other reports seems all too close to that found by the Commission's Inquiry ten years ago. SANE Australia's Mental Health Report 2002-03 for example said that "mental health services are in disarray around the country, (and) operating in crisis mode…"

13. The evaluation of the Second National Mental Health Plan, published by the Department of Health and Ageing in March 2003, stated that:

> progress has been constrained by the level of resources available for mental health and by varying commitment to mental health care reform. While the aims of the Second Plan have been an appropriate guide to change, what has been lacking is effective implementation. The failures have not been due to lack of clear and appropriate directions, but rather to failures in investment and commitment.

A shorter way of saying that might be that governments have not matched their words with resources. Key conclusions of the evaluation were that

- the aims of the National Mental Health Strategy have not yet been fully translated into the expected benefits for consumers and carers
- while there has been growth in mental health expenditure, this has simply mirrored overall health expenditure trends and is not sufficient to meet the level of unmet need for mental health services;
- despite some progress towards improving consumer rights and consumer and carer participation, full and meaningful participation for consumers and carers has not yet been achieved, particularly in relation to individual treatment and recovery plans;
- while community treatment and support services have been strengthened, community treatment options are often still unavailable or inadequate, with growth in resources to the non-government sector in particular not having kept pace with their increased role

- although access to mental health care has been improved, consumers are still frequently unable to access mental health care as and when they need to
- in particular, follow-up care into the community after hospitalisation for an acute episode is often lacking.

14. Very similar conclusions can be found in the "Out of Hospital Out of Mind" report released by the Mental Health Council of Australia (MHCA) in April 2003 in the lead up to the Third National Mental Health Plan. As with other reports, the MHCA pointed to failure to turn innovations in policy and treatments sufficiently into practice, particularly in the areas of prevention, early intervention, mental health promotion and improved public awareness, as well as in developing better partnerships between specialist resources and the GPs and community services who are providing care to most of those people with a mental illness who are receiving any services at all.

15. The Commission wrote to the then Federal Minister for Health to suggest a positive response by Government to the MHCA report. We urged serious consideration of the MHCA's call for establishment of a national Mental Health Commission such as exists in New Zealand. We wrote that there appeared considerable merit in the view that a national Mental Health Commission would be able to make substantial contributions to policy development, monitoring and accountability, and community education regarding mental health issues.

16. The former Minister responded that the concept of a national Commission of this kind was not transferable from New Zealand to Australia's federal system. The government response to the MHCA's recommendations, and to the Commission's representations in support of those recommendations, appeared also to indicate that a mental health commission was not required because this Commission had power to investigate relevant human rights issues.

17. The Commission wishes to place on record its view that the ability of a Human Rights Commission to conduct national inquiries is in no way a substitute for ongoing mechanisms for accountability, education and policy development. This is not only due to constraints on resources but also to limits on the institutional authority and competence of a human rights body. The Commission does not and cannot seek to present itself as the ultimate authority on mental health issues in place of community and professional experts or to sit in judgment on what mental health workers are achieving with limited resources and increasing demands.

18. In the Commission's 1993 National Inquiry on Human Rights and Mental Illness, our aims were to provide a forum for the experience of people affected by mental illness, as patients, families, or carers, together with community and professional service providers; to seek to refocus debate in this area as involving matters of human rights; and to draw public and political attention to this experience as a means of promoting accountability and remedies where abuses or neglect of human rights were found.

19. With the same aim, the Commission joined the MHCA and the Brain and Mind Research Institute (BMRI) to conduct consultations with people in the mental health sector - professionals and people with a mental illness and their families. Together with representatives of the MHCA and BMRI, during 2004 the Commission

participated in a series of community forums to discuss issues in mental health and related services around Australia. Written submissions were also received both from people who participated in the forums and from people who had not been able to attend a forum.

20. The report of these consultations should be available to the Senate inquiry and to the public very shortly together with comments from governments on draft reports provided to them. The Commission and its partners in this process will be pleased to give evidence to the Committee on what we were told once the report is available. It can be said clearly at this point though that, consistently around Australia, we heard over and over again that the issues raised in the Commission's Inquiry over 12 years ago largely remain and that the promise of the National Mental Health Strategy remains largely unfulfilled.