

## Pre-print

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Newsletter article:

## **A week can be a long time in mental illness**

**Christopher Ryan and Sascha Callaghan**

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An erosion of the Mental Health Act is worrying. The safeguards on our human rights hang by a slender thread.

In July last year, everyone in NSW had one such safeguard cut away. Its removal, by a simple bureaucratic manoeuvre, will be hard felt by anyone unfortunate enough to become severely mentally ill. Mental illness can happen to anyone. Severe depression, for example, affects one person in 10 and can strike at any age. The NSW Mental Health Act gives psychiatrists extraordinary powers to lock up and medicate people with severe mental illness, even when the affected person refuses all treatment.

These powers are important. They can and do save lives. But, like any extraordinary power, there is always a risk that they might be abused. To make abuse less likely the Mental Health Act only allows a person to be held on a psychiatrist's order for a very short time and demands that the order be quickly and automatically reviewed by an independent tribunal. How quickly? The phrase in the Act is "as soon as practicable".

Until July last year "as soon as practicable" was interpreted as within about a week - usually within a few days. Of course, many felt that even a few days was a long time, if you were in a psychiatric hospital and believed you shouldn't be there. However, most people accepted that within about a week was a pretty reasonable definition for "as soon as practicable". It was the definition used for more than 50 years and the system seemed to work very well.

In July last year though, everything changed. The Mental Health Review Tribunal took over the independent reviews from magistrates, and the president of the Tribunal, Greg James, advised hospitals that although the Act said that these reviews should happen "as soon as practicable", in some cases people should be made to wait in detention for at least two weeks before their automatic review.

As if this was not concerning enough, documents unearthed this week by Greens MLC John Kaye, revealed that under the new regime many people actually waited far, far longer. Nearly a third of people were not seen until they had been held in hospital between three and four weeks. And one person was apparently held against their will for five weeks before they got their "as soon as practicable" review. Imagine yourself, or a family member, sitting in hospital feeling that you should not be there, and having to wait more than a month before your detention was reviewed. The documents also reveal a litany of other concerns that have arisen since July last year. They speak of some hospitals refusing to allow lawyers access to patients and others providing inadequate information to patients and their families.

It seems that the slackening of the rules around timing may have led to a much broader erosion of the rights of the mentally ill. Psychiatrists were always opposed to the weakening of these important safeguards. Nearly 200 signed a petition asking the former Labour government to restore proper, timely reviews. They claimed that "as soon as practicable" couldn't possibly be interpreted as within a month or so and that the Tribunal should be directed to follow the law as the parliament had intended. While the Greens and crossbenchers agreed, the then Labour government, only months from annihilation, simply sat on its hands. Now the Coalition has inherited the problem.

Psychiatrists want a return to timely review, because they want to make sure their patients are properly protected. The horrors of deep sleep therapy in Chelmsford Hospital and Townsville's ward 10B are stark reminders of what can go wrong if psychiatric services are not kept under proper scrutiny.

Until these ill-considered bureaucratic changes, NSW provided better protection for psychiatric patients than almost any other state in the world. Now though, without any change in the law, those protections have been scratched away, and many people will come into hospital, be treated against their will and be sent home, without anyone ever checking that everything was as it should be by law.

Fortunately, the Minister for Mental Health, Kevin Humphries, has expressed real concern about the impact of the new procedures and a review of the Tribunal's operation is expected shortly. This is reassuring, but with increasing evidence that the system is beginning to unravel, corrective action is clearly needed quickly.

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