

Submission template

Response to *Review of the Mental Health Act 1986 Consultation paper*

Introduction

This template is designed to assist people in making a submission in response to the *Review of the Mental Health Act 1986 Consultation paper*. It contains a list of the questions posed in the consultation paper. Comment is welcome on any matter related to the Act, and need not be limited to the questions in the paper or the *Some key questions* paper.

Please note: Closing date for submissions is 5:00pm on Friday 27 February 2009. The use of this template is optional.

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I wish to make several comments in regard to the review of the act about an issue indirectly related to question 50, whether the act should incorporate the functions of existing psychosurgery review board within an external agency. The current act defines psychosurgery in a way that includes "the use of intracerebral electrodes to cause stimulation through the electrodes on the same or separate occasions without creating a lesion in the person's brain for the purpose of influencing or altering the thoughts, emotions or behaviour of that person" (54 (1) (b)). This activity, is now commonly referred to as deep brain stimulation (DBS).

DBS is currently being trialled in multiple centres around the world as a potential new treatment for patients with severe depression and severe obsessive compulsive disorder (for example (1-4)). Notably, DBS is also widely used for the treatment of a variety of neurological conditions such as Parkinson disease, epilepsy, refractory dystonia and tremor disorders.

The current inclusion of DBS within the mental health act results in patients being considered for this procedure (at this stage only within the context of a human research ethics committee approved clinical trial) being subjected to a requirement for review by the psychosurgery review board. This has several implications.

The most critical of these implications is that although an individual patient may consent to undergo a DBS procedure, the patient is completely unable to

exercise autonomy in their capacity to select this treatment, or participate in current research trials, as consent must be granted by the psychosurgery review board. The review board will apply all of the current standards of the mental health act including determining whether the patient has capacity to consent and whether "all other reasonable treatments have already been adequately and skilfully administered without sufficient and lasting benefit" (65 (f)). Therefore, a patient who is completely able to give informed consent and is also completely able to evaluate the potential benefits and risks of the procedure, may be denied access to the procedure if the board is not satisfied that the patient meets this and other criteria defined under section 65.

This would appear to be in conflict with the intent of the review of the act, especially in regards to the way in which the review of the act aims to improve "patient participation in treatment and care decisions".

The current regulation of DBS under the mental health act is also completely inconsistent with the way in which DBS is regulated and provided for patients with neurological disorders such as Parkinson disease or epilepsy. Treatment of these patients is not subject to external review and this would seem to suggest that patients with mental health illnesses are treated in equitably in conflict with the Charter of Human Rights and Responsibilities right to "recognition and equality before the law" (section 8). It is notable in this context that patients with Parkinson's disease have high rates of depression, psychosis, dementia and other mental health problems (5-7) but the standard applied to the provision of treatment is greatly inequitable compared to the standards applied to "psychiatric disorders" such as depression or obsessive compulsive disorder.

This element of inconsistency in the regulation of "psychiatric" and "neurological" disorders is highlighted by the case of Tourette's syndrome. It is an inherited neuropsychiatric disorder with onset in childhood, characterized by the presence of multiple physical (motor) tics and at least one vocal (phonic) tic which these tics characteristically wax and wane. Tourette's is defined as part of a spectrum of tic disorders, which includes transient and chronic tics. It sometimes referred to as a neurological disorder, sometimes as neuropsychiatric disorder and it is included in the Diagnostic and Statistical Manual as a Psychiatric Disorder. Treatment of the Tics of Tourette's syndrome with DBS, as is now being trialled (8), would nominally fall under the jurisdiction of the Mental Health Act (as it would not be excluded by sections 54 (2) a or b (the behavioural changes cannot be attributed to convulsive disorder / epilepsy or a disorder of the basal ganglia)). However, many of these patients are treated primarily or exclusively in a neurology and not psychiatric context.

Although clearly there is a need to ensure that new treatments are provided in a manner which protects the interests of patients with psychiatric disorders, the current inclusion of DBS within the definition and regulations the psychosurgery ensures that patients with psychiatric disorders are discriminated against in their capacity to access this procedure and exercise their individual autonomy.

It is notable that the requirements for access to DBS are inconsistent with those applied through most Western countries. In the jurisdictions where trials are currently underway including the USA, Canada, Germany, and the Netherlands patients are not subject to the same form of limiting institutional review that occurs with the act of the Psychosurgery Review Board in Victoria. Most jurisdictions ensure a review of the capacity of the patient to provide consent but do not subject to patients to the type of review of matters that are currently the scope of attention of the Victorian Psychosurgery Review Board.

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