

Mental Health and the Law – Time for a new Approach
Abstract to Conference – From Margins to Mainstream

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The Mental Health Council of Australia (MHCA) would like to propose a whole session on the issue of Mental Health Legislation at the Margins to Mainstream Conference.

As stated in *Not For Service*, the position of the MHCA is that all governments apply the UN Principles for the protection of persons with mental illness and the improvement of mental health care, all jurisdictions develop nationally consistent guidelines on the assessment, sentencing and provision of specialised mental health care for mentally ill people in contact with the justice and/or detention systems, and that all jurisdictions provide specialised legal services, diversionary and reintegration programs for people with a mental illness in contact with the justice and/or detention system.

This proposal would see four presentations occur during one session of the conference, to address the determinants of freedom from discrimination and the methodology of advocacy, policy-making systems strengthening in mental health promotion and prevention of mental disorders programs. The first session would look at the protection of the rights of consumers within the legal system. The second session would then follow from this addressing the rights and needs of carers. Thirdly, we propose a session on whether separate mental health legislation is the best method to protect people's rights, and the fourth session would discuss how legislation can be the driving force for new policies and better services.

Since the UN Principles for the Protection Of Persons with Mental Illness were adopted in 1991 efforts have been made to improve mental health legislation in all states and territories; however reforms to mental health legislation have not been consistent, and references to human rights do not feature in most state and territory mental health acts.

In 1992 the Human Rights and Equal Opportunity Commission (HREOC) in Australia, identified breaches of human rights in mental health laws in all Australian states and territories.

In addition, HREOC pointed out that both the form and substance of mental health legislation in most jurisdictions tended to perpetuate stigma associated with mental illness and did not promote their human rights.

Health status is often a reason behind a person's experience of discrimination. Trying to stamp out discrimination on the basis of health is required in many areas and many believe that if the legal system was changed to include references to human rights this would provide more mental health services. However, a big hurdle is to try to decide the best method. Advocates for the reform of legislation call for various solutions. These range from universal national mental health laws to abolishing existing legislation and incorporating mental health clauses in other acts. Whichever course is appropriate, changes in mental health laws across all states and territories will affect policy making and resource allocations. Therefore, our charter recommendation is to implement the UN Principles for the Protection of Persons with Mental Illness in all jurisdictions and develop nationally consistent guidelines for laws relating to mental health.