



Submission to the Universal Period Review for New Zealand 2024

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INTRODUCTION

1. The Citizens Commission on Human Rights (CCHR) was co-founded in 1969 by the Church of Scientology and Professor of Psychiatry Emeritus Dr. Thomas Szasz at a time when patients were being warehoused in institutions and stripped of all constitutional, civil and human rights. The New Zealand branch was established in 1975.
2. CCHR has investigated numerous violations of human rights in psychiatric institutions around New Zealand and now in community settings with the advent of compulsory treatment enforced outside the traditional hospital settings.
3. Foremost in our investigations has been the psychiatric ill-treatment and torture of children in Lake Alice psychiatric hospital in the 1970s. This abuse of children using the tools of psychiatry—drugs and electroshock—is a salient example of psychiatry’s misuse of power in this country, and the subsequent cover up by psychiatric and medical agencies for over 40 years.
4. CCHR’s representations and formal complaints¹ to the UN Convention Against Torture from 2010 onward has helped bring about a new police investigation and Royal Commission of Inquiry which looked into the abuse at Lake Alice.
5. The first part of this submission concerns the issue of redress for the survivors of torture at the Lake Alice psychiatric facility.
6. The second part of this submission concerns mental health law and compulsory treatment as this is a current issue in New Zealand with new law changes being proposed.

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CONVENTION AGAINST TORTURE

7. As at this writing, the New Zealand State has not removed its reservation on the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment article 14—not acceding to the right to award compensation to torture victims.² This is despite the UN finding that New Zealand was in breach of Article 14 of the UN torture convention, requiring governments to “ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependants shall be entitled to compensation.”³

8. Following the recent Committee Against Torture Periodic Review in July 2023 the New Zealand Police released a summary of their investigation into Lake Alice.⁴

9. Based on their interviews, recorded statements and medical files they determined that electroshocks and drugs were used as punishment.⁵

10. Even though almost 50 years have passed, the police were able to identify over 140 separate occasions involving 51 child patients where electroshocks were used as punishment by the psychiatrist, Dr Leeks. The shocks were on their heads, arms, legs and even, on 13 children, their genitals.

11. The police analysis identified that around 68 patients disclosed being administered paraldehyde as punishment and there were in excess of 350 separate occasions when it was administered. This was done mainly by the head or charge nurses.

12. These figures constituted but a quarter of the number as it was estimated that 300 or more children went through Lake Alice.

13. Due to the time that has passed the alleged offenders were either deceased or in such a poor state of health they were unable to stand trial.

14. Dr Leeks would have been charged with wilful ill treatment of a child for his use of ECT as punishment were he fit to stand trial. Dr Leeks died on the 6th of January 2022.⁶

15. The police were interested in three surviving nurses, of which one was charged, one was unfit to stand trial and there was insufficient evidence to commence a prosecution of the other.

² “Convention Against Torture & Other Cruel, Inhuman or Degrading Treatment or Punishment,” <https://www.justice.govt.nz/justice-sector-policy/constitutional-issues-and-human-rights/human-rights/international-human-rights/cat/>

³ Aaron Smale, “Government botches response to Lake Alice torture finding,” Newsroom, 6 Sept. 2023, <https://www.abuseincare.org.nz/our-progress/reports/inquiry-into-the-lake-alice-child-and-adolescent-unit/2->

⁴ NZ Police Investigation Summary Lake Alice 2018 -2023 (File No 060622/6273) attached

⁵ Ibid page 7-8

⁶ Ibid page 9-10

16. John (Dempsey) Corkran was a charge nurse at the former Lake Alice psychiatric hospital accused of injecting adolescent patients with a paraldehyde as punishment. He was charged with 8 charges of wilful ill treatment of a child. In June 2023 during pretrial applications and after hearing medical evidence a High Court Judge ordered a stay of proceedings.⁷

17. It is New Zealand's shame that this case was deliberately prolonged at government, police and health/mental health agency levels. It was not until 2020 that a thorough police investigation took place and only after the UN Committee Against Torture urged the State to do so.

Convention Against Torture Article 14—Redress

18. The New Zealand government's reservation on article 14 has meant that the prospect of timely redress for the Lake Alice survivors looks increasingly distant. The government's redress scheme is still in the design phase with no predicted outcome for these people now in their 60s—yet more procrastination on the part of the government, despite the recognised tremendous harm and trauma these former Lake Alice victims have and continue to suffer.

19. In July 2023 CCHR provided the UN Committee Against Torture with the reasons why the redress for Lake Alice survivors should be given as a matter of urgency.⁸

20. Following the release of the UNCAT Concluding observations, CCHR tried to establish from the Ministry of Justice and the Solicitor General when redress for the survivors of torture might be given in response to the urgency the CAT placed on the matter. To date no specific directions have been conveyed other than the matter is being considered by the government and it is with the Crown Response to the Abuse in Care Inquiry.

21. It should be noted that the Treasury had set aside \$132 million (\$203 million in today's currency) in the late 1990s for the Lake Alice civil claims and paid out 198 survivors \$12.8 million in 2001 (an average around \$65,000)..⁹

22. The Committee Against Torture also highlighted in their concluding observations the lack of prosecutions and/or disciplinary actions for recorded allegations of ill-treatment in places of detention.¹⁰

23. Among the Committee's recommendations included:

(d) Ensure that the suspected perpetrators of acts of torture and ill-treatment

⁷ Ibid page 10

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https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2FCAT%2FCSS%2FNZL%2F53064&Lang=en

⁹ <https://www.abuseincare.org.nz/our-progress/reports/inquiry-into-the-lake-alice-child-and-adolescent-unit/2-4-attempts-at-independent-investigation-accountability-and-redress/2-4-6-court-action-and-settlements/>

¹⁰ Ibid page 13

*and the superior officers responsible for ordering or tolerating the acts are duly tried and, if found guilty, punished in a manner that is commensurate with the gravity of their acts;*¹¹

24. A group of former Lake Alice patients have filed new police complaints in early 2023 about possible accessories to the torture at Lake Alice under the Crimes of Torture Act 1989, Section 3 (2) (c).¹²

25. The complaints were directed at high-level health and government officials who had access to the patient files and other material that pointed to the ill treatment and abuse that occurred at Lake Alice and defended the civil and ill-treatment claims against the responsible psychiatrist, Selwyn Leeks and nursing staff.

26. The police have been investigating these new complaints for a good part of 2023 and, according to a response to one of the complainants in August, it appears the complaint may not be successful because of the difficulty to reach sufficient evidence pursuant to the Solicitor General's Prosecution Guidelines.

27. While this may be the determination, it still remains that government officials who were possible accessories to crimes of torture are virtually impossible to prosecute if the police cannot operate independently from the State and require extraordinary approval from the Attorney General before mounting a prosecution (a clause of the Crimes of Torture Act 1989).

CONVENTION ON THE RIGHTS OF THE DISABLED PERSON

Mental Health Law Review

28. The Ministry of Health released a report entitled *Cabinet material and briefings: Transforming Mental Health Law: Second Tranche of Policy Decisions* dated 23 August 2023,¹³ on behalf of the Minister of Health. It is a public record of the law review process and the need for a human rights-based approach to the proposed new Mental Health law.

29. The proposed legislation changes follow the Inquiry into Mental Health and Addiction which recommended a human rights-based approach which promotes supported decision-making, aligns with the recovery and wellbeing model of mental health, and provides measures to minimise

¹¹ Committee against Torture Concluding observations on the seventh periodic report of New Zealand

¹² <https://www.legislation.govt.nz/act/public/1989/0106/latest/DLM192846.html>

¹³ Cabinet material and briefings: Transforming Mental Health Law: Second Tranche of Policy Decisions https://www.health.govt.nz/system/files/documents/information-release/cabinet_material_transforming_mental_health_law_black_box_watermarked_for_pr.pdf

compulsory or coercive treatment.¹⁴

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30. Under the current Mental Health Act (1992) in the 2020/21 financial year there were 11,149 people subject to some form of compulsory mental health assessment or treatment. Māori were assessed and treated under the Act at about 3 times the rate of non-Māori.¹⁵

31. The 1992 Act transferred the rules of enforced treatment from the asylum to the community on a much broader scale. Compulsory treatment orders were issued for indefinite periods—a point that was amended in 2021 removing the word “indefinite” but still maintaining compulsory treatment for periods lasting 12 months between reviews.¹⁶

32. In practice, removal from compulsory treatment orders has been very rare, which is why the 1992 Act has faced such strong criticism, in particular in relation to international obligations and the significant negative impact on people in terms of compulsory treatment and care, detention, seclusion and restraint.¹⁷

33. Many of the proposed changes to New Zealand’s mental health law could result in fundamental changes for the better. However it stops short of eliminating compulsory treatment altogether, saying it should be used when urgent intervention is required as a last resort and be limited to extreme and serious circumstances. This still leaves the door open to arbitrary decisions and abuse.

34. The proposals still allow for the enforced use of electroshock (ECT), medication, seclusion and restraint, even though the CRPD have directed such measures should never be used..¹⁸

Electroshock Treatment (ECT)

35. The Transforming Mental Health Law proposal includes the power to administer electroshock treatment (ECT) without consent, allowing it to be administered if a person does not have a valid advance directive in place refusing the use of ECT, or lacks the capacity to consent and a second opinion provider agrees to the use of ECT.¹⁹

36. In the 2020-2021 figures released by the Director General of Mental Health showed a total of 259 people were administered 3,043 electroshock treatments. Of these, 98 were subjected to 1,191 ECT treatments without their consent—deemed to lack capacity. The report stated an additional 4

¹⁴ He Ara Oranga: Report of the Government Inquiry into Mental Health and Addiction 2018
<https://mentalhealth.inquiry.govt.nz/inquiry-report/he-ara-oranga/>

¹⁵ Ibid page 25

¹⁶ Mental Health (Compulsory Assessment and Treatment) Amendment Act 2021
<https://legislation.govt.nz/act/public/2021/0041/latest/LMS463522.html>

¹⁷ Cabinet material and briefings: Transforming Mental Health Law: Second Tranche of Policy Decisions
https://www.health.govt.nz/system/files/documents/information-release/cabinet_material_transforming_mental_health_law_black_box_watermarked_for_pr.pdf page 25

¹⁸ Committee on the Rights of Persons with Disabilities Eleventh session 31 March–11 April 2014 General comment No. 1 [2014] Article 12: Equal recognition before the law, p 11

¹⁹ Cabinet material and briefings: Transforming Mental Health Law: Second Tranche of Policy Decisions, page 40

people refused the treatment but, regardless, were given 18 treatments.²⁰

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37. That means 38 per cent of people who received electroshocks were deemed lacking capacity to consent for the treatment which means the 98 people who were deemed incapable of consent could still be electroshocked under the new proposals.

38. This contravenes the CRPD and recommended draft legislative guidelines of the WHO/ OHCHR:

If permitted, ECT must only be administered with the informed consent of the person concerned. International human rights standards are very clear that ECT without consent violates the right to physical and mental integrity and may constitute torture and ill-treatment. People being offered ECT should also be made aware of all its risks and potential short- and long-term harmful effects, such as memory loss and brain damage.

ECT is not recommended for children, and hence this should be prohibited through legislation.

39. New Zealand has an appalling record of enforced ECT on children in the Lake Alice psychiatric hospital in the 1970s. The current Royal Commission of Inquiry into Abuse in Care declared in their report *Beautiful Children* (2022) that this was torture.²¹ Lake Alice was not the only psychiatric hospital where children were subjected to ECT without consent. As such, it would be appropriate for this country to ban its use altogether and to ensure safe alternatives are made accessible.

Seclusion and Restraint

40. The CRPD *Concluding observations on the combined second and third periodic reports of New Zealand* (26 September 2022) reported their concerns about article 15 and that the "State party take immediate action to eliminate the use of solitary confinement, seclusion, physical and chemical restraints and other restrictive practices in places of detention."²²

41. Recent statistics on the use of seclusion and restraint were reported in the Transforming Mental Health Law proposal document stating that in 2020/2021 815 people were secluded out of 8,596 inpatients (9.5%). This did not include forensic and intellectual disabled patients.

42. This is a rate of 27.0 people per 100,000. Māori were secluded at a rate of 79.5 per 100,000 population, Pacific peoples at 27.0 per 100,000 population and other ethnicities at a rate of 16.6 per 100,000 population

²⁰ Ministry of Health. 2022. Office of the Director of Mental Health and Addiction Services: Regulatory Report 1 July 2020 to 30 June 2021. Wellington: Ministry of Health. (p 3 [13 pdf])
<https://www.health.govt.nz/publication/office-director-mental-health-and-addiction-services-regulatory-report-1-july-2020-30-june-2021>

²¹ <https://www.abuseincare.org.nz/our-progress/reports/inquiry-into-the-lake-alice-child-and-adolescent-unit/executive-summary/executive-summary/>

²² Committee on the Rights of Persons with Disabilities Eleventh session 31 March–11 April 2014 General comment No. 1 [2014] Article 12: Equal recognition before the law, p 6

43. Although incomplete the 2021 data shows 1,934 individuals were restrained for a total of 6,769 restraint events.²³

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44. The proposal plans to minimise the use of seclusion and restraint with the intention of eliminating seclusion²⁴ but only to provide mechanisms to control (not prohibit) restraint use.²⁵

45. Restraint is likely used 10 times as often as seclusion.

46. The proposal is inadequate, leaving in place restraint procedures that can be deadly.

47. The proposal has no uncertainty about seclusion being a harmful practice with no therapeutic benefit and thus avoiding its use would save the State money.

48. Under the sub-heading "Benefits" the Transforming Mental Health Law proposal discusses possible financial benefits by improving the health services. In this section, there is a clear statement that "Seclusion is done by force, and is an inherently harmful practice, with no therapeutic benefit."²⁶ And by not secluding people would save the State \$1.83 million per year in avoided harm. Quite apart from a cost-saving venture, more to the point it is a human rights and safety issue.

49. A calculation was made concerning the upholding of human rights and avoiding potential penalties for infringing rights in cases of seclusion could save up to \$15 million per year.²⁷

In Summary

50. While the New Zealand proposals state that they offer a human rights approach to the new mental health legislation, human rights abuse will continue as long as there is compulsory treatment and enforcement of seclusion, restraint, electroshocks and drugging.

51. The system requires real independent oversight, reporting and investigations.

52. Oversight in the hands of District Inspectors and the National Reporting Mechanism has not addressed issues such as compulsory treatment, enforced drugging, violent restraints, ongoing use of seclusion and forced ECT. These issues require independent monitoring and reporting.

53. Enabling reporting only by the Director of Mental Health is grossly insufficient as this position is invariably held by a psychiatric practitioner and historically psychiatrists are blinkered to the

²³ Cabinet material and briefings: Transforming Mental Health Law: Second Tranche of Policy Decisions
https://www.health.govt.nz/system/files/documents/information-release/cabinet_material_transforming_mental_health_law_black_box_watermarked_for_pr.pdf page 92-93

²⁴ Ibid page 94

²⁵ Ibid page 108

²⁶ Ibid page 115

²⁷ Ibid page 116

excesses and abuses of their profession—as Lake Alice exemplified.

54. Likewise, the Director of Mental Health should not be the sole person empowered to direct health service providers as to how they will address recommendations made as a result of investigations of complaints. Such matters require independent oversight and if the new mental health system is to be more holistic and move away from a psychiatric monopoly, it also needs to give patients the right to refuse treatment and provide services to help them safely withdraw from

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medication, which have long term adverse effects. There needs to a more diverse directorship over mental health investigations, with the power to report criminal abuse to the police and negligent treatment to professional licensing boards.

55. A truly independent complaint and monitoring system is needed that can direct serious complaints to police and oversee recommendations that uphold human rights in the mental health system. Such a system requires consumer and advocacy representation.

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