

To: Senate Select Committee on Mental Health

From: insane australia

Date: July 4, 2005

Re: United Nations Ad Hoc Committee on a Comprehensive and Integral International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities

The current draft of the above UN Convention actively discriminates against people with psychosocial disabilities, or mental health consumers, by regarding our basic human rights as somehow different to the rights of people with other disabilities. Australia is contributing to this discrimination through its delegation to the Convention process. A key member of the Australian delegation is the Human Rights and Equal Opportunity Commission (HREOC) who, despite public pronouncements in Australia to the contrary, is supporting this discrimination against us at the UN. The Australian delegation, HREOC, and other advisers to the Australian delegation do not include any mental health consumers. And although there have been extensive consultations with other disability organizations, there has been only minimal and inadequate consultation with mental health consumers and our organisations in Australia. This is further discrimination against mental health consumers.

The international voice of mental health consumers at the UN Convention, the World Network of Users and Survivors of Psychiatry (WNUSP), is opposing the current draft of the convention because of its discrimination against mental health consumers. The following statement outlines the key points in the current draft of the Convention where this discrimination occurs. It calls upon governments of the world to oppose any Convention that regards the basic human rights of mental health consumers as somehow less than those enjoyed by people with other disabilities. 'insane australia' supports and endorses WNUSP in its fight to secure our most basic human rights and calls upon the Senate Select Committee on Mental Health to advise the Australian government to oppose the current draft of the UN Convention that discriminates against us.

WNUSP is an international organisation run entirely by and for mental health consumers. The voting members of the Board of WNUSP are two elected delegates from each of four sub-regions: Europe, the Americas, Africa and the Middle-East, and the Asia-Pacific, which includes Australia. The Board members for the Asia-Pacific are Mari Yamamoto in Japan and Chris Hansen in New Zealand. We include in this addendum to our submission, two position papers prepared and endorsed by the Board of WNUSP:

- Advocacy Note on Legal Capacity
- Advocacy Note: Forced Interventions Meet the International Definition of Torture Standards

Statement from WNUSP

We, as members of World Network of Users and Survivors of Psychiatry, Support Coalition International and other organizations, urge you to oppose the inclusion of any language in the new United Nations Convention on the Rights of Persons with Disabilities that would allow for mental health and/or psychiatric treatment to be forced upon an individual against his or her will. The text as proposed by the Working Group in Articles 10 and 11 specifically calls for an end to involuntary hospitalization and involuntary treatment. There has been significant discussion by the governmental delegations to allow for exceptions to be made to this prohibition under what they term “exceptional circumstances” and with “appropriate legal safeguards” when it is “in the best interest of the person.” This language refers to civil commitment for persons who are mentally ill and are considered to be a danger to themselves or others. As users and survivors of psychiatry, we have experienced involuntary hospitalization and involuntary treatment and consider such “treatment” to be a total violation of our human rights and dignity and our experience is that such treatment is torture.

No amount of legal safeguards can reverse the fact that our human rights are being violated by “treating” us against our will. This Convention is entitled “A Comprehensive and Integral International Convention on the Protecting and Promotion of the Rights and Dignity of Persons with Disabilities.” We urge you to support the position of the International Disability Caucus that prohibits involuntary hospitalization and involuntary treatment and protects the human rights of persons with psychosocial disabilities.

Persons who are considered to be a danger to others should be dealt with by the criminal justice and law enforcement systems that clearly define conduct constituting criminal offenses. In any such interactions, reasonable accommodation for people with disabilities must be provided, including availability of non-coercive support for someone undergoing a mental health crisis. Any separate system for involuntarily detaining people is clearly discriminatory.

Persons who are considered to be a danger to themselves would be much better served by a voluntary system of services than by involuntary hospitalization and involuntary treatment. Our experience of involuntary treatment is that it is so cruel and degrading that many of us have committed suicide as a result of being treated in this manner. Those of us who have managed to survive this torture feel obligated to speak on behalf of our brothers and sisters who have not survived or who are severely disabled by their experience of forced treatment.

We also urge you to support the position of the International Disability Caucus on issues addressed in Article 9 regarding the right to legal capacity. We oppose the notion that the State must protect us by assigning guardians to make decisions for us. We advocate using a model of supported decision-making as opposed to the commonly used model of substituted decision-making. In the substituted decision-making model the legal capacity of the person is taken away and passed over to another person (a guardian or

representative) who from then on will make decisions on the person's behalf. In the supported-decision-making model, the person with a disability maintains their legal capacity and the support system is obligated to try to communicate with the person and to facilitate the person's exercise of choice and decision-making. Full legal capacity with availability of supported decision-making is crucial for persons with psychosocial disabilities to protect ourselves from abuse and to exercise our civil rights in all areas.

We users and survivors of psychiatry are counting on this Convention to end the discrimination that we experience on a daily basis and to promote and protect our human rights. Ending this discrimination will involve finding creative solutions to address some of the issues facing persons with disabilities and the issues facing the States in their attempts to protect us. It is totally unacceptable to use this Convention to simply codify existing mental health laws and practices.