

REPORT ON CAMPAIGN AGAINST FORCED MEDICATION

Responses by Mental Health Authorities and Stakeholders to the Kerry O'Malley Case

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Introduction

This report details the responses of mental health authorities and consumer organisations to the efforts to stop the forced medication of Ms. [Kerry O'Malley](#). The treatment she experienced highlights the disrespect towards consumers by the Australian mental health system. It exposes consumer powerlessness despite the rhetoric and money spent, intended for their support.

Kerry O'Malley was subjected to a Community Treatment Order (CTO) in December 2019, leading to her forced medication. This caused severe mental and physical side effects including increased anxiety, lack of motivation, poor concentration, weight gain, loss of hair and emotional stress caused by her lack of autonomy. She was accused of sitting in a chemist shop, confused, for six hours. However, no evidence was given of her being a risk of serious harm to herself or to others. The NSW Mental Health Review Tribunal rejected her proposed alternative plan, which incorporated medical and social intervention strategies to increase Kerry's control over her own life.

She is one of 5,000 in NSW and one of 17,000 in all of Australia currently forcibly injected under CTOs. Kerry O'Malley's rights to representation, access to medical files and bodily autonomy had all been breached. These issues were well defined and the case was won in the NSW Supreme Court. The campaign [was supported](#) by the world-leading publication *Mad in America*.

All mental health authorities and organisations across the nine jurisdictions in Australia, including Mental Health Ministers, Shadow Ministers, Greens representatives, Mental Health Commissioners, Chief Psychiatrists, Carer and Consumer representative organisations were approached for statements of principle about the use of forced medication.

This is the Report of their responses. Those closest to the consumers overwhelmingly opposed forced medication.

RESPONSES

Mental Health Australia's CEO Dr. Leanne Beagley, for the peak body stated on November 25, 2020:

“Freedom from cruel or inhuman treatment and protecting the integrity of the person are key mental health consumer issues and need greater attention within the mental health sector”.

“Your individual advocacy and human rights work is an important corollary to our policy and reform advocacy and we are pleased to provide you with published material from our organisation and from the National Mental Health Consumer and Carer Forum in relation to the matters you have raised... What is particularly important about these publications is that they have been developed directly by people with lived experience of mental illness and those who care for them. They provide a strong framework to support advocacy work in this area and I commend them to you.”

In particular, she highlighted that Kerry O'Malley's case:

“...signals a set of complex broader issues related to the rights of individuals to make decisions in relation to their own treatment.”

Mental Health Carers NSW CEO Mr. Jonathan Harms, stated on June 23, 2020:

“[We will] support any judicial review of any cases like that of Kerry O'Malley in order to ensure that such protections as do exist within our legislative framework are at least enforced and respected along with the human dignity of consumers and carers, which these laws are meant to enshrine.”

“MHCN is concerned at the excessive emphasis in the modern Australian mental health system on medication and forced medication at that.”

“Legal exploration of the legitimate legal limits on forcing toxic drug treatments on people when other, more humane, and less intrusive alternatives, (with just as much evidence for efficacy) are available, is frankly long overdue.”

The organisation is concerned that:

“a culture of medication over-prescription embedded across the mental health sector and particularly the use of Community Treatment Orders.

The *Mental Health Carers NSW* highly recommends a:

“shift to the provision of additional community support is required to lessen the need for reliance on medication”.

Victorian Mental Illness Awareness Council (VMIAC) CEO Maggie Toko stated on October 29, 2020:

“...we too share concerns about the use of force in mental health services. You can see our positions on these matters set out in our position statements on compulsory treatment, seclusion and restraint, as well as preventing violence, abuse and neglect.”

[VMIAC Policy Position Paper #1: Compulsory treatment](#)

[VMIAC Policy Position Paper #2: Preventing and responding to violence, abuse and neglect](#)

[VMIAC Policy Position Paper #3: Seclusion and Restraint](#)

VMIAC states that the focus should be on voluntary, trauma-based and peer-led treatment alternatives. Forced medication:

“violates [one’s] human rights and promotes discrimination by treating people differently based on a diagnosis of mental illness”.

Consumers Health Forum of Australia (CHF) and **Health Consumers NSW** stated on June 30, 2020:

“As leading advocates on consumer health care issues in New South Wales and nationally we believe that consumers should be partners in their own care to the extent that they choose... involuntary treatment should be avoided wherever possible and should only be used as a last resort”.

They said that under the *Australian Charter of Healthcare Rights*, produced by the *Australian Commission on Safety and Quality in Health Care*:

“Consumers have a right to be treated with dignity and respect, have their choices recognised and respected, and be involved in open and honest communication about their care.”

Recommendation

This report aims to highlight the negative effects of forced medication in an attempt to return power to the consumers. This national campaign defends the rights of Kerry O’Malley and others in similar situations.

Forced medication is an action of abuse against vulnerable people by health professionals trusted to assist them. It is the antithesis of the person-centred approach. Forced medication is harmful to the consumer by not engaging consumers in their own wellbeing, and causes severe side effects. Court rulings restricting its use are being ignored. The lack of consumer legal support independent of Health Department funding has allowed this malpractice to continue without formal opposition.

Court challenges similar to that of [Kerry O’Malley](#) are needed to force change. Concerned organisations should give support for those cases to be selected and presented.

The law restricting its practise is analysed in the “[Limits of the Power to Forcibly Medicate](#)” report. Numerous effective alternative treatments are available through working with consumers, such as Cognitive-Behavioural Therapy. They are outlined in the “[Survival Manual for Health Department Escapees](#)”.

RESPONSES BY MENTAL HEALTH AUTHORITIES & STAKEHOLDERS

Jurisdiction	CTH	NSW	VIC	QLD	ACT	NT	SA	TAS	WA	TOTAL
Pro forced medication reform	2	3	1	1	1	1	0	0	1	10
Avoided making a statement	5	10	3	3	4	1	2	3	2	33
Refused changes to forced medication	0	2	0	0	0	0	0	0	0	2
No response	3	6	1	3	1	2	4	2	2	24
Total	10	21	5	7	6	4	6	5	5	69

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RESPONSES FROM NATIONAL CONSUMER GROUPS

Mental Health Australia

We initially reached out to *Mental Health Australia* in April 2020, informing them of the Kerry O'Malley case and asking for their support. After months of repeated requests, we ended up speaking with the organisation over the phone. On the 25th of November 2020 we received a letter of support for our advocacy and human rights work in this field. *Mental Health Australia* expressed an intention to work with us moving forward, to ensure the safety and quality of care for those accessing mental health treatment in Australia.

In Leanne Beagley's correspondence letter, she firmly states that, *"Freedom from cruel or inhuman treatment and protecting the integrity of the person are key mental health consumer issues and need greater attention within the mental health sector"*. *Mental Health Australia* is committed to ensuring all Australians will be taken care of with necessary treatment and the system will uphold their rights. Leanne went on to commend the work of our organisation in advocating for mental health in individual cases:

"Your individual advocacy and human rights work is an important corollary to our policy and reform advocacy and we are pleased to provide you with published material from our organisation and from the National Mental Health Consumer and Carer Forum in relation to the matters you have raised (links below). What is particularly important about these publications is that they have been developed directly by people with lived experience of mental illness and those who care for them. They provide a strong framework to support advocacy work in this area and I commend them to you."

NEAMI National - Leon Meyer/Monika Engelhead

An email was sent on 4 November to Leon Meyer and Monika Engelhard detailing Kerry's case. A reply was received on 19 November from Leon, an apology for the delay, and stating that he sent a request to CEO Tom Dalton for consideration. An email the next day from Leon Meyer | Senior Manager Communications & Marketing, stated that NEAMI would not assist:

“Following a chat with our CEO, NEAMI will not be able to provide a statement of support. We wish you well with your campaign.”

Human Rights Law Centre

We began contacting the *Human Rights Law Centre* in April 2020 during our campaign for Kerry O’Malley’s case. We spoke with a representative in May 2020, who informed us that:

"The Commission does not have authority to advocate for individuals or individual clinical matters."

After continued attempts for direct contact, staff redirected the matter to Director, Monique Hurley - who, while stating concern about the issue, said cannot assist this time.

Consumers Health Forum of Australia

We approached the *Consumers Health Forum* in June 2020. On the 30th June 2020 we received a joint letter of support from the organisation and Health Consumers NSW. The letter stated that *“involuntary treatment should be avoided wherever possible and should only be used as a last resort”*. They stressed their focus is on consumer rights, ensuring that mental health consumers are treated with dignity and respect.

National Mental Health Consumers and Carers Forum

We contacted the Forum via numerous emails from 21 May 2020 to 26 November 2020. No acknowledgement or response has been provided.

Lived Experience Australia

Lived Experience Australia received numerous emails from 7th July to 28 October. After receiving no response, we contacted the Chief Executive Officer of *Lived Experience Australia*, Janne McMahon via phone on 2 November 2020. She recognised that the *‘system is not sufficiently engaging mental health consumers’*.

Public Interest Advocacy Centre

We received a response from the Public Interest Advocacy Centre in May, informing us they were *“not in a position to assist with this”* matter, redirecting us to other institutions.

In July 2020 we updated the organisation of our Supreme Court victory, and they offered us their congratulations but did not provide an in-principle support statement:

*“Congratulations to everyone involved in achieving this result.
I’m afraid PIAC doesn’t provide statements of support for individual cases in which we aren’t involved. We do appreciate the broader importance of the issues in the case,
but we do not have capacity to engage in wider advocacy on it at this stage.”*

Beyond Blue

Beyond Blue provides education and support for mental health. We sent out a number of emails to different contacts within *Beyond Blue* in early November 2020. On November 9th we received a response from *Beyond Blue*’s media manager to our request for an in principle support statement, stating, “*Beyond Blue does not have the capacity to advocate on behalf of the many individuals who approach the organisation with individual advocacy requests.*”

Justice Connect

A series of emails were sent to *Justice Connect* in June (18) and July (7 & 16), plus the office was called on June 22. On November 3, despite sustained efforts to make contact with all available options to speak with any related staff, we were unsuccessful. We have not received any response to our emails and phone calls.

Black Dog Institute

We have sent a ‘Victory’ email on Aug 17 requesting a statement of support for the entitlement of mental health consumers like Kerry, but only received an automated reply.

RESPONSES FROM STATE AGENCIES AND CONSUMER GROUPS

NEW SOUTH WALES

Mental Health Minister - Bronwyn Taylor

We have sent a series of emails and phoned the Minister's Office between April and October 2020. On 9 November 2020, we spoke to the Personal Assistant, who informed us they had received our information and were preparing a response. Justice Action sent an email on 28 April 2020 describing Kerry's case, to which they responded with an automated reply acknowledging receipt of our email. A follow-up email sent on 16 July 2020 informing the Minister of Kerry's victory in the Supreme Court appeal was again only met by an automated reply. Received a response on 10 November 2020: *"I acknowledge your concerns about the importance of providing mental health consumers with person-centred and respectful care and treatment. I refer you to the enclosed correspondence sent to you by NSW Chief Psychiatrist, Dr Murray Wright, on 28 October 2020. Dr Wright's correspondence provides NSW Health's position on the matters raised in your email."*

Lastly, we completed another online enquiry to contact Mrs. Taylor to follow up the correspondence on 28 November 2020. No response was received.

Chief Psychiatrist - Dr Murray Wright

We have sent numerous emails to him between May and October 2020. On the 4th of November we received a letter, replying that the outstanding issue *Justice Action* identified in the Chief Psychiatrist Communique from 2014 failure to sufficiently define 'risk of serious harm' - remains relevant and is consistent with the NSW legislation. Dr Wright recommended we seek advice from the Mental Health Review Tribunal.

Justice Action sent an email to Dr Murray Wright regarding Kerry's case on 1 July 2020. Justice Action received a signed letter from Dr Wright dated 20 July 2020, stating that he does not have the capacity to comment on individual treatment, however he directed *Justice Action* to *NSW Official Visitors Program* and *The Health Care Complaints Commission*.

On 14 October 2020, *Justice Action* contacted the office of Dr Murray Wright about a NSW Chief Psychiatrist's Communique of 2014 detailing the limits to forced medication, included a draft report detailing his response to our previous emails, and inviting him to reconsider his response. Justice Action stated: *'The NSW Chief Psychiatrist's Communique of 2014 is misleading and does not adequately define the limits of power that the law has permitted... We ask that this be withdrawn and replaced with a new Communique that reflects the position of the courts in imposing highly restrictive threshold requirements that must be met before an order for such an invasive intervention can be lawfully made.'*

A follow-up email was sent on 22 October 2020, to which no response was received. The following day *Justice Action* made a follow-up call to the office of Dr Murray Wright, and spoke to Dr Wright's PA who advised us that the email was received and Dr. Wright is yet to provide a response to it. The office advised that we called back on 27 October 2020.

Dr. Wright's PA, Meredith Sims later responded and attached a correspondence letter from Dr. Wright (delayed delivery as it was dated 4 November 2020). Dr. Wright maintained his stance: that the NSW Communique is relevant and consistent with the NSW legislation, and recommends us speaking with NSW Mental Health Review Tribunal or NSW legislative bodies in order to clarify the definition of 'serious harm'.

We wrote back on December 3, further stating why we considered it the responsibility of the NSW Chief Psychiatrist to deal with this misleading nature of this Communique in relation to defining serious harm risk, so as to limit NSW Health's powers to forcibly medicate people, and urged details be updated on their website to reflect the legal precedents restricting the use of forced medication. In this email we stated that:

"This matter is clearly your responsibility. We have examined the role of the Chief Psychiatrist as delineated by the NSW Ministry of Health and found that you must provide: High level advice to the Director of Mental Health on the mental health needs of the NSW population; Professional leadership to NSW mental health clinicians across all areas; and Clinical input to policy development and implementation to improve the mental health status of target groups.

The statutory obligations under other Australian jurisdictions reveal that the Chief Psychiatrist is crucially responsible to continually improve the quality and safety of mental health treatments. This involves critical scrutiny of restrictive practices, and the provision of accurate and useful information to mental health practitioners.

The Communique of November 2014 is the basis upon which clinicians and the NSW Health Department refer to when forced medication occurs. However, contrary to your previous response, we do not believe the Communique remains relevant and is in fact misleading. While the Communique provides a list of situations where harm may arise, there is no clear standard to determine what magnitude of consequences constitutes “serious harm”. This was asserted in our report ‘Limits of the Power to Forcibly Medicate’

(<https://www.justiceaction.org.au/images/stories/CmpgnPDFs/LimitsForcedMdtm141020.pdf>; page 16) and our ‘Survival Manual for Health Department Escapees’ (https://docs.google.com/document/d/1zJHg_-aUQmAh1dbQE3kRecPNOOVnQunFdf2t7fWfrvE/edit#heading=h.aa8ydk8c24xt; page 2). Further, the obligation to negate less restrictive alternative treatments had not been mentioned in the information sheet on the Communique as provided by the NSW Ministry of Health.”

He replied in an email dated 8 December 2020, his lack of interest to change the “Communique of November 2014”, and did not comment about his departments legal precedents but said:

“As per our previous correspondence on 4 November 2020, the NSW Chief Psychiatrist’s Communique of November 2014 remains relevant in guiding mental health clinicians regarding the considerations in the assessment of risk, and in line with the legislative definitions as provided by the NSW Mental Health Act 2007 and the NSW Mental Health Review Tribunal.

No further action is indicated at this time.

If you wish to further clarify the legislative definitions of serious harm, you should contact the NSW legislative bodies or the NSW Mental Health Review Tribunal.”

Mental Health Review Tribunal - Judge Paul Lakatos SC (President)

We sent an email on the 25th November 2020 and received reply mail on 11th December, and dated 27th November. Judge Lakatos' replied that the tribunal was 'satisfied' with the current website content about the law on CTO's, but did not indicate any tribunal's concerns or support actions towards better receipt/engagement of consumer input, nor its intention for reforms. However he noted that *Justice Action* may consider making suggestions within next year's *MHA* review of reforms to protect mental health consumers:

"I agree that advanced care directives could be used by consumers to communicate their will and preferences to treating teams and there is no reason why consumers should not use them.

Your paper also sets out a number of potential reforms to the MHA that may be more protective of the rights of consumers. I understand that the MHA is due to be reviewed in the next year or two and this may be an opportune time for you to suggest to government the reforms as outlined in the paper.

The Tribunal welcomes feedback in relation to its role, functions, and processes.

However, I am satisfied that the Tribunal's website accurately sets out the current law in relation to CTOs and its other heads of jurisdiction.

Accordingly, it is unnecessary to amend the website as per your suggestion."

Shadow Mental Health Minister - Emma McBride

We sent an email on the 28th April 2020 and received an automated reply acknowledging receipt. A follow-up call was made on 21 May 2020, in which we were told the Minister was busy with other cases. A follow-up email was sent on 21 May 2020, to which we have not received a response other than an additional automated reply. On 18 November 2020 we spoke to the receptionist who said they would find the correct person to respond to us. As of 30 November 2020 we are waiting for the Minister's office to get back to us.

On the 14/12/20 Michael Mukherjee, the Research and Policy Officer responded to the detail provided regarding this focus case: 'We understand what you are saying, and we are not going to be providing a statement.'

Mental Health Commission - Commissioner Catherine Lourey

We contacted the Commission from April 28 with a series of emails. The Commissioner responded on the 14 May, saying that while they do not engage in individual advocacy, they do focus on systemic mental health issues:

“ However, it is valuable to hear stories such as Ms O’Malley to identify those aspects of the mental health system that could work better and advocate for reform...

We will continue to advocate for a system that recognises the autonomy of people who experience mental health issues, which supports them to make decisions, which best support their personal recovery journey.”

Shadow Mental Health Minister - Tara Moriarty

We sent a series of email to the Shadow Health Minister from 1 July 2020 to 30 October seeking support for Kerry’s case, and then following up with calls on the October 23 & 30. In response, we received an autoreply on October 15 to our email that included our report on ‘Forced Medication’. On 3 November 2020 we spoke to PA who said they have received the email and she will follow up with Tara Moriarty regarding a response. We sent a follow up email on 3 December 2020, yet received no response.

Greens Representative - Cate Faehrmann

We have sent a number of emails between July and October 2020. On 3 November 2020 we spoke to the receptionist who said they had received our emails and would take a look over it. We then received a reply to our various emails on 4 November 2020, thanking us for informing them about the case and giving their support to the campaign.

Mental Health Carers NSW - Jonathan Harms

We sent an email on the 16th July 2020. We received a reply, recognising the case was “troubling” and “were happy to support the fight for due process”. Further correspondence on the 26th July, offered support plus initiated support for any judicial review of the laws as they are intended to support recovery, and ensure the legislative framework is enforced and respected:

“The case of a woman, Kerry O'Malley, being put on a mandatory Community Treatment Order when there was no evidence of risk of serious harm, raises concerns. More so when 'treatment' is limited to a monthly injection of medication that terrifies her merely to suppress symptoms, with no other ongoing work to identify causes of her alleged symptoms or other options offered for support or counselling to address them.

This is clearly inconsistent with the principles of treatment listed in section 68 of the Mental Health Act, (although we know this does not invalidate this treatment due to the operation of s195). However, her fears that any complaint could result in her medication being increased demonstrates a sad failure by services to build an appropriate relationship with the person they are supporting, difficult as this can be. Such cases increase MHCN's concern about the reduction in scrutiny by the Mental Health Review Tribunal and the Official Visitors caused by changes to laws and regulations in response to the COVID-19 Pandemic.

We would support any judicial review of any cases like that of Kerry O'Malley in order to ensure that such protections as do exist within our legislative framework are at least enforced and respected along with the human dignity of consumers and carers, which these laws are meant to enshrine.”

Mental Health Advocacy Service (Legal Aid NSW) - Todd Davis

We emailed the Service many times between April and November 2020. On 19 November 2020 we sent an email, asking for a statement of support.

Received a reply on 7 December stating that he would not provide a statement of support due to a perceived conflict for whom they serve:

“We note your recent favourable outcome as you describe below.

Thank you for your invitation to provide an in principle statement regarding 'forced medication.

We are not in a position to provide such a response. Reasons for that include the disparate population of people we represent which traverses many areas of law and health care practice."

NSW Council for Civil Liberties (NSWCCL) - Nicholas Cowdery

We emailed the Council on 29 April and received a reply on 5 May:

"NSWCCL is not in a position to provide a statement of concern at this point in time. We would be happy to share a statement or article by her legal team on NSWCCL's website or social media to assist in drawing attention to the legal aspects of Kerry's case/situation and to inform others experiencing similar treatment. We wish Justice Action all the best in advocating for Kerry and in the good work you do in representing others in the pursuit of justice."

We sent a follow up email on 19 November, and they replied saying it was noted in the Committee's meeting.

Mental Health Coordinating Council - Carmel Tebbutt

We sent an email in April 2020, receiving a reply on 11 May 2020 that stated the Council was 'unable to comment', redirecting us to agencies, such as *PIAC* and *Being*.

We wrote back clarifying that we are not asking for individual advocacy and asking for an in principle statement, she repeated earlier sentiment about individual advocacy.

"Thank you for your email about Ms O'Malley's situation, and that of other consumers. I understand Justice Action's commitment to advocacy regarding forced medication. However as I have previously communicated MHCC is the mental health peak body representing community managed organisations in NSW. Whilst we

advocate on mental health policy and legislative reform matters in position papers and submissions as opportunities arise; we do not advocate for individuals, or comment on clinical decisions either made in hospital and upheld in MHRT hearings. We regret that we are unable to comment on Ms O'Malley's individual circumstances; or indeed the individual circumstances more generally in NSW or nationally."

NSW Bar Association - Heather Sare

We sent a series of emails between April and October 2020. We received a reply on 5 of November 2020, thanking us for our email. They said were unable to comment on public campaigns, however redirected the email internally to the Director to consider further regarding offering campaign support. No support has been forthcoming.

Legal Aid NSW - Brendan Thomas

We emailed him between April, and received a response on 29 April 2020. The response focused on the eligibility of individuals like Ms O'Malley to receive Legal Aid. Nothing was offered in terms of ongoing support of the campaign.

Law Society of NSW - Richard Harvey

We sent an email on 28 April 2020 describing Kerry's case. On 11 May 2020 we received an email referring us to the Pro Bono scheme and application process for Legal Aid, which we did not finalise. On the 18 November 2020 we asked for a statement of support. We received a reply the following day, confirming it had been forwarded to the *Law Society Committee* for their information and comment. On December 14, Hanna Murphy, Executive Assistant to the President, stated in her email: *'I have spoken to the Director of our Policy and Practice Department and confirm that the Law Society have no further comment to make.'*

Justice Health and Forensic Mental Health Network - Gary Forrest

We sent a number of emails in April and May 2020. We sent a follow up email on 31 July and 30 November, plus attempted several calls to his office - the last call attempt in Nov

2 had left our call on hold for 5 minutes and then the line was cut off. We have received no response/reply.

Carers NSW - Elena Katrakis

We sent a number of emails from April to July 2020, without receiving a response. We spoke to a receptionist on 3 November 2020 who asked us to resend the email. We resent the email on 12 November 2020, and haven't received a reply.

Australian Medical Association NSW - Dr Kean-Seng Lim

We sent an email on 28 April 2020. We received a reply on 5 May 2020, stating that the organisation is a medico-political organisation and they were unwilling to comment on individual matters:

"The AMA does not become involved in individual patient cases and I am unable to assist you in this circumstance."

Being - Irene Gallagher

We contacted *Being* on numerous times, sending a series of emails from May (5 & 28), July 1, and in October (14, 22 & 30).

On October 15 we received a 'Blocked Message' mail delivery notice. We received an email response on 29 October that acknowledged our previous two emails, however noting that as *"a systemic advocacy organisation with limited resources and are unable to assist with [our] request at this time"*. *Being* did also state:

"We acknowledge the work of Justice Action in assisting individuals such as Ms O'Malley and are pleased to hear of the positive outcomes for Ms O'Malley."

We sent a follow up email on 2 November 2020, clarifying our request for an in-principle statement of the issue, which received an autoreply. Despite speaking multiple times on the phone with *Being staff*, they did not provide a statement of support for the issues raised in our campaign.

One Door Mental Health - Professor Anthony Harris

We sent a number of emails between June and November 2020. We were only able to leave messages on 6 and 14th November 2020, yet received no response.

Sydney Treatment and Advocacy Group (STAAG) - David Murphy

We emailed the *Sydney Treatment and Advocacy Group* (STAAG) in April 28 and November 4 & 6, not initially receiving a response. Following our telephone conversations on November 6 & 9, we received David's letter on 14 November with additional case example documentation about the problems of forcible medication that referred to problems with: the state legally back themselves when someone is arrested in a confused 'disorganised' state, and 'risk' (of harm to self or others) is seen as a 'continuous chain of events'; the need for the provision of the patient's information to their representative or first of kin; problems with medical record keeping; and the statistical confidence on least restrictive care alternatives and the 'revolving door' risk to consumers. STAAG detailed several concerns:

"The powers that be that forcibly medicate must be called to prove that their medications are beneficial and work and are not merely sedative and hallucinatory...

If they work there should be evidence of patients being cured. Since there is none it is perfectly valid to demand that forcible medication cease and treatment alternatives.... with its proven success rate in recent years and lack of side effects be employed as it is less invasive than unattested, placebo grade (30-35% effective) chemical medications."

MH-worX - Douglas Holmes

We sent a number of emails and phone calls between 28 April and 2 November 2020, all of which were met with no response.

VICTORIA

Mental Health Minister - Martin Foley & James Merlino

We sent emails on July 1 & 3 as well as October 14 to Martin Foley - initial email was met with an acknowledgement of receipt. Calls on October 23 & on the 27th, staff said as the office was newly created, we should call again and wait for a response. In October We attempted to call again on November 3, 9 & 18, but couldn't reach the office and sent another follow up email on 3 December - without response. We called again on December 7 and spoke to the PA who did not know when they would be able to get back to our inquiry. Sent another email on the 8th of December, yet we received no response to the issues.

We were redirected from Martin Foley to James Merlino on November 9. We have sent an initial and follow up email on October 23 and November 6, and received an automated reply. We called Merlino's reception on November 9 seeking an in-principle statement, and said our request would be referred to her supervisor. As an earlier email was not received, we sent another on December 8. We went back to Foley, emailing on 3/12 and then spoke to his PA on the 7th, who said they were still in the process of reviewing all emails.

None of our contacts were met with a response, despite being redirected to Merlino.

Chief Psychiatrist - Dr Neil Coventry

We received no response to the succession of emails sent to the Chief Psychiatrist from: July 2, several in October (6 & 28 & 30), in November (5, 6 & 9), and on December 3, detailing Kerry's case, and seeking in-principle support statement of our analysis. Two of the three November emails received 'Blocked Message' email delivery rejection notices. A voicemail was left on the 8 December, again with no response being received. No response was received at any stage, nor to any form of contact.

Victorian Mental Illness Awareness Council - Maggie Toko

The *Victorian Mental Illness Awareness Council* (VMIAC) represents mental health consumers to shed light on people's experiences. We reached out to VMIAC from April 29

with a series of emails and contacts.. On October 29, we received a statement of support that acknowledged the concerns about the use of forced medication in mental health treatment where the focus should be on voluntary, trauma-based and peer-led treatment alternatives.

Greens MP for Brunswick - Tim Read

A series of emails to the Greens MP between July 1 to October 30 have been met with no response. Voicemails left on November 3 & 18 November have not received a response.

Mental Health Legal Centre - Theresa Swanborough

Sent a series of emails to the *Mental Health Legal Centre* on April 28, July 2 & 16 detailing Kerry O'Malley's case, each received no reply. A follow up email sent on 16 July 2020 was sent out and responded to. In a phone call to the centre, In reply to our email on July 21, Principal Solicitor, Ann Joregeson reply emailed her apologies for the delay and wishing Kerry the best, but no support was provided:

"We have unprecedented demand on our service at this time and have our small staff all working remotely. At present we do not have the capacity to get involved in an interstate campaign or provide a statement of support."

QUEENSLAND

Queensland Deputy Premier and Mental Health Minister - Ivan Frkovic

We sent emails from May 19 to November 13 detailing Kerry's situation and asking for support. We received replies on May 8 & 19, October 28, and November 30 stating they are unable to provide further comment due to being in another jurisdictional. From October 15 our material had asked for a 'statement supporting the analysis of this paper' for what we detailed as a national problem.

Chief Psychiatrist - John Reilly & Mental Health Act Administration Team

We sent emails to the Chief Psychiatrist's office on July 1, November 1, and we attempted to email on 9 November -unsuccessfully three times, where we received a 'Message Blocked' failure to deliver notice. On December 7 we spoke to Dr Reilly's PA Connor Rappray, who said he would promptly respond. On advice, we sent a follow up email on November 30 to Janet Ceron.

Both our November emails referred to our national campaign about 'individuals are being forcibly medicated across Australia' and that we sought a 'statement supporting the analysis of this paper'. We received a response on 8 December from the Mental Health Act Administration Team stating that they could not make comments as:

"Ms O'Malley's matter falls outside of the Queensland jurisdiction, and as such, it would be inappropriate for a Queensland Health departmental officer to make any comment on the matter... The Chief Psychiatrist cannot make any further comments in addition to what has been addressed by both the Deputy Director-General and Assistant Deputy Director-General"

Shadow Mental Health Minister- Rosslyn Bates

We sent a series of emails from July 1 to 15 October, seeking support for Kerry O Malley's case. This was met with acknowledgements of receipt, but no response. Additionally, we left voicemails, however our calls were not returned. We have received no response since.

Queensland Mental Health Commission - Bretine Curtis

On 8 May, we received a detailed and strongly supportive response to our emails, :

"We appreciate that you have made us aware of Ms O'Malley's case and offer our sympathies for the distress this will be causing both Ms O'Malley and her family and loved ones.

The Queensland Mental Health Commission's primary role is to drive ongoing reform towards a more integrated, evidence-based, recovery-oriented mental

health, alcohol and other drug service system in Queensland. Given this role, we are not able to provide advice or endorsement in relation to individual cases, particularly those outside Queensland or involved in a legal matter.

However, we do have a strong interest in protecting the human rights of people with a mental illness. In October 2019 the Commission published research findings around Involuntary Treatment Protections which might be of interest to you:

www.qmhc.qld.gov.au/research-review/human-rights/involuntary-treatment-protections.

I have also taken the liberty of advising the NSW Mental Health Commission of your correspondence and concerns.

Thank you for your important advocacy work for people with a mental illness.”

It indicates that the Mental Health Commissioner in Queensland is acting directly towards reform in ‘strengthening the human rights of mental health consumers’.

The email linked us to reports including MHRT and CTO’s: such as the report on ‘Findings, Human rights protection frameworks for people being treated involuntarily for a mental illness, May 2019’ that referred to federal and state regulatory laws, advanced directives, the Mental Health Tribunal. On the MHRT, the link stated: *‘The reviewed national and international literature showed that Mental Health Tribunals’ (MHTs) role of protecting the rights of people with mental illness of unjustified detention or treatment can be hampered by factors such as an overreliance on medical opinion, the quality of the health reports provided by medical staff, and a primary focus on risk and dangerousness assessments.’*

(<https://www.qmhc.qld.gov.au/documents/findingshumanrightsprotectionframeworksforpeoplebeingtreatedinvoluntarilyforamentailnessmay2019pdf>)

We accept these details equate to receiving in-principle support to the issues in our focus case.

Deputy Director-General Clinical Excellence Queensland - Dr Jillann Farmer

We sent a series of emails from 1 July regarding Kerry's case to Health Minister Dr Steven Miles (received one autoreply on July 1, and a 'Blocked Message' mail delivery notice on October 15) , and later to Dr Farmer. Although we had repeatedly asked for an statement of support for the principles that her case highlighted, we received a response on 25 August 2020 from Dr Jillann Farmer replying on behalf of the Deputy Premier, stating:

"I note your advice that hearings and negotiations between Ms O'Malley and the New South Wales Supreme Court and Mental Health Review Tribunal are ongoing and therefore, it would not be appropriate for me to comment at this time."

We sent an email on 30 November to advise that our victory case that had been won earlier in July 13, yet no support statement was forthcoming from Janet Ceron, whom we were redirected to by the office.

Greens Spokesperson - Senator Larissa Waters

We sent an email on 1 July 2020 regarding Kerry's case. A response was received on the same day, in which the office indicated they had forwarded our concerns to Greens Senator Rachel Siewert who holds the Greens Portfolio for Mental Health. We resent an email on 29 October 2020 and 13 November 2020. No correspondence has been received. We responded to her advice and emailed Senator Siewert in December 14, and await a reply.

Minister for Health and Minister for Ambulance Services - Steven Miles

We sent initial and follow up emails to the office of Steven Miles on 5 November 2020 asking for support. The emails were met with automated acknowledgement of receipt and no further response.

AUSTRALIAN CAPITAL TERRITORY

Mental Health Minister - Shane Rattenbury

We sent an initial email to the office on 28 April plus follow-up emails were sent on 1 July and also 2 and 3 July, and replied to on 15 October that the ACT Government is in ‘caretaker’ mode due to elections and the correspondence has been referred to the Directorate for consideration and response. No such response has been supplied.

On 27th October 2020, we spoke to PA for Shane Rattenbury, who forwarded the email to the director, and we followed up on the 30 October. We received a response on 3 December notifying that a full response to Kerry’s case was being prepared. We sent a reminder email to the Mental Health Minister’s office regarding the statement of support, and following their advice on December 11 on the 14th we reapproached Sandra Capacio in that office and left an urgent request for her response.

Chief Psychiatrist - Dr Denise Riordan

We emailed on the 1 July 2020 seeking support for the Kerry O’Malley case. A response was received on 8 July 2020 refusing to provide a statement of support:

“As this matter is before the courts, the Office of the Chief Psychiatrist has no comment and will not enter into communication regarding this matter.”

On 14 October 2020, *Justice Action* emailed the ACT office of Dr Denise Riordan to encourage her to reconsider her response about ‘Health department's policy statements are misleading and do not adequately define the limits of the power of Health Departments to forcibly medicate individuals’, and included a draft report on the limits of forced medication, and our draft Campaign report, . On 20 October 2020, a phone call was unsuccessfully made to the office of Dr. Denise Riordan following up our email and asking for a response.

We sent another email on 3 December that included information about the Supreme Court Victory for this case, and asking for a ‘statement of support for the principles that her case highlights’. Although this could have resolved their alleged concern to not comment on matters before the courts, we still received no response.

Carers ACT - Lisa Kelly

We sent *Carers ACT* emails throughout June to November. We received a reply on 6 November 2020, stating that they were unable to extend support due to jurisdictional issues: *“We are not a mental health provider and thus are not in a position to comment on medications or treatments.”*

Mental Health Consumer Network ACT - Dalane Drexler

We emailed the *ACT Mental Health Network* in April and May 2020. They responded in June, saying they were unable to provide assistance due to ‘legal and organisational factors’ and ‘an incapacity to advocate for NSW matters’, and that *‘We hope that Ms O’Malley is able to receive the support she so desperately needs, and apologise that we are unable to assist.’*

Recontacted on October 22 we asked for in-principle support statement to the issues this focus case raised, they re-iterated:

“I read your email and links with interest, and am glad that there has at least been some progress made in Ms O’Malley’s case, albeit limited...”

As we have previously advised JA on several occasions, we cannot operate outside our jurisdiction (ACT) and therefore are unable to provide the requested statement. We are also not a health care provider and so the request regarding policy review does not apply to us.”

Calling on 27 & 28 October, we were advised *‘Do not call.’*

Mental Health Community Coalition ACT - Simon Viereck

We emailed Mr Viereck in June 18 & 26 and received a response from him on June 26, appreciating our work in the face of breaches and need for systematic reform. While he indicated their organisational role includes mental health reform, he redirected the email to another ACT agency:

“Thank you also for what you are doing to support Kerry. On a personal level I agree that the human rights of Kerry and others are being actively breached by the mental health system.

On an organisational level, I am afraid this is somewhat out of scope for us. Our remit is to support NGO mental health service providers in the ACT and in a broad sense contributing to mental health reform. In regards to systemic reform, Kerry's case is a useful illustration of what is wrong with the current system, and as such we will keep it in mind as a case example.

I'll pass your email on to the ACT Mental Health Consumer Network and they may be in a position to express their support for the cause. “

Senator Katy Gallagher

We sent a series of emails to Ms Gallagher's office ACT Senator, who is the Shadow Minister for Finance, and for the Public Service. An initial email was blocked on October 15 and a series of subsequent emails was acknowledged with receipts on 21& 30 of October, and on 13 November. We have not received a response nor any support to the issues we raised.

NORTHERN TERRITORY

Mental Health Minister - Natasha Fyles

We sent a series of emails to the Minister between July and November. We received a reply on 12 November that informed us that the Minister is concerned primarily with the mental health support of Territorians, noting that the NT government is undertaking a review of their equivalent mental health legislation, including the powers of involuntary treatment orders regarding health treatment and support. While a statement of support was not forthcoming, her email gave recognition to the issues we raised, by referring our correspondence to the NT Mental Health Review Team, as part of the overall review process.

Mental Health Coalition - Judy Davis

We sent a series of emails from June to October, and notified on July 7 that the email was forwarded to their chairperson. On November 2 we called the coalition and were

informed that our contact had left and a replacement was awaited. We had difficulties in making phone contact. We received a short reply on November 10 from Interim EO Wendy Morton, stating the Coalition was ‘*unable to provide a statement of support at the current time*’.

Carers NT - Gail Marsh

We sent a series of emails to *Carers NT* from 17 June to 3 December (and following advice to redirect emails) and repeated calls during that period, reiterating the need for support for the case - all contacts were met with no response.

Top End Mental Health Consumers Organisation - Helen Day

We sent a series of emails between April and October, and called their office numerous times in November 2020. They stated that the organisation was facing several emergencies that were a priority, rather than engaging outside the Northern Territory.

SOUTH AUSTRALIA

Mental Health Minister - Stephen Wade MLC

We sent a series of emails from 1 July to October 15, each met with a receipt of acknowledgement. A phone call on 2 November 2020 indicated that Kerry’s matter under consideration, yet no response was provided.

Chief Psychiatrist - John Brayley

Justice Action sent emails on 5 and 28 May 2020 regarding Kerry’s case, which were met with no response. A follow up email sent on 1 July received a reply on August 11 confirming the July correspondence, however Marc Currie, Manager of Legislation & Policy apologised that their office was unable to locate our previous emails.. An email we sent on October 15 received a ‘Message Blocked’ mail delivery notice. In a phone call to the office on November 3, we spoke to the receptionist who said the matter was being dealt with. A follow up email was sent on 3 December that was met with no forthcoming response.

Shadow Mental Health Minister - Chris Picton MLC

We sent two emails on 5 May and 28 May, to which no reply was received. Subsequent emails sent on 1st July and 14th October, received acknowledgements of receipt. Calls to his office were made on 3rd July and 20 October - the latter had staff report that it was being dealt with. No phone contact nor response statement was forthcoming.

South Australia Mental Health Commission

We sent an email on the 5 May and 28 May and on 1 July. On 22 October, we received an email that the Mental Health Commission was now *Wellbeing South Australia*, as the Commission had been abolished in January 2020, and that ‘*Wellbeing SA is unable to assist with your request.*’

Greens Spokesperson - Senator Sarah Hanson-Young

We sent a series of correctly addressed emails from 5th May to 2nd November 2020 regarding Kerry’s case, to which we have yet to receive reply or response. An update email sent on December 14 received no response.

Mind Australia - Jill Callister & Helen Sheppard

Justice Action directed to Anne Paxton, Robyn Hunter and Jill Callister, several emails to the office between April 28 till November 18, plus follow up phone contacts from August 3 to November 18. On 20th November, the Executive Director of *Mind Australia* Helen Sheppard declined our request for a ‘statement of support to the common issues’:

“We take a systemic approach to our advocacy activities, whilst also assisting current clients to address issues of concern and injustice. We are therefore not able to take any specific action at this time.”

TASMANIA

Mental Health Minister - Jeremy Rockliff

A series of emails were sent out from 1 July to 30 October, on July 3 & 6 , and on October 15 to which we received 5 email autoreplies. On July 6 we also resent emails following an office request. We received a call back on 20th October indicating the office would respond to our material shortly, and despite recalling on 2nd November, no response was forthcoming.

Chief Psychiatrist - Aaron Groves

Justice Action sent a series of emails between July 2 to November 9, and two correctly addressed emails were unsuccessful, receiving a 'Message Blocked' mail delivery notice. None received any comment nor acknowledgement.

Shadow Mental Health Minister - Sarah Lovell MLC

Justice Action sent a thread of emails on the 6 October - these emails appear correctly addressed but were met with no reply.

Mental Health Council - Connie Digolis

We sent a series of emails from 28 April that were met with no response. On 2 November 2020, we called the office of the *Mental Health Council* who redirected us to contact their Corporate Services Manager Shareen Pearson. Despite our request for an in-principle statement of support on the prevailing issues, we received a response on the same day stating they were '*unable to support or respond on this individual case*'.

Greens Spokesperson for TAS - Peter Whish-Wilson

We sent a multiple thread of emails to Senator Whish-Wilson on 6 October and although the emails appeared to be correctly addressed, we received no reply.

WESTERN AUSTRALIA

Minister for Mental Health - Roger Cook

We sent a series of emails from the 1st July, where each email was met with an automated receipt. Despite a request for an in-principle statement, on 11 November we received an email response, recognising receipt of two emails but misconstruing our request for a statement supporting our paper analysis. Regardless of our emails repeatedly explaining the Australia wide concerns and responses for this campaign, he redirected us to the NSW Health Minister saying:

‘The matter you have raised falls outside of the authority of the Western Australian Government and is a matter for the New South Wales Government.’

Chief Psychiatrist - Dr Nathan Gibson

We originally sent an email to the office of Dr Nathan Gibson on 2 July (which received an autoreply on October 15, November 2), and on their request, was successfully resent on November 2. We sent an email on 30 October enclosing our paper on the ‘Limits to Forced Medication’ that concluded with our request for ‘...sending us a statement of concern or publicising her case so that it prevents others being treated similarly.’

Dr Gibson response on 10 November indicated he would not provide a statement:

“ I am apologising for my late response, but would like to advise you that, as a statutory agent, I do not have a role in advocacy for individual cases in other jurisdictions.

As his statement did not accurately relate to our earlier request, on December 14, we left a message with his office staff, to clarify that we are not seeking individual advocacy for this national campaign, and that we awaited an in-principle support statement. No other contact was received.

Shadow Mental Health Minister - Zak Richard Francis Kirkup MLA

We sent an email on 6 October (to which we received an autoreply) and left a voicemail on 30 November - we have not successfully made contact.

Greens Spokesperson for WA - Jordon Steele-John

We sent a series of correctly addressed emails on the 6 October 2020 regarding Kerry's case - our emails were met with no response.

Consumers of Mental Health Western Australia - Shauna Gaebler

The *Consumers of Mental Health Western Australia* (CoMHWa) is a consumer-led organisation we began contacting from 28 April. We called on May 5, and then again on October 23 where office staff said there was no guarantee of a reply. In August we received a reply, which said while they were open to addressing systemic issues, they were unable to provide a letter of support for individual cases. We sent a follow up email on October 14, and also on November 26 to which we received a reply that day from Systemic Advocate, Lachlan Rodenburg. He noted that *Being* is the NSW organisation to contact, and referred us to the WA Chief Psychiatrist's call for [publication of seclusion and restraint data towards greater transparency in the use of restrictive practices](#), and he recognised for WA:

"...Unfortunately you're right, Kerry's case is not uncommon. We work on a systemic level to raise these issues with the people who need to hear about them, to ensure that they stop. In fact, the WA Chief Psychiatrist is committed to helping us address this on the frontline because clinicians are at the mercy of the system, and when the system doesn't work properly, clinicians are often left with little choice."

APPENDIX

Example of email sent to mental health interested parties

komteamja@gmail.com

6 October 2020 12.27pm to

senator.steele-john@aph.gov.au

senator.steele-john

Senator Jordon Steele-John

Greens Minister for WA

Parliament of Australia

Dear Senator Steele-John,

We previously contacted you in April and July about the treatment of 74 year old Kerry O'Malley by the mental health system.

This week the NSW Supreme Court declared the Community Treatment Order to be invalid and awarded costs to Kerry after NSW Health admitted that the order was incorrectly authorised. The [full report is here](#).

Please find our earlier emails below, showing the issues raised in the case including the right to representation, the right to examine files held by authorities and the right not to be forcibly injected without serious consideration.

She is a stark example of the failed system and for that reason we asked for your support, and thank those who provided statements.

Kerry has expressed her immense relief in a five minute video interview [here](#).

Kerry O'Malley's situation is shared with 5,000 people in NSW, 17,000 in Australia. Forced medication constitutes a serious abuse by the health profession against vulnerable people, whose rights and protections have been brushed aside in the interest of easy management.

We ask you for a statement of support for the entitlement of mental health consumers like Kerry to be treated with respect and dignity.

Please acknowledge upon receipt.

Kind regards,

Lilly Scarborough

Kerry O'Malley Team Leader

JUSTICE ACTION

From: KOM Team <komteamja@gmail.com>

Date: Thursday, 2 July 2020 at 4:44 pm

Subject: Kerry O'Malley

CEO

Mental Health Interested Party

Dear CEO,

We are writing to you regarding the mental health treatment of consumers as exposed by the experiences of Kerry O'Malley.

Kerry's situation has received international attention in the world-leading publication "[Mad in America](#)". This successfully conveys not only her situation, but that of thousands of others who experience similar abuse in the healthcare system. She features at the top of their weekly newsletter.

Kerry is fighting for respect for the rights of mental health consumers and is prepared to publicly use her name to assist others in the same situation. Additionally, her rights as a vulnerable person to representation, to not be forcefully medicated and to access her own medical files are to be heard by the NSW Supreme Court.

Meet her in this five minute [video interview](#). A document with details of the [hearings and negotiations is here](#). Her index [page is here](#).

We ask you to join others with a statement of support for the principles that her case highlights.

Would you do that?

Please acknowledge upon receipt.

Kind regards,

Lilly Scarborough

Kerry O'Malley Team Leader

JUSTICE ACTION

From: KOM Team <komteamja@gmail.com>

Date: Tuesday, 28 April 2020 at 4:18 pm

Subject: Forced Medication Supreme Court Appeal

CEO

Mental Health Interested Party

Dear CEO,

We ask you to support Kerry O'Malley's appeal to the Supreme Court to stop her from being forcibly medicated. If we cannot protect this gentle 74-year-old mother of five from coercive treatment, then we are diminished as a community. [Meet her here.](#)

The case of Kerry O'Malley exposes the abuse of vulnerable people by the mental health system. Kerry was told that the law prevented her from being represented before the Mental Health Review Tribunal if she was not a patient. Because she lives at home, and therefore legally isn't defined as a patient, no-one could represent her or help her examine her file.

The Penrith Health Service gave Kerry thirty minutes to look at six redacted pages instead of the whole file as the law requires. She was accused of sitting in a chemist shop, confused, for six hours. No evidence was given of her being a risk of serious harm to herself or others. In fact she has never hurt herself or anyone else.

The medication "Abilify" makes Kerry feel anxious and unmotivated. She has gained weight, sleeps badly and feels reduced as a person. She has the support of her own doctor, psychologist, family and church and with these to help her she feels safe and asks to be left alone. She said to the Tribunal: "My rights have been overlooked."

Justice Action has supported her since 2015, when her former psychiatrist asked for our help.

The sitting Tribunal initially gave permission for her primary carer to be recognised as her representative and thus be given access to her file. However, after the treating psychiatrist raised an objection, two Deputy Presidents of the Tribunal overruled that decision and said that no person was allowed representation if they were not a patient locked in hospital.

The Tribunal rejected her proposed alternative plan, which incorporated medical and social intervention strategies to enhance Kerry's autonomy over her own life and mental health. This was a rejection of the "recovery" approach in favour of the biomedical model of treatment.

Despite the previous psychiatrist's admission that medication was "probably unnecessary", the order made on April 1 this year permitted the Health Department to forcibly inject Kerry every month. The Tribunal scheduled a review on 30 September 2020.

Kerry O'Malley's experience is shared by more than 5,000 people in NSW each year. The imposition of medication may be convenient management, but in fact constitutes serious abuse by the health profession against vulnerable people, whose protections have been brushed aside.

A document with details of the [hearings and negotiations is here](#). Her index [page here](#).

We ask you to assist us with legal representation before the Court, sending us a statement of concern or publicising her case so that it prevents others being treated similarly.

Please acknowledge receipt.

Kind regards,

Lilly Scarborough

Kerry O'Malley Team Leader

JUSTICE ACTION