



c/o GREG McINTYRE, S.C.
John Toohey Chambers
27-29 St George's Tce
PERTH WA 6000

**Submission to Environment and Public Affairs Committee
Legislative Council
Parliament House
Perth**

The International Commission of Jurists has as its primary objectives protection of the Rule of Law and promotion of the observance of human rights and fundamental freedoms.

The Western Australian Branch of the ICJ notes that the Parliament of Western Australia is currently considering the *Mental Health Bill 2013* and the *Mental Health Legislation Amendment Bill* and petitions presented by the Hon Stephen Dawson in relation to those Bills. We also note that Members of the Legislative Council have been provided with Briefing Notes in relation to the legislation by the Mental Health Law Centre (WA) Inc.

We wish to indorse the concerns expressed by the Centre in relation to the legislation and underline the importance of maintaining the fundamental rights and freedoms of individuals who may be subject to the coercive powers exercised under mental health legislation.

An important safeguard against the infringement of rights and freedoms is access to advocates acting in the interests of those who may be subject to coercive powers or detention. In that regard we draw attention to and commend to the Parliament the United Nations Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment,¹ principle 11 of which states that a detained person shall have the right to defend him or herself or to be assisted by counsel as prescribed by law,

We also note the applicability, by analogy, of the Basic Principles on the Role of Lawyers,² in particular principle 6, which states that any persons who do not have a lawyer shall, in all

¹ Adopted by the United Nations General Assembly resolution 43/173.

² *Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August-7 September 1990: report prepared by the Secretariat (United Nations publication, Sales No. E.91.IV.2), chap. I, sect. B.3, annex.*

cases in which the interests of justice so require, be entitled to have a lawyer of experience and competence commensurate with the nature of the offence assigned to them in order to provide effective legal assistance, without payment by them if they lack sufficient means to pay for such services

We endorse the sentiment expressed in the petitions that the rights of an individual to avoid being subjected to coercive powers unnecessarily ought to be included in the objectives and principles of mental health legislation which vests coercive powers over the individual in agents of the State.

Greg McIntyre SC
Chair
International Commission of Jurists
Western Australian Branch
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