



Editorial

International perspectives on community treatment orders: Special Edition



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ABSTRACT

The use of compulsion has become one of the most contentious issues in psychiatry. This special edition, guest edited by Professor Steve Kisely and Professor Lisa Brophy, brings together a range of perspectives on Community Treatment Orders or outpatient commitment.

Legislation in many western nations authorises compulsory treatment using Community Treatment Orders (CTOs). When CTOs were introduced, they were seen as a way of addressing the fragmentation of psychiatric care that occurred as an unforeseen consequence of de-institutionalisation. Although compulsory, being treated in the community offered the promise of a less restrictive option to involuntary admission. Despite the initial optimism surrounding their introduction, evidence for the efficacy of CTOs is mixed, and in recent years, there has been a vigorous debate regarding the ethical, legal and clinical justification of compulsory treatment. For example, the United Nations Convention on the Rights of Persons with a Disability has recommended that compulsory treatment on the basis of mental illness be rescinded as it constitutes discrimination on the basis of disability. For every advocate of this stance, there is an equivalent for whom this position represents an unacceptable departure from duty of care, or- perhaps more frighteningly- a step towards acceptance of an unpalatable reality- that not every risk can be predicted, controlled and 'managed'. The four themes of this special edition of the *International Journal of Law and Psychiatry* explore the heavily contested terrain of CTOs.

For an issue that is as contested as compulsory treatment, and which carries such potentially profound implications for consumers, transparent processes and judicious use of statutory powers become imperative. In many jurisdictions, the ethical issues posed by CTOs are compounded by a lack of clarity regarding who is subjected to compulsory treatment, and on what grounds.

Three articles address these questions. In the first, Edwina Light examines the rates and demographics of CTO use in the Australian context, which have previously shown to be among the highest in the world. Light's analysis of published reports of Australian state and territory government mental health review tribunals, health departments, and office of the chief psychiatrists provides an update to her earlier research. Light's research shows that rates of CTO use continue to rise across most Australian jurisdictions (through at reduced rates

compared with the 2012 study¹ in some jurisdictions) and to vary considerably between jurisdictions.

The second article explores the use of CTOs, (here termed Outpatient Commitment) in Norway; a country with one of the longest histories of compulsory community treatment, dating back to 1961. Despite a much longer history of compulsory treatment compared with Australia, Jorun Rugkåsa and co-authors discuss a challenge that echo's Light's concern: limited research existing on the use of outpatient commitment in Norway, and publicly available data that is of questionable quality. Their research is a multi-site study that retrospectively analyses patient records to contribute to the identified gap in research. The answer to the question the title poses 'The use of Outpatient Commitment in Norway: who are the patients, and what does it involve' can be briefly distilled as follows: 75% of the patients were diagnosed with schizophrenia spectrum disorders and medication was a noted treatment for over 93% of patients. However, as in Australia, there was considerable variation in rates of use across Norway. The authors discuss the criterion used to justify treatment and offer reflections on recent local changes in the legal dangerousness criterion, which was applied to justify treatment in a significant minority of cases.

The third study from a large health district (Metro South) in the Australian city of Brisbane explored the relationship between compulsory treatment and ethnicity. Australia has a high Culturally and Linguistically Diverse (CALD) population, with national data suggesting 26% of Australian residents born overseas, and even higher proportions (32%) in Metro South (Moss Wyder, Braddock, Arroyo & Kisely 2019). Many CALD people are also refugees whom the author's note may have experienced 'trauma, poverty, lack of housing, exploitation, racism, discrimination, sexual violence, famine, drought, civil wars and other forms of deprivation'. It is humane, just and rational to provide especially thoughtful care to a demographic who may be, due to past experiences of trauma, more sensitive to the potential disempowering or retraumatising impacts of involuntary treatment compared with other

¹ Light, E., Kerridge, I., Ryan, C., & Robertson, M. (2012). Community treatment orders in Australia: rates and patterns of use. *Australasian Psychiatry*, 20(6), 478-482.

consumers. In this piece of research the author's investigated whether CALD status increased the likelihood that a person will be treated involuntarily in the community. Strikingly, findings indicate that after adjusting for other variables, CALD background increased the likelihood of involuntary treatment, and the likelihood almost tripled in cases where an interpreter was required.

The considerable variation in the use of CTOs, even within the same country, and evidence of disproportionate use in marginalised populations, raises concerns that use is not solely determined by clinical factors. So what are the views of people who are on CTOs, and those who administer them?

The next two articles in the special edition focus on understanding more fully these perspectives. In the first, Corring, O'Reilly, Sommerdyk and Russell expand on three previously published systematic reviews of qualitative research to examine how CTOs are experienced by three different stakeholder groups using qualitative and mixed methods research. Bringing together the views of 581 people on CTOs, 215 family members, and more than 700 clinicians, the authors provide a tapestry of rich qualitative perspectives, that simultaneously identifies common themes, and captures the complexity of CTOs; with views ranging from CTOs being experienced as '*banging your head against a brick wall*', to perceived as offering a '*safety net*'. The authors conclude by identifying areas in need of further exploration in CTO research. They note that while all stakeholders reported at least some positive views on CTOs there may be a selection bias, as consumers for whom compulsory treatment is negatively experienced may be underrepresented in research. They also discuss the low rates of CTOs rescinded by review boards, considering how this may be shaping current decision making within psychiatry, and whether a legal shift away from adversarial processes and towards inquisitorial processes may positively impact psychiatric decision making.

Australian mental health services are increasingly moving towards using Recovery Oriented Practice (ROP) models. A key principle of ROP is that of consumer choice: consumers are to be supported to make their own decisions, including decisions about mental health treatment. CTOs pose an obvious challenge to this principle. While this shift towards ROP has been embedded in both policy and legislation, the core contradiction between ROP and compulsory treatment is often left unacknowledged.

The next article in this edition examines this conflict. Nested within a large randomised controlled trial, a qualitative study was undertaken to explore how ROP was experienced by both consumers on CTOs and staff members with whom they worked (Edan Brophy Weller Fossey & Meadows 2019). Semi-structured interviews were undertaken with consumers who had been on CTOs in the last 12 months and with staff members involved in their care. Staff accounts highlighted barriers to implementing ROP in the context of CTOs, a lack of focus on recovery as a practice and a lack of organisational 'buy in'. Consumer accounts highlighted that ROP is difficult to implement in the context of CTOs: in fact, themes from consumer accounts included a lack of choice and control, and an absence of recovery oriented practice. More positively, consumers reported that treatment under CTOs, despite reducing feelings of choice and control, also led to increased supports. However, the authors contend that this benefit suggests that CTOs may be implemented as a response to system failure, rather than as a response to an individual's need.

Next we turn our attention to the social work profession. A key aim of social workers is to critique dominant models of power and work towards social justice and human rights. In the mental health context, this often translates to seeking to counterbalance powers enabled by mental health legislation and working towards reducing the use of coercion. The conflict for social workers working with people on CTOs is obvious: how can they simultaneously challenge the dominant model while forcing people to comply with treatment? Campbell, Davidson, Mccusker, Jobling and Slater (2019) explore the many ethical and practical issues that arise as social workers navigate this challenge in different legal contexts across the UK and Ireland. The roles social

workers play vary drastically by context: in England, Wales and Scotland they wield significant statutory powers, while in Ireland legislation does not authorise compulsory treatment in the community. This article highlights how complex the issues surrounding community treatment orders are. As the author's note, the ethical issues surrounding compulsion do not vanish when it is not legally authorised, but on the contrary, are replaced by subtler forms of coercion- from which there are no explicit avenues for legal protection.

Legal protection can exist in theory, but unless people know how to navigate the complex web of systems it may remain out of reach: this is one of the many reasons independent advocacy services are crucial. Weller et al evaluated the impact of the Independent Mental Health Advocacy (IMHA) organisation in Victoria, Australia. The authors examined how IMHA's services were perceived by multiple stakeholders, including consumers and clinicians. A key theme in accounts of the former is strong gratitude for the IMHA with independent advocates seen as crucial guardians in a health care system that may leave people feeling in need of external protection. However, positive accounts were tempered by significant access issues. Indeed, many consumers were unaware of the existence of IMHA. In terms of mental health workers, the majority of inpatient clinicians agreed that the IMHA service helped to maintain rights as opposed to only one third of community-based colleagues. This is of particular concern for people on compulsory community treatment whose access to IMHA may be hindered by treating clinicians' unfavourable views of the service. As a result, the authors argue for renewed efforts to target advocacy services to those on CTOs.

Staying in the Australian context, the next article in the edition only reinforces the importance of independent advocacy, by highlighting just how complex legal frameworks can be. In Victoria, Australia, compulsory treatment is currently authorised by the *Mental Health Act 2014*. When this legislation was enacted, it was generally seen as improvement on its predecessor (the *Mental Health Act 1986*), with its explicit recovery focus, expressed intent to reduce the number of compulsory treatment orders, and emphasis on least restrictive care. In this article, Ruth Vine and Fiona Judd suggest that some aspects of these goals have been achieved. In recent work, they found a 25% reduction in the number of days on a compulsory order in a two year period following discharge from a CTO between the 2014 and 1986 legislation. However, alongside these optimistic findings, they also discuss some areas of concern. Included among these, is that, for orders made under the 2014 Act, 'almost 30% of CTOs 'ended' by being varied to an inpatient treatment order by the AP' [Authorised Psychiatrist]. Is this reflective of an under-resourced community sector, struggling to meet the needs of the people who were once housed in institutions and asylums? The impact of the 2014 legislation is confounded somewhat when returning to Light's findings: that rates of CTO use in Victoria were significantly lower in 2016 compared with the all time high of 2012, but significantly higher in 2016 compared with 2005. Rates of CTO use remain an important yet nebulous issue.

In this special edition we have covered four themes: rates and patterns of CTO use, stakeholder perspectives, critical practice issues, and the legal context. We conclude the special edition with Hannah Jobling's article, which weaves together each of these themes. Jobling's work is an ethnographic study that took place over eight months in England, examining the tribunal's role in providing oversight into decisions made about discharging patients from CTOs. 18 service users, 36 mental health professionals and 8 tribunal chairs participated in the study, which used an eclectic range of procedures including in depth interviews, discharge meeting observations, and file reviews. A key issue that exists in the English context is the relatively low threshold for compulsion compared with many other jurisdictions. In such a context, the role played by tribunals is crucial. Findings cast some doubt on whether the tribunal is serving its purpose in providing objective external legal oversight, revealing instead an interplay of legal and extra-legal factors between tribunal members, practitioners, and consumers (when present). The interplay that occurred between legal and extra-legal factors may ultimately privilege practitioner views, and Jobling

notes that this risked swaying tribunal decision making in a way that closely aligned with a 'best interest' approach. Ultimately, decisions lean towards continuation of CTOs.

In conclusion, the articles in this issue highlight the wide range of research in this important area. While CTOs remain in force, it is vital to optimise their use to ensure that they are not arbitrarily applied and that the views of those who are subject to them are taken into account.

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