Rethinking
Mental Health Laws

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The role of law in the prevention of mental illness and the promotion of health and well-being

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Despite the increasing numbers of individuals with mental illness in the criminal justice system in Australia and elsewhere, and the number of patients who move between and within the forensic and general mental health systems, the contribution that laws and legal frameworks make to the prevention of mental illness is infrequently included in debates about improving mental health services. Despite the law being recognised internationally as a method of enhancing the capacity of mental health systems to operate as preventive, rather than reactive structures,1 law reform debates remain preoccupied with questions concerning civil detention and involuntary treatment, and overly deferent to the concerns and objectives of risk and the preventive detention of dangerous individuals. A reactive approach to 'hard cases' ignores the interaction between civil and criminal mental health systems, and between the mental health and public health systems. Shifting the focus of mental health law reform from reaction to prevention invites a consideration of legislative models and approaches that govern service access, delivery and quality, and suggest the need for effective accountability systems.

In addition to generating new approaches, the shift to a preventive perspective reshapes the contours of current debate. For example, best practice in mental health law reform currently reiterates the established principles of human rights law. Key rights and principles include equality and non-discrimination, the right to privacy and individual autonomy, freedom from inhuman and degrading treatment, the principle of the least restrictive environment, and the right to information and participation.2 The application of these principles and their detailed translation into law and policy remains open to debate, reflecting philosophical, conceptual and practical dilemmas in the articulation and interpretation of human rights law. Consumer groups argue that involuntary treatment fundamentally offends the principle of self determination, and that human rights principles logically demand the conceptual, practical and administrative separation of detention and treatment at all times. The prevention perspective shifts this debate from a rights focus toward an evidence based approach, requiring the development of new methods and approaches to trace the connections between legal frameworks and clinical outcomes. Taken to its fullest potential, the prevention perspective provides a method of disentangling different threads of debate and shifts the focus toward the concrete outcomes of health and wellbeing. This paper argues that comprehensive law reform in mental health must take into account the preventive capacity of law in improving mental health systems.

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[1] WHO Resource Book on Mental Health, Human Rights and Legislation, *WHO*, 2005
[2] Ibid.

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