

Productivity Commission Inquiry on Mental Health



Justice Action



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Executive Summary

This submission aims to address those who identify with a mental illness and the exploitation of these persons by the mental health industry. Justice Action advocates for the redirection of mental health funding, so that mental health consumers are able to receive the support they need. People who are represented under the national health scheme (NHS) cost the government up to 1 million dollars per person each year¹ and are abused and by those who are appointed to care for their wellbeing. Justice Action's submission focuses on the case of Miriam Merten. This case occurred at the Lismore Based Hospital in New South Wales (NSW), and resulted in Ms Merten's death, after being neglected by the mental health industry.

Merten's case is alarming, and exposes the standard of current mental health care. The review by the chief psychiatrist said that NSW mental health culture lacked compassion and humanity or real interest in the individual beyond risk management. The system used coercive compliance, had no internal oversight after the Merten death, had little evidence of engagement with consumers and carers, little involvement in care plans and no examples or the necessary leadership required to give high quality compassion and care. The review illustrated that peer worker support was limited with rare access despite being a vital resource to lessen seclusion and restraint.

Justice Action recognises that there is a critical need for social and economic integration of individuals suffering from mental health issues. We consider how policies and programs raise mental health awareness within workplaces and prisons, in order to facilitate the equal participation of mentally ill individuals in social and economic life. The following recommendations for reform are intended to promote a shift in the way society has commonly perceived mentally ill individuals as unfit for social life, towards a recognition of their potential for social and economic contribution. In order to achieve these aims, early intervention programs and safety nets needs to be put in place, distinct from formal mental healthcare systems.

We identified the use of forced medication as the most severe presentation of the top-down medical model imposed on consumers as opposed to a person-centred approach. Justice Action proposes addressing mental health issues through the perspectives of mental health consumers, who understand the specific needs of such vulnerable persons. Justice Action aims to represent those consumers with severe, persistent and complex mental illness, with consideration to the episodic nature of some mental illnesses, to improve the integration and continuity of support for this focus group. Our work at best achieving a person-centred approach is best exemplified through publications and Community Treatment Orders (CTOs) outlined in the following link (<https://www.justiceaction.org.au/mental-health/mental-illness-issues/forced-medication>).

The following recommendations aim to address cost-effective investments to improve mental health outcomes for individuals, their families, and society.

Justice Action's submissions will review and analyse:

- a) The current performance of forced medication upon mental health patients;
- b) The extent to which social and economic support, when intertwined with treatment, can form shared lived experiences of mental health;
- c) The relevance of the Merten case in proposing patients' access to mobile phones for family and personal support;
- d) Further clinical guidance and oversight that entails patients personal needs are met through therapy with constant feedback being given

¹ Justice Action, *Mad in Australia: The state's assault on the mentally ill* (Report, June 2013).

- e) Individual centred approach which entails mental health services being designed with a focus on consumers rather than providers

Recommendations

- That a fixed percentage of 0.1% of the mental health budget be set aside as mandatory funding of independent consumer groups;
- That those consumer groups be democratically responsive to consumers' concerns, addressing issues of general importance, funding consumer-directed research and interacting with government policies;
- That in the interim, all service providers in the mental health industry fund independent consumer functions with a percentage of their budgets

Six issues were raised regarding the safety of patients and staff in the mental health services industry. Such issues should be taken into consideration and addressed, in order to ensure that similar cases similar to Miriam Merten's does not happen again. The six issues are as follows:

- Mobile phone access
- Forced Medication and Peer Worker Intervention
- Education Access
- Consumer Representation
- CCTV Monitoring
- Media Access

For further information see Appendix B.

Current intervention programs and initiatives to address mental health issues

Miriam Merten Case Study

The death of Miriam Merten while in mental health care is a case that has raised significant ethical issues on the performances of seclusion, restraint and observation of patients in the care of health facilities.

Miriam Merten was well known at the hospital, suffering from mental health issues for which she was admitted to Lismore Hospital numerous times over a number of years. As a result, staff had developed a misguided disregard for the seriousness of Miriam's condition.²

Ms Merten was heavily sedated and contained in isolation for more than five hours in a dark room that was entirely empty but for a mattress on the floor. Throughout the duration of her seclusion, Miriam was not provided with food, water, or toilet facilities and was not dressed by staff. Whilst in seclusion, Ms Merten was monitored by nurses via a video monitor and received no verbal communication from the nurses on shift. These conditions cumulatively constituted a violation of both state and international laws regarding the treatment of mentally ill patients.

The case of Miriam Merten's mistreatment within Lismore Hospital did not go unnoticed, leading to an independent review into quality of New South Wales's health facilities. The review, conducted by Dr Murray Wright, found that there were up to 3,700 times in which mental patients were secluded for an average time of five and a half hours.³ As a result, the NSW Government pledged an additional \$20 million into mental health reform throughout the 2017-2018 financial year, boosting mental health care funding to a total of \$95 million.

Additionally, the Minister for Mental Health Tanya Davies has stated that the mental health reform actions will address all 19 recommendations made in Dr Wright's independent review, which local health districts will have until July 2019 to enact.⁴ Some of the recommendations made include the establishment of 24/7 on-site supervision for accountability, the establishment of minimum standards and skill requirements for all staff working in mental health, the creation of a single and simplified policy based around the elimination of seclusion and restraint and greater individual assessment to reflect the needs of patients.⁵ These recommendations are vital to the improvement of the mental health of Australians within mental health facilities.

² Coroners Court of New South Wales, Parliament of New South Wales, *Findings in the inquest into the death of Miriam Merten* (7 September 2016) 1.

³ Dr Murray Wright, *Review of seclusion, restraint and observation of consumers with a mental illness in NSW Health facilities* (Independent Review, 8 December 2017) 6.

⁴ Nour Haydar, 'Sweeping mental health reforms in NSW announced after Miriam Merten's death', *Australian Broadcasting Corporation* (online at 11 May 2018) <<https://www.abc.net.au/news/2018-05-11/nsw-government-announces-sweeping-mental-health-reforms/9750650>>

⁵ Dr Murray Wright, *Review of seclusion, restraint and observation of consumers with a mental illness in NSW Health facilities* (Independent Review, 8 December 2017), 42

Increase Accountability and Oversight through Supervision

Taking the Miriam Merten case into account, it is clear that accountability and oversight needs to be established on a wider scale. Doing so would not only be in favour for the wellbeing of patients, but also mental health workers. Justice Action advocates for Recommendation 5, from NSW Chief Psychiatrist Dr Wright's independent review to be enacted on a national level, which states:

‘All mental health inpatient services must have 24-hour, everyday on-site supervision from accountable management representatives. This supervision must include in-person rounding on every shift.’ (42)

Doing this can lead to patients being treated better and not being neglected, thus contributing to the goal of improved mental health. While oversight can be provided currently with on-site clinical supervision, it is not always practiced. Dr Wright found that in NSW, on-site clinical supervision by senior management was rarely provided due to them claiming to be too busy.⁶

Alternatives to Forced Medication through Patient Care

Promoting alternative treatments to mental health on a case-by-case management of mental health issues is significant to achieving productivity. Following the dissatisfaction within involuntary medication performances, alternatives such as acceptance and commitment therapy, talk therapy, social support and family support can all be used as effective tools as treating mental illnesses. The current performance of forcible medication upon mental health patients is an area requiring further attention and improvement and can be addressed through the following patient care methods.

Acceptance and Commitment Therapy (ACT)

A fundamental principle of Acceptance and Commitment Therapy (ACT) is to teach acceptance and understanding about aspects of your life beyond your personal control. The theory of mindfulness highlights the importance of enhancing ones emotional wellbeing, and letting go of negative thoughts that hamper your ability to function effectively at work and/or in social situations. Mindfulness is an approach that seeks to stabilise personal values, and assists patients in clarifying what is truly important and meaningful in their lives. Acceptance and Commitment Therapy is accepted as a useful treatment method for individuals suffering from stress-related problems, anxiety, and depression⁷

Talk Therapy

Talk therapy, also known as psychotherapy, is widely considered an effective method of treating a range of mental health issues such as depression and bipolar disorder. This is usually done through a therapist talking to a patient and understanding their situation, thus allowing them to provide coping strategies and solutions. Therapists are also trained to introduce different perspectives of situations, in order to expand ones mindset and work through issues such as trauma, fear and insecurity.

⁶ Ibid.

⁷Justice Action, Health Department Inquiry ‘Review of seclusion, restraint and observation of consumers with mental illness.’ 2017.
https://www.justiceaction.org.au/images/220917_Health_Department_Inquiry.pdf

The aim of reform through talk therapy is to create an environment that shifts from the provider to the consumer, allowing for patients to be better understood. Responses to patients needs are therefore highly specialised, tailored to suit each individual patient and their own respective issues.

Social Support

One in five Australians between 16-85 will experience a mental illness every year.⁸ Experiences of mental health are often subjective to the environmental, social, and economic state of an individual. It is important that existing safety nets are put in place to raise awareness and facilitate participation and engagement prior to mental health issues arising.

Therefore, networks of friends, families and communities are crucial in sustaining social and financial support, as well as the improvement and management of an individual's psychological condition.⁹ Separating patients from their support network while holding them in seclusion induces feelings of helplessness and can exacerbate pre-existing mental health issues. Social support has been proven to be a crucial factor in enhancing resilience to stress and trauma induced disorders and thus is vital to the long-term care of mentally ill patients.¹⁰ With this in mind, it is important that healthcare facilities work towards giving patients more options to interact with their family and friends in order to not risk a potential drop in economic and social productivity.

Family Support and Unpaid Carers

While the support of family member is important for individuals experiencing episodes of ill mental health, it unfortunately has risks to family members livelihoods. In agreement with *The Productivity Commission Issues Paper*, there is potential of their earning capability to be reduced or limited due the time and attention needed to provide support. How do we manage schemes such as carer allowances and Disability Support Pensions (DSP)? What support can we offer carers who support person(s) with severe mental health, which is episodic in nature? The requirements for receiving carer allowances can exclude these people from receiving these important services.¹¹ Justice Action recommend that these requirements be revised to ensure that family members and unpaid carers are not at a loss for providing support to individuals with severe and persistent mental health issues.

⁸ Blackdoginstitute, 'Facts & figures about mental health' *Facts & figures about mental health - Black Dog Institute* (fact sheet, 29/03/2019) 1 <https://www.blackdoginstitute.org.au/docs/default-source/factsheets/facts_figures.pdf?sfvrsn=8>.

⁹ Ozbay F, Johnson DC, Dimoulas E, Morgan CA, Charney D, Southwick S, 'Social Support and resilience to stress: from neurobiology to clinical practice', *Psychiatry (Edgemont)* 2007, 4(5) 35-40

¹⁰https://www.justiceaction.org.au/images/310717_Public_Accounts_Committee_Inquiry_Final_Submission.pdf

¹¹ Australian Government, Department of Social Services. 'Disability and Carers' <https://www.humanservices.gov.au/individuals/services/centrelink/carers-allowance/eligibility/eligibility-rules>

Improve Mental Health Support in Workplaces

Mental health in the workplace can have substantial effects on social and economic productivity, from; lower probability of employment¹², greater likelihoods of absenteeism¹³, and lower productivity at work. Lower participation and productivity in the workforce due to ill mental health is estimated to cost the economy twice as much as spending on health care services. Justice Action wants people living with mental illness to be able to participate and be included within the workforce.

Moving forward, there is a need for attention towards the youth and incoming generations into the workforce. This demographic is slowly becoming a major stakeholder in the operation of organisations. As such, there is a need for improved awareness and acceptance surrounding mental health issues. Creating a safe environment within the workplace is essential to supporting mental health consumers in receiving services tailored to their needs and wellbeing while at work. The result of this will contribute to improving organisational productivity and economic benefits.

Improve Mental Health Programs in Prisons

In New South Wales alone, 54% of women, and 39% of men in prison have at some point been diagnosed with a mental health disorder.¹⁴ People with mental health illnesses are severely overrepresented in prisons and often do not adapt well to the environment of prisons. They are more likely to be at risk of committing suicide and present management difficulties for prison staff.¹⁵ Dr Neilssen suggests the imprisonment of people with schizophrenia is often due to the failure of community care, and the interface between prison and the community does little to stop the door from revolving. As Herrman et al stated, whatever the cause, services for people with mental illness in Australian prisons are inadequate and in need of urgent reform.¹⁶ Dr Neilssen highlights the need to establish mental health prisons to facilitate more intensive treatment. A structured and focused environment that can be facilitated through 'mental health prisons' will allow further clinical guidance to mental health consumers and the opportunity to respond to the personal needs of each individual.

Additionally, Dr Neilssen suggests the early release from prison for consumers with schizophrenia to secure accommodation and treatment arrangements.¹⁷ This will contribute to the improvement of potential social and economic productivity as it allow for patients with schizophrenia to transition back into the wider community much easily.

¹² Frijters, Johnson and Sheilds, 2014, 'The effects of mental health in employment: evidence from Australian panel data'

¹³ Bubonya, Cobb-Clark and Wooden, 2016, 'Mental health and productivity at work: Dows what you do count?'

¹⁴ Butler T, Allnutt S. Mental Illness Among New South Wales' Prisoners. NSW Corrections Health Service, (2003). 96.

¹⁵ Ogloff, J., 2015 'Good mental health care in prisons must begin and end in the community' The Conversation <<https://theconversation.com/good-mental-health-care-in-prisons-must-begin-and-end-in-the-community-40011> >

¹⁶ White, P. and Whitefor, H. Prisons: mental health institutions of the 21st century? The Medical journal of Australia 2006. 185:6. 302-303

¹⁷ Neilssen, O. 'Productivity Commission Mental Health Inquiry' Productivity Commission, Submission 2019.

References

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Appendices

Appendix A

Terms of Reference

Terms of reference – Productivity Commission Issues Report

<https://www.pc.gov.au/inquiries/current/mental-health/issues/mental-health-issues.pdf>

The Commission should consider the role of mental health in supporting economic participation, enhancing productivity and economic growth. It should make recommendations, as necessary, to improve population mental health, so as to realise economic and social participation and productivity benefits over the long term.

Without limiting related matters on which the Commission may report, the Commission should:

- Examine the effect of supporting mental health on economic and social participation, productivity and the Australian economy;
- Examine how sectors beyond health, including education, employment, social services, housing and justice, can contribute to improving mental health and economic participation and productivity;
- Examine the effectiveness of current programs and initiatives across all jurisdictions to improve mental health, suicide prevention and participation, including by governments, employers and professional groups;
- Assess whether the current investment in mental health is delivering value for money and the best outcomes for individuals, their families, society and the economy;
- Draw on domestic and international policies and experience, where appropriate; and
- Develop a framework to measure and report the outcomes of mental health policies and investment on participation, productivity and economic growth over the long term.

Appendix B

Report of the Responses from LHDs Regarding the Implementation of Minister Tanya Davies' Recommendations

Miriam Merten died on 3rd June 2014 in the care of the Mental Health Unit of Lismore Base Hospital. The coronial inquest into Merten's death found that she died from a "traumatic brain injury caused by numerous [approximately 20] falls and the self-beating of her head on various surfaces, the latter not done with the intention of taking her life". The horrific nature of Merten's treatment was revealed in shocking CCTV footage released in 2017, which depicted Merten; neglected, bloodied and covered in faeces, wandering the corridors of the Lismore facility on the night of her death. This footage exposed a lack of care from the NSW Health Staff at Lismore Base Hospital along with their abject failure to intervene in her untimely death.

The independent Review of seclusion, restraint and observation of consumers with a mental illness in NSW Health facilities by Chief Psychiatrist, Dr Murray Wright and a panel of five mental health experts, made very serious criticisms of the NSW Mental Health System. The Review stated that the NSW Mental Health culture lacked compassion and humanity (p7) or real interest in the individual beyond risk management (p22). The System used coercive compliance, had no internal oversight even after the Merten death (p29), lacked guidelines, had little evidence of engagement with consumers and carers (p35), little involvement in care plans (p.36), and had no examples of the necessary leadership required to give high-quality compassionate care (p24). Additionally, the Review stated peer worker support was very limited with rare access despite being a vital resource to lessen seclusion and restraint (p33). These findings demand urgent action of NSW Health. Consumers, especially those as vulnerable as Miriam Merten, are entitled to receive the best care and treatment for their illness.

In response to these findings and the death of Miriam Merten, Justice Action met with the Minister for Mental Health, The Hon Tanya Davies MP, to discuss six primary issues regarding the safety of consumers. These six issues were specifically identified as

significant in the death of Merten, and therefore require attention to ensure the prevention of similar deaths. These six issues and the 17 NSW Local Health Districts (LHDs) responses to their implementation are discussed below. These include the provision of Access to Education, Media and Mobile Phones, CCTV Monitoring, Consumer Representation, Forced Medication/Peer Worker Interventions. Additionally, included in this report is the record of the meeting between Minister Tanya Davies and Justice Action, and her letter following the meeting.

1. Mobile Phone Access

Justice Action promotes the implementation of access to personal mobile phones. As per the letter from Tanya Davies, patients in the Forensic Hospital are not entitled to mobile phones, as they are considered a security and safety risk for patients and staff. There is access to landline phones under supervision, however this is not available to patients in seclusion. The retainment of mobile phones by consumers is crucial for the maintenance of family and social relationships. Prohibiting access to these interactions may enhance their sense of isolation, which may exacerbate their illness and ultimately have a detrimental impact to their treatment and care.

Central Coast: JA is negotiating on this issue, currently reviewing the use of personal electronic devices and a pilot is underway to evaluate the safety, needs and privacy issues before being implemented in more facilities. However, televisions, newspapers and ward telephones are available for use to consumers.

Far West: JA is following up by phone and email.

Hunter: JA is following up by phone and email.

Illawarra: Developing a program that allows the access to mobile phones.

Justice Health: JA is following up by phone and email.

Mid-North Coast: JA is following up by phone and email.

Murrumbidgee: recently reviewed the procedure for the implementation of this issue, which led to a risk management program being undertaken. Once this is successful the use of mobile phones will be allowed only in bedrooms, not the general area, of this LHD.

Nepean/Blue Mountains: JA is following up by phone and email.

North Sydney: JA is following up by phone and email.

Northern NSW: allows consumer access to personal and landline phones.

South Eastern Sydney: has made personal devices available in seclusion with a staff member present for observation to ensure consumer physical safety.

South Western Sydney: JA is in negotiation. Phones are provided in specific areas. They also provide computers and telephones in specific areas for use by consumers in the interest of retaining their support network and facilitate their recovery.

Southern NSW: allow consumer access to personal and landline phones.

St Vincent's Health Network: JA is following up by phone and email.

Sydney: permits phone access to consumers under staff supervision throughout the day and evening.

Sydney Children's Hospital Network: JA is following up by phone and email.

Western NSW: Points raised regarding access will be considered. JA is in negotiation.

Western Sydney: JA is following up by phone and email.

2. Forced Medication/Peer Worker Intervention

Justice Action advocates for the implementation of alternatives to forced medications, or safeguards that ensure its use as a last resort such as the employment of peer workers. Tanya Davies has noted the commitment of the NSW Ministry of Health to expanding the peer workers intervention, which includes the recent employment of 30 new peer worker positions across New South Wales. These positions have been created to increase direct engagement of consumers with their care programs and a self-directed model of recovery.

Central Coast: JA is negotiating on this issue.

Far West: JA is following up by phone and email.

Hunter: JA is following up by phone and email.

Illawarra: Has no specific policies relating to involuntary admissions and medication use. However, peer workers are available to provide support to consumers.

Justice Health: JA is following up by phone and email.

Mid-North Coast: JA is following up by phone and email.

Murrumbidgee: JA is following up by phone and email.

Nepean/Blue Mountains: JA is following up by phone and email.

Northern NSW: Use the procedure of forced medication as a last resort when no other less restrictive alternative is available under the Mental Health Act (2007).

North Sydney: JA is following up by phone and email.

South Eastern Sydney: JA is following up by phone and email.

South Western Sydney: JA is still negotiating. Forced medication is one of the elements of treatment. It is not the only treatment but it is also not the last resort.

Southern NSW: Use exercise physiology, programs and psychologist led programs delivered in units as alternatives to forced medication.

St Vincent's Hospital Network: JA is following up by phone and email.

Sydney Children's Hospital Network: JA is following up by phone and email.

Sydney: JA is following up by phone and email.

Western NSW: JA is following up by phone and email.

Western Sydney: JA is following up by phone and email.

3. Education Access

Education is essential for a person's growth, especially for young people. As a fundamental human right, consumers are entitled to access educational resources, whether it is through partnerships with education organisations or through the use of personal computers. Education also has positive implications in the recovery of consumers as it allows the continuation of a routine that may be reinstated when leaving Health Facilities. Education may also include vocational training providers and facilities essential for training adult patients.

Central Coast: JA is negotiating on this issue. Do not have any long-stay or forensic facilities where long-term education programs could be implemented.

Far West: JA is following up by phone and email.

Hunter: JA is following up by phone and email.

Illawarra: Has engaged with TAFE and other education services to promote education amongst health districts. They are developing a program that allows the access to personal computers and Internet.

Justice Health: JA is following up by phone and email.

Mid-North: JA is following up by phone and email.

Murrumbidgee: JA is following up by phone and email.

Nepean/Blue Mountains: JA is following up by phone and email.

North Sydney: JA is following up by phone and email.

Northern NSW: Allows consumer access to educational resources in individual and therapeutic group interventions. There is also access to external education and vocational courses that are given to consumers exercising higher levels of care amongst observation areas. Allows consumer access to computers.

South Eastern Sydney: Currently provides voter education material to consumers allowing for equality within this sector. This district also provides therapeutic education through the form of 'Keeping the Body in the Mind' (KBIM) along with supporting enrolling individuals in courses in their Recovery College. Promotes consumers having access to designated computer terminals within inpatient wards. No traditional education in place. JA will continue with negotiations to establish access to traditional education.

South Western Sydney: JA is following up by phone and email.

Southern NSW: JA is following up by phone and email.

St Vincent's Health Network: JA is following up by phone and email.

Sydney: Currently allows for computer access under staff supervision throughout the day and evening. The access to formal education is reliant on a discussion between the consumer and the treating team.

Sydney Children's Hospital Network: JA is following up by phone and email.

Western NSW: Has discussed access to forms of communication with the Consumer and Carer Representatives but action has not been taken.

Western Sydney: JA is following up by phone and email.

4. Consumer Representation/Peer Workers

Given cases of mistreatment being recorded by consumers, it is clear that their voices need to be heard and given a larger platform. Consumer representation enables consumers within mental health institutions and their families to be more involved within decision-making processes. Representation of consumers can be enacted through means such as the creation of consumer committees or the election of a representative. All districts and networks are due to have documented protocols for engaging with consumers and families to improve quality of care and treatment by June 2019.

Central Coast: Official visitors are appointed to visit mental health inpatient facilities and are available to assist consumers on community treatment orders. 'Your Experience of Service' (YES) is designed to support consumer's participation in the ongoing development of mental health services.

Far West: JA is following up by phone and email.

Hunter: JA is following up by phone and email.

Illawarra: Encourages consumers to participate, where possible, in their care and management through the 'Peer Workforce'. This association involves consumers in the

areas of planning and management based upon medication and treatment options. This is currently accessible to high care and acute units in the facility.

Justice Health: JA is following up by phone and email.

Mid-North Coast: JA is following up by phone and email.

Murrumbidgee: Employs strategies by working with parties, co-designing methodology for program design and capital works, a growing peer workforce, and designated senior positions with the responsibilities of coordinating consumer participation strategies.

Nepean/Blue Mountains: JA is following up by phone and email.

Northern NSW: Incorporates a peer workforce within delivery and service planning of patients along with their families. Their voices are enhanced through the Consumers and Careers Mental Health Forum, which is referred to as a 'therapeutic environment'.

North Sydney: JA is following up by phone and email.

South Eastern Sydney: Has increased the amount of peer workers and volunteers in assisting with postal voting amongst consumers to increase support and mentoring along with community involvement.

South Western Sydney: JA is in agreement with their current implementation.

Southern NSW: Engages consumer participation on all levels along with having a participation group for the local health district, carer group and representation of people who have had experience as consumers at all meetings and throughout the decision making process.

St Vincent's Health Network: JA is following up by phone and email.

Sydney: Consumers are in full and part time positions but there is no representation.

Sydney Children's Hospital Network: JA is following up by phone and email.

Western NSW: Consumers are represented on key committees throughout the district, peer workers are being employed in a peer workforce, and consumer and carer representatives provide a strong advocacy group for consumers.

Western Sydney: JA is following up by phone and email.

5. CCTV Monitoring

CCTVs are essential in mental health facilities as they provide supervision for the safety of staff and consumers. In the case of Miriam Merten, the CCTV revealed the failure of staff intervention in preventing her death. Therefore, CCTV is crucial in holding staff accountable.

Central Coast: CCTV instalment complies with relevant legislation.

Far West: JA is following up by phone and email.

Hunter: JA is following up by phone and email.

Illawarra: Confirms the installation of CCTV camera in their mental health units.

Justice Health: JA is following up by phone and email.

Mid-North Coast: JA is following up by phone and email.

Murrumbidgee: JA is following up by phone and email.

Nepean/Blue Mountains: JA is following up by phone and email.

Northern NSW: CCTV instalment complies with relevant legislation.

North Sydney: JA is following up by phone and email.

South Eastern Sydney: CCTV instalment complies with relevant legislation.

South Western Sydney: JA is following up by phone and email.

Southern NSW: CCTV instalment complies with relevant legislation.

St Vincent's Hospital Network: JA is following up by phone and email.

Sydney: Does not have plans to install CCTV within its facilities.

Sydney Children's Hospital Network: JA is following up by phone and email.

Western NSW: JA is following up by phone and email.

Western Sydney: JA is following up by phone and email.

6. Media Access

Similar to CCTV monitoring, media inspections ensure the safety of both staff and consumers. This is through the supervision of staff and consumers, holding staff accountable, and maintaining consumer wellbeing.

Central Coast: JA is negotiating on this issue.

Far West: JA is following up by phone and email.

Hunter: JA is following up by phone and email.

Illawarra: JA is following up by phone and email.

Justice Health: JA is following up by phone and email.

Mid-North Coast: JA is following up by phone and email.

Murrumbidgee: JA is following up by phone and email.

Nepean/Blue Mountains: JA is following up by phone and email.

Northern NSW: Will not implement media inspections.

North Sydney: JA is following up by phone and email.

South Eastern Sydney: JA is following up by phone and email.

South Western Sydney: JA is following up by phone and email.

Southern NSW: JA is following up by phone and email.

St Vincent's Hospital Network: JA is following up by phone and email.

Sydney: JA is following up by phone and email.

Sydney Children's Hospital Network: JA is following up by phone and email.

Western NSW: JA is following up by phone and email.

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Agreed Record Meeting with Minister for Mental Health

Tanya Davies

October 16, 2018

This report was prepared following an hour-long meeting with the Hon Tanya Davies MP, Minister for Mental Health. Other participants were Gavin Melvin (Chief of Staff), Amy Wyndham (Acting Executive Director, Mental Health Branch), and Gary Forrest (CEO, Justice Health) along with Justice Action Team comprising Brett Collins, Jordii Burke and Sunny Hemraj.

Prior to this meeting, we had met the Minister on September 6 at the Estimates Committee Hearing during which time Justice Action requested a meeting. On September 7, we had sent in an agenda as well as all the documents required and the meeting was set up for October 16.

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We presented to the Minister our concerns about the proposed legislation for victims of forensic consumers using secret Victims Impact Statements. We gave her our research paper titled: Restorative Justice for Victims and Forensic Mental Health Patients.

We stated that it is important that the forensic patient have access to the victim impact statement in order to give the victim and offender both an opportunity to hear each other and for possible reconciliation. We also stated that the criminal law always provides offenders access to victim impact statements and it should be the same for forensic patients.

We mentioned that we had contacted representatives from 3 victims' organisations – Howard Brown from VOCAL, Ken Marslew from Enough is Enough and Martha Jabour from Homicide Victims Support Group. The first two completely supported our perspective, and the third hadn't responded at the time of the meeting.

Gavin Melvin, Chief of Staff, said that by default, the Mental Health Review Tribunal (MHRT) is permitted to give the offender access to the Victim Impact Statement. The tribunal has the power to authorise non-disclosure but must be satisfied procedural fairness for the forensic patient was maintained but the statement and process are initially open. However, Justice Action pointed out that this was not the case.

The proposed secrecy of victim impact statements means that the victim doesn't engage with the forensic consumer and is not provided an opportunity for reconciliation. Research clearly states the benefits to victims to gain closure, especially with a continuing relationship such as with families, as is often the case. There is no equivalent secrecy provision in the criminal law, and no reason to exclude consumers from the restorative justice process.

The Minister stated that people are being reviewed every 6 months and mentioned the establishment of a "Victims Support Unit" that aims to "better balance" the needs of victims and forensic patients. The Minister also referred to The Whealy Report that was aiming to increase support for victims.

Miriam Merten Case

Referring to the appalling treatment and eventual death of Miriam Merten at the Lismore Base Hospital, we stated that it needs to be handled structurally with real and lasting changes. We mentioned that it is an embarrassment to the department as a whole, and also to her as the Minister. We quoted from the Wright Inquiry Report (add a small quote from

the report).

The Minister mentioned that the Government has released a detailed plan, which outlines how the government is responding to each of the recommendations made by Dr Wright, and implementation began in May 2018 and will be over in the next 18 months. The Minister informed us that projects to make improvements to the therapeutic environment of acute mental health units will be announced soon and that all projects were co-designed by consumers, mental health carers, mental health organisations, and so on. The aim of this plan is for patients to receive the same level and quality of care regardless of location and demographic.

We said that none of the 19 Recommendations would make a difference to what had occurred with Miriam Merten as the problems were clearly structural and needed structural responses.

We put forward our suggestions for objective evidence with CCTV and independent access. We said that every wrong action carried out in the hospitals with vulnerable disabled people should have consequences and staff must be held accountable for any breaches they make. We said removing s195 of the *Mental Health Act 2017* (NSW) was essential.

Computer and Phone Access as well as Education in Prisons

We suggested that computers and phones be available to patients in all areas particularly including seclusion areas in order to lessen isolation and allow contact with not only family but also external support services. This is necessary to ensure that the patients' mental wellbeing is not harmed further. Phones should not be removed from consumers on entry to the hospitals.

The next point raised by us was the lack of education for forensic patients in hospitals. We quoted here the case of forensic consumer Saeed Dezfouli, who won his right to study law whilst residing in hospital, however, the agreement made in this settlement for access to a computer in his cell was not followed through.

Taking this as a base, we stressed the importance of education, as it instills a sense of purpose, scope for personal development, and sense of positivity for the patient. We informed the Minister that we had contacted 3 hospitals earlier that day – Morrisett Hospital, Bunya Unit Parramatta and Macquarie Hospital – who all confirmed this lack of access to education and corresponding absence of teachers.

Consumer Representation

We stated that the current lack of direct consumer representation prevents honest dialogue and change. Justice Action has been left to do the work confronting unfair policies. The Department of Health and Justice Health itself has been defensive in this ongoing matter, rather than engaging and appreciating the concern of independent consumer advocates. The authorities have only engaged those whom they controlled and agreed with them.

We also stated that we had taken three cases to the Supreme Court to challenge Mental Health behaviour and the power of the MHRT over hospitals. This should have been the work of paid organisations but it had fallen to us because of our independence. We highlighted the need for structural change and proposed ways in which this could be achieved.

We re-stressed the point that the fact that legislation for secrecy regarding the victim impact statement was fundamentally wrong and had only occurred as they are only getting advice from people whom they controlled. We needed to be engaged and were prepared to be part of change.

The Minister said that we needed to engage respectfully and be courteous, as she had received a report stating that we had interrupted a Custodial Health Conference at Darling Harbour a few weeks before. To this, Brett responded that Justice Health CEO Gary Forrest had personally evicted him from the Conference when in fact we should have been invited, as we are fundamental in matters regarding our community's health.

Justice Health had demanded that we pay \$2500 if we wanted to be a part of the Conference.

This is disrespectful towards us as we are an independently funded organisation that has national status and a key role in representing people in custody and have done decades of work in this area. We had been asked by the National Mental Health Commission to consult as one of the 6 experts in Australia for forensic mental health when they first set up, and represented all people in custody for the OPCAT roundtables and consultations. As aforementioned, we fund ourselves through a social enterprise, which allows us to be independent from government.

The Minister responded by stating that the new Mental Health Plan includes more consumer support and consumer involvement, increased numbers of peer workers. She also encouraged Justice Action members to engage with their local health districts if they wanted to become involved in implementation of the plan in their local area.

We agreed to send them a draft Report on the meeting and a series of questions that could be the basis for ongoing discussions. In conclusion, the Minister acknowledged and thanked us for our involvement and works in this area.

Proposed agenda for meeting

Victim Impact Statements

We have been part of an NGO Roundtable and consultation on the Mental Health (Forensic

Provisions) Amendment (Victims) legislation.

We feel there has been a fundamental misunderstanding of the opportunity for the victim to get the benefits of the restorative justice process. We want to raise that too.

The proposed secrecy for the victim impact statement means that the victim doesn't engage with the forensic consumer and achieve an understanding of why the event had occurred and a possible reconciliation. Research clearly states the benefits to victims to gain closure, especially with a continuing relationship such as with families, as is often the case. There is no equivalent secrecy provision in the criminal law, and no reason to exclude consumers from the restorative justice process.

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The [review by the Chief Psychiatrist](#) made very serious criticisms of the NSW Mental Health System.

He said that the NSW Mental Health culture lacked:

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2. Real interest in the individual beyond risk management (p22)
3. The System used coercive compliance, had no internal oversight even after the Merten death (p29)
4. Lacked guidelines, had little evidence of engagement with consumers and carers (p35)
5. Little involvement in care plans (p.36)
6. Had no examples of the necessary leadership required to give high-quality compassionate care (p24)
7. The Review said that peer worker support was very limited with rare access despite being a vital resource to lessen seclusion and restraint (p33)

Question 1: s.195

To prevent a reoccurrence of the Miriam Merten death in Lismore Hospital, do you intend to remove the legislative protection of s.195 of the *Mental Health Act 2007* (NSW)?

Question 2: CCTV and media

Will you implement ongoing objective accountability with CCTV and media inspection under a privacy agreement to ensure the culture is structurally confronted?

Question 3: Computers and phones/Education

Will computers and phones be available to patients in seclusion areas to lessen isolation and allow contact with family and external support services? We ask that phones not be taken away from consumers when they enter the hospital system.

Particularly we refer to the need for education services to be offered and supported. This can be very cost effective with online services for personal computers in the residential areas.

Question 4: Alternatives to forced medication

Will alternatives to forced medication be offered to mental health patients including support from consumer workers?

Question 5: Consumer representation

When will you implement elected consumers on Committees and independent advocacy as recommended?

We have received complaints from consumers in the Forensic Hospital that court action is being threatened in an attempt to charge them for their forced stay in hospital. This would force the patients to use their pensions to pay the invoices from the hospitals. Please see an example of an invoice received by a forensic patient and an analysis of the legal and political argument attached to this email.

Question 6: Invoices for forced stay in hospital

Will Justice Health withdraw its demands for forensic patients' pensions whilst locked in hospital?

The Federal Government was unsuccessful in removing the pension and that should be accepted as an entitlement to the patient.

We attach an invoice delivered and our analysis of the situation.



The Hon Tanya Davies MP

Minister for Mental Health
Minister for Women
Minister for Ageing

Mr Brett Collins
Coordinator
Justice Action
PO Box 386
BROADWAY NSW 2007

Our ref M18/6407

Dear Mr Collins

Thank you for your email following our recent meeting. I appreciate you taking the time to meet with me, and your advocacy for patients in custodial settings and secure hospitals. I have responded to the issues you have raised below.

Question 1: *Mental Health Act* section 195

I note your suggestion about removing section 195 of the *Mental Health Act 2007* (the Act) in relation to the death of Ms Miriam Merten at Lismore Base Hospital. Ms Merten's death was considered in the Review of seclusion, restraint and observation of consumers with a mental illness in NSW.

The review did not find a need for legislative change. There are a range of provisions that set out the important objects and principles of the Act, and the provision of care and treatment under the Act. Section 195 makes clear that these provisions are intended to guide how decisions are made, and care and treatment are provided under the Act, rather than to create a legally enforceable right. While there is no intention to remove section 195, I thank you for your suggestion.

Question 2: Closed Circuit Television (CCTV) and media

The decision to implement CCTV or media inspections is one for local health districts and speciality health networks.

I am pleased to advise that the Forensic Hospital is in the final stages of installing CCTV. This is an important security measure that will enhance safety for patients and staff. CCTV in the Forensic Hospital will be compliant with relevant legislation, including the *Workplace Surveillance Act NSW 2005* and NSW Health policy, including Protecting People and Property policy and standards for security risk management in NSW Health agencies.

Question 3: Computers, phones and education

The decision to provide access to these resources is at the discretion of local health districts and speciality health networks. The *Review of seclusion, restraint and observation of consumers with a mental illness in NSW Health facilities* noted that some services were addressing the use of personal mobile phones and access to social media. As part of the implementation of the Review recommendations, all services are reviewing their acute mental health units. The NSW Government has committed \$20 million to improving these therapeutic environments.

The Forensic Hospital is a high secure forensic mental health facility. Mobile phones are a prohibited item and not permitted to be taken into the secure hospital. Patients in the hospital have access to landline phones under supervision, but patients in seclusion do not. While I understand that you do not agree with this approach, these are important security and safety measures for patients and staff.

In relation to education, the Forensic Hospital works with vocational training providers and facilitates training for adult patients. The hospital has been working with the Department of Education, and adolescent patients will soon be able to access distance education. The hospital will also soon start a trial of computers with limited, supervised internet access.

Question 4: Alternatives to forced medication

Alternatives to involuntary ("forced") medication are always offered to consumers, as well as support from peer workers where available. The Act is based on the principle of least restrictive care. Involuntary medication is only used when no less restrictive alternative is available and for the minimum possible period of time, balancing the need for treatment of mental illness, management of risk, and the need for preservation of personal rights and autonomy.

The Justice Health and Forensic Mental Health Network is taking measures to increase the availability of peer workers. The NSW Ministry of Health is committed to growing the peer workforce in all mental health services. We have invested \$2.7 million recurrently from 2017-18 to deliver approximately 30 new peer work positions across NSW, including new positions in the Network. These new positions will work directly with consumers to increase hope, model that recovery is possible for all, and challenge stigma associated with a mental health diagnosis.

The review implementation plan and the *NSW Strategic Framework and Workforce Plan for Mental Health 2018-2022* also have specific recommendations to increase the peer workforce to support the delivery of contemporary care in the least restrictive way.

Question 5: Consumer representation

Under the NSW Government's implementation plan for recommendations from the review, local health districts and speciality health networks will routinely include consumers and families in key committees, projects and workgroups. All districts and networks are due to have documented protocols for engaging with consumers and families in quality improvement by June 2019.

While the Forensic Hospital does not have patient-elected consumers on committees, the hospital does have a consumer consultant employed by a community organisation who participates in various hospital committees. The hospital is also in the process of developing a peer workforce.

The Network is required to collect hospital fees from patients in accordance with the *Health Services Act 1997 (NSW)*. Hospital fee contributions for chargeable hospital services are payable by any person who receives a health service, including voluntary and involuntary patients. This includes Mr Saeed Dezfooli. The amount collected for hospital fees is determined by the scale of fees published by the NSW Government and is subject to increases twice a year. Hospital fees represent a small contribution to the actual cost of hospitalisation. NSW Health covers the rest of the hospital costs on behalf of the patient.

Question 6: Invoices for forced stay in hospital

As per question 5, the Network is required to collect hospital fees from patients in accordance with the *Health Services Act 1997 (NSW)*.

Thank you again for meeting with me and for your report and follow up questions. If you would like more information, please contact Mr Rajiv Anand, Acting Chief Executive, Justice Health and Forensic Mental Health Network, on 9700 3000.

Yours sincerely

Tanya Davies MP
Minister for Mental Health

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