



## Mental Health Review Tribunal

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Mental Health Inquiry  
Productivity Commission  
GPO Box 1428  
CANBERRA ACT 2604

12 April 2019

Dear Commissioner,

Thank you for extending the time frame for making a submission to the Commission.

### **Background**

The NSW Mental Health Review Tribunal (the Tribunal) is responsible for ordering a person's detention for involuntary treatment in a mental health facility, making community treatment orders and ordering electro-convulsive therapy for involuntary patients.

The Tribunal also has a forensic jurisdiction. In that context, the Tribunal makes decisions about people who have committed serious criminal offences whilst mentally unwell or who are unfit to stand trial. The Tribunal also reviews the placement and care of inmates in prison who need mental health treatment while in prison. For people who have been found not guilty of an offence by reason of mental illness, the Tribunal makes decisions about where the person should be detained, when the person can be transferred to another place of detention, when the person should have leave from that facility and when they can be released to live in the community under conditions. The Tribunal also decides when a person can safely live in the community without a forensic order.

This submission relies on the experience of the Tribunal, primarily gathered through its forensic hearings and engagement with stakeholders. It will be limited to addressing some of the questions posed at p 24 of the Issues Paper.

## **Other sources**

The information in the Tribunal's Forensic files has also been used as part of a detailed study undertaken through University of NSW. The study involved collecting data from the Tribunal files in relation to 478 forensic patients found Not Guilty by Reason of Mental Illness (NGMI) who been under the supervision of the Tribunal between 1 January 1990 and 29 July 2016. That data is being linked to re-offending data and to health care data.

The evidence from that study is still being analysed, with papers to be published shortly. A/Prof Kimberlie Dean has prepared the submission to the Commission from the Royal Australian and New Zealand College of Psychiatrists, and the data obtained from the study is likely to be covered in the College's submission.

The Tribunal also recommends the NSW Mental Health Commission's 2017 report *Towards a just system: mental illness and cognitive impairment in the criminal justice system*. It canvassed many of the concerns raised by the Commission and suggests solutions, including costings.

***To what extent does inadequate identification of mental health and individual needs in different parts of the justice system increase the likelihood, and extent, of peoples' future interactions with that system?***

***Where are the gaps in mental health services for people in the justice system including while incarcerated?***

The NSW evidence shows that people in custody have a significant incidence of mental illness, far higher than for the Australian population as a whole.<sup>1</sup> The Justice Health 2015 survey shows that 18% had their mental illness diagnosed in custody, and for a further 12% the diagnosis was made in custody and outside of custody. So for some, their mental illness was only identified once they were in custody.

In the Tribunal's experience, there are a number of difficulties with mental health care in custody:

- Mental health care in custody in NSW is largely based on prescription of medication (and incidental supportive conversations with doctors/nursing staff). Access to psychological services, mental health group programs or other recovery based supports is almost nil. Given the high

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<sup>1</sup> Justice Health and Forensic Mental Health Network 2015 Network Patient Health Survey Report at 52 - 62

rate of trauma amongst those in custody,<sup>2</sup> and the increasing evidence of the importance of non-pharmacological treatments for mental illness, this is an obvious gap.

- Levels of contact with custodial mental health services varies significantly depending upon the correctional centre where a person is detained. Assertive mental health care is available in the Metropolitan Remand and Reception Centre (MRRC) or Long Bay Hospital (LBH). Both have very restrictive settings. Access to psychiatric care in a mental health facility for all detainees in NSW is available at LBH which has 40 beds. There are extensive waiting lists to access treatment in the Hospital. There are few jobs and little activity for inmates at either MRRC or LBH. Many inmates prefer to be in the other correctional centres which are either closer to family or have more work/vocational opportunities.
- Planning for maintaining a person's mental health care when they leave custody is difficult. The date on which a person leaves custody can be difficult to predict. A person who is remanded and awaiting trial may be discharged suddenly from court. Even when discharge is predictable (end of sentence or parole) a person's living arrangements may be uncertain until the last day or two before release. Without a known address, the person cannot be linked to a local community mental health team. Added to this, is the fact that some community mental health teams are reluctant to take on clients who have come out of custody.

To try to stop this gap, the Tribunal has been asked to make an increasing number of community treatment orders for people in custody<sup>3</sup>. A (forensic) community treatment order can be varied to a (civil) community treatment order after a person's release. The principle behind making a community treatment order in custody is that it gives a community mental health team the legal mechanism to require a person to accept mental health treatment. Ideally, it is also a starting point for building a therapeutic relationship.

However, making a forensic community treatment order is no guarantee that the person will be assertively followed up by a community mental health team once out of custody. This is dependent on

- (a) assertive action by staff from Justice Health & Forensic Mental Health Network, and
- (b) acceptance of the client and assertive action by the community mental health team when both custodial and community services are stretched, it can be difficult to make the time needed to follow up client's transitions out of custody. This requires good hand over from

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<sup>2</sup> See Justice Health and Forensic Mental Health Network *2015 Network Patient Health Survey Report* figure 4.8.1

<sup>3</sup> *NSW Mental Health Review Tribunal Annual Report 2018/19* p 9

Justice Health and a willingness by the community mental health team to follow up on the person in the community.

***What interventions in the justice system most effectively reduce the likelihood of re-offending, improve mental health and increase prospects for re-establishing contributing lives? What evidence is there about the long-term benefits and costs of these interventions?***

The data linkage research project run by UNSW shows that the re-offending rate for NSW forensic patients is very low (about 6% re-offending with 12 months) compared to 41% of adults exiting prison in NSW in 2015 who were reconvicted of a further offence within 12 months (BOCSAR, 2017).<sup>4</sup> This is despite the fact that many forensic patients have significant criminal histories and past contact with mental health services before their serious forensic offence occurred.<sup>5</sup>

Forensic patients generally receive a very high standard of assertive (and compulsory) mental health care, in the high secure setting of the Forensic Hospital as well as in medium and low secure mental health units. This care involves not just regular psychiatric treatment, but a range of group and individual therapies that support cognitive skills, drug and alcohol abstinence, a better understanding of mental illness, anger management and behavioural regulation. There is also a strong emphasis on vocational pathways (paid or voluntary) and developing a range of structured daily activities which the person finds enjoyable and valuable. It is this holistic approach which is the foundation of the low re-offending rate and the re-establishment of contributing lives.

Many forensic patients still rely on a disability support pension, but some work full-time and receive no social security. Many people on a forensic order are involved in voluntary work and find fulfilment in their ability to give back to the community. Others take on a significant role in caring for other family members. The Tribunal has been told by NGO service providers, that those people who leave the forensic system truly embody the idea of recovery – they take responsibility for their own choices and live meaningful, satisfying, and purposeful lives, with or without symptoms of mental illness.

The NSW Mental Health Commission has done a comparative costing on keeping a person in custody versus supporting them in the community. The financial costs are equal, but the societal cost is immeasurably better if the person does not re-offend and remains out of custody.<sup>6</sup>

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<sup>4</sup> K Dean; S Singh; R Kemp; O Nielssen; A Johnson "Characteristics and post-release re-offending patterns of male and female forensic patients in New South Wales, Australia", forthcoming.

<sup>5</sup> As above

<sup>6</sup> Mental Health Commission of NSW (2017). *Towards a just system: mental illness and cognitive impairment in the criminal justice system*. Sydney, Mental Health Commission of NSW, at 10-12.

***What are the main barriers to lowering the over-representation of people living with a mental illness in the justice system and what strategies would best overcome them?***

The barriers are numerous. The Tribunal's anecdotal assessment suggests that some of the key barriers are:

- Lack of affordable, appropriate housing. The waiting time for a studio apartment through Housing NSW in western Sydney is easily 13 years.<sup>7</sup> For forensic patients, this delays their ability to live in the community, even when community living is the most appropriate placement. This in turn leads to bed blocks in other mental health facilities that cater to forensic and correctional patients.
- A lack of resources for assertive community mental health care. More frequent visits from community mental health and other support services and a longer period of engagement during those visits can be instrumental to maintaining a person's mental health in the community. More investment in community mental health would reduce the likelihood that a person's mental illness will bring them into contact with the criminal justice system.
- A blockage of mental health care beds for people with forensic orders. For example, the Forensic Hospital (a high secure mental health facility in Sydney's south) is legally able to accommodate people in custody with mental health difficulties. However, because of the lack of beds in other parts of the forensic mental health network, beds for men in the Forensic Hospital are scarce. There is a two year wait for forensic patients to be transferred to these beds from custody. Forensic Hospital beds simply do not become available to sentenced prisoners or those on remand who need mental health treatment. Many people in custody would benefit enormously from the intensive and holistic mental health treatment that is available in the Forensic Hospital and other mental health facilities. If available, it may well reduce re-offending for those people.

***To what extent do inconsistent approaches across states and territories lead to inefficient, ineffective or inequitable outcomes for offenders and their families?***

There are no interstate arrangements for the transfer of forensic patients. This means that patients whose family and cultural connections are in another State are disadvantaged, as they cannot move to another State (whilst still under their forensic order) to continue their recovery. This is a particular disadvantage for Aboriginal and Torres Strait Islander people who may be required to live in a State that is a long way from family and country.

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<sup>7</sup> A forensic patient recently waited 13 years to obtain a studio apartment in western Sydney. This is not unusual.

The availability of family and friends to support (and supervise) a person's return to community living is also a practical assistance and can reduce the time that the person spends in forensic detention. The lack of interstate transfer agreements is a significant disadvantage to the safe recovery of those under a forensic order.

If the Tribunal can assist further, please do not hesitate to contact me

Yours faithfully,

Anina Johnson  
Deputy President