



Mental Health Commission
of New South Wales

NSW Law Reform Commission Reference on Parole

Submission by the Mental Health Commission of New South Wales

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Contact: Sarah Hanson

Position: **Executive Officer**

The Mental Health Commission of NSW

The Mental Health Commission of NSW was established as a statutory body in July 2012 for the purpose of monitoring, reviewing and improving the mental health system and the mental health and well-being of the people of New South Wales. In exercising its functions the Commission must take into account the particular views and needs of different sections of the community, including taking into account issues related to the interaction between people who have a mental illness and the criminal justice system. The Commission is guided in all its work by the experiences, hopes and priorities of people who live with mental illness and their carers and families.

The NSW Government has asked the Commission to prepare a draft Strategic Plan for Mental Health in NSW. This will be a Plan for all people in NSW, regardless of where in the state they live, their age, cultural background, or any other personal circumstance. The planning process is person-centred and has focussed on themes based on life stages and concerns that may arise at those times. System issues that are relevant across the whole life-span have also be considered, particularly other large scale reforms such as the National Disability Insurance Scheme and the opportunities and challenges this brings for people with a lived experience of mental illness.

Additionally the Commission has been closely engaged in the recent review of the *Mental Health Act 2007*, with the Commissioner, Mr John Feneley, sitting on the Expert Reference Group and attending six of eight community consultation forums held across NSW as a member of the Mental Health Act Review Community Consultation Panel.

The Commission welcomes the opportunity to make a submission in relation to the Law Reform Commission's current reference regarding Parole and has reflected on the discussions with consumers, carers, families, and professionals in its consultations around the Plan and the review of the *Mental Health Act 2007* in preparing this submission.

Parole Reference

In making this submission the Commission has had particular regard to issues raised in *Question Paper 4: Reintegration into the community and management on parole*; *Question Paper 5: Breach and Revocation*; and *Question Paper 6: Parole for young offenders*.

Availability of Mental Health Services in Custody

Research has shown that people in NSW who experience mental illness are three to nine times more likely to enter prison than those who do not with it being estimated that up to 77% of prisoners in NSW have a mental health problem.¹

However, the majority of mental health services within the correctional system are located within the Sydney metropolitan area. In particular, if an inmate requires acute or crisis care, they must be transported from whichever correctional centre they are in across the state to Long Bay Prison Hospital. Not only is this unacceptable given the size of NSW, it is evidently insufficient given the strain this places on 'feeder' services such as the Mental Health Screening Unit at the MRRC.

The reasons for the scarcity of ambulatory mental health care throughout the NSW prison system are many and complex, including difficulties in attracting and retaining qualified personnel. It is not proposed to address these issues within this submission, but rather to discuss the impact this has on the outcomes for prisoners and parolees.

At present, the NSW Mental Health Commission is aware that due to the lack of resources, the mental health needs of prisoners are often not adequately assessed and/or addressed until pre-release planning commences. For long term prisoners this can mean that they experience long periods of time without receiving the care that they require. For short-term prisoners this may mean that they do not receive adequate care at all during their time in custody. For both populations, the lack of resources also necessarily limits the extent to which appropriate links are made with community based services to provide care post-release.

A further consequence of the need to transport those who require acute/crisis care to Sydney is a disruption and/or unavailability of other rehabilitation programs. As described below, there is a need to consider the whole needs of the person – both mental health and criminogenic - and to meet these needs in a co-ordinated and integrated manner.

¹ McCausland, R., E. Baldry, S. Johnson and A. Cohen (2013). People with mental health disorders and cognitive impairment in the criminal justice system: Cost-benefit analysis of early support and diversion. Sydney, University of New South Wales and PwC.

Availability of Mental Health Services in the Community

As recognised by the establishment of the NSW Mental Health Commission, community mental health services are currently under-resourced and this presents issues for parolee's ability to access mental health care, as it does for those seeking diversion from the criminal justice system and the general population.

Additionally, those with a criminal history experience added stigma, regardless of the offence type, which can leave treating teams misunderstanding and/or feeling ill equipped to meet the needs of the individual. This requires some education of community mental health staff but also clear lines of support (such as through Community Forensic Mental Health Service) in the event that a person does present with a history of violence which may require a more sophisticated form of risk management.

These issues combined mean that if a person is not connected to services prior to release, it is likely to be difficult for them to access appropriate care independently post-release.

Continuity of Care

Improving the level of access to services in prison and the continuity of care between prison and the community has led the NSW Mental Health Commission to explore the concept of a permeable membrane between prison and the community with NSW Health, Justice Health, and Corrective Services NSW. Such a model would see local community mental health services being able to follow a person into and out of custody to maintain the 'habit' of good care. If an individual requiring mental health services is not already linked with a community mental health service on reception, then this link would be established early in their stay, regardless of their status as remandee or sentenced prisoner.

If the concept is supported then it is likely that it would initially be tested in two regional centres for prisoners with expected stays of less than 12 months. This work would build on the previous efforts in this space of Aboriginal Medical Services, and its success would require the engagement of all key agencies that deliver mental health services in the areas including AMSs and NGOs.

Not just Mental Health

As referred to above, people with a mental illness who are in the criminal justice system are generally not there purely because of their mental illness. Rather, like other prisoners, they can present with a complex array of needs and are likely to require criminogenic rehabilitation programs not just mental health treatment.

However, because intensive mental health care is provided by Justice Health and broader rehabilitation programs are provided by Corrective Services, it is common that an individual is only able to access one or the other at any one time. This not only has negative impacts on the individual's ability to successfully re-integrate into the community, but can even delay their access to parole given the extra time required to provide the necessary services in a sequential rather than an integrated manner.

We need to become much more sophisticated in addressing these needs in a holistic, aligned, and complimentary way. This would not only improve individual outcomes but reduce the cost both to the community at large and in terms of extended periods in custody.

Data Sharing

Having appropriate data sharing mechanisms in place would be a necessary feature both of continuity of care and improved co-ordinated delivery of mental health care and rehabilitation programs. These data needs would include information at a system level to aid service planning, as well as at the individual level to improve the co-ordination of care.

While privacy legislation is often cited as a reason why such mechanisms can not be established, it is increasingly recognised that this presumption is often not tested and consequently the benefits of data sharing within the bounds of legislation are not consistently realised. This will need to be improved upon if services are to be designed to address the mental health and related needs of those coming into contact with the criminal justice system.

Breaches and Revocation

The NSW Mental Health Commission has been made aware of occasions on which parole has been revoked primarily due to issues relating to the mental health needs of the individual, rather than issues of criminogenic risk. For example, where compliance with a Community Treatment Order has been integrated into parole conditions, an individual's breach of the CTO should be addressed under the *Mental Health Act 2007*, resulting in hospitalisation, rather than through a revocation of parole, resulting in imprisonment.

While community safety must be the overarching concern of the parole system, within that framework the goal of establishing and maintaining the habit of good mental health among those parolees who experience mental illness must be of critical concern.

Re-offending

Maintaining the habit of good mental health is equally applicable to the way in which re-offending by parolees is managed. At present, re-offending, no matter the relative seriousness of the offence, results in consideration both by the Parole Board in relation to the individual's existing order, as well as by the traditional Court system in relation to the new offence. In addition to the system costs, this process can have significant negative impacts on the rehabilitation of the individual through disruption of their care and access to appropriate programs. This is particularly the case as Courts do not uniformly have available to them information regarding the treatment and rehabilitation needs of the individual and their relative progress to date as part of the considerations on sentencing of the new offence.

Having regard to the existing composition of the Parole Board, alternative options could be explored to address these current limitations. For example, for less serious offences (for example where the maximum sentence is 12 months or less) where an offender has pleaded guilty, the matter could be heard by the Parole Board as part of its consideration of the current parole order. This could have immense advantages for continuity of care as the Parole Board would inevitably have a more complete picture of the individual and could balance the rehabilitation needs against the risk to the community. It would also reduce the burden on the local court system and increase the opportunity to provide 'swift and certain' justice.

Therapeutic Responses for Young People

The need to consider the therapeutic needs of offenders is even more acutely evident in relation to juvenile offenders. Research has shown that close to 90 per cent of young people in custody have at least one psychological disorder and about 70 per cent have two or more.² Although the needs of juvenile offenders who enter custody are invariably complex, the vast majority will require a primarily therapeutic response.

It is important to note that the primary goal must be to implement holistic early interventions that address the needs of young people as they develop to both improve their quality of life and reduce the possibility of them coming into contact with the criminal justice system. For those who do come into contact with the criminal justice system, diversion wherever possible is the desirable alternative. However, this will invariably depend on the capacity of community based services which as indicated above are currently under-resourced. In the interim, where a

² Indig, D. (2011). 2009 NSW young people in custody health survey: Full report. Sydney, Justice Health.

young person must enter custody, the Commission believes that this should primarily be a therapeutic environment.

While the NSW Mental Health Commission is exploring what this means with Juvenile Justice, Family and Community Services, NSW Health, and Justice Health, the same issues apply to the way in which parole orders operate for this population. In the future this may mean that rather than a custodial order being made by a Court, the Court may make a therapeutic order which could require a period of time for care and treatment to be provided within a safe and secure environment, before following the juvenile back into the community and supporting their engagement with a range of service providers, including mental health. Such a model would necessarily build on the success of programs in NSW, such as the work of the Community Integration Teams, and internationally, such as Milwaukee Wraparound.