

MENTAL ILLNESS IN NSW PRISONS

Carol Berry, Solicitor – Health Policy and Advocacy, Public Interest Advocacy Centre

At PIAC I am employed as health solicitor, and as part of our work on mental illness and the justice system, PIAC has established a network to work to focus on the issue of mental illness in NSW prisons. Our network is made up of psychiatrists, lawyers, carers, consumers and consumer groups, advocates, psychologists, nurses and others engaged in the sector, and our network now has over 90 members. The purpose of the network is to share information and to try and build the profile of this important human rights issue.

At PIAC we have been focussing on a number of issues, such as the prevalence of mental illness in prison, the quality of treatment currently available for the mentally ill in prison, and the status of ‘forensic patients’, who are generally those found not guilty on the grounds of mental illness within the corrections system.

PIAC hopes to contribute to the push to divert the acutely mentally ill out of prisons, and into more appropriate care, and to help prevent the those suffering from serious mental illness from being imprisoned in the first place. PIAC also hopes to contribute to the push to improve the quality of care and treatment provided for people suffering from mental health problems whilst in prison.

PIAC believes that the treatment of mentally ill prisoners within the NSW corrections system is a significant human rights issue, and that the public interest is served by more appropriate mental health care of the state’s prison population.

The number of people suffering from mental illness being locked up in NSW prisons has become the focus of increased attention. The fact that people with mental illness are over-represented in the criminal justice system is of increasing concern to human rights advocates, especially as the population of prisons increases.

A chapter of a report released by the Senate Select Committee on Mental Health last year, *A national approach to mental health: From crisis to community*, was dedicated to mental health and the criminal justice system.

The report observed that ‘people with a mental illness comprise a disproportionate number of the people who are arrested, who come before the courts and who are imprisoned.’¹

A 2003 report detailing the prevalence of mental illness in NSW prisons, *Mental Illness Among New South Wales Prisoners*², reflected what has also been observed in other countries, such as the USA, that the occurrence of mental illness in the prison population is much higher than the general population. For example, the NSW study

¹ Senate Select Committee on Mental Health, *A national approach to mental health: From crisis to community* (2006) 329

² T Butler and S Allnutt, *Mental Illness Among New South Wales Prisoners* (2003).

reported that the prevalence of psychosis in inmates was 30 times higher than in the general Australian community.³

The study found that 48% of reception inmates and 38% of sentenced inmates had suffered a mental disorder in the past 12 months (characterised as a psychosis, affective disorder or anxiety disorder). When a broader definition of 'any psychiatric disorder' was used, it was found that 74% of the NSW inmate population was affected.⁴

The study also reported that female prisoners have a higher prevalence of psychiatric disorder than male prisoners⁵, with approximately 90% of female reception prisoners having experienced a mental disorder in the 12 months before their incarceration compared with 78% of male prisoners.⁶

These statistics suggest we need to be asking questions about serious systemic failings, such as why our community care system has fallen down dramatically so that the mentally ill wind up in prison, and why we divert those suffering from mental illness, particularly serious mental illnesses, into the prison system at all.

The corrections environment is not an appropriate environment for people suffering from serious mental illness. There are many examples of prisoners suffering from serious mental illness being locked up for 23 hours a day in solitary confinement. This is considered cruel and inhumane treatment under international law, and yet is still practiced in the NSW corrections system.

Forensic Patients

In NSW we have a special category of mentally ill patients called 'forensic patients'.

Forensic patients, most commonly, are those found not guilty of criminal offences on the basis of mental illness. Many of these individuals, after being found not guilty, are detained within the corrections system because they are considered too unwell to be released.

This is despite the fact that they were considered too unwell to have understood the nature of what they were doing, however, the system still holds some of these individuals within the corrections system, despite the fact that they are not guilty by law. Being held in the corrections system means enduring some of the harsh conditions that this entails, such as solitary confinement and even sensory deprivation.

There are approximately 300 forensic patients within the NSW corrections system. Some of these patients are kept for periods of time within the general prison environment because there are not enough beds available in appropriate facilities, such as the prison hospital. There is increased pressure on hospital resources due to

³ Ibid, 3.

⁴ Ibid, 2.

⁵ Ibid, 2.

⁶ Ibid, 15.

the fact that some forensic patients are not released because they are held in the hospital at the discretion of the NSW Minister for Health.

Inappropriate Ministerial discretion

As the Senate Select Committee on Mental Health report outlines, most state jurisdictions have special courts or tribunals to oversee the administration of mental health legislation. In NSW, the Mental Health Review Tribunal (MHRT) performs this function.

However, in NSW, the MHRT only has the power to make recommendations to the NSW Minister for Health, who then ultimately makes decisions about, for example, the care and treatment of those found guilty on the grounds of mental illness. There are concerns that the possible political implications of decisions to release those found guilty on the grounds of mental illness unduly influence decisions by the Minister for Health.

This means that there are many individuals who have been found not guilty on the grounds of mental illness who are effectively incarcerated for much longer periods of time than is necessary or appropriate. The regime of ministerial discretion in this state in relation to forensic patients is considered to be quite outmoded and ultimately unjust. At present a review is being conducted by the Honourable Greg James QC to consider removing executive discretion over recommendations of the Mental Health Review Tribunal. PIAC, and many other organizations, are strongly supportive of executive discretion being removed.

Mental health: a human rights issue

Human rights are about protecting the dignity of every person. If a group within the community are treated without dignity, or in a way that is cruel and inhumane, it is important that this issue is addressed as a matter of urgency, to ensure a humane and civil society.

People suffering from mental illnesses, particularly acute mental illnesses, need treatment, not punishment.

This observation was made by the Deputy State Coroner, Dorrell Pinch at a death in custody inquest where PIAC represented the family of Mr Scott Simpson, who committed suicide in Long Bay Prison in June 2004. The Human Rights and Equal Opportunity Commission was also represented at the Inquest.

At the inquest there were many issues raised that were relevant not only to Scott Simpson but to the treatment of mentally ill inmates and forensic patients in prison generally.

Scott Simpson suffered from a severe case of paranoid schizophrenia. Scott was held in solitary confinement for the final 26 months of his life. He died awaiting admission into the acute ward of Long Bay Prison Hospital. The Coroner found that Justice Health hadn't done enough to prevent the deterioration of Scott's mental health over a long period of time. For example, Scott spent just under a year at the Goulburn Supermax prison, the High Risk Management Unit, or the HRMU, as it is otherwise known.

Scott had a long criminal history. His final period of incarceration was particularly troubling and tragic.

Scott was taken into custody at the MRRC in March 2002. He had committed a relatively minor offences which had involved violence, but he had not yet been tried or sentenced, he was simply bail refused.

Scott was granted protection status, and was placed in a two-out cell with another inmate, who was also in protective custody.

Within 15 minutes of being placed with the other inmate, Scott had brutally attacked him, and kicked him to death.

The Supreme Court later found that Scott was not guilty of this offence on the grounds of mental illness.

After killing his fellow inmate, Scott was placed in segregation. Except for two short periods, he remained in solitary confinement at various prisons until he hanged himself in his cell on 7 June 2004.

Coroner Pinch made the following observation:

“It is pertinent to emphasise that Simpson was in prison not because he had been convicted of an offence and given a custodial sentence. Initially, he had been remanded in custody for alleged offences involving violence. As the history set out below illustrates, those attacks occurred when Simpson was suffering paranoid delusions. The subsequent attack in prison occurred in similar circumstances. The evidence before me indicates that Simpson’s mental illness was not something incidental to his incarceration. His delusional beliefs and his actions in accordance with them were the very reason he was in custody.”

Although Simpson was reviewed by seven psychiatrists over the next two years, there was no opportunity for a therapeutic relationship with any of them. Hence, the only on-going treatment he received was antipsychotic medication, which he took intermittently. There was evidence before me to indicate that medication should only ever be part of an overall treatment regime.

In order to place the death of his fellow inmate, and Scott’s own suicide in perspective it is interesting to look at what was happening in Scott's life during the previous six months before he arrived at the MRRC.

On the 12 October 2001 police were called to premises in Granville where Simpson was seen to climb over garage roofs.

He told police that he was being watched by ASIO and the NCA. He was subsequently admitted for treatment of a psychotic episode to Cumberland Psychiatric Hospital on the 19 October 2001. Following his discharge on 31 October 2001, he went to Coffs Harbour to see his family. His behaviour became violent and bizarre

and he was charged with offences arising out of assaults on family members. Scott went back into custody.

Scott was discharged from the MRRC on 14 January 2002. On 27 March 2002 he attended Parramatta Police station requesting to be taken into custody because he had failed to comply with the reporting requirements of his bail. Concerned with aspects of his behaviour, police officers conveyed him to Cumberland Hospital but he was not assessed as being mentally ill within the meaning of the *Mental Health Act 1990*. Scott was released on bail. On 29 March he initiated an unprovoked attack to a person and his vehicle while having a psychotic episode. The Custody Manager at Windsor Police Station, where Scott was taken after his arrest, considered that Simpson could “snap” at any moment. The following day, 30 March 2002, he was taken to the MRRC.

Simpson was psychotic on 29 March. He was also psychotic, according to three psychiatrists, on 30 March. But his psychotic status was not identified at his Reception Assessment on 30 March by Justice Health staff. Scott was placed with another inmate with a terrible consequence.

As I have previously mentioned, in the aftermath of the attack on his fellow inmate, Scott was placed in segregation.

A psychiatrist examined him and concluded that he was suffering from paranoid psychosis.

Evidence was presented at the Inquest which indicated that at that time Scott should have been transferred to D Ward, which is the acute psychiatric ward at Long Bay Prison Hospital.

The Coroner observed that Scott should have been very high on the priority list – he was demonstrably acutely mentally ill to the extent that he had killed another person.

However, instead of receiving treatment in hospital he was sent to a segregation cell at the prison at Goulburn with minimal opportunities for adequate psychiatric care.

The result was that while Scott’s condition fluctuated depending on whether he was compliant with his medication, the time spent in segregation lead inevitably to a deterioration of his mental state until the crisis point was reached on 7 June 2004.

Scott was taken to Long Bay prison in March 2004.

Following the finding of Not Guilty on the grounds of Mental Illness on 31 March 2004 Simpson remained at Long Bay, awaiting admission to D Ward.

Dr Lewin, Scott’s treating psychiatrist at the time of his death, diagnosed Simpson as suffering from Paranoid Schizophrenia, in partial remission, and recommended hospitalisation.

Dr Lewin was gravely concerned about Scott’s mental state and agitated to have him transferred to D Ward as quickly as possible.

Dr Lewin stated in evidence that he was so concerned about being unable to get Scott into hospital that he threatened to call the Minister. He described his exasperation in these terms:

“I have never had a higher index of concern about a patient. I felt powerless because it was absolutely apparent that he needed to be cared for in hospital and this was not happening.”

Later in his evidence he stated:

“My concern was that someone was going to get killed.....my concern was that a member of staff might have been harmed and I had almost the same index of concern with regard to Mr Simpson himself.”

From 10 May 2004 Scott was number one on the list for admission to D Ward. However, on 1 June when the next bed became available another patient was given priority. Justice Health staff have consistently denied that Scott’s security classification in any way influenced decisions in respect of his placement. Scott had an A1 classification, the highest possible security classification attainable within the corrections system at that time.

The Coroner concluded

“After reviewing all the evidence I have reached the conclusion that Justice Health administrators were reluctant to admit Simpson to D Ward, whether unconvinced of the clinical urgency or because of security considerations or a combination of both, I am unable to determine.”

On 7 June 2004 Scott appeared at Penrith Local Court for the matters in respect of which he had been bail refused, and for which he had been originally incarcerated this time around. The charges were withdrawn. He arrived back at Long Bay at 1.16 pm. In just under seven hours later he was found hanging in his cell.

Coroner Pinch made a number of important and far reaching findings as a result of the inquest.

These included recommending to Justice Health that they establish standardised criteria in regard to admission into Long Bay Prison Hospital.

She also recommended that there be a review of the Minister’s powers in regard to the Mental Health Review Tribunal.

She suggested that the review should examine, and I quote:

‘whether the present system of Executive responsibility is best suited to ensure the placement and movement of inmates on clinical grounds. The review should specifically assess whether, under the present system, the decision-making process about the movement of forensic patients ensures the best use is made of the limited available hospital beds.’

Amongst other things, the Coroner also recommended that the Department of Corrective Services should adopt the policy that inmates diagnosed with a mental illness should be placed in segregation only in exceptional circumstances and for a limited period.

If anyone here would like to become involved in PIAC's network to examine issues of mental illness in NSW prisons and in the criminal justice more broadly we would welcome your involvement – just give me your email address at the end of this forum.

I'm interested in hearing if anyone has any questions or comments about what I have mentioned today, or more broadly.