



## Out of Sight, Out of Mind: Mentally Ill in Queensland Correctional Centres

DAN ROGERS\*

### Abstract

*The apparent surge of Australia's mental health problem poses increasing challenges to government and non-government agencies. In the Queensland custodial environment this problem is most notably espoused. Encouraged by strong evidence demonstrating an over-representation of mentally ill in prison, this article critically examines the current legislative framework and operational procedures for the diversion and treatment of mentally ill defendants. Such analysis reveals a necessity for major reform and this article proposes seven key recommendations. Ultimately, reform rests on greater recognition of the problems faced by mentally ill inmates. However, as the problem often remains out of sight, the difficult task is to effectively convey their difficult situation to the minds of government and non-government agencies in the hope of urgent intervention.*

\* BA (UQ), LLB candidate (UQ).

# **Out of Sight, Out of Mind: Mentally Ill in Queensland Correctional Centres**

**DAN ROGERS**

---

## **Contents**

---

<b>1. Introduction .....</b>	<b>90</b>
<b>2. The Over-Representation of the Mentally Ill in Queensland Prisons .....</b>	<b>90</b>
<b>3. The Current Legislative Framework.....</b>	<b>91</b>
<b>4. Major Problems.....</b>	<b>93</b>
<b>5. Supporting Research.....</b>	<b>95</b>
<b>6. Recommendations .....</b>	<b>96</b>
6.1 Early Intervention .....	96
6.2 Better Police Training.....	96
6.3 Better Screening Processes in Prisons .....	97
6.4 Better Support Services upon Release .....	98
6.5 Lower Thresholds for Meeting the Legal Criteria of a Forensic Patient.....	98
6.6 Greater involvement by the Queensland Department of Health.....	99
6.7 Better Training for Criminal Defence Lawyers.....	99
<b>7. Concluding Remarks .....</b>	<b>99</b>

## 1. Introduction

Mental illnesses in Queensland Correctional Centres are routinely ignored to the extent that the prison environment has been described as the 'mental health institution of the 21<sup>st</sup> century.'<sup>1</sup> Identifying and treating mentally ill inmates is a task which has received a low to non-existent priority among the state's Department of Corrective Services; the body responsible for mental health in prison. This is true both in terms of the existing legislation and in terms of the operational procedures in place. Additionally, the Queensland Department of Health, through their inaction, has effectively dismissed the idea that this problem falls within their jurisdiction. The result is that there is a desperate need for reform in order to meet the needs of a growing population of mentally ill inmates. This article begins by considering the over-representation of the mentally ill in Queensland prisons. It then reviews the current legislative framework for dealing with mentally ill inmates. With these analyses complete, the importance of reform is clear. The article concludes by making recommendations for how the law and operational procedures ought to be changed.

## 2. The Over-Representation of the Mentally Ill in Queensland Prisons

The number of mentally ill inmates in Queensland Correctional Centres is considerable. Studies vary as to the number of mentally ill inmates currently in custody but at a conservative level, it is estimated that the level of mental health problems and disorders is 3 to 4 times higher among inmates than that of the general Australian population.<sup>2</sup> In another study, it was estimated that the prevalence rate for psychotic illnesses such as schizophrenia ranges from 5.1% to 9.6% in prison compared to 0.3% to 0.5% in the general population.<sup>3</sup> Whatever measure or study design employed, there is general agreement that the number of mentally ill inmates in prison is grossly over-represented.

Similar to most jurisdictions around the globe, deinstitutionalization of the mentally ill, coupled with a lack of support services, has greatly contributed to the over-representation of mentally ill inmates. Australia's population doubled in the past 50 years.<sup>4</sup> However, the number of public and private psychiatric hospital beds fell from 30,000 in the early 1960s to 8,000 in 2006.<sup>5</sup> The increase in the number of mentally ill people in the community was not met with a sufficient increase in mental health services.<sup>6</sup> The consequence is that many people with a mental illness have been criminalized and their illnesses are not receiving the appropriate treatment while in prison. Fifteen years ago, Herrman et al pointed out that, 'whatever the cause, services for

---

<sup>1</sup> P White & H Whiteford, 'Prisons: mental health institutions of the 21st century' (2006) 185 (6) *Medical Journal of Australia*, 302.

<sup>2</sup> Author unknown, 'Mental Health and the Criminal Justice System' (2003) *Beyond Bars: Alternatives to Custody (Fact Sheet 9 - Australian Institute of Criminology)*, 1, 1.

<sup>3</sup> T Butler, G Andrews and S Allnutt, 'Mental disorder in Australian prisoners: a comparison with a community sample.' (2006) 40 *Australian and New Zealand Journal of Psychiatry*, 272, 273.

<sup>4</sup> Australian Bureau of Statistics, 'Population Clock', *Australian Bureau of Statistics* <<http://www.abs.gov.au/ausstats/abs@.nsf/94713ad445ff1425ca25682000192af2/1647509ef7e25faaca2568a900154b63?OpenDocument>> (as at 10 February 2007)

<sup>5</sup> White and Whiteford, above n1, 302.

<sup>6</sup> V Poelgeest, 'Lack of Mental Health Resources A Safety Risk' (2008) *Australian Medical Association Queensland*, [www.amaq.com.au/index.php?action=view&view=20280&pid](http://www.amaq.com.au/index.php?action=view&view=20280&pid) (as at 6 August 2008)

people with mental illness in Australian prisons are inadequate and in need of urgent reform.<sup>7</sup> A consideration of the current law reveals that the urgent reform that Herrman and his co-authors proposed fifteen years ago has not been successful.

### 3. The Current Legislative Framework

Two key pieces of legislation dictate mental health in Queensland correctional centres namely, the *Corrective Services Act 2006* (Qld) and the *Mental Health Act 2000* (Qld). This legislation is analysed below. The analysis reveals that the legislation is inadequate in dealing with a growing problem among mentally ill inmates.

Because of the fact that the Department of Corrective Services is responsible for mental health in prisons, the *Corrective Services Act 2006* (Qld) is instrumental in the rights of prisoners including the mentally ill. The preamble to the Act states:

This Act recognises that every member of society has certain basic human entitlements and that for this reason, an offender's entitlements, other than those that are necessarily diminished because of the imprisonment or court sentence, should be safeguarded.<sup>8</sup>

Based on this preamble, one would assume that the legislation is designed to protect mentally ill inmates by providing the appropriate care and management for their disability. The unfortunate reality is that the 279-page long Act has no reference to the mentally ill.<sup>9</sup> In light of this fact, it appears that the new Act is dominated by law-and-order politics where the rights of the mentally ill have been overshadowed by a political campaign which focuses on 'getting tough on crime'. When introducing the *Corrective Services Bill*, Queensland Police Minister Ms Judy Spence MP stated at the very outset, 'This Bill gets tough on crime.'<sup>10</sup> Disappointing is the fact that the Minister's speech also makes no reference to the mentally ill despite strong evidence of a large number of mentally ill inmates.<sup>11</sup>

In the absence of any reference to the mentally ill in the *Corrective Services Act 2006* (Qld), one must turn to the *Mental Health Act 2000* (Qld) (hereinafter the Act) to find safeguards for the mentally ill. This Act contains a number of provisions that prevent mentally ill persons from being unnecessarily detained in prison. However, a critical evaluation of this Act reveals a number of loopholes which result in the mentally ill being detained in correctional centres as opposed to a mental health service.

<sup>7</sup> H Herrman, P Mc Gorry, J Mills, B Singh, 'Hidden severe psychiatric morbidity in sentenced prisoners: An Australian study.' (1991) 148 *American Journal of Psychiatry*, 236.

<sup>8</sup> *Queensland Corrective Services Act 2006* (Qld), s 4.

<sup>9</sup> Honourable W.J. Carter QC, 'Lock them up conference' *Presentation at Brisbane City Hall*, 17 May 2006

<sup>10</sup> Ms J Spence MP, Minister for Police and Corrective Services, 'Hansard Transcription 29 March 2006' *Queensland Parliament*, 915, 940, <[http://parlinfo.parliament.qld.gov.au/isysnative/XFxXRUJTRVJWRVJcSEFOX01TWVM2REJcMjAwNi5wZGZcMjAwNi8wM18yOV9XRUVLTFkucGRm/2006\\_03\\_29\\_WEEKLY.pdf#xml=http://parlinfo.parliament.qld.gov.au:80/i/sysquery/irl4795/2/hilite.>](http://parlinfo.parliament.qld.gov.au/isysnative/XFxXRUJTRVJWRVJcSEFOX01TWVM2REJcMjAwNi5wZGZcMjAwNi8wM18yOV9XRUVLTFkucGRm/2006_03_29_WEEKLY.pdf#xml=http://parlinfo.parliament.qld.gov.au:80/i/sysquery/irl4795/2/hilite.>) (as at 13 December 2007)

<sup>11</sup> Author unknown, above n 2, 2.

The scope of the present article precludes a comprehensive outline of all the provisions of the Act. Only those sections specifically relating to mental health in prison are discussed here. The Act defines a mental illness as 'a condition characterised by a clinically significant disturbance of thought, mood, perception or memory.'<sup>12</sup> The scope of this definition is limited by various qualifications. For instance, a person is not considered to be mentally ill merely because of racial, economic or social status or because of their decision to engage in antisocial, immoral or illegal behaviour or because they are affected by drugs or alcohol.<sup>13</sup> The definition is adapted from the national model mental health legislation and the *United Nations Principles for the Protection of Persons with Mental Illness and for the Improvement of Mental Health Care*.

The Act makes provision for both involuntary and voluntary assessments as well as subsequent treatment orders where someone meets the relevant treatment criteria.<sup>14</sup> For a mentally ill person who is charged with a criminal offence, a key distinction is whether or not they are currently on a so-called treatment order, as specified under the Act.

If a mentally ill person is already on a treatment order and they are charged with a criminal offence, they are far more likely to get the treatment they require because the illness has already been formally recognised. The inmates' treatment order is automatically brought to the attention of police if he/she is arrested. This effectively ensures that the police recognise the mental illness and respond according to the provisions of the Act. There are a range of options available for a mentally ill person in this position. An application for a court assessment order is made if a defendant is already on a treatment order.<sup>15</sup> If this is granted, an examination and report by a qualified psychiatrist dictates the inmate's next move.<sup>16</sup> The options include admission to a mental health service (deemed a classified patient)<sup>17</sup>, discontinuance of less serious charges (Attorney General Pardon)<sup>18</sup> or referral to the Mental Health Court where the court decides whether the inmate is of unsound mind, of diminished responsibility or whether they are fit for trial.<sup>19</sup> Additionally, a mentally ill detainee may simply be granted bail and continue their involuntary treatment plan in the community, while their charge is finalised.<sup>20</sup> Finally, in some circumstances the person may be remanded in custody if the psychiatrist believes they are no longer required to remain on a treatment plan.<sup>21</sup>

The rights of the patient under all of the above scenarios are legislated in the Act. Some of the fundamental rights include patient involvement in the assessments<sup>22</sup>, regular reviews by both a psychiatrist or the Mental Health Review Tribunal which has appellate avenues to the Mental

---

<sup>12</sup> *Mental Health Act 2000* (Qld), s 12(1).

<sup>13</sup> *Ibid*, s 12(2).

<sup>14</sup> *Ibid*, s 14.

<sup>15</sup> *Ibid*, s 58.

<sup>16</sup> *Ibid*, s 46.

<sup>17</sup> *Ibid*, Chapter 3, Part 3, Division 2.

<sup>18</sup> *Ibid*, Chapter 7, Division 3, Part 3.

<sup>19</sup> *Ibid*, Chapter 7, Division 3, Part 4.

<sup>20</sup> *Ibid*, s 244.

<sup>21</sup> *Ibid*, s 245.

<sup>22</sup> *Ibid*, s 45.

Health Court<sup>23</sup>, access to assessment documents<sup>24</sup> and access to treatment plans and reasoning.<sup>25</sup> These rights conform to the *United Nations Principles for the Protection of Persons with Mental Illness and for the Improvement of Mental Health Care*. Fortunately, for someone already on a treatment order, there is a reasonably good chance that they will be diverted away from the formal criminal justice process and instead, receive adequate mental health treatment. This diversion is, of course, dependant on the severity of the crime which they have committed. However, even if incarceration is required because of the seriousness of their crime, the awareness of a pre-existing treatment order encourages appropriate treatment while in custody.

The target of criticism in Queensland is the situation where someone who has never been subjected to a treatment assessment is apprehended by police. In this case, authorities are unaware of a pre-existing mental illness and this is where the mentally ill arrestee can 'fall through the cracks' and remain untreated in correctional centres. There are a number of reasons why this problem is occurring; each of which will be dealt with separately. Some of the problems are a result of inadequate provisions under the *Mental Health Act 2000* (Qld) whereas others are a result of poor operational procedures within the Queensland Police Service (QPS) and other Government bodies. Further, the time restraints imposed on all lawyers, particularly those who are acting under a legal aid grant to assist the arrestee, may cause them to overlook or neglect mental illnesses and, in doing so, fail to consider the options available to their clients under the Act.

#### 4. Major Problems

As the first point of contact in the criminal justice system, the police have an important role in safeguarding the rights of the mentally ill. Proper police diversion is therefore crucial. Queensland Health has formalised a 'Memorandum of Understanding' for the Queensland Police Service.<sup>26</sup> Effectively, this is an agreement between the Department of Health and the QPS involving a number of initiatives for better police diversion of the mentally ill. They include education and training of police by mental health services, the development of protocols and district operational forums in which operational issues between these two departments can be raised.<sup>27</sup> Despite these genuine initiatives, the practical reality is that the vast majority of QPS officers are not able to identify someone who is suffering from a mental illness.<sup>28</sup>

The Mental Health Court, a key feature of the *Mental Health Act 2000* (Qld), is unique to Queensland in that no other Australian State or Territory has developed a similar institution. The court diversion, as a result of the Mental Health Court, is strongly supported by mental health groups.<sup>29</sup> However, there exist a number of operational difficulties which inhibit equitable

---

<sup>23</sup> Ibid, Chapter 6.

<sup>24</sup> Ibid, s 16.

<sup>25</sup> Ibid, s 307.

<sup>26</sup> D Kilroy, 'Criminalising Illness? Strategies to Reduce the Over-representation of People with Mental Illness in Criminal Justice System' (2005) *Queensland Alliance* <<http://www.qldalliance.org.au/resources/items/2005/04/06768-upload-00001.pdf>> (as at 13 January 2007).

<sup>27</sup> Ibid, 3.

<sup>28</sup> Ibid, 5.

<sup>29</sup> Ibid, 6.

access to the court. For instance, research has shown that many legal and health professionals are not sufficiently aware of the mental health court and how to access it.<sup>30</sup> This can result in lawyers pleading clients as opposed to arguing for a treatment order under the Act.

There is also a significant resource problem whereby prisoners on remand can spend more time in prison awaiting a determination of the mental health court than if they had of plead guilty to their offence and served their sentence.<sup>31</sup> At present, only a single Supreme Court judge is responsible for the court. Experience has shown that current listings for a Mental Health determination take approximately 8-12 months. More judges are needed to tackle this resource problem.

Prison diversion is a key problem for the mentally ill and the *Mental Health Act 2000* (Qld) does not address the issue in an appropriate way. This is particularly true for those people not already on a treatment order under the Act. The Act, it has been said, sets a threshold too high for prison diversion.<sup>32</sup> A public fear about criminally accused, mentally ill being released into the community has fuelled this high threshold. This is unfortunate because 'most people with mental illness in prison are not a danger to other individuals or the community at large – they have mainly committed minor offences, and not crimes against the person.'<sup>33</sup> Changing societal perceptions towards the mentally ill is an important step in securing greater prison diversion.

Once a person suffering a mental illness has been sentenced to serve a period of imprisonment in the mainstream way, there is little chance that the mental illness will be acknowledged in prison. A lack of provision in the Act for regular screening of inmates is a major problem. As a result, prison officers are under no obligation to regularly screen inmates and in the absence of legislative provisions requiring them to do so, they most often will not do so. Given the lack of mental health service professionals in the prison environment, there is a growing need to provide information, training and support in mental health to prison officers.

The problem of poor police and prison diversion is most notably espoused by the well publicised case of Cornelia Rau. Ms Rau was unlawfully detained for six months in a Queensland prison and then for a further four months in an immigration detention centre, before she was diagnosed with a mental illness.<sup>34</sup> The release of Ms Rau and her subsequent quest for compensation resulted in an independent inquiry coined the 'Palmer Inquiry'. The Palmer report highlighted that 'it is clear that the case is not an isolated instance of errors that might occur in any large bureaucracy: it is symptomatic of a department that is terminally dysfunctional.'<sup>35</sup>

---

<sup>30</sup> Ibid, 6.

<sup>31</sup> Ibid, 6.

<sup>32</sup> K Cocks, 'Lock 'them' up, disability and mental health is not a crime conference' *Queensland Advocacy Incorporated Conference*, 17 May 2006, <<http://www.sistersinside.com.au/conference2006.htm>> (as at 15 January 2007).

<sup>33</sup> Kilroy, above n26, 6.

<sup>34</sup> Rebecca Keating, 'Mental illnesses overwhelm prison systems', *ABC Online*, 11 February 2005, 1.

<sup>35</sup> Julian Burnside QC, 'The abuse of one exposes what we are doing to them' *The Age*, 7 July 2005.

## 5. Supporting Research

On the basis of the foregoing analysis, the inevitable conclusion is that the current Queensland legislation is failing to meet the basic needs of mentally ill inmates and there is a wealth of research to support this claim. The clearest evidence is the over-representation of untreated inmates in correctional centres.

The Queensland Women's Prisoners Health Survey 2002 found that 57% of female prisoners reported having been diagnosed with a specific mental illness; the most common are depression, anxiety, and substance dependence.<sup>36</sup> The comparative general population is said to have a prevalence rate of mental illness in the vicinity of 5.8%.<sup>37</sup> This gross over-representation is made even more complex when the additional difficulties often faced by those with a mental illness are taken into account. For example, Queensland Women's Prisoners Health Survey 2002 also found that among the prison population 38% reported childhood physical or emotional abuse.<sup>38</sup> Even higher rates have been reported in other studies.<sup>39</sup> A prison environment is not the appropriate place to deal with the combined effect of a mental illness and childhood abuse. However, for women convicted of serious offences and facing the inevitability of a period of incarceration, custodial officers need to be more aware of this complex and difficult dynamic faced by many women.

The lack of mental health services in prison is evident in the rates of suicide and self-harm. Liebling conducted a study in 1992 where she compared women prisoners who had self harmed to a control group of women prisoners who had not self harmed. She found that the self harming group were far more likely to have received psychiatric or other medical attention in the past.<sup>40</sup> What this suggests is that the mentally ill in prison are not receiving the treatment they need to cope with their suicidal or self-harming tendencies.

The response by prison staff to mentally ill inmates who self harm further demonstrates the lack of appropriate mental health services within prison. Suicide observation cells or segregation has been utilised in most Australian states. These methods of suicide prevention are the opposite of therapeutic. In fact, Keating remarks that 'researchers... have universally condemned the use of isolation cells for suicidal prisoners.'<sup>41</sup> Schrader shares Keating's complete disapproval of this inhumane form of treatment stating, 'it amounts to sensory deprivation and cruel treatment. It is not the recognised treatment for those in the community. This is punishment, not therapy – and there are alternatives.'<sup>42</sup> The mere existence of these practices is evidence of poor mental health services in Queensland correctional centres.

---

<sup>36</sup> Tracey Schrader, 'Close Your Eyes and Throw Away the Key: Mental Health of Female Prisoners' (2005) 83 *New Doctor*, 4, 5.

<sup>37</sup> *Ibid*, 5.

<sup>38</sup> *Ibid*, 5.

<sup>39</sup> *Ibid*, 5.

<sup>40</sup> A Liebling *Suicides in Prison* (Routledge, London, 1992), 45.

<sup>41</sup> Keating, above n34, 6.

<sup>42</sup> Schrader, above n36, 7.

Another method of determining the extent of the problem of mental health in Queensland prisons is through personal accounts of inmates and workers within the prison. Schrader points out that 'working in a prison makes one acutely aware of the failure of the system – for instance, the lack of social supports, education, health and mental health services.'<sup>43</sup> Queensland-based barrister, Debbie Kilroy served a period of actual imprisonment for trafficking in a dangerous drug in the early 1990's. Her articulate personal account still provides a very good insight into the mental health problems faced by Queensland inmates; 'I look at things both from the outside and the inside out. I hear the pleas of women inside, the rhetoric of governments outside, and all around me the echo of stereotypes.'<sup>44</sup> Kilroy summarises the current state of affairs by claiming, 'I would say prisons have become defacto psychiatric centres – with no mental health professionals inside the walls.'<sup>45</sup>

## 6. Recommendations

Based on the problems identified within the current legislation, the writer proposes seven key recommendations to assist the mentally ill both prior to incarceration and while in prison. It is crucial to note that mental health in prison is a complex issue and the following recommendations do not in any way provide an exhaustive list of what reforms are needed. Instead, they represent the writer's key concerns. They include:

### 6.1 Early Intervention

Keeping individuals with a mental illness away from and out of the criminal justice system requires proactive work on the part of various government and other organisations. A greater amount of mental health service facilities can assist in providing individual support in the form of personal development opportunities, life skill practices, job placements and general support in times of need. A community group called Queensland Alliance believe that the main contributor for the over-representation of mentally ill persons in prison is 'the inadequacy of community-based and non-government health and human services in Queensland.'<sup>46</sup> Such facilities need to be accessible and well resourced. They have the strong potential to minimise the amount of mentally ill people coming before the courts.

### 6.2 Better Police Training

Police represent the first point of contact with the criminal justice system. Therefore, training of police in how to deal with the mentally ill should be at the forefront of any reform. The ability to screen and identify a person with a mental illness is crucial. Apart from the *Police Powers and Responsibilities Act 2000* (Qld), the QPS Operational Procedures Manual is the most authoritative guideline for police conduct.<sup>47</sup>

---

<sup>43</sup> Schrader, above n36, 4.

<sup>44</sup> Debbie Kilroy, 'Qld Alliance – Criminalising Illness? Mental Illness and the Prison System' Queensland Alliance (2005) <http://www.sistersinside.com.au/media/MentalHealthLunchAugust2005.pdf> (as at 24 April 2007).

<sup>45</sup> Ibid, 4.

<sup>46</sup> Kilroy, above n26, 3.

<sup>47</sup> Queensland Police Service, 'Queensland Police Service Operational Procedures Manual (Issue 33)' Queensland Police Service (current as at 2 May 2008).

The manual provides directions for police contact with special needs groups including the mentally ill.<sup>48</sup> However, in the author's view, the manual fails to emphasise the cautionary and sensitive approach required for dealings with the mentally ill. Further, the manual is purely a guideline and it is difficult to gauge how well police are versed in its provisions and further, their rate of compliance. The manual needs to be updated with the assistance of a team of suitable psychologists. Furthermore, better awareness of the Manual should be an integral part of police training, both at the time of recruitment and on an ongoing basis. Given the number of mentally ill persons who come into contact with police, the importance of this training cannot be overstated.

### **6.3 Better Screening Processes in Prisons**

Academic research clearly shows that many mentally ill persons 'fall through the cracks' and end up in correctional centres without any treatment. As a result of this undisputed reality, screening processes in prison, both upon admission and at regular intervals, is very important. A detailed screening process on admission will help to reduce the number of mentally ill inmates or at least, ensures those inmates receive the appropriate treatment and medication while in custody.

Additionally, it has been noted that people with an acute form of mental illness often have their condition exacerbated by the experience of incarceration. The screening process must be able to identify such people whose condition deteriorates to a point where imprisonment is no longer appropriate. To ensure strict compliance with screening processes, the *Mental Health Act 2000* (Qld) and the *Corrective Services Act 2006* (Qld) should be amended accordingly.

The type of intake screening process which is implemented is of fundamental importance. The author supports the suggestion by Ogloff that the screening process currently operating in the Surrey Pre-trial Services Centre (SPSC) is a good model.<sup>49</sup> This model has been rigorously tested and found to be effective at identifying the mentally ill.<sup>50</sup> The scope of the current article precludes a detailed description of the intake screening process. However, the key feature which ensures a high success rate is the fact that interviewers are trained and closely supervised by registered psychologists with experience in corrections.<sup>51</sup>

Criminal defence lawyers also have a role to play in the screening process. It is common practice for pre-sentence reports to be obtained for criminal defendants. Such reports usually provide an insightful description of a client's mental health. For those defendants with mental health problems, it is simply inexcusable that a defence lawyer does not bring a pre-sentence report to the attention of the prison authorities.

---

<sup>48</sup> Ibid, section 6.6.

<sup>49</sup> J Ogloff, 'Identifying and Accommodating the Needs of Mentally Ill People in Gaols and Prisons' (2002) 9(1) *Psychiatry, Psychology and Law*, 1, 14.

<sup>50</sup> R Roesch *Mental Health Intervention in Jails* (1995) In G Davies, S Lloyd-Bostock, M McMurrin, & C Wilson, *Psychology, law, and criminal justice* (Walter de Gruyter, New York, 2003) 520-531.

<sup>51</sup> Ogloff, above n49, 15.

#### **6.4 Better Support Services upon Release**

Simply waving a mentally ill inmate 'goodbye' from the prison gate is a recipe for disaster. Better support services would involve a co-ordinated effort between correctional centres and community groups. A plain recognition that the experience of incarceration drastically affects anyone's life skills is the simple starting point. The negative life experience of incarceration for someone with a mental illness would be even worse. Assistance in finding a safe place to live, possible work or other personal development would greatly support the mentally ill. Such support would be helpful to reduce rates of recidivism. Ogloff argues that such post-release care and support is 'critical for increasing the probability of the inmate succeeding in the community.'<sup>52</sup> The current post-release services are wholly inadequate. In fact, 'not only are people released without transport, housing, food, income support, etc but also without medication or referral to mental health services.'<sup>53</sup>

#### **6.5 Lower Thresholds for Meeting the Legal Criteria of a Forensic Patient**

The standard employed for the determination of criminal responsibility is crucial to the number of mentally ill inmates in Queensland goals. At present, it is recognised that few mentally ill inmates 'meet the legal criteria to be considered formal 'forensic patients' (ie found unfit to stand trial or not criminally responsible on account of mental disorder, etc)'.<sup>54</sup> In light of the disproportionate number of mentally ill inmates, a consideration of a lower threshold should be the focus of academic and public debate and consideration among key stakeholders. It is acknowledged that such a reform is of great significance and there are many competing arguments for a lower threshold.

For instance, mentally ill defendants convicted of less serious offences would probably rather serve a short period of imprisonment than be subject to a lengthy treatment order which restricts their freedom for long periods of time. Furthermore, many defendants would not want the stigma associated with a treatment order. However, there is the risk that without treatment, the mental condition of these defendants may deteriorate to the point where their lives are drastically disabled. Their period of imprisonment, during which they are unlikely to get appropriate treatment, could very possibly fuel this deterioration.

It is also important to consider the type of mental illness that the defendant suffers and the likelihood that this illness will fit the criteria for classification as a forensic patient. It is acknowledged that all mental illnesses have varying degrees of disability and dysfunction. However, if the disorder is something of a more serious nature, such as schizophrenia or bipolar disorder with psychotic episodes, there is a strong argument for a more accessible threshold. On the other hand, a lower threshold carries the risk that those suffering anxiety or depression will escape imprisonment despite being criminally responsible. In this latter scenario, the focus should be on the accessibility of treatment while in prison rather than improper pursuits in the Mental Health Court. The above example demonstrates the desirability for a cautious approach to reform on this point.

---

<sup>52</sup> Ogloff, above n49, 28.

<sup>53</sup> Kilroy, above n26, 8.

<sup>54</sup> Ogloff, above n49, 1.

### **6.6 Greater involvement by the Queensland Department of Health**

The Queensland Department of Corrective Services is either unwilling or unable to deal with the issue of mental health in prisons. On the surface, the Department appears to be consumed by considerations of punishment and criminalisation, rather than concepts of rehabilitation and community safety.<sup>55</sup> It is also unsatisfactory to expect prison staff to deal with this complex issue. Unfortunately, this is what is occurring in many jurisdictions, not just in Queensland.<sup>56</sup> For example, in relation to the situation in British Columbia, Canada, James Ogloff has proposed the implementation of a 'Director of Mental Health Services' in correctional centres.<sup>57</sup> For this writer, this proposal seems desirable in the Australian context and may be effective at ensuring the Department of Health assumes greater responsibility in the prison environment. The Director should be able to provide professional guidance and support to mental health staff in Queensland's correctional centres. Additionally, the Director must oversee correctional staff's adherence to minimum standards of care and proper screening processes.

### **6.7 Better Training for Criminal Defence Lawyers**

As the legal representative of the mentally ill, criminal defence lawyers must be able to identify a mentally ill client. This is not an easy task. The Queensland Law Society should offer more seminars focussing on mental health issues. To be effective, such seminars must include speakers from the mental health profession and lawyers also need to be receptive to their advice. Moreover, lawyers need to ensure that they are familiar with the provisions of the Mental Health Act; the main legislative instrument for the mentally ill. Queensland Law Society seminars are again an effective forum for this training. For all seminars, the availability of Compulsory Professional Development (CPD) points is essential to encourage participation.

## **7. Concluding Remarks**

As far as is reasonably practical, the above recommendations should be legislated. It is not enough to leave it up to the good will of government bodies to implement operational procedures or training courses. This is especially true in correctional centres where security and violence control too often dominate staff training focussed on rehabilitation of inmates and identification of the mentally ill.

A consideration of the current law and research show that mental health in Queensland prisons is in need of major reform. The difficult task is convincing government bodies of the need to implement changes. The Australian Government is finally appearing to be heading down this road. On 5 April 2006, the Council of Australian Governments (COAG) announced its intention to commit 1.8 billion dollars over five years to mental health services across the country.<sup>58</sup>

The Australian Government is to be praised for this commitment. However, the key question which remains unanswered is what amount of this money will be committed to mentally ill

---

<sup>55</sup> Kilroy, above n26, 3.

<sup>56</sup> Ogloff, above n49, 10.

<sup>57</sup> Ogloff, above n49, 10.

<sup>58</sup> Fran Kelly, 'Mental Health Crisis' *ABC Radio National Breakfast* 7 June 2006, 2.

persons in prison. The recommendations proposed in this paper are a starting point for improving the rights of the mentally ill in prison. Concern remains that mentally ill inmates, who remain out of our sight in correctional centres, will also continue to remain out of the minds of those responsible for spending the government's money. It has been said by various scholars that humanity should be measured by the way in which we treat our most vulnerable citizens.<sup>59</sup> The mentally ill, locked up in correctional centres, are probably the most vulnerable citizens in our society. The humanity shown to mentally ill inmates must improve if Australia is to be considered a reputable first world nation.

---

<sup>59</sup> J Rawls, *A Theory of Justice* (Harvard University Press, Cambridge Massachusetts, 1970).