Dr Andrew Ellis

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9 April 2020

Ms Emma Manea
Solicitor
Legal Aid New South Wales
PO Box K847
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Dear Ms Manea,

RE: COVID - 19 AND MENTAL HEALTH ISSUES FOR NSW PRISONERS

INTRODUCTION

Thank you for requesting a psychiatric report to assist solicitors in advocating for clients and making submissions to the court when determining release applications, variations of bail and sentence matters, with regard to the potential impact of COVID-19 on their client's mental health.

You have indicated in your letter of instruction background information including that the World Health Organisation ('WHO') has announced that the novel Coronavirus (COVID-19) first identified in Wuhan, China late last year is now a "pandemic", the Australian Government has determined that the outbreak of COVID-19 in Australia is a "health emergency" and that there have been responses from the NSW government and Corrections NSW.

You have asked that the report address specific questions which I will answer individually in the opinion section.

You have asked the report addresses for each question issues facing NSW prisoners, children in detention and detainees in immigration detention.

CODE OF CONDUCT FOR EXPERT WITNESSES

I, Dr Andrew Kenneth Ellis, acknowledge for the purpose of Rule 31.23 of the Uniform Civil Procedure Rules 2005 that I have read the Expert Witness

Code of Conduct in schedule 7 to the said rules and agree to be bound by it.

SOURCES OF INFORMATION

- CSNSW Response to COVID-19 document
- Procedures at Long Bay Hospital Pandemic Plan
- Offender Population report for the week ending 22 March 2020

OPINION

1. *What effect or impact if any, has the current COVID-19 pandemic had or would be reasonably expected to have on the mental health of people in custody/detention?*

A pandemic will have mental health effects by two main mechanisms. The first will be direct contribution to development of new psychiatric conditions in individuals by infection with a virus. The second will be the effects of social changes such as isolation or quarantine used to combat population wide infection, which may effect a wider group. The effects of procedural change in custodial settings could lead to the development or worsening of existing mental conditions in persons who are not infected with the virus, and would compound the effects of persons infected.

Currently there are no known cases of direct infection of detainees in custodial settings in NSW. There are cases of infection of workers who attend the facilities. There are reports of infection in overseas jurisdictions, however it is as yet too soon to determine what the long term effects of this particular viral infection will be on the mental health status of individuals. There is substantive evidence from previous respiratory viral epidemics that psychiatric conditions are prevalent in those who become infected by this type of virus. For example following the novel coronavirus SARS (severe acute respiratory syndrome) epidemic in the early 21st century 25%-30% of those infected developed post-traumatic stress disorder (PTSD) and 15%-30% developed a major depressive disorder in populations in Hong Kong[1] and Canada[2]. Similar findings from the 2015 MERS (Middle East Respiratory Syndrome) outbreak in Korea showed that those infected developed psychiatric conditions at a much higher rate compared to those

[1] Mak, I. W. C., Chu, C. M., Pan, P. C., Yiu, M. G. C., & Chan, V. L. (2009). Long-term psychiatric morbidities among SARS survivors. General hospital psychiatry, 31(4), 318-326.

[2] Hawryluck, L., Gold, W. L., Robinson, S., Pogorski, S., Galea, S., & Styra, R. (2004). SARS control and psychological effects of quarantine, Toronto, Canada. Emerging Infectious Diseases, 10(7), 1206.

hospitalised for observation only.[3] The mechanism of exactly how respiratory viruses can contribute to psychiatric disorders is not understood, however the comparison with those who are subject to quarantine and not as affected indicates there is a role of infection itself. This may be purely psychosocial as the person is subject to the stress of knowing there are infected with a serious condition and experience physical effects of infection as unpleasant. The systemic nature of the infection could also have a neuropsychiatric effect on brain systems that regulate trauma and mood response. Severe cases of infection can lead to delirium as basic brain function is compromised.

Therefore based on experience from previous novel coronavirus pandemics it would be reasonable to presume an increase in the development of post traumatic stress disorder and depression and subclinical symptoms of these conditions in those who are infected and recover physically. This would include people in detention. At this stage I am not aware of infection in current detainees.

The second likely effect on mental health is through measures employed in institutions to combat viral spread. Quarantine is the major mechanism to avoid spread of the virus in those who carry it, fall medically unwell with it, or are suspected of carrying it (i.e. have come into close contact with a carrier). The effect of these measures can impact those with and with out the virus. There is evidence from previous outbreaks that persons subject to quarantine are at greater risk of developing psychiatric disorders[4]. The effects of prison segregation are considered in a further question. The effect of isolation in a prison or detention cell alone is likely to be at least equivalent to quarantine within one's own home, and likely more aversive. People with existing psychiatric conditions may experience a worsening of their condition while subject to quarantine. The delivery of mental health care in custodial facilities is difficult at the best of times, and reduction in mental health care to persons subject to quarantine measures, and to the general population of a facility is to be expected. Therefore the general effect of measures to combat the spread of a virus (lockdowns, quarantines and reduction in face to face mental health staff presence) can induce new mental disorders, worsen existing mental disorders and reduce access to treatment.

Some of the recommended measures to reduce the psychological impact of quarantine are likely difficult to enact in prison and detention settings. People who understand the need for quarantine and have an altruistic

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[3] Kim, H. C., Yoo, S. Y., Lee, B. H., Lee, S. H., & Shin, H. S. (2018). Psychiatric findings in suspected and confirmed middle east respiratory syndrome patients quarantined in hospital: a retrospective chart analysis. Psychiatry investigation, 15(4), 355.

[4] Brooks, S. K., Webster, R. K., Smith, L. E., Woodland, L., Wessely, S., Greenberg, N., & Rubin, G. J. (2020). The psychological impact of quarantine and how to reduce it: rapid review of the evidence. *The Lancet*.

motivation to participate do better, however in these settings the high rates of mental disorders and persons who do not speak English make this explanation more difficult. Likewise harnessing altruistic motives for quarantine may be more difficult. Supplies such as entertainment may not be available, as they would be contrary to established security regimes. Increasing access to mental health services may not be possible due to already stretched services and limited access.

Stigma is a noted effect of persons undergoing quarantine. This has not been studied in detention settings, however many groups who are stigmatised in society face worse stigma in custodial settings. Already stigmatised groups (such as mentally ill persons in custody) may face additional stigma.

2. In your opinion are there some groups in custody/detention which may be affected more than others with regard to their mental health, and in what way? Is there a more vulnerable group and if so who? Please elaborate on what steps should be implemented to address these issues? Would some client's have difficulties complying with directions regarding appropriate physical and social distancing requirements, like an inmate with an intellectually disability?

The rates of mental disorder of persons held in adult[5] and juvenile[6] custody are well established and greater than the general community. Likewise rates of mental disorder within immigration detention are also high[7], although the pattern is different.

Persons with a major mental illness (conditions such as schizophrenia and bipolar disorder) are over-represented in prison and are more vulnerable generally to poor outcomes such as suicide or being a victim of assault in custody. They are more likely to be found in violation of institutional rules, and have a higher rate of violence towards others in custody as a group. Treatment of these conditions is specialist and complex, and difficult to deliver in a prison environment. Mental health diversion legislation is applicable to this group. For those with summary offences, or offences being dealt with summarily in the local court diversion to hospital or community mental health under the *Mental Health (Forensic Provisions) Act 1990* is possible. Pleasingly there is significant evidence that mental health diversion

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[5] Butler, T., Andrews, G., Allnutt, S., Sakashita, C., Smith, N. E., & Basson, J. (2006). Mental disorders in Australian prisoners: a comparison with a community sample. *Australian & New Zealand Journal of Psychiatry*, *40*(3), 272-276.

[6] Indig, D., Vecchiato, C., Haysom, L., Beilby, R., Carter, J., Champion, U., ... & Muir, P. (2011). 2009 NSW young people in custody health survey: Full report. *Justice Health and Juvenile Justice, Sydney*, 77-78.

[7] Green, J. P., & Eagar, K. (2010). The health of people in Australian immigration detention centres. Medical Journal of Australia, 192(2), 65-70.

is more effective on average than ordinary use of the justice system for both clinical and re-offending outcomes.[8] Use of diversion legislation where a person meets criteria is likely to be more effective in ordinary circumstances, and may be relatively more so during a time where less mental health treatment may be available in custody. This could be considered by a court in determining whether to use diversion provisions. For indictable matters diversion is possible through the common law provisions for fitness to be tried and the defence of not guilty by reason of mental illness (NGMI). Forensic patients (those found unfit or NGMI) who are detained in prisons are eligible to be detained in psychiatric hospitals, and again show significantly better outcomes when treated in the forensic mental health system.[9] Courts or tribunals could recommend hospital disposals as a likely safer and more effective form of managing criminal behaviour associated with mental illness. A particularly small but vulnerable group are elderly forensic patients detained in prisons.

Persons with cognitive disorders, either constitutional (such as intellectual disabilities and autism) or acquired (such as with head injuries and dementias) are another vulnerable group. They are more frequently victimised in custody, and can fail to follow institutional rules due to poor memory and lack of understanding. They show higher rates of institutional rule violations, and could be expected as a group to have difficulty complying with directions regarding infection control as would persons with mental illness. Mental health diversion options can apply to these populations in a similar fashion.

Persons with comorbid conditions such as substance use alongside mental illness and cognitive impairment have compounded issues and are more resistant to brief treatment. Exposure to early trauma and social disadvantage are risk factors for the development of mental disorders, and tend to lead to worse outcomes when mental disorders are experienced. Young persons yet to achieve developmental maturity are tend to have greater functional impairment when experiencing mental disorders.

Persons in immigration detention who do not speak English may be at greater risk of non-compliance with quarantine measures. Many persons in detention come from countries where trust in authorities is low, and engaging in altruistic measures at the request of government officials may be more difficult.

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[8] Albalawi, O., Chowdhury, N. Z., Wand, H., Allnutt, S., Greenberg, D., Adily, A., ... & O'driscoll, C. (2019). Court diversion for those with psychosis and its impact on re-offending rates: results from a longitudinal data-linkage study. BJPsych open, 5(1).

[9] Nielssen, O., Yee, N. Y., Dean, K., & Large, M. (2019). Outcome of serious violent offenders with psychotic illness and cognitive disorder dealt with by the New South Wales criminal justice system. *Australian & New Zealand Journal of Psychiatry*, *53*(5), 441-446.

3. Are you aware of the effect or know of any literature which has considered the effect on the mental health of prisoners/children/detainees who are kept in segregation or isolation?

There is a significant literature on the effect of segregation or isolation in custodial settings[10]. Prolonged confinement is usually considered 10 days or more. Current recommendation for COVID isolation is a minimum of 14 days. In summary there are always negative effects for mental and physical health found when the practice is studied. It can induce even psychotic conditions (delusions and hallucinations) as well as depression and PTSD de novo, and worsen the course of pre-existing mental disorders. Rates of self injury increase. Children respond particularly poorly, and the practice usually denies education which is an essential component of detention in youth justice settings. Treatment is necessarily difficult to deliver to a person so confined. The problems of segregated custody and mental disorder have been highlighted in a number of Coronial cases in NSW.[11]

4. Would you support consideration of a management approach that prioritised early release generally, and if so, are there particular inmates who should be prioritised?

Yes. In general the criminological literature shows no correlation between length of confinement and risk of reoffending on release at a group level, therefore as a general policy this approach would not likely lead to an increased overall risk to the community from re-offence, particularly if treatment for mental disorders is part of the approach. An individual assessment of risk in community settings would need to be applied to individual cases. Immigration detainees with no criminal record are not likely to pose a risk to the community on release.

Currently forensic patients held in prison could be prioritised for transfer to psychiatric hospitals or "other places" such as locked nursing homes or locked disability accommodation without affecting their release as such. This would have a dual effect of better targeted rehabilitation to reduce offending and better ability to manage the mental conditions within a pandemic setting.

Persons with mental illness and cognitive impairment held on adult or juvenile remand could be considered for bail with conditions to attend on mental health treatment, or diversion under section 32 or 33 of the *Mental Health (Forensic Provisions) Act 1990.*

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[10] Haney, C. Mental Health Issues in Long-Term Solitary and Supermax. Confinement, 49, 130-32.

[11] Inquest into the death of "W" 2015, Inquest into the death of David Wotherspoon 2016, Inquest into the death of Junior Fenika 2017

Likewise, persons with mental illness and cognitive impairment who are in a parole period should be reviewed for release with mental health treatment as part of their parole or youth justice conditions. Longer periods under supervised care in the community are likely to have longer term benefits for reducing re-offending, rather than waiting until sentences expire and release does not encourage participation in treatment.

Acutely mentally unwell persons who require involuntary treatment should be transferred to acute psychiatric hospital settings under mental health act provisions.

Young offenders with mental disorders, and older offenders with mental disorders (considered age 55 and above, or age 45 and above if indigenous in custodial settings) would be candidates for priority. This is based on the likely severity of mental health symptoms in both groups and greater need for specialist treatment on average. Social support is particularly crucial for both cohorts. The general health status of older inmates is poor and comorbid mental health conditions become more difficult to treat.

5. Would you be able to comment on the known and likely effect on conditions in which inmates are held resulting from recent changes to procedures since the announcement of the pandemic of COVID-19, in particular restricting visits, lockdown procedures and access to services and programs, as these relate to:

the physical conditions in which prisoners are held;

inmates' access to exercise;

inmates' access to training and education programs and other services;

inmates' access to medical care;

inmates' mental health

Access to exercise, training and education, general medical care and specialist mental health care is currently limited within correctional, youth justice and immigration detention environments under ordinary operation. The limited mental health care available compared to the size of the adult inmate population has been particularly noted in the coronial cases referenced above and others. The conditions imposed by the pandemic response are likely to further reduce access to these services. For example in the documents provided psychiatric clinic services are not a function that would be maintained at all times, however on call services for emergencies would continue. Some persons with mental conditions find that replacement services with audio-visual technology renders communication difficult or impossible. Reduced access to visitors could increase distress in those with and without mental disorders. Reduced access to physical activity worsens

mental function. Boredom coupled with lack of access to education or vocational activities worsens mental function. Some isolation facilities are physically harsher than general prison placements. Single cell isolation is a risk factor for self harm and suicide in custodial settings.

6. Would you be able to comment on the known and likely effect on the conditions in which inmates are held that is likely to result if and when the virus spreads within NSW Correctional Centres, in particular as these relate to:

the physical conditions in which prisoners are held;

inmates' access to exercise;

inmates' access to training and education programs and other services;

inmates' access to medical care;

inmates' mental health and psychosocial needs

Should the virus spread within facilities then the above mentioned reduction in access to these services would likely be further reduced. Prisoners would be managed in isolation, or placed in cohorts of infected, or suspected infected groups. The capacity to separate people based on mental health needs would likely be a secondary priority to placement based on infection status. Stigmatised and vulnerable inmates may be more at risk in this situation.

7. Given the additional restrictions on inmates' liberties during the COVID-19 health emergency (e.g. existing restrictions on the availability of personal visits and likely restrictions on inmates' capacity to interact with other inmates and to engage in physical exercise), is there a real risk that a sentence of full-time imprisonment served during the COVID-19 pandemic may have a seriously adverse effect on a prisoners health (including both their physical and mental health)?

Yes, currently the restrictions on service provision with suspended visits render persons with mental illness or cognitive impairment more at risk of worsening their pre-existing conditions. This could have a serious adverse effect on mental health. Rates of suicide and self harm are already elevated in custodial populations, and a significant risk factor for these adverse outcomes is no or inadequate treatment. As noted viral infection and measures to combat it are risk factors for worsening existing mental disorders.

8. Any other matters in addition to those already addressed that are relevant in your opinion to the mental health issues of prisoners, children detained in

Juvenile Justice and detainees held in immigration detention relating to COVID-19?

Nil further to add.

I trust this information has been of assistance to you. Please contact if there are further questions.

Yours faithfully,

Dr. Andrew Ellis

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