



### **Re: Long Bay Hospital “The Way Forward”**

Thank you for the opportunity to provide comments about the increased lockdown period of inmate patients at Long Bay Hospital.

The Aboriginal Justice Advisory Council (AJAC) is an independent government body responsible for providing advice directly to the NSW Government on law and justice issues effecting Aboriginal people in this state.

The AJAC submit the following observations for your information in response to the request of the NSW Nurses’ Association regarding the increased lockdown period of inmate patients at Long Bay Hospital.

While the following observations concentrate on Aboriginal inmates, the AJAC support any submissions on behalf of non-Aboriginal inmates for their well-being and humane treatment whilst ever they remain incarcerated in the Long Bay Hospital.

It is well known Aboriginal Australians are over-represented in the criminal justice system. Aboriginal Australians make up 2.4% of the population of Australia, but 22% of the prison population. No statistics exist as to how many of these are cared for in the NSW Justice Health system, but it may be reasonably assumed at any given time, a similar percentage of Aboriginal inmates would be admitted to the prison hospital at Long Bay gaol.

Recommendation 150 of the Royal Commission into Aboriginal Deaths in Custody (RCIADIC) states;

“...the health care available to persons in correctional institutions should be of an equivalent standard to that available to the general public. Health services

provided within correctional institutions should be adequately resourced and be staffed by appropriately qualified and competent personnel. Such services should be both accessible and appropriate to Aboriginal prisoners. Correctional institutions should provide 24-hour a day access to medical practitioners and nursing staff who are either available on the premises, or on call”.

The Aboriginal Justice Plan 2004 – 2014<sup>1</sup> (AJP) provides further direction in Strategic Direction 5, specifically Strategic Action 9, with regard to the health requirements for the well-being of Aboriginal prisoners.

An Australian Medical Association (AMA) Report published in 2006<sup>2</sup> reports inter alia;

“...while a prisoner remains in detention, the individual States and Territories are responsible for the provision of health services with the consequence that each jurisdiction provides health services through different government bodies. There is no national or uniform approach to assess or meet the health care needs of the Indigenous prison population. Many authors have referred to the conflicts between the custodial role and the health care role. There is a danger that custodial requirements will take precedence over the health care needs of prisoners leading to prisoners’ health problems becoming subordinate to prison issues”.

Indeed Justice Health at “Our Services – Aboriginal Health”<sup>3</sup> state;

“In the 14 years since the Commission handed down its finds, (sic) the number of Aboriginal people in custody has continued to rises (sic) at a steady rate. In January 2005 the number of Aboriginal people in custody had risen to the highest number and the highest proportion of Aboriginal inmates ever recorded in NSW. If the current rise in incarceration rate of Aboriginal people continues, the Aboriginal inmate population will increase 1% per year over the coming years.

This increase, posses (sic) a number of significant challenges for Justice Health and the way in which we provide services to an ever-increasing Aboriginal inmate population. The well being of Aboriginal people within the NSW Correctional Environment is a priority for Justice Health. We recognise that to achieve long-term health outcomes for Aboriginal people, the connection between, individuals, families, community and service providers is essential for the continuity of health care”.

Picking up on some threads in another submission in support of the NSW Nurses’ Association regarding the shortcomings of increased lockdown periods for inmates in Long Bay Hospital, isolating individuals with any type of mental health issue for long

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<sup>1</sup> *NSW Aboriginal Justice Plan: Beyond Justice 2004 – 2014*, NSW Aboriginal Justice Advisory Council, Sydney 2005.

<sup>2</sup> AMA Report Card Series 2006, *Aboriginal and Torres Strait Islander Health. Undue Punishment? Aboriginal People and Torres Strait Islanders in Prison: An Unacceptable Reality*, p2.

<sup>3</sup> [http://www.justicehealth.nsw.gov.au/services/aboriginal\\_health.html](http://www.justicehealth.nsw.gov.au/services/aboriginal_health.html)

periods can be more distressing and indeed harmful to their overall health and rehabilitation.

With the aforesaid in mind I turn now to the United Nations Principles for the protection of persons with mental illness and the improvement of mental health care, adopted by General Assembly resolution 46/119 of 17 December 1991. Principle 1.1 states;

“All persons have the right to the best available mental health care, which shall be part of the health and social care system”.

Principle 8.1 states;

“Every patient shall have the right to receive such health and social care as is appropriate to his or her health needs, and is entitled to care and treatment in accordance with the same standards as other ill persons”.

Principle 9.1 states;

“Every patient shall have the right to be treated in the least restrictive environment and with the least restrictive or intrusive treatment appropriate to the patient’s health needs and the need to protect the physical safety of others”.

Principle 20 regarding criminal offenders qualifies the above Principles stating;

1. “This Principle applies to persons serving sentences of imprisonment for criminal offences, or who are otherwise detained in the course of criminal proceedings or investigations against them, and who are determined to have a mental illness or who it is believed may have such an illness”.
2. “All such persons should receive the best available mental health care as provided in Principle 1. These Principles shall apply to them to the fullest extent possible, with only such limited modifications and exceptions as are necessary in the circumstances...”.

The above Principles are further qualified and given authority by Article 5 of the Universal Declaration of Human Rights;

“No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment”.

It may be argued increased lockdown periods may be tantamount to cruel, inhuman or degrading treatment or punishment. Confining vulnerable or ill individuals in their cells from 3:30PM especially during the warmer months, as well as depriving them of health care, it is argued, is harsh and additional punishment to the sentence imposed.

The AJAC submit, an increased lockdown period for an already vulnerable group is not only unnecessary but may very well be more detrimental to their well-being and health. Furthermore, notwithstanding Recommendation 150 of the RCIADIC is now

16 years old, the reasons for the recommendation are the same today as they were then, deaths in custody.

While the Commission found Aboriginal people were no more likely than non-Aboriginal people to die in custody, it was reported<sup>4</sup> "...the fact [I]ndigenous people are grossly over-represented in all forms of custody means that, relative to the general population, they experience much higher levels of custodial death than do non-[I]ndigenous people".

The AJAC welcome this opportunity to provide a brief submission to the request of the NSW Nurses' Association regarding the increased lockdown period of inmate patients at Long Bay Hospital.

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<sup>4</sup> Implementation of the Commonwealth Government Responses to the Recommendations of the Royal Commission into Aboriginal Deaths in Custody, Annual Report 1994-95, p. 3-4.