

**Human Rights and  
Equal Opportunity Commission**

**Human Rights Commissioner &  
Commissioner Responsible for  
Disability Discrimination**

The Hon. John Hatzistergos MLC  
Attorney General and Minister for Justice  
GPO Box 5341  
Sydney NSW 2001

By email: [office@hatzistergos.minister.nsw.gov.au](mailto:office@hatzistergos.minister.nsw.gov.au)

Dear Minister

I am writing to you to express my concerns regarding the current treatment of forensic patients during temporary accommodation arrangements at the new Long Bay Prison Hospital while awaiting transfer to the new Long Bay Forensic Hospital later this year. In particular, I seek your urgent intervention to examine the current conditions of detention while at the new Long Bay Prison Hospital for forensic patients to ensure health and safety, including a significant reduction in lock down time.

**Increase in lock down hours for forensic patients during transition period at the new Long Bay Prison Hospital**

We understand that the period of lock down has increased substantially in comparison to the period of lock down in operation at the former Long Bay Prison Hospital. At the former Hospital, we believe the period of lock down was shorter in overall duration (12 hours per day in total) and spilt as a 10 hour period overnight (9pm to 7 am) and a 2 hour period during the day (12 noon to 2 pm). Currently, while awaiting transfer to the new Forensic Hospital, we understand forensic patients are locked down for a significantly longer period of time (16 hours per day in total) in one continuous period (from 4pm to 8 am).

**Harmful effects of isolation**

This increase in lock down hours poses considerable risk to the health and safety of these forensic patients during their interim stay at the new Long Bay Prison Hospital.

Many people with mental illness are adversely affected by being alone for long periods of time which can lead to the deterioration of their mental health. Health and safety risks also escalate during extended periods in isolation as there is no-one, and in particular no staff, around to monitor any changes in mental state, observe any changes in behaviour or intervene in any positive way to avert a crisis.

For many people with mental illness increased periods in isolation have led to suicide (for example, the death of Scott Simpson; discussed below). A recent report published in the Sydney Morning Herald (26 April 2008) indicates that there have been two suicide attempts since the new lock down hours began on 2 April 2008.<sup>1</sup>

A recent Australian study also indicates that people with schizophrenia are twenty times more likely to die as a result of choking to death.<sup>2</sup> A similar study overseas supports this finding that mental illness is a substantial risk factor for death by choking.<sup>3</sup> Death of forensic patients by choking might be preventable if staff or other people are around during meal times or

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Level 8 Piccadilly Tower 133 Castlereagh Street Sydney NSW 2000 GPO Box 5218 Sydney NSW 1042  
Telephone: 02 9284 9812 Facsimile: 02 9284 9797 Complaints Info Line: 1300 656 419 Teletypewriter: 1800 620 241 (toll free)  
Website: <http://www.humanrights.gov.au> ABN 47 996 232 602

while food is being consumed more generally. This can be achieved by minimising lock down times.

As Human Rights Commissioner and Commissioner Responsible for Disability Discrimination I am very aware of the risks associated with increased periods of isolation for people with mental illness in the criminal justice system in general, and in Long Bay Correctional Centre in particular, as I was granted leave to intervene in the Coronial Inquest of Scott Ashley Simpson a few years ago. In that case, Scott Simpson had paranoid schizophrenia and hanged himself while in isolation.<sup>4</sup> The Coroner found the time Mr Simpson spent in segregation led inevitably to a deterioration of his mental state until the crisis point was reached on 7 June 2004. In that case, HREOC made numerous recommendations to improve the way in which people with mental illness are dealt with by the criminal justice system and many of these recommendations were adopted in full or in part by the Coroner when formulating her findings.

### **International treaties and other human rights instruments to which Australia is party for people with mental illness in the criminal justice system**

Importantly, people with mental illness in the criminal justice system in NSW have the rights prescribed in international treaties and other human rights instruments to which Australia is party. These include: the *International Covenant on Civil and Political Rights*; the *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*; the *Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment* ('Principles for the Protection of Persons in Imprisonment'); the *Standard Minimum Rules for the Treatment of Prisoners* ('Standard Minimum Rules'); and the *Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care* ('Principles for the Protection of Persons with Mental Illness').

#### Right to humane treatment

Article 7 of the ICCPR provides that 'No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.'<sup>5</sup> The aim of article 7 is to protect the dignity and the physical and mental integrity of the individual.<sup>6</sup>

The prohibition in article 7 is complemented in the ICCPR by the positive requirements of article 10. Article 10(1) provides that 'all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.'<sup>7</sup> Article 10(1) imposes on States parties a positive obligation towards persons who are particularly vulnerable because of their status as persons deprived of liberty. The Human Rights Committee has stated that respect for the dignity of such persons must be guaranteed under the same conditions as for that of free persons. That is, persons deprived of their liberty enjoy all the rights prescribed in the ICCPR, subject to the restrictions that are unavoidable in a closed environment.<sup>8</sup>

#### Access to medical care

Governments are under a particular duty to protect the health of persons deprived of their liberty. HREOC believes that a lack of appropriate medical care may amount to 'inhuman and degrading treatment and punishment' within the meaning of article 7 of the ICCPR.<sup>9</sup>

The obligation to protect the health of persons deprived of their liberty is explicitly recognised in the Principles for the Protection of Persons in Imprisonment and the Principles for the

Protection of Persons with Mental Illness. The Principles for the Protection of Persons in Imprisonment provide (at Principle 24) as follows:

A proper medical examination shall be offered to a detained or imprisoned person as promptly as possible after his admission to the place of detention or imprisonment, and thereafter medical care and treatment shall be provided whenever necessary.

Further, the Principles for the Protection of Persons with Mental Illness provide that persons serving sentences of imprisonment for criminal offences, or who are otherwise detained in the course of criminal proceedings, and who are determined to have a mental illness, have the right to the best available mental health care (Principle 20).

*The Standard Minimum Rules* make particular provision for the treatment of mentally ill persons within the criminal justice system as follows:

- 82(1) Persons who are found to be insane shall not be detained in prisons and arrangements shall be made to remove them to mental institutions as soon as possible.
- (2) Prisoners who suffer from other mental diseases or abnormalities shall be observed and treated in specialised institutions under medical management.
- (3) During their stay in prison, such prisoners shall be placed under the special supervision of a medical officer.
- (4) The medical or psychiatric service of the penal institution shall provide for the psychiatric treatment of all other prisoners who are in need of such treatment.

The Human Rights Committee has indicated that the norms found in the *Standard Minimum Rules* are incorporated into the article 10 guarantee.<sup>10</sup> The Committee has also implicitly endorsed the other United Nations codes.<sup>11</sup> These codes are the product of agreement between States and as such are an indication and expression of States' consensus on a particular issue.<sup>12</sup>

#### Detention in segregated custody

The Human Rights Committee has expressed concern about the use of solitary confinement, especially for those detained prior to trial and conviction. The Committee has stated:<sup>13</sup>

The Committee is of the view that solitary confinement is a harsh penalty with serious psychological consequences and is justifiable only in case of urgent need; **the use of solitary confinement other than in exceptional circumstances and for limited periods is inconsistent with article 10, paragraph 1, of the Covenant.** [Emphasis added]

Relevantly, the Human Rights Committee has held that the use of confinement was inconsistent with article 10(1), in circumstances where the prisoner's confinement to a cell 'was intended to maintain prison order or to protect him from further self-harm, as well as other prisoners.'<sup>14</sup>

The Human Rights Committee has also indicated that prolonged solitary confinement may amount to acts prohibited by article 7.<sup>15</sup> As set out above, the assessment of whether the treatment is incompatible with the standards of article 7 depends on all the circumstances of the case. Relevantly, factors including mental health have been found to aggravate the effect of solitary confinement so as to bring that treatment within article 7.<sup>16</sup>

## Request for intervention

We understand that the need to temporarily accommodate some forensic patients in the new Long Bay Prison Hospital is to allow the old prison hospital to be demolished quickly and to maximise chances of successful commencement of the new Forensic Hospital as demolition will not be occurring on the site next door.

However, these interim arrangements will be in place for many months and therefore the increased time in lock down is likely to have a cumulative negative effect.

There is ample evidence of the harm that may ensue from extended periods in isolation for forensic patients and people with mental illness. Both the increased period of lock down and the fact that forensic patients are being housed within general correctional facilities is of serious concern to HREOC. These approaches are contrary to national trends and international treaty obligations.

I therefore ask you to urgently review the conditions of detention and reduce the period of lock down hours for forensic patients during this period of transition to ensure the health and safety of these members of our community with mental illness.

If you would like to discuss the matter further, I would welcome the opportunity to meet with you at your earliest convenience.

Yours sincerely



Graeme Innes AM  
Human Rights Commissioner and Commissioner responsible for Disability Discrimination

8 May 2008

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<sup>1</sup> Jordan Baker, Sydney Morning Herald, 26 April 2008, *No butts edict raises harm risk for patients*. Available at <http://www.smh.com.au/news/national/no-butts-edict-raises-harm-risk-for-patients/2008/04/25/1208743249022.html>

<sup>2</sup> Ruschena D, Mullen PE, Palmer S, *et al.* (2003). Choking deaths: the role of antipsychotic medication. *British Journal of Psychiatry*: 183; 446-450.

<sup>3</sup> Warner J (2004). Risk of choking in mental illness. *The Lancet*: 363 (9410); 674.

<sup>4</sup> A copy of HREOC's submission is available at: [http://www.humanrights.gov.au/legal/submissions\\_court/intervention/simpson.html](http://www.humanrights.gov.au/legal/submissions_court/intervention/simpson.html)

<sup>5</sup> See also Principle 7 of the *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*: 'No person under any form of detention or imprisonment shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.'

<sup>6</sup> Human Rights Committee, General Comment No. 20: Replaces general comment 7 concerning prohibition of torture and cruel treatment or punishment (Art 7): 10/03/92, CCPR General Comment No. 20 at [2] and [5].

<sup>7</sup> See also Principle 1 of the *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*: 'All persons under any form of detention or imprisonment shall be treated in a humane manner and with respect for the inherent dignity of the human person.' And, Principle 1(2) of the *Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care*: 'All persons with a mental illness...shall be treated with humanity and respect for the inherent dignity of the human person.'

<sup>8</sup> Human Rights Committee, General Comment No.21: Replaces general comment 9 concerning humane treatment of persons deprived of liberty (Art 10): 10/04/92, CCPR General Comment No.21 at [3]-[4].

<sup>9</sup> See, for example, *Keenan v United Kingdom* [2001] ECHR 242 (3 April 2001) at [111], [116].

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<sup>10</sup> *Mukong v Cameroon*, Communication No. 458/1991: CCPR/C/51/D/458/1991 at [9.3]; *Potter v New Zealand*, Communication No. 632/1995: CCPR/C/60/D/632/1995 at [6.3], stating that the Standard Minimum Rules ‘constitute valuable guidance for the interpretation of the Covenant’; Concluding Observations of the Human Rights Committee: United States of America, 03/10/95 CCPR/C/79/Add.50. at [34].

<sup>11</sup> General Comment No.21: Replaces general comment 9 concerning humane treatment of persons deprived of liberty (Art 10):10/04/92, CCPR General Comment No.21 at [5].

<sup>12</sup> HREOC notes that the Principles for the Protection of Persons in Imprisonment and the Principles for the Protection of Persons with Mental Illness do not have the status of a treaty and accordingly are not binding on States.

<sup>13</sup> Concluding Observations of the Human Rights Committee: Denmark, 31/10/2000 CCPR/CO/70/DNK at [12].

<sup>14</sup> *Brough v Australia*, Communication No. 1184/2003: CCPR/C/86/D/1184/2003 at [9.4]. In this case, the person was confined to a safe cell and a dry cell.

<sup>15</sup> Human Rights Committee, General Comment No. 20: Replaces general comment 7 concerning prohibition of torture and cruel treatment or punishment (Art 7): 10/03/92, CCPR General Comment No. 20 at [6].

<sup>16</sup> *Vuolanne v Finland*, Communication No. 265/1987: CCPR/C/35/D/265/1987 at [9.2]; See also *Keenan v United Kingdom* [2001] ECHR 242 (3 April 2001).