

Criminalising Illness?
*Strategies to Reduce the Over-Representation of
People with Mental Illness in the Criminal Justice System*

QUEENSLAND ALLIANCE

Submission to the Review of *Corrective Services Act 2000*

31 March 2005

1. INTRODUCTION

The Department of Corrective Services (DCS) announced a review of the *Corrective Services Act 2000* late last year and has released thirteen separate issues papers for consultation with key stakeholders. In all these documents there is little specific mention of the needs of people with mental illness, despite the very high prevalence of people with mental illness in prison.

This submission describes the Queensland Alliance and how we gathered the information contained in this report.

The Queensland Alliance believes it is important for there to be a place of consequence for those who commit serious crimes. The culture and purpose of prison, however, should be about rehabilitation and addressing the underlying causes of offending. Correctional cultures – based on the experiences of people from the system – appear focused on punishment, control and the breaking of spirit. This approach to prisons produces brutalised, dehumanised individuals and so reduces community safety.

The Queensland Alliance suggests most people with mental illness should not be in jail, because

- there are viable alternatives to prison which produce better outcomes for individuals and safer communities;
- prison produces negative outcomes for individuals – incarceration worsens mental health;
- people with mental illness need health care and social support, not punishment – the therapeutic environment required to deal with mental illness is in direct conflict with a prison environment focused on punishment;
- prison produces frustrated or brutalised individuals who are released to the community with little preparation or support - this reduces community safety;
- incarceration does not operate in practice as a deterrent and has a centuries long history of failure in reducing crime.

The submission presents two key policy areas contributing to the over-representation of people with mental illness in prison. ‘Whole-of-government’ solutions to diverting people with mental illness from the criminal justice system are presented, and some specific recommendations made in response to the discussion papers.

This submission uses the term “people with mental illness” to refer to people with mental illness as well as people with psychiatric disability. Psychiatric disability refers to people who have ongoing social limitations as a result of mental illness and its treatment, while they may no longer be mentally ill. The term mental illness includes the full range of illnesses described in the American Psychiatric Association DSMIV-TR, principally Axis 1 conditions (eg schizophrenia, bipolar, etc) and the personality disorders described in Axis 2. While intellectual disability and substance mis-use disorder are listed in the DSMIV-TR, we do not include these conditions in our definition of mental illness.

2. BACKGROUND

2.1 About the Queensland Alliance

The Queensland Alliance is the State-wide peak body for non-government organisations and groups which serve the needs of Queenslanders living with mental illness & psychiatric disability. The Alliance represents consumer groups, carer groups and non-government community based service providers across the State and aims to promote, strengthen and develop the growth of non-government community managed responses to mental illness and psychiatric disability in Queensland.

The Queensland Alliance makes this submission on behalf of our 145 member organisations across Queensland.

2.2 About this Submission

This submission has been developed by:

- Brief review of the literature – including reports and submissions by government departments and independent community-managed organisations - on people with mental illness and the criminal justice system;
- Consulting with the Queensland Alliance membership – 145 non-government organisations across Queensland - through individual consultations, group discussions and written feedback on an early draft;
- Meeting with individual key informants in the health, corrective services and human service systems, from both the public and non-government sectors.

3. SUMMARY OF LITERATURE

A range of articles is attached in the appendix, but in essence the literature identifies:

- People with mental illness are significantly over-represented in the prison population. Estimates and survey results vary, but the numbers are anywhere between 70% - 90% of prisoners have a mental health disorder. Conservative estimates are that severe illnesses such as schizophrenia are three to four times more prevalent in prison than in the general community (see appendix);
- People with mental illness are inappropriately arrested, sentenced and refused parole – most recently highlighted by the plight of Cornelia Rau;

- Incarceration worsens people’s mental health, and the therapeutic environment required to improve mental health is directly at odds with the control and punishment culture of corrective services.

4. OVER-ARCHING ISSUES AND SOLUTIONS

The rate of incarceration of people with mental illness reflects the stigma and discrimination so many people experience as a consequence of their health status: this is unfair. The Queensland Alliance identifies two main reasons why people with mental illness are over-represented in the corrective services system.

One contributor is the inadequacy of community-based and non-government health and human services in Queensland. This lack of support results in many people remaining untreated, homeless and at great risk of offending or coming to the attention of Police. Increased funding to human services generally, and increased funding to support services for people with mental illness specifically, is likely to reduce the numbers of people in jail. It also costs less than incarceration.

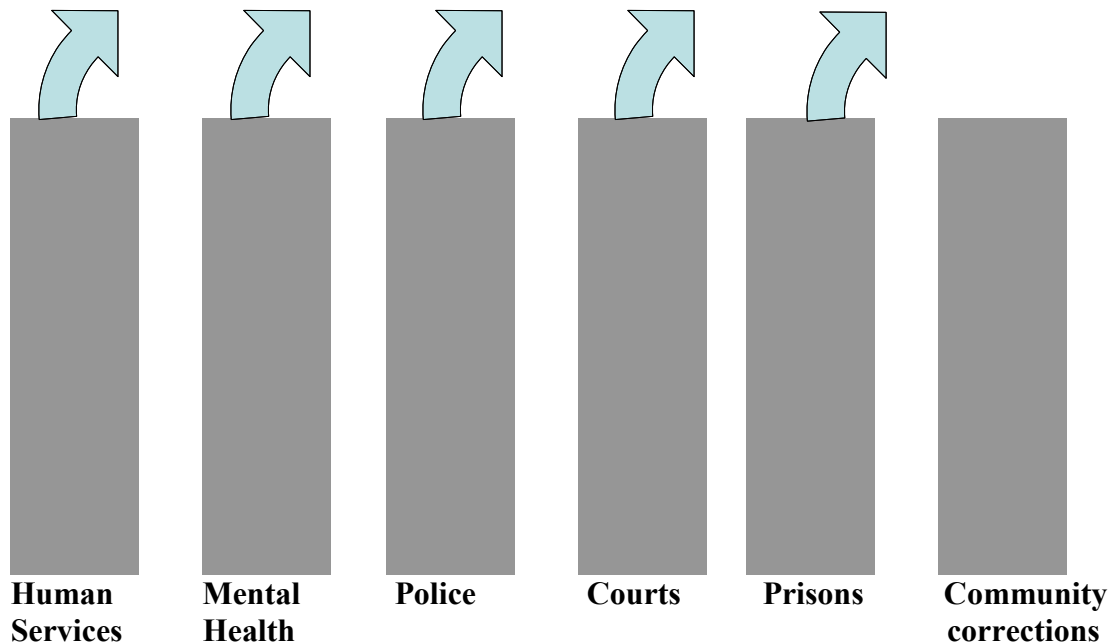
The second contributor is a law and order debate focused on punishment and criminalisation, rather than concepts of rehabilitation and community safety. Incarceration brutalises individuals and increases their likelihood of offending in the future. Many leave the corrective services system with limited experience of rehabilitation, and no support or preparation for a new life on release. If people with mental illness can receive appropriate support in community settings that is focused on rehabilitation and not punishment, community safety will be increased. Unfortunately the populist “lock ‘em up” response from community leaders and politicians, stifles debate and produces significant harm for people with mental illness.

Solutions to the over-representation of people with mental illness in prison must include an expansion of community-based and non-government human and health services. Also required is a public policy debate which focuses on rehabilitation, health and community safety, rather than punishment and control, as a response to mental illness.

One step in this direction is to invest in diversionary activities for people with mental illness – both preventing people being arrested, sentenced and imprisoned, and supporting people out of prison to community corrections, and smoother release programs. The next section provides details on these diversionary solutions.

5. SOLUTIONS: IMPROVING LINKAGES AND DIVERTING PEOPLE WITH MENTAL ILLNESS

People with mental illness are being arrested, sentenced and imprisoned when they should be diverted for treatment. There are many points in the system where diversion can occur – through inter-departmental collaboration - and Queensland already has some strong examples of good diversion practices. Following member consultation and stakeholder interviews, the following framework has been developed:



The diagram represents the various points in the system where diversion can occur.

Human services - Insufficient investment in community based, non-government mental health and mainstream human services results in people with mental illness in prison or homeless. More than 60% of people with mental illness do not access mental health services. Mainstream public health services often do not adequately meet the needs of marginalised people with mental illness: homeless people, Aboriginal and Torres Strait Islander people, people from non-English speaking backgrounds and young people. Non-government services have a track record of working well with these populations, and strong investment in social services will ensure people do not need crisis mental health services, and will not proceed to criminal justice systems.

Project 300 is an independently evaluated, successful, cross-government initiative which could serve as a model for a prison diversion programme. Project 300 provided funds for housing, health and support services to enable people to leave institutions and live in the community. This initiative was backed by a Memorandum of Understanding signed by the CEO's of Health, Housing and (then) Family Services, and remains the sole exemplar of such strong coordination in the Queensland Government. This model could be directly replicated to reduce the over-representation of people with mental illness in our prisons.

The cost per person of providing these three services in the community is less than the cost of incarceration. It also produces greater mental health and community safety.

Community Mental Health– funding in the public system needs to be re-oriented to meet the needs of people in the community, to prevent them entering acute wards. A prevention and early-intervention framework is more cost effective than simply waiting until people are so unwell they need hospitalisation, become homeless or simply offend.

Police diversion – Queensland Health has formalised a Memorandum of Understanding at a central office level with Queensland Police, and rolled out local agreements that are signed off by District Commissioners and District Mental Health Service Directors. These arrangements 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.

Similar protocols between community based service providers and Police occur on an ad hoc level.

The experience of our members is often that when a person is identified as having a mental illness, and has the support of a community organisation, the Police respond in flexible and appropriate ways. In developing this submission Alliance members reported that Police would often contact them if they apprehended someone who they knew to be a client. The difficulties arise when the Police are simply not aware the person has a mental illness, or the person with a mental illness has no connection to family, friends or service providers.

The Queensland Alliance recognises the Police face a difficult task in many of these situations, and – because of the insufficient resources to community-based mental health services – are often forced to take on roles that far exceed their training and official role. Additionally, police may arrest someone with a mental illness and keep them in the watch house, not because they have committed serious crime, but because there is simply no other safe place for them.

Court diversion – a pilot project is currently occurring in Toowoomba which employs a legal advocate to represent people with mental illness (and intellectual disability) in court systems. The volume of people presenting at courts means there is limited time for duty lawyer or Magistrate to know the defendant has an illness which mitigates their circumstances.

There is one mental health worker in Brisbane and one in Townsville Magistrates court trying to identify defendants with mental illness. The Queensland Government's 2002 Forensic Policy recommended this service be expanded to all busy magistrates courts in Queensland.

The Mental Health Court – unique to Queensland - is a key aspect of the Mental Health Act 2000 which was passed by Parliament on 30 May 2000 with some amendments included in the Health Legislation Amendment Act 2001. The legislation was introduced to offer a more effective and accountable system of

involuntary treatment and care for persons with mental illnesses and designed to provide for the unique features of mental illness that are not catered for in other mainstream legislation.

The Mental Health Court is constituted by a Supreme Court judge who is assisted by 2 experienced psychiatrists who advise the Court on medical or psychiatric matters. Advice given by the assisting psychiatrists is provided in a way that is accessible to all parties. In each case, the decision is that of the judge. The Court has inquisitorial powers that enable the Judge to investigate the issues fully, and to accept material that may otherwise be inadmissible in other court proceedings. Hearings are generally open to the public.’

This court has been strongly supported by Queensland Alliance members. Many of our members have identified that legal and health professionals do not seem aware of the mental health court and how to access it.

Unfortunately this court is under-resourced and some people incarcerated on remand spend more time in prison awaiting a determination of the mental health court, than if they had simply pleaded guilty through a mainstream court and served their sentence in prison. Additional resources must be allocated to improve access to this court.

Prison diversion – The cost of keeping a person with mental illness incarcerated, is more than sufficient to provide adequate support services, treatment and housing in the community. Prisons are expensive, and tend to brutalise people, thus reducing community safety and security. 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. For this majority of prisoners with mental illness referral to community corrections or community-based treatment would seem the best solution.

There are currently limited mental health services available in prisons in south-east Queensland. In general the Queensland Alliance believes it is better to divert people with mental illness from prison, rather than spend scarce resources on increasing mental health services in prison.

However, a very small investment would double the current level of resources. While we believe the need to invest in community services and social infrastructure is greater, given current circumstances it seems clear that prisoners need additional mental health services. These services are probably best focused on counselling and support services rather than high-cost psychiatric and other medical care. This recommendation is based on the belief of forensic mental health that the current level of clinical service provision is adequate to meet demand from prisoners with Axis 1 illnesses.

There is a need to provide information, training and support to prison officers on mental health. The Queensland Alliance does not suggest prison officers become de facto mental health workers, but given the huge percentage of prisoners with mental health disorders, some base level of training in mental health is required (eg the Mental Health First Aid training course may be appropriate for all prison officers).

There is also substantial untapped potential for peer-based prisoner support. For example, GROW is an organisation which develops peer or mutual support groups in the community. They have also supported the development of groups within the prison, but due to limited resources and the difficulties of outside organisations accessing prisoners, they have not been able to continue to support these groups. Similarly, members of one consumer advisory group provide information and support to prisoners, so that they in turn assist and support prisoners with mental illness inside. We believe these types of peer-based support initiatives are very cost-effective and may improve health outcomes for prisoners with mental illness.

Diversion to secure (forensic) treatment is another alternative. However most people with mental illness that we have spoken to in developing this submission state they prefer to go to prison than to a secure forensic facility or designated mental health facility. We have repeated this statement at many consultation meetings and in the exposure draft of this submission and no one has disagreed. This is a sad indictment on our mental health services.

It seems that some people with mental illness feel safer and healthier in prison than in designated mental health facilities. The reasons given for this preference vary, and include:

- in prison people know when they will get out (whereas forensic unit release is based on medical assessment, not a time limit);
- in prison people have access to work and study;
- friends and family report that forensic units are not very accessible for visits; and
- in prison people find a more normalised environment.

For these reasons we believe referral of prisoners with mental illness who have not committed violent crimes against the person, to community based mental health services and/or community corrections - rather than prison or forensic facilities - is better for the individual and safer for the community.

The Queensland Alliance does not support the concept of developing prisons exclusively for people with mental illness. The evidence from America and Victoria indicate these type of facilities do not produce better outcomes. Indeed this model was first developed in the nineteenth century and was the precursor to asylums and psychiatric hospitals. While there may be a small percentage of people with mental illness for whom prison or secure care is the best response, the overwhelming majority of people would be better served through community based treatment and community corrections. This is where resources are best directed.

Lack of Planning Pre-Release and Lack of Support Post-Release

There are no systems in place for graduated release, or special consideration of people with mental illness when considering community corrections orders. The Queensland Alliance endorses the report “Incorrections” (2004) by Tamara Walsh and commends this document to the legislative review team. For people with mental illness the consequences of not planning release are even more significant – not only are people

released without transport, housing, food, income support, etc. but also without medication or referral to mental health services.

We believe these practices reduce community safety. People in prison are brutalised and frustrated, and releasing them without any preparation into the community is likely to increase recidivism and reduce community safety.

We heard many stories from ex-prisoners and their supporters during the development of this submission about the impacts on community safety of poor release procedures. One young man had been kept in solitary confinement for two weeks because he was a danger to himself and others. He was then released to the community without any support or referral to appropriate services.

We have also heard the story from a Doctor working with prisoners of a young man with Aspergers. While this is not someone with a mental illness the parallels are obvious. This young man had been confined in isolation in the back cells of David Longlands – cells that we understand do not include toilets and do not conform to international standards. The Doctor described poor treatment of this young man, and on the day of his release he committed suicide.

We believe Corrective Services is at least in part responsible for what happens to prisoners after release, particularly for vulnerable prisoners such as those with mental illness and other disabilities. In addition to ensuring all prisoners have pre-release preparation and post-release follow up from Corrective Services, we recommend that community-managed support services have access to people while in prison so that links can be made prior to release.

Community Corrections – there is huge scope to link mental health services – both public and NGO – into community corrections reporting systems. Currently the reporting system is high volume (ie often only 5 – 10 minute periods of contact weekly) and so an opportunity to engage a needy population group in support and treatment services is lost.

Some people with mental illness, however, advised us that they had developed a positive relationship with their community corrections officer, and that their community corrections officer had been supportive and on a number of occasions “saved” them from re-imprisonment.

There are clearly many ways of diverting people with mental illness from the criminal justice system. These solutions can be implemented if the policy objective is rehabilitation and community safety, and there is coordinated effort across government portfolios.

6. SPECIFIC RESPONSES TO ISSUES PAPERS

The Queensland Alliance has reviewed eight of the thirteen issues papers we think are most relevant for people with mental illness. The following table lists the key issues in the left column, and our responses and recommendations in the column on the right.

<p>Consultation Paper 1 – Classification System</p> <p>Through the current classification system, prisoners are classified through the ORNI. Section 12 and 15 of the Act enables prisoner’s medical history to be taken into account in providing a classification. A high classification determines that a prisoner should be kept in maximum security and so on. However, the security level also determines the level of access to programs such as a release program.</p> <p>The Alliance is concerned that the current system discriminates against people with mental illness, because through no fault of their own (ie getting sick) they are forced into high security. The Alliance is also concern that the use of a suicide gown, body-belt, strip- searches, padded cells, sensory deprivation units are used as punishment or containment – where this is clearly inappropriate for people with a mental illness.</p> <p>Concern that prison officers are often frustrated by a system which is not structured to deal with mental illness. They feel caught between a ‘rock and a hard place’ without the necessary training to work appropriately with a population that has a high prevalence of mental illness.</p> <p>Concern that DCS wants two classifications to match available prison accommodation security standards.</p>	<p><i>Recommends that the Department move away from a classification system designed to serve the needs of the correctional facility to one aimed at rehabilitation outcomes (the needs of the greater community).</i></p> <p><i>Recommends that the department cease the use of isolation, control or containment in response to symptoms of mental illness and makes such responses unlawful in the new legislation.</i></p>
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<p>Consultation Paper 2 - Separation</p> <p>Concern that separation is often used to intervene with people who are self-harming, diagnosed with a mental illness or at risk of suicide, under the guise of ‘crisis support’. These same places of separation are used to punish disruptive, non-compliant prisoners.</p> <p>Concern that the Department’s “high standard of care and therapeutic interventions,” (p.11 of consultation paper 2) actually exacerbates mental illness.</p>	<p><i>Recommends that the Department cease the use of separation and isolation to respond to people with mental illness.</i></p> <p><i>The evidence suggests isolation, separation and any form of body belting or physical or chemical restraint simply worsens people’s mental health.</i></p> <p><i>The use of such separation and restraints suggests a culture of punishment and control rather than a culture of treatment and rehabilitation.</i></p>
<p>Consultation Paper 4 – Special Needs</p> <p>This consultation paper ignores mental illness as an area of special need.</p> <p>Concern that people with Dual Disability are also ignored.</p> <p>Concern that people suffering symptoms of mental illness are not treated appropriately given their cultural needs.</p> <p>The limited discussion of mental health issues in this paper – and across the 12 other papers – cannot be an oversight. The department and all those involved in corrective services are aware of the significant over-representation of people with mental illness in corrective services system. It is not understood why issues of mental health are so completely absent from these issues papers.</p> <p>During the consultation period of this review the Queensland Alliance attempted to meet with policy officers in Corrective Services to discuss these issues, but these requests were denied.</p> <p>It is difficult to constructively engage in the development of policy solutions for people with mental illness when the Corrective Services bureaucracy will not</p>	<p><i>Recommends the Department take the issue of mental illness seriously, and considers how the practices, policies and legislation of the department discriminates against people with mental illness.</i></p> <p><i>Recommends that the Department develop improved strategies for prisoners with mental illness as a matter of priority. This will require a process of collaboration and consultation with non-government organisations providing mental health and psychiatric disability support services.</i></p> <p><i>Recommends that prison officers are offered better training to work with people with mental illness – eg Mental Health First Aid course.</i></p> <p><i>Recommends that the model in Lotus Glen for an Indigenous liaison officer be considered State-wide. This involves an outreach worker from the community-based, government health service ensuring cultural issues of prisoners are considered, rather than mental illness diagnosed in isolation of cultural needs.</i></p> <p><i>Recommends that the Department fund</i></p>

<p>meet with us to discuss our concerns.</p>	<p><i>and engage with independent community managed organisations to seek their participation in supporting rehabilitation outcomes for prisoners, while still incarcerated.</i></p>
<p>Consultation Paper 6 – Complaints (see 13 below)</p>	<p><i>Recommend that decisions of departmental officers are subject to individual review by an independent statutory Commissioner who reports directly to the Parliament. (eg the Health Rights Commissioner is appointed by Governor-in-Council and reports directly to the Queensland Parliament, not to the Health Minister.</i></p> <p><i>Recommends that the Department ensure prisoners have unfettered access to independent advocacy from community managed organisations funded to provide advocacy for people with disability, including psychiatric disability.</i></p>
<p>Consultation Paper 8 – Release from custody Section 75 and 77 of the Corrective Services Act enables the CEO to put someone on remission, and take account of psychological / medical reports. Concern that decisions around release from custody are at the discretion of the General Manager of the prison, and concern at potentially discriminatory practices surrounding use of medical reports.</p> <p>Concern that there is not enough options for graduated release.</p> <p>Concern at the lack of access to community engagement programs.</p>	<p><i>Recommends that discretion of the General Manager of Prisons be limited, rather than available in so many instances throughout the legislation. Such discretion removes the transparency of the legislation.</i></p> <p><i>Recommends that the use of discretion by General Managers be subject to independent review – that is, review independent of the Minister, accountable to the Parliament.</i></p> <p><i>Recommends that the Department fund and engage with community-managed organisations to provide community engagement and rehabilitation outcomes on release</i></p> <p><i>Recommends the Department focus on breaking the cycle by funding diversionary strategies. Better outcomes argument / cost-benefit argument can be made</i></p> <p><i>Recommends the Department take a lead</i></p>

	<p><i>with other justice and social policy departments to create inter-sectoral linkages focused on diverting people away from the criminal justice system.</i></p> <p><i>Recommends the Department encourage MH service providers to visit people inside to enable smoother transition from prison to the community and improve their survival skills once released</i></p>
<p>Consultation Paper 10 – Community Based Release Concern that prisons are bad for people’s mental health.</p>	<p><i>Recommends people should receive community corrections with sufficient mental health and other supports to enable recovery and rehabilitation in the community wherever possible</i></p> <p><i>Recommends that the Department strengthen links between independent community-managed organisations and community correction, so that the opportunity of support and engagement through reporting is not wasted.</i></p>
<p>Consultation Paper 9 – Visitors & Consultation Paper 13 – Official Visitors Concern that there is not enough external advocacy support for complainants (especially from vulnerable people like those with a mental illness).</p> <p>Concern that there is an unmet need for a mental health specific Official Visitor to ensure the needs of people with mental illness are met.</p>	<p><i>Recommends that the Department fund and engage with independent community managed organisations to provide independent advocacy for prisoners</i></p> <p><i>Recommends the Department engage a mental health specific Official Visitor to ensure the needs of people with mental illness are met.</i></p> <p><i>Recommends that a Commissioner – as recommended above – could also undertake a role of independent support to official visitors, and report their findings direct to Parliament.</i></p>

Finally we recommend that the preamble to the legislation emphasise the purpose of corrective services are to provide rehabilitation, and are not about punishment and control or security and isolation of offenders – this latter approach reduces general community safety.

APPENDIX – References on Prisoners with Mental Illness

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