



Australian Government

National Mental Health Commission

D16-302384

Committee Secretary
Senate Standing Committees on Community Affairs
PO Box 6100
Parliament House
Canberra ACT 2600

Dear Committee Secretary

I am writing to provide this submission from the National Mental Health Commission, to the Community Affairs References Committee Inquiry into the indefinite detention of people with cognitive and psychiatric impairment in Australia.

The Commission provides independent reports and advice to the community and government on mental health. We work across all areas that promote mental health and prevent mental illness and suicide—not just government and not just health, but education, housing, employment, human services and social support. By leading, collaborating, advising and reporting we help to transform systems and promote change, so that all Australians achieve the best possible mental health and wellbeing.

The Commission has a number of concerns about the indefinite detention of people with cognitive and psychiatric impairment in Australia. In its reporting framework, the Commission has taken a recovery perspective to its work – which reflects that a recovery journey of a person living with a mental health difficulty aims to achieve as fulfilling a life as possible, which is unique to each person. This view is beyond mental health and sees the context of people’s lived experiences and their hopes for leading a full and contributing life. A Contributing Life is where people living with a mental health difficulty can expect the same rights, opportunities and health as those without mental illness.

Australia is a signatory to both the *Universal Declaration on Human Rights* and the *United Nations Convention on the Rights of Persons with Disabilities*. The Commission has concerns that Australia is failing its obligations to “... *the right to a standard of living adequate for the health and well-being of himself... and medical care and necessary social services...*”.

The Disability Convention states that when people with a disability are involved with the justice system they have a range of entitlements. These are to health and healthcare, legal representation and equality of treatment before the law, and consideration given to the support necessary to ensure their mental health and health needs when their liberty is taken away.

The Commission has articulated its concern about how we as a society criminalise people who live with a mental health difficulty. People living with mental illness are over-represented in our prisons and in the number of police incidents. Almost 40% of people

entering the prison system report having been told they have a mental illness. The Commission has raised concerns about what opportunities exist for these people to have received the right support and treatment when they needed it.

People with a mental illness who come into contact with a court or the criminal justice system can be either diverted from the criminal justice system into treatment, or may be found not guilty by reason of mental illness or unfit to plead due to their mental illness. States and Territories have adopted different practices, however little is known about how these align with optimal practice approaches.

More work is needed to develop evidence of good practice. It is not clearly understood how access to treatment and ongoing support can reduce relapse into crime or improve mental health in the long term. A number of specific studies on interventions have shown services to have a positive outcome. Diversion approaches are based on the principle of “therapeutic jurisprudence” – that people with a mental illness who offend do so because of their illness, and the appropriate response is to provide health treatment, not criminal penalties.

As a principle, the Commission believes that people who commit a crime because of their mental illness should be given the opportunity to be diverted into either mental health treatment services in the community, or into the forensic system to receive appropriate mental health treatment and support.

The Commission has previously called for a nationally consistent picture to see more clearly the experience of people living with a mental health difficulty in the criminal justice system, and how service and supports are provided. Australia does not have a national reporting system or consistent framework across the criminal justice, police and court system.

The Commission’s view is that we all share common human rights and entitlements to treatment under law and access to appropriate health care and supports. When we are ill, come before a court or are imprisoned, we should not lose our human rights. But in practice, people living with a mental illness do lose their rights. The treatment and rights of people living with mental health difficulties and the handling of their cases can be inconsistent, and have profound effects on their present and future wellbeing.

Thank you for the opportunity to provide a submission on this important issue. Please contact Mr David Butt, Chief Executive Officer

should you have any questions regarding this submission.

Yours sincerely

Prof Allan Fels AO
Chair
6 April 2016