



**Australian Senate Select Committee on Regional and Remote  
Indigenous Communities – Mental Health**

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### **Availability of Services**

It is essential that diversion programs and support services are available to all Aboriginal and Torres Strait Islander peoples, no matter where they live. The present experience of many mentally ill Aboriginal and Torres Strait Islander peoples from remote communities in Queensland is that Courts and Mental Health Services are reluctant to agree to the release of Aboriginal and Torres Strait Islander peoples on bail to return to their communities due to the lack of formal support available to them. It is more likely that those from remote communities will be released on bail to larger cities or regional areas, if they can nominate accommodation, because the Mental Health Services exist in those communities. This approach fails to acknowledge the importance of family and community in the healing process for those with mental illness.

Although services for mental health exist in regional and remote Aboriginal and Torres Strait Islander Communities in Queensland, those services are often underfunded, running at or over capacity and therefore not accessible to all people who require them. For example, the Cairns Mental Health Unit has 38 beds and usually runs at and beyond capacity. The Cairns and Hinterland Health Service covers a broad area: - from Cardwell to the Torres Strait, to Weipa, to the Atherton Tablelands.

Mental Health outreach services are provided from the larger regional areas such as Cairns to remote communities in Cape York, the Gulf of Carpentaria and the Torres Strait, as well as smaller regional areas. This means that access to these services is limited to the timing of practitioner visits to communities and appointment availability. The limited number of beds in Mental Health Units and accessibility issues for those residing outside of Cairns, means that many people who require closer attention do not receive it.

### **Criminalisation of behaviour of the Mentally Ill**

One of the issues for the Aboriginal and Torres Strait Legal Service's (ATSILS's) clients who experience mental illness is that it may lead to offending behaviour. Often, due to the way that the criminal justice system, including legislation is structured, instead of being seen as a mental health matter, the behaviour of mentally ill people is interpreted in terms of criminal behaviour which then in turn brings the person into contact with the criminal justice system. Often the person cannot be diverted from the criminal justice system because there are no beds in the Mental Health Unit and access to appropriate support is not available.

## Queensland Legislation – The *Mental Health Act 2000* (Qld)

In Queensland, after being charged with a criminal offence, the mentally ill fall within the ambit of the *Mental Health Act 2000* (Qld). The two main foci of the *Mental Health Act 2000* in respect to those who have been charged with an offence or offences, is whether they are fit to plead and whether they were of unsound mind at the time of the alleged offence. The *Act* is concerned with how a person should be processed (i.e., through the mental health system or through the criminal justice system), rather than with their mental health issues.

The consequences of being found to be of unsound mind at the time of an offence can be that the person is placed on a forensic order and placed in a Psychiatric institution for a longer period of time than if they were convicted and sentenced in the criminal justice system. Also, some people are held on remand in mainstream prisons until the Mental Health Court presents its findings. Due to the time it takes for a defendant to be psychiatrically assessed and a report written (also, often legislative timeframes are not adhered to) the time served on remand can and does at times surpass the time that would have been served if the person pleaded guilty and was sentenced through the regular criminal justice process.

While the *Mental Health Act 2000* enables those clients charged only with summary offences on Involuntary Treatment Orders and Forensic Orders to be referred to the Mental Health Court in regard to unfitness for trial or unsoundness of mind, those clients charged only with summary offences (i.e., no indictable offences) who have mental illness but are not on Involuntary Treatment Orders and Forensic Orders are usually dealt with by the Magistrates Court. Magistrates Courts are generalised Courts and do not have the benefit of the presence of Psychiatrists to advise them on mental health issues, therefore they can only apply their own knowledge and interpret reports, if they are before them, as best they can.

The end result of people with mental health issues being processed by a mainstream non-specialised Court is that they are more likely to receive sentences that are inappropriate for them and often are punished for crimes they cannot remember committing or were not criminally responsible for committing.

Another issue for people with mental illness entering the criminal justice system is that it is often difficult to obtain bail due to the lack of information before the court on the person's mental health, as well as due to the lack of mental health services available to support people once released. This is especially the case for ATSILS clients who live in remote communities where permanent mental health services do not exist. It has been said that at times that bail is refused simply due to the lack of mental health services in a community.<sup>1</sup> Also, bail may be refused at times because there is no

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<sup>1</sup> Queensland Alliance, (31 March 2005) *Criminalising Illness? Strategies to Reduce the Over-Representation of People with Mental Illness in the Criminal Justice System – Submission to the*

information, or a report (s 238 report for e.g.) from a Psychiatrist, Psychologist or Mental Health team.

Practising Psychiatrist, Dr Ernest Hunter provides a scenario set in a remote area where a young Aboriginal man who had a serious psychotic disorder, was charged with assault after spitting at a police officer. The problem that Dr Hunter and the young Aboriginal man faced was that resources were not available to sustain the recommendation that Hunter wanted to make in respect to the young man. Hunter pointed out that if the young man lived elsewhere, such as a city or town, there would be no issues with access to the requisite services.<sup>2</sup> The practical result of this is that a Psychiatrist is required to adapt their recommendations based on the services available to the person, not what would be the best and most appropriate treatment and support for the person in an ideal world, or even a city.

Often there are issues with the quality of the Psychiatric assessment reports. Most of the reports could not be said to comply with the requirements in the *Mental Health Act 2000*. The reports tend to be extremely brief and general in nature, expressing many non-expert and generalised opinions, providing conclusions regarding clients' fitness to plead and soundness of mind at the time of the offence/s without supporting information.

It is also unclear as to whether the Psychiatrists writing the reports, or making the initial diagnoses, have received training to work with our clients. This is particularly important so that thought processes relating to cultural and spiritual matters can be distinguished from mental health matters and correct diagnosis and interpretations made.<sup>3</sup> Psychiatrists' assessing our clients should always be aided by Aboriginal and Torres Strait Islander mental health workers.

The Psychiatric assessment reports are generally either written by Government employed Psychiatrists or paid for by the Government. The reports are expensive and accessing Psychiatrists to write the reports is extremely difficult, as the numbers of Psychiatrists who write the reports are limited and most Psychiatrists are concentrated in urban areas.

## **Diversion**

In Queensland the statistics in regard to recidivism provide clear evidence that the justice system on its own is not an appropriate or effective way of dealing

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*Review of Corrective Services Act 2000*, p. 2.  
[www.qldalliance.org.au/resources/items/2005/04/06768-upload-00001.pdf](http://www.qldalliance.org.au/resources/items/2005/04/06768-upload-00001.pdf)

<sup>2</sup> Hunter, E., Disadvantage and discontent: A review of issues relevant to the material health of rural and remote Indigenous Australians, Ernest Hunter (The Centre for Rural and Remote Mental Health, Cairns, Queensland, Australia) *Australian Journal of Rural Health* (2007) 15, p. 88.

<sup>3</sup> Westerman, T.G., Psychological Interventions with Aboriginal People. Connect, Health Department of Western Australia, 2002, p. 2. <http://www.gtp.com.au/ips/inewsfiles/P2.pdf>

with people with mental illness. The trend in the United States and other overseas jurisdictions is toward a therapeutic approach (Mental Health Courts) where the reasons behind the offending behaviour are identified and addressed through treatment and support services, while the person is monitored by the Court. Therapeutic Mental Health Courts in other countries rely upon external services to support clients. Without the presence and support of different community services, therapeutic Mental Health Courts cannot work successfully.

Diversion must occur at all stages, including before people come into contact with the criminal justice system, as well as when, during and after they are in contact with the system. It also must encompass more than just a focus on mental health. It is a must that housing, income support, general health, substance use, social and emotional wellbeing are also included.

We see it as important to have mechanisms in place to divert and support the mentally ill throughout all stages of the criminal justice system. For diversion to be available:

- more funds need to be injected into community mental health services, housing, general health care and support services;
- education, training and appropriate screening tools for Police to identify and divert the mentally ill. A precursor to the Police being able to divert people is that services are available to assist people;
- Court staff and legal representative need to be able to identify mentally ill people and a Court process devised where people can be referred to and supported by relevant services;
- Prison staff need to be educated and trained to identify mentally ill inmates at the earliest possible time and link them to Forensic mental health;
- Community Corrections and community services need to be linked with inmates prior to their release from prison so that they have support in all areas (treatment, medication, housing, money, support, housing, transport, etc) once released. .

The benefits for all community members of a diversionary process for the mentally ill far outweigh persistence with the present system. The well being of mentally ill people who would otherwise be processed by the mental health system would improve, their community input would become positive, public safety would increase due to a reduction in offending and although funds would be diverted from Corrections there may be a financial saving in the long term.