



4 February 2022

Queensland Sentencing Advisory Council  
A/Director of the Council Secretariat  
Dr Eva Klambauer  
GPO Box 2360  
Brisbane QLD 4001

Dear Dr Klambauer

**Re: *Serious violent offences scheme in the Penalties and Sentences Act 1992 (Qld)***

The Royal Australian and New Zealand College of Psychiatrists (RANZCP) Queensland Branch thanks Judge John Robertson, Chair of the Queensland Sentencing Advisory Council (Ltr Ref: 596509/4).

We welcome the opportunity to respond to the Issues Paper, *The '80 per cent rule': The serious violence offences scheme in the Penalties and Sentences Act 1992*.

The Issues Paper contains 34 questions regarding the serious violent offences scheme and potential reform options.

Of specific relevance to the RANZCP Queensland Branch are:

- issues around victim protection if the perpetrator/s have a forensic order, or treatment support order
- information sharing across the correctional centre, police, health sector and parole/probation services, specifically with respect to strengthening confidentiality and privacy arrangements
- the importance of addressing underlying mental health issues for perpetrators and the mental health and wellbeing of perpetrators living with intellectual and developmental disability to prevent future violence.

## **Victim protection and perpetrator/s that have a forensic order, or treatment support order**

The *Health and Other Legislation Amendment Bill 2021* (the Bill) was introduced to Parliament on 1 December 2021, by the Honourable Yvette D'Ath Minister for Health and Ambulance Services.

The amended Bill amends the *Mental Health Act 2016 (Queensland)* (the Act), to improve the operation of health portfolio legislation and support the provision of health services in Queensland.

Under the current Act, a victim of an unlawful act, or a close relative of the victim, can apply for an information notice about a perpetrator subject to a forensic order or treatment support order. This requires the Chief Psychiatrist to provide advice about appeal options, even when there is no prospect of a successful appeal.

The Act currently allows a government entity to use or disclose personal information to assist in identifying victims and to provide victims with support services. But it does not recognise that the provision of support services

may require *ongoing* use or disclosure of victim personal information to provide ongoing support.

The amended Act aims to improve support for victims of unlawful acts by reframing the provisions relating to information notices to advise the victim if a forensic or treatment support order is revoked, or the person is transferred interstate (and there is no prospect of a successful appeal).

The amended Act will clarify that a government entity may use and disclose victim personal information for both the initial identification of victims, and also to provide *ongoing* support.

The RANZCP Queensland Branch strongly supports this amendment, and would like to see the *Serious violent offences scheme in the Penalties and Sentences Act 1992 (Qld)* reflect this amendment to improve support for victims of unlawful acts.

### ***Information sharing across the correctional centre, police, health sector and parole/probation services***

The amended Act proposes to strengthen the confidentiality provisions of the current Act to ensure the obligations for all people performing functions under the amended Act are clear and consistent.

It also proposes to extend the duty of confidentiality to experts engaged to provide reports to the Mental Health Court, or the Mental Health Review Tribunal.

Respecting patient confidentiality is consistent with principle 4 of the [RANZCP Code of Ethics](#) (on page 11): "*Psychiatrists shall maintain the privacy and confidentiality of patients and their families.*"

The RANZCP Queensland Branch endorses the proposal to create an offence for all persons captured by sections 778 and 779 of the amended Act to inappropriately access, use or disclose confidential information and the penalty of 100 penalty units.

The RANZCP Queensland Branch would like to see the *Serious violent offences scheme in the Penalties and Sentences Act 1992 (Qld)* reflect this amendment to strengthen confidentiality and privacy arrangements when information is shared across the correctional centre, police, health sector and parole/probation services.

## The importance of addressing underlying mental health issues for perpetrators and the mental health and wellbeing of perpetrators living with intellectual and developmental disability

### Mental health issues

The RANZCP Queensland Branch advocates that, for patients within the criminal justice system, it is very important to facilitate early access to mental health care from existing health care organisations to prevent deterioration in their mental health.

Under the *Mental Health Act 2016 (Queensland)*, a forensic order allows for the involuntary treatment and care of a person for a mental condition and, if necessary, detention in an authorised mental health service.

It is well known that relatively few prisoners with a mental illness are so seriously ill that they require inpatient treatment, but they may still require some mental health treatment, and that treatment, if provided, will generally be in the prison setting. The availability and adequacy of treatment for mentally ill people within Queensland's prisons is therefore an important issue for consideration.

Regarding this forensic patient cohort, the current evidence is that treatment of mental illnesses in Australian prisons is inadequate. Forensicare, in their submission to the Parliament of Australia Senate Select Committee on Mental Health, stated that, '*Adequate mental health services are rare in prison*'.<sup>i</sup>

Furthermore, Sisters Inside, an organisation which advocates for the human rights of women in the criminal justice system, in their submission to the Parliament of Australia Senate Select Committee on Mental Health, commented on the scarcity of mental health resources in Queensland prisons:

*'In our prison system at the moment we have ... 1.5 mental health workers for 3500 prisoners. Prisons have become the de facto psychiatric units but with no mental health professionals.'*<sup>ii</sup>

For the public health sector in Queensland, it is extremely challenging to take over care of people transitioning from custody who have either had no mental health support, or inadequate mental health support in prison.

### Specialist treatment in a purpose-built facility

Queensland's mental health services are tasked with managing increasing caseloads and highly complex patients. High-acuity patients transferred from custody are especially high-risk, and the RANZCP Queensland Branch believes that general adult mental health wards are not a clinically appropriate treatment setting for patients transitioning from custody, as such patients are usually extremely violent.

Some Fellows of the RANZCP Queensland Branch have reported that the pressure to treat and be accountable for complex, high-risk patients transferred from custody, within general mental health services has an impact on staff safety and morale, recruitment and reputation. Furthermore, the therapeutic atmosphere of a ward is impacted when high-risk, complex patients share wards with the general public.

The RANZCP Queensland Branch recommends that such patients should be transported to an appropriate secure environment for the purposes of assessment and acute risk management. This assessment should be carried out by suitably qualified health practitioners and in an appropriately designed environment.

The RANZCP Queensland Branch advocates that high-risk patients, in transition from places of custody, would benefit from specialist treatment in a purpose-built facility.

To be eligible for this specialist treatment, patients would be assessed as beyond the capacity of general adult authorised mental health services, who are not classified as being at the offending level for the High Security Inpatient Service, and who are not suitable for rehabilitation in a Secure Mental Health Rehabilitation Unit.

## Mental health and wellbeing of perpetrators with intellectual and developmental disability

The forensic disability service system is a source of great concern, echoed in reports by the Queensland Ombudsman<sup>iii</sup>, the Public Advocate and Queensland Advocacy Incorporated<sup>iv</sup>.

There was an extensive governmental review<sup>v</sup>, including a commissioned external review that was tabled in Parliament in 2018, and yet the problems in the forensic disability system continue.

One of the problems with the forensic disability service system is that the current Queensland *Mental Health Act 2016* places persons with an intellectual or developmental disability who commit crimes on forensic disability orders. These orders tend to be long-term and few people come off them.

A Forensic Order (Disability) requires that the individual is managed by authorized public mental health services, often by staff who do not have the experience to work with people with intellectual and developmental disability. When such patients break their leave provisions, usually through challenging behaviour, they are regularly readmitted to mental health inpatient units of public hospitals. There is no capacity for mental health services to offer the mental healthcare services that this cohort needs, such as behavioural interventions or therapies. Thus, the public mental health services are inappropriately forced to act as parole services.

The only notable intellectual and developmental disability service in Queensland is a 10-bed facility operated by the Department of Seniors, Disability Services and Aboriginal and Torres Strait Islander Partnerships (and not Queensland Health). It is located at “The Park” at Wacol and is permanently operating at capacity, rendering it inaccessible.

Both the Butler and Carter reports<sup>1,vi</sup> noted that people with intellectual and developmental disability, but no mental illness, continued to reside in mental health hospitals in Queensland, and that this is often an inappropriate clinical treatment setting for such patients. This included those persons subject to a forensic order made by the Mental Health Court and those who had neither a mental illness nor were subject to either a forensic order, or an involuntary treatment order.

The RANZCP Queensland Branch also recommends that the *Mental Health Act 2016*, which currently enables health services to act as parole services for individuals on existing forensic disability orders, should be revised.

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<sup>1</sup> Two reports, published in 2006, found evidence of inappropriate models of care for people with intellectual disability in Queensland health facilities:

- *Promoting Balance in the Forensic Mental Health System: Review of the Queensland Mental Health Act 2000* – a Report by Brendan Butler AM SC (Butler Report); submitted to the Queensland Government 8 December 2006, the Queensland Government Response Tabled in Parliament, 11 October 2007; and
- *Challenging Behaviour and Disability: A Targeted Response* – a Report by William Carter QC (Carter Report), tabled in Parliament 22 May 2007.



The RANZCP Queensland Branch would like to see the *Serious violent offences scheme in the Penalties and Sentences Act 1992 (Qld)* reflect this amendment to ensure that mental health services are not inappropriately forced to act as parole services.

## Adequate resourcing of related health and community services in Queensland

Another key concern for the RANZCP Queensland Branch is that, at the point of release, coherent plans for a managed return to the community with prearranged mental health support almost never occur. This is especially concerning given that persons released from prison are at a heightened risk of homelessness. This is neither optimal for achieving integration of recently released prisoners back into the community, or safe for the community at large. Local and international studies consistently report the homeless are over-represented in prisons and ex-prisoners are over-represented among the homeless.<sup>vii</sup>

The RANZCP Queensland Branch advocates that facilitating optimal mental healthcare for patients on forensic orders is predicated on appropriate and adequate resourcing of an array of related services in Queensland. This particularly includes effective funding of drug and alcohol services, as well as housing for persons with a mental illness.

To discuss the contents of this submission please contact me [REDACTED]

Yours faithfully,  
[REDACTED]

**Professor Brett Emmerson AM**

*Chair, The Royal Australian and New Zealand College of Psychiatrists, Queensland Branch*

<sup>i</sup> Parliament of Australia Senate Select Committee on Mental Health, The Victorian Institute of Forensic Mental Health, *Submission 306*, p. 19. Available from: [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Former\\_Committees/mentalhealth/report/c13](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Former_Committees/mentalhealth/report/c13)

<sup>ii</sup> Parliament of Australia Senate Select Committee on Mental Health, Ms Debbie Kilroy, OAM, Director, Sisters Inside, *Committee Hansard*, 4 August 2005, p. 92. Available from:

[https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Former\\_Committees/mentalhealth/report/c13](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Former_Committees/mentalhealth/report/c13)

<sup>iii</sup> The Queensland Ombudsman, The Forensic Disability Service Report. August 2019. Available from: <https://www.ombudsman.qld.gov.au/improve-public-administration/investigative-reports-and-casebooks/investigative-reports/the-forensic-disability-service-report>

<sup>iv</sup> Queensland Advocacy Incorporated, Position Statement – Forensic Disability Service. Available from:

<https://qai.org.au/2015/10/30/position-statement-forensic-disability-service/>

<sup>v</sup> Queensland Government, Section 157: Review of the operation of the Forensic Disability Act 2011, Final report. Available from:

<https://documents.parliament.qld.gov.au/tableOffice/TabledPapers/2018/5618T1581.pdf>

<sup>vi</sup> The Queensland Ombudsman, The Forensic Disability Service Report. August 2019. Available from:

<https://www.ombudsman.qld.gov.au/improve-public-administration/investigative-reports-and-casebooks/investigative-reports/the-forensic-disability-service-report>

<sup>vii</sup> “Ex-prisoners are more likely to become homeless but the reverse isn’t true”, *The Conversation*, 4 April 2019. Available from:

<https://theconversation.com/ex-prisoners-are-more-likely-to-becomehomeless-but-the-reverse-isnt-true-113570>