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Submission to Australian Government Productivity Commission
Mental Health Inquiry

Re: *Mental health and the Justice System*

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The Issues paper providing background to the Inquiry rightly considers the role of contact with the justice system, highlighting the burden of mental illness amongst those in such contact, the impact of justice system contact, and the gaps in services and supports for this highly disadvantaged group. The relevance of contact with the justice system to trajectories of economic participation and other outcomes throughout the life-course cannot be underestimated. There has, however, been very little focus on understanding the mental health needs and outcomes of those in contact with the justice system and the development of mental health services and interventions in this context has lagged well behind any other. As a mental health clinician and academic with specific expertise in the overlap between the mental health and justice systems, I make the following submission to the Productivity Commission Inquiry into the 'role of improving mental health to support economic participation and enhancing productivity and economic growth'.

<u>The burden of mental illness amongst those in contact with the justice system</u>

Individuals in contact with the criminal justice system are known to suffer an enormous burden of mental illness, associated with poor long-term outcomes including with regard to economic and other participation in society. Cross-sectional studies of prison samples in Australia and internationally have established prevalence rates of symptoms and illness to be up to *10 times higher than in the general population* (Fazel and Seewald, 2012). Despite the elevated rates of mental illnesses and the greater complexity of health need that is more typical in this group, those in contact with the criminal justice system demonstrate lower levels of help-seeking and health service access in the community (AIHW, 2015). Thus, contact with the criminal justice system, at all points along the pathway (including police, courts, prison and other secure settings, and the community post-release), can present an important opportunity to intervene, in order to improve outcomes for a difficult-to-reach group with high levels of mental health need. Unfortunately, however, the reality of the limited mental health services and interventions provided for those in contact with the criminal justice system is that their development has occurred largely in the absence of a rigorous evidence base, with assessment tools, interventions and service models often simply borrowed from those used in other settings, and with very limited evidence to support their specific effectiveness for this group.

Importance of support for the transition between prison and the community

Whilst there has been some much needed focus on optimising mental health care for prisoners whilst in custody, it is also important to recognise that prisoners come from the community and that the vast majority will return to the community, with time in custody often brief. Unfortunately, the fragmentation of services and lack of support during the prison-to-community transition means the potential health benefits of the opportunity presented by imprisonment are often lost (David Lovell et al., 2002), as is the preventative impact of mental health treatment on risk of re-incarceration (Baillargeon et al., 2009), particularly important for those communities facing very high incarceration rates, such as the Aboriginal and/or Torres Strait Islander peoples (ABS, 2012). Promising results have emerged from attempts to provide 'critical-time' interventions designed for the prison-to-community transition period (Kouyoumdjian et al., 2015) but rigorous evaluations/replications have been few, remand prisoners with the highest rates of mental illness have often been excluded, and interventions have typically commenced just prior to release. In NSW we are currently trialling an intervention to support people with severe mental illness during the prison-to-community transition, in particular, trying to encourage re-engagement with community mental health services post-release.

Risk for mental illness and justice contact emerges in early life

For many individuals, risk of coming into contact with the criminal justice system can be traced back into early life (Jolliffe et al., 2017), with the early indicators of such vulnerability overlapping with those well known to herald later development of mental illness (e.g. childhood trauma, educational problems, early exposure to substance use, social disadvantage). Recently, this realisation has led to a flourishing of interdisciplinary research activity explicitly considering crime (and criminal justice system contact) as a *cause* of ill health and ill health as a *cause* of crime, with an understanding that there is likely to be a complex interweaving of risk and protective factors for these outcomes developing throughout the life-course, and across generations (Dean et al., 2012). There are now exciting opportunities to address many of the unanswered research questions emerging in this area, particularly in the context of the 'big data' era (DeLisi, 2018), and such research is being pursued currently in NSW within the context of the NSW Child Development Study. It is also interesting to note that an analogous interdisciplinary approach has taken root in intersectional service developments, such as with the advent of 'health-justice partnerships', where legal and health professionals work together in the same service to meet the needs of vulnerable communities often inadequately addressed by traditional siloed models of service delivery (Gyorki, 2014).

Those young people who become enmeshed in the criminal justice system have some of the worst long-term outcomes, including in relation to their mental health and outcomes that include economic participation, of any group in society, with substantial impact on their families and the wider community. For example, in a recent Danish national register study, over one-third of all male suicide cases across the entire population were found to have had a history of criminal justice system contact (Webb et al., 2011). Identifying those at risk of such outcomes as early as possible is vital for successful preventative intervention, and that means targeting young people well before they are formally established as offenders. This early identification and intervention is a vital target for a range of organisations and services, from health to education and beyond.

Forensic patients – small group but complex and costly care

'Forensic Patients' represent a special sub-group of individuals in contact with the criminal justice system who have typically committed serious violent offences, have severe mental illnesses such as schizophrenia, and have been considered at court to be either sufficiently mentally unwell at the time of the alleged offence that they are Not Guilty by Reason of Mental Illness (NGMI) or to be unfit to plead (or stand trial). The mental health needs of Forensic Patients are managed by forensic mental health services, mainly in secure psychiatric units. Whilst Forensic Patients make up a relatively small proportion of 'mentally disordered offenders' the mental health care they require is highly specialised and costly (estimated to be 20% of national spend on adult mental healthcare in the UK, for example). Despite the impact on government mental health budgets across jurisdictions, very little is known about the mental health and other care needs for this group and thus the development of evidence-based service models and interventions has been limited. We do know, however, that forensic patients released from secure care after treatment have much lower rates of post-release reoffending than do released prisoners. In NSW, we have recently determined that the 12-month rate of re-offending for released forensic patients is 6.3% for a cohort accrued over the past 25 years (Dean et al., submitted 2019); this compares to a rate typically over 40% for released prisoners in NSW. Our findings are consistent with those across jurisdictions internationally supporting the notion that forensic mental health services are effective at reducing post-release contact with the justice system, vital for supporting social and economic participation for this high-risk and high-needs group (Fazel et al., 2016; Dean et al., submitted 2019; Hayes et al., 2014).

Diverting people from the justice system in mental health treatment

In Australia and internationally, a key strategy to reduce the over-representation of individuals with mental illness in justice settings has been the development of mental health courts and court liaison and/or diversion services, tasked with identifying those with mental health needs at an early stage in the court process in order to refer them to mental health services and away from custody. Emerging research indicates that such an approach can result in a wide range of benefits for individuals and the wider society, including: reduced recidivism rates, avoidance or re-incarceration, improved access to mental health services, and improved psycho-social participation (Richardson and McSherry, 2010; Steadman et al., 1999; Broner et al., 2004; James, 2010). In Australia, reoffending rates have been shown to be better for among those diverted if diversion occurred in a local court serviced by a specialist mental health diversion team (Bradford and Smith, 2009), and in a pre-post study of diversion in Adelaide, both the proportion offending and the number of offences was found to be reduced (Skrzypiec et al., 2004). In NSW, court diversion has also been shown to reduce re-offending rates amongst those with psychosis, particularly if mental health treatment is actually received (Albalawi et al., 2019). In our own research, however, the rate of diversion in NSW has been found to be just over 50% only (of those clinicians recommend for diversion) and diversion is employed less often for male offenders, younger offenders, and those of Aboriginal and/or Torres Strait Islander heritage (Soon et al., 2018 (2018)), indicating that there is still work to be done to ensure diversion opportunities are maximised for all groups.

Recommendations to improve economic participation and other outcomes for those with mental illness in contact with the justice system:

1. There is a need to develop and agree standards for mental health care provision and outcomes for those with mental illness in contact with the justice system and to prioritise areas for further research and evaluation. In Australia, this would benefit from consideration of the development of a national body to take responsibility for driving improvements in the field of justice health and for reducing disparity between jurisdictions.

2. Most offenders will spend the majority of their lives in the community where their mental ill health and risk of offending will have greatest impact on themselves and others, and where interventions are likely to have the greatest and most sustained impact. Early identification (both of mental illness among offenders and of risk of offending among the mentally ill) and intervention is needed, as is a greater focus on establishing successful models of post-release support to maximise any benefits of intervention. There is an enormous need for more integrated services and the 'health-justice' partnerships emerging across Australia are an example of the approaches that need to be trialled.

3. Early intervention is a key principle, common across health care and other contexts but the justice system is a neglected target for such an approach, both in terms of intervening early in life with young people at risk of mental illness and justice contact, as well as for those already in contact with the justice system who would benefit from an early identification of their mental health needs.

4. Forensic patients are a high risk and high need group of individuals with both severe mental illness and history of serious offending. Their care may be costly and complex but evidence suggests it is highly effective, in particularly in ensuring rates of post-release reoffending are low (a 'holy grail' of the criminal justice system that is very rarely glimpsed). The approach to offender rehabilitation in the wider criminal justice system may well have something to learn from the approach taken by forensic mental health services.

5. Diversion away from the justice system and into healthcare needs to be key focus of strategies to improve outcomes for those with mental illness and justice contact. Evidence is emerging to support the benefits of diversion but services are not adequately resourced (both in terms of diversion team and in terms of the health services expected to take on the care of diverted patients) or embedded.

6. Specific subgroups among those offenders with mental illness should be the focus of research and evidence-informed service development including those of Indigenous background (given the extraordinary relative incarceration rates of those in Australia from an Aboriginal and/or Torres Strait Islander background), female prisoners and young people in contact with the Justice System.

Yours sincerely,

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