



public interest
ADVOCACY CENTRE LTD

**Comments on the Ten-Year Roadmap for National
Mental Health Reform**

30 January 2012

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Introduction

The Public Interest Advocacy Centre

The Public Interest Advocacy Centre (PIAC) is an independent, non-profit law and policy organisation that works for a fair, just and democratic society, empowering citizens, consumers and communities by taking strategic action on public interest issues.

PIAC identifies public interest issues and, where possible and appropriate, works co-operatively with other organisations to advocate for individuals and groups affected. PIAC seeks to:

- expose and redress unjust or unsafe practices, deficient laws or policies;
- promote accountable, transparent and responsive government;
- encourage, influence and inform public debate on issues affecting legal and democratic rights; and
- promote the development of law that reflects the public interest;
- develop and assist community organisations with a public interest focus to pursue the interests of the communities they represent;
- develop models to respond to unmet legal need; and
- maintain an effective and sustainable organisation.

Established in July 1982 as an initiative of the (then) Law Foundation of New South Wales, with support from the NSW Legal Aid Commission, PIAC was the first, and remains the only broadly based public interest legal centre in Australia. Financial support for PIAC comes primarily from the NSW Public Purpose Fund and the Commonwealth and State Community Legal Services Program. PIAC also receives funding from the Industry and Investment NSW for its work on energy and water, and from Allens Arthur Robinson for its Indigenous Justice Program. PIAC also generates income from project and case grants, seminars, consultancy fees, donations and recovery of costs in legal actions.

Background to this submission

PIAC welcomes the opportunity to take part in the NSW Government's review of the Commonwealth Government's *Ten Year Roadmap for National Mental Health Reform* (the Roadmap). PIAC believes that in order for the high rates of mental illness in Australia to be reduced, a national, coordinated strategy such as the Roadmap is essential.

Much of PIAC's law reform and litigation work in the areas of health, homelessness and prisons and detention is centered on ensuring the right of vulnerable people to appropriate and effective mental health treatment and support. On the basis of this experience, this submission provides comment on a number of the Roadmap's Key Directions and provides specific detail on how these directions can be implemented in practice. This submission also focuses on the need for the Roadmap to be amended to include specific targets and measures, as well as timeframes for implementation.

General comments

Lack of targeted and specific measures

PIAC is concerned that the Roadmap, in its draft form, does not contain specific and evidence-based measures to reduce the high rates of mental illness in Australia. While the Roadmap contains a list of 'short-term' and 'long-term' action items under each Key Direction, these items are exceedingly vague, make no reference to available data (or identify gaps in data and establish a system for collecting it) and provide no timeline for ensuring the compliance of government agencies.

For example, Key Direction 2 commits the Commonwealth Government to 'encouraging court diversion programs, where appropriate' without reference to data demonstrating the necessity for court diversion or to any evaluation conducted on the effectiveness of diversionary mechanisms already existing in various states and territories. Where appropriate data is not in existence, the Roadmap should clearly detail a process (including consultation with the non-government sector) for ensuring it is obtained. Where such data is available, it should be used to develop specific measures that should also detail the relevant government agency with responsibility for its implementation and a timeframe.

PIAC also is concerned about the lack of a comprehensive system for evaluation of action items under the Roadmap and believes the general 'how will we know we are doing better?' section should be redrafted to incorporate such a system.

Recommendation One

That the Roadmap use evidence-based measures to identify gaps in mental health policy and practice in Australia. The Roadmap should also provide detail of government agencies with responsibility for implementation of these measures, specific timeframes and a comprehensive system for evaluation.

Key Direction 1

Prevention of suicide

PIAC welcomes the Roadmap's identification of the need to provide effective policy responses to the issue of suicide prevention. However, PIAC is concerned that in its draft form, the Roadmap fails to acknowledge the considerable levels of suicide in Australian correctional facilities.

A large number of studies have highlighted the significant incidence of suicide and self-harm in prisons. According to the Australian Institute of Criminology, which is responsible for compiling national statistics on deaths in custody, the number of prison deaths since 2006 has risen nationwide, despite the size of the Australian prison population remaining fairly stable. In the decade to 2008, the last year for which verifiable figures are available, 471 people died in Australian prison custody, an increase of nearly 50% from the decade to 1989.¹ A review into the number of suicides in New South Wales prisons from 1 January 1995 to 31 December 2005, *Suicide in New South Wales Prisons, 1995-2005: towards a better understanding*, found a total of 92 cases were identified as deaths by suicide in this period.² This represented 41 per cent of all deaths in custody for this period. Those on remand or serving a sentence of less than 6 months accounted for 64 per cent of all suicides

¹ Figures discussed in Inga Ting 'Deaths in custody: 20 years after a royal commission, prison deaths are rising, *Crikey* (online) 15 April 2011 <<http://www.crikey.com.au/2011/04/15/deaths-in-custody-20yrs-after-a-royal-commission-why-are-fatalities-rising/>>

² Colman O'Driscoll (et al) 'Suicide in New South Wales Prisons, 1995-2005: towards a better understanding', *Australian and New Zealand Journal of Psychiatry* (2007) 41(6) 519

in NSW custody, with 75 per cent occurring within 6 months of incarceration. This report also found the rate of suicide in prisons was ten times the level of death by suicide in the NSW community. A study conducted by *Crikey* for the period 2001-2009 found 59 deaths by suicides in NSW prisons.³

PIAC believes that for the Roadmap to make 'efforts to prevent suicide' it must consider and implement effective responses to suicide in correctional facilities.

Recommendation Two

That the Roadmap specifically list reduction of suicide among people in correctional facilities under Key Direction 1.

A national approach to suicide prevention in prisons

In order to reduce the high incidence of suicide and self-harm in prisons, the Roadmap should commit to the development of a nationally consistent approach to the provision of support for prisoners identified as being 'at risk'. As the provision of health services to prisoners is currently the responsibility of states and territories, there is no consistency in suicide prevention approaches in correctional facilities. In NSW, the current approach to the prevention of suicide in prison is through the use of 'safe cells'.⁴ Safe Cells are purpose built prison cells designed to minimise the opportunity for the prisoners to deliberately or accidentally harm themselves. According to *Crikey*, safe cells are designed "to minimise the opportunities of self harm, so therefore it's got no hanging points, they've got special blankets, it has camera observation and nothing sharp or unscrewable".⁵ They are used for the involuntary seclusion of inmates who are considered at risk of self-harm.

There have been a number of concerns expressed about the use of safe cells in NSW including that prisoners at risk of suicide avoid disclosing intent suicide/self-harm in order to avoid placement in such cells and that being placed in such a cell actually increases risk of suicide post-release.⁶ PIAC notes a range of alternative mechanisms are in place in other jurisdictions, including the use of 'step-down' procedures in Victoria which have demonstrated to be effective in reducing rates of suicide and self-harm.⁷

PIAC believes in order to reduce the high rates of suicide in prisons, that the Australian Government through the Roadmap should conduct an investigation of best practice mechanisms to provide support to at-risk prisoners. The Roadmap should also contain a commitment to ensure these best practice mechanisms are implemented in a nationally consistent policy response.

Recommendation Three

That the Roadmap commit to reviewing best practice guidelines and the implementation of a nationally consistent approach to assist people identified as being at risk of suicide in prison.

Coronial Inquests

³ Inga Ting, 'Deaths in custody: authorities ignore warnings on hanging points' *Crikey* (online) 15 June 2011 <<http://www.crikey.com.au/2011/06/15/deaths-in-custody-authorities-ignore-warnings-on-hanging-points/>>

⁴ Christopher Crocos (et al), 'The use of safe cells in the management of suicidal and violent prisoners' (2001) 9 *Australasian Psychiatry* 47.

⁵ Inga Ting 'Deaths in custody: 20 years after a royal commission

⁶ Christopher Crocos (et al) 'The use of safe cells in the management of suicidal and violent prisoners' (2001) 9 *Australasian Psychiatry* 47.

⁷ Department of Human Services Mental Health Branch, *Evaluation of the Victorian Suicide Prevention Responses* 23 January 2011 <www.health.vic.gov.au/mentalhealth/suicide/suicide.../summary.pdf>

PIAC has considerable experience in the area of suicide prevention in prisons, often representing the families of deceased persons in Coroners' Inquests. As a result of this experience, PIAC believes Coroners in Australia's states and territories play a vital role in suicide prevention both in terms of their scrutiny of deaths by suicide and through making recommendations so that deaths can be prevented. Coroners play an important role in public awareness about suicide. Media reporting on the conduct of Inquests as well as of Coroners' finding and recommendations is the most common way the public are made aware of the circumstances of preventable suicides in Australia.

PIAC draws the NSW Government's attention to its 2009 submission to the *Senate Community Affairs Committee Inquiry* into suicide in Australia that called for a harmonisation of coronial law on the basis of existing best practice mechanisms.⁸ PIAC believes the NSW Government should call on the Roadmap to develop such a national approach in order to prevent high rates of suicide and preventable deaths in custodial settings.

Recommendation Four

That the Roadmap commit the Australia Government to harmonisation of coronial laws.

Key Direction 2

Prisoners and Mental Illness

PIAC notes the Commonwealth Government's acknowledgement in the Roadmap of the high rates of mental illness among people in the corrections system. In 2009, the Australian Bureau of Statistics reported that 41 per cent of people who have been in prison had experienced mental illness, which is twice the prevalence of people who had not been in prison.⁹ More recently, the Australian Institute of Health and Welfare's research report, *The health of Australia's prisoners 2010*, recorded that 31 per cent of prison entrants reported having ever been told that they had a mental health illness and 16 per cent of prison entrants reported that they were currently taking mental health related medication.¹⁰ On entry to prison, almost one-fifth of prison entrants were referred to the prison mental health services for observation and further assessment following the reception assessment. Young people in juvenile detention facilities also have high rates of mental illness. The 2011 report, *NSW Young People in Custody Health Survey*, found that as many as 87 per cent of young people in custody had a psychological disorder of some description.

PIAC is concerned that the Roadmap does not provide specific measures to ensure effective mental health treatment is provided to prisoners with a mental illness. The *United Nations Principles on the Protection of People with a Mental Illness and the Improvement of Mental Health Care* provide that "all persons have the right to the best available mental health care" and that "all persons with a mental illness... shall be treated with humanity and respect".¹¹

⁸ Please see Peter Dodd, *Augmenting the role of the Coroner to enhance suicide prevention: submission to Senate Community Affairs Committee Inquiry into suicide in Australia* available at <http://www.piac.asn.au/publication/2009/12/091127-piac-suicide-sub>

⁹ Australian Bureau of Statistics, *National Survey of Mental Health and Wellbeing 2007*, (7 January 2012), Australian Bureau of Statistics <http://www.abs.gov.au/ausstats/abs@.nsf/mf/4326.0>

¹⁰ The Australian Institute of Health and Welfare, *The health of Australia's prisoners 2010*, (10 January 2012) The Australian Institute of Health and Welfare <http://www.aihw.gov.au/publication-detail/?id=10737420111&libID=10737420110>

¹¹ Articles One and Two of the *Principles for the protection of person with mental illness and the improvement of mental health care*. Office of the United Nations High Commission, *Principles for the*

The *Principles* expressly apply to people serving sentences of imprisonment “to the fullest extent possible, with only limited modifications and exceptions as are necessary in the circumstances”. The *Standard Minimum Rules for the Treatment of Prisoners* provide that “prisoners with other mental diseases or abnormalities shall be observed and treated in specialised institutions under medical management” and while in prison shall be placed under the “special supervision of medical officer”.¹² However, in practice, the needs of people with a mental illness in prisons are overlooked. The *Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health* noted ‘current services are insufficient to treat the number of inmates who suffer from mental illness’ and that ‘resourcing of mental health diagnosis and treatment within prisons, particularly for chronic illnesses, remains inadequate’.¹³

While the provision of mental health services to prisoners is ultimately a state responsibility, PIAC believes that the Commonwealth Government, through the Roadmap, should provide a national focus and strategy to ensure access to appropriate treatments is secured. PIAC believes working with state and territory governments to ensure such strategies are developed should be embedded in the short-term and long-term action items of the Roadmap.

Recommendation Five

That the NSW Government recommend that the Roadmap, under Key Direction 2, commits to working with states and territories to ensure access to effective mental health treatment for people in the corrections system.’

Post-release coordination and support

PIAC welcomes the Commonwealth Government’s recognition in Key Direction 2 of the Roadmap of the need for early intervention strategies to ensure greater coordination between government agencies (particularly those in the justice and corrections systems). In PIAC’s experience, the lack of coordination between government agencies in the corrections and justice system is most evident in relation to prisoners post-release. PIAC directs the NSW Government to the work of Professor Eileen Baldry, whose work has highlighted how limited post-release coordination and support by government agencies has led to high rates of recidivism, lack of appropriate mental health treatment and homelessness among post-release prisoners.¹⁴ Informed by the work of Professor Baldry and our own case work with the Homeless Persons’ Legal Service, PIAC is currently undertaking a project to document the experiences of people who are experiencing homelessness who have been released from prison. The project will also examine particular difficulties faced by services and agencies that assist homeless people in providing services to homeless people recently released from prison. PIAC believes it is essential that the Roadmap provide specific reference to the need for coordination of government agencies post-release and for it to

protection of person with mental illness and the improvement of mental health care, (23 January 2012) Office of the United Nations High Commission <http://www2.ohchr.org/english/law/principles.htm>

¹² Office of the United Nations High Commission, *Standard Minimum Rules for the Treatment of Prisoners*, (23 January 2012) Office of the United Nations High Commission <<http://www2.ohchr.org/english/law/treatmentprisoners.htm>>

¹³ Office of the United Nations High Commission, *Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health* (23 January 2012) Office of the United Nations High Commission <<http://daccess-ods.un.org/TMP/743090.286850929.html>>

¹⁴ For example see Eileen Baldry et al ‘Ex-prisoners, accommodation and the state: post-release in Australia’ (2006) 39 *ANZ Journal of Criminology* 20.

commit the Commonwealth Government to a process of evaluating the effectiveness of current post-release services.

Recommendation Six

That Roadmap recognise the need for greater coordination of post release services under Key Direction 2.

Recommendation Seven

That the Roadmap commit to the development of a nationally consistent and evidence based approach to the issue of post-release support for prisoners.

Diversionsary mechanisms

PIAC supports the inclusion of the 'development of court diversion programs' as an action item under Key Direction 2 of the Roadmap. However, as noted above, PIAC is concerned that the Roadmap provides no detail about effective court diversionsary schemes currently in operation, and does not include a process for ensuring state and territory government work towards implementing such schemes.

PIAC believes as part of obtaining data on effective diversionsary schemes, the NSW Government should discuss with the Commonwealth the operation of s32 and s33 of the *Mental Health (Forensic Provisions) Act 1990* (NSW) and the Magistrates Early Referral Into Treatment (MERIT). While the NSW Law Reform Commission consultation paper, *People with cognitive and mental health impairments in the criminal justice system*, has a number of recommendations for reform to the operation of the process for diversion in NSW¹⁵, PIAC believes s32 and s33 of the *Mental Health (Forensic Provisions) Act 1990* (NSW) are important mechanisms for ensuring appropriate diversion into treatment and support.

In addition to diversionsary options in NSW, the Roadmap should also investigate options such as mental health courts/specialist lists including the effectiveness of current list in Tasmania (via the Magistrates Court of Tasmania's Mental Health Diversion List Program) and Victoria (via the Melbourne Magistrates' Court's Assessment and Referral Court List).

Recommendation Eight

That the Roadmap compile data on effective court diversionsary schemes for people with a mental illness and commit to working with state and territory governments to implement such diversionsary options.

Recommendation Nine

That the NSW Government refer to the operation of s32 and s33 of the Mental Health (Forensic Provisions) Act 1990 (NSW) in its submission to the Roadmap.

¹⁵ The NSW Law Reform Commission recommends some of the following reform mechanisms: providing the NSW Police with greater powers to issue cautions to people with a cognitive impairment or a mental illness (under s107 of the *Law Enforcement (Powers and Responsibilities) Act 2002*), reforms to s32 and s33 of the *Mental Health (Forensic Provisions) Act 1990* (NSW), the expansion of programs such as Magistrates Early Referral Into Treatment (MERIT) and the development of a specialist mental health court list in local courts as specific measures the NSW Government could undertake. Please see NSW Law Reform Commission, *People with cognitive and mental health impairments in the criminal justice system* (23 January 2012) NSW Law Reform Commission <http://www.lawlink.nsw.gov.au/lawlink/lrc/ll_lrc.nsf/pages/LRC_cref120>

Key Direction 5

Accessibility for vulnerable groups. People experiencing homelessness.

PIAC supports the Roadmap's recognition of the need to improve the accessibility of mental health services for vulnerable and at risk groups. In particular, PIAC believes the Roadmap should identify and provide specific approaches to improve access to effective mental health treatment among people at risk of and those currently experiencing homelessness.

Homeless Persons' Legal Service

The Homeless Persons' Legal Service (HPLS)¹⁶ provides free legal advice and on-going representation to people who are homeless or at risk of homelessness. In addition, HPLS works closely with people experiencing homelessness to identify effective public policy responses to issues facing homeless people. The HPLS Solicitor Advocate provides court representation for people who are homeless and charged with minor criminal offences.

From 1 January 2010 to 30 June 2011, the HPLS Solicitor Advocate provided court representation to 104 individual clients.¹⁷ Of these:

- 53 per cent disclosed that they had a mental illness;
- 62 per cent disclosed that they had drug or alcohol dependency;
- 76 per cent said that they had either a mental illness or drug/alcohol dependency;
- 38 per cent disclosed that they had both a mental illness and drug/alcohol dependency; and
- 45 per cent indicated that they had previously been in prison.

Homelessness and links with mental illness

In its 2003 study into the legal needs of homeless people in NSW, the Law and Justice Foundation of NSW reported that mental health, alcohol and drug issues, dual diagnosis and other complex needs are prevalent among the homeless population, particularly those who are entrenched in homelessness.¹⁸ In their 1998 study of 210 homeless people in emergency hostels in inner Sydney, Hodder, Tenson and Buhrich reported that 75 per cent of their sample had either mental health problems, drug use disorder or alcohol disorder. Forty-eight percent of the sample had a drug use disorder and 55 per cent reported an alcohol disorder.¹⁹ A 2003 study involving 403 homeless young people in Melbourne aged 12-20 found that 26 per cent of those surveyed reported a level of psychological distress indicative of a psychiatric disorder.²⁰ Most recently, in their study of 4,291 homeless people in

¹⁶ HPLS is a joint project of PIAC and the Public Interest Law Clearing House NSW (PILCH).

¹⁷ Over this period the HPLS Solicitor Advocate completed 135 client files for these 104 individual clients. Several of these clients returned to the HPLS Solicitor Advocate with additional criminal charges arising in separate circumstances.

¹⁸ Suzie Forell, Emily McCarron, and Louis Schetzer, (2005), *No Home, No Justice? The Legal Needs of Homeless People in NSW*, Law and Justice Foundation of NSW, Sydney, at 124.

¹⁹ Tracey Hodder, et al *Down and Out in Sydney: Prevalence of Mental Disorders, Disability and Health Service Use Among Homeless People in Inner Sydney*, Sydney, Sydney City Mission, 1998, 19-25.

²⁰ Ben Rossiter, et al (2003) *Living Well? Homeless Young People in Melbourne*, Melbourne, Australian Research Centre in Sex, Health and Society, 17.

Melbourne, released in 2011, Johnson and Chamberlain found that 31 per cent of their sample had a mental illness (not including any form of alcohol or drug disorder).²¹

The links between homelessness and mental illness have also been identified as being 'intertwined in terms of cause and effect' by the Australian Government's White Paper on Homelessness *The Road Home, A National Approach to Reducing Homelessness*.²²

PIAC believes the Roadmap should similarly recognise the considerable links between homelessness and mental illness and develop specific recommendations to ensure homeless people have access to effective mental health treatments and supports.

Recommendation Ten

That the Roadmap specifically address the needs of people at risk of and those currently experiencing homelessness as a vulnerable group under Key Direction 5.

Recommendation Eleven

That the Roadmap develop specific recommendations in regard to the provision of mental health services to people experiencing homelessness.

A rights-based response

PIAC welcomes the Roadmap's recognition of the need for nationally consistent legislation to address the growing rates of mental illness in Australia. PIAC believes it is essential that this legislation and the Roadmap itself should adopt a human rights framework.

In its current form, the Roadmap not only lacks such a framework, but also fails to make any reference to important international human rights relating to mental illness such as the *UN Principles for the Protection of Persons with Mental Illness and for the Improvement of Mental Health Care*.²³

The *UN Principles for the Protection of Persons with Mental Illness and for the Improvement of Mental Health Care* provides specific guidance on standards of care, allocation of resources and handling of complaints and is invaluable in the development of an effective, national based response to the area of mental health. PIAC also notes that the Roadmap fails to incorporate the work of the *National Human Rights Baseline* in reviewing the compliance state and territory territories government's mental health policy with such human rights standards. PIAC believes the findings of the *National Human Rights Baseline* and the *National Human Rights Action Plan* should be used to inform specific actions in the Roadmap.

Recommendation Twelve

That the Roadmap use a human rights framework to analyse gaps in delivery of effective services to people with a mental illness.

²¹ Guy Johnson and Chris Chamberlain (2011), 'Are the Homeless Mentally Ill?', *Australian Journal of Social Issues*, Autumn 2011, 35.

²² Commonwealth of Australia, *The Road Home, A National Approach to Reducing Homelessness* (2009) 14.

²³ *Principles for the protection of person with mental illness and the improvement of mental health care*. Office of the United Nations High Commission, *Principles for the protection of person with mental illness and the improvement of mental health care*, (23 January 2012) Office of the United Nations High Commission <<http://www2.ohchr.org/english/law/principles.htm>>

Recommendation Thirteen

That the Roadmap incorporate the findings of the National Human Rights Baseline and National Human Rights Action Plan.