

# Full Day Hansard Transcript (Legislative Council, 13 November 2008, Proof)

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**Order of the day discharged and bill withdrawn.**

## **BUSINESS OF THE HOUSE**

### **Suspension of Standing and Sessional Orders: Order of Business**

**Ms SYLVIA HALE** [11.27 p.m.]: I move:

**That standing and sessional orders be suspended to allow a motion to be moved forthwith that Private Members' Business item No. 101 outside the Order of Precedence, relating to Long Bay Jail, be called on forthwith.**

This matter is urgent, and has been urgent since 2 April 2008 when forensic patients at Long Bay Jail was first locked in their cells for 18 hours every day. I asked questions with and without notice on 1 April 2008, 14 May 2008, 24 June 2008, 25 September 2008; I made an adjournment speech on 5 June; and I gave notice of this motion on the same day. But still these most vulnerable of people remain subject to intolerably long hours of solitary confinement.

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This motion is urgent because, as a nurse said to me, each day these patients are being subjected to additional punishment and stress for no reason other than the department's bloody-minded determination to save money by refusing to employ sufficient staff on the afternoon roster. The Minister has had ample opportunity to end this shameless abuse of inmates' human rights by restoring staffing levels, but he has not done so. Yesterday, no doubt hoping that I would not persist in seeking urgency, the Minister informed me that the forensic hospital would open on 28 November 2008 and prisoners would be gradually transferred to it on a ward-by-ward basis. That is good. But it is not an argument against urgency for the ending of this regime, as the damage to these patients is being done daily.

My motion is urgent because the patients are locked in for 18 hours a day and that regime will continue until they are transferred. For some prisoners that may mean waiting anything up to six months. The new forensic facility must be staffed. The positions of nurse unit managers for the facility were advertised in newspapers only last weekend. Given the Christmas break and the need to do background checks, it could take six weeks or more for those positions to be filled. No-one will be moved until they are. Patients are to be moved ward by ward and there could be a time lag of up to one month between each ward transfer. The complete transfer process may take six months. By the time the last

forensic ward is transferred to the new forensic hospital some patients could have been subjected to the extended lock-in regime for a year. It is urgent to debate this motion because no patient should be locked in for one day longer, let alone another six months. We are almost at the end of the parliamentary year. We cannot and should not allow a regime to continue that aggravates and intensifies mental illness and is contrary to the Mental Health Act while we go off to enjoy ourselves over the summer break. It is urgent that the Minister explain and justify to the House why he cannot make arrangements to immediately end this regime. I ask members to support this motion.

**Question—That the motion be agreed to—put and resolved in the affirmative.**

### **Order of Business**

#### **Motion by Ms Sylvia Hale agreed to:**

That Private Members' Business item No. 101 outside the Order of Precedence be called on forthwith.

#### **LONG BAY CORRECTIONAL COMPLEX HOSPITAL LOCK-IN HOURS**

**Ms SYLVIA HALE** [11.32 a.m.]: I move:

1. That this House condemns the Government for the new arrangements that result in inmates of the Long Bay Prison Hospital being locked in their 2.5 x 3.5m cells for 18 hours a day.
2. That this House notes that, in 2004, in an answer to a question on notice in relation to the new forensic facility, (Answer to question No. 1219, Tuesday 19 October 2004, published in Legislative Council Q&A Paper No. 74), the Premier, as Health Minister, gave his assurance that: "The quality of the health service provided will improve. Forensic patients will no longer be housed in a correctional centre, but in a Health facility that will be purpose built to cater to their needs."
3. That this House condemns the Attorney General and Minister for Justice on the grounds that locking patients in for 18 hours a day as a precursor to the opening of the new facility, and continuing this practice in the new facility, is clearly a betrayal of Premier Iemma's assurances in 2004.
4. That this House notes that such a regime is contrary to:
  - (a) section 12.4 of the Department of Corrective Services Operation Procedure Manual,
  - (b) section 153 of the Crimes (Administration of Sentences) Regulation 2001,
  - (c) the Mental Health Act 2007, and
  - (d) article 5 of the Universal Declaration of Human Rights, to which

Australia is a signatory.

5. That this House:

- (a) notes that a patient wrote to the Minister for Justice describing the new regime as "maddening, un-therapeutic, destructive, oppressive, savage, barbaric, depressing and frustrating", and
- (b) acknowledges that, according to qualified psychiatrists, subjecting mentally ill patients to long periods of solitary confinement can exacerbate psychotic or schizophrenic symptoms.

6. That this House:

- (a) calls upon the Minister for Justice to end this new regime immediately, and
- (b) if the Minister for Justice does not end this new regime, calls on the Human Rights and Equal Opportunity Commission to investigate.

There must be an end to the regime currently operating at Long Bay prison hospital whereby forensic patients are locked in and isolated in their 2.5 metre by 3.5 metre cells for 18 hours a day. Locking patients in their cells for 18 hours a day is fundamentally a means of reducing staffing costs and is not humane nor an improvement in treatment. Prior to 2 April this year patients were not confined to their cells until 9 o'clock at night. The Government has imposed this regime as a precursor to Justice Health taking over the running of the prison hospital and the opening of the new forensic facility, which is being built at Long Bay. The lock-in has been in force for almost eight months and conceivably could extend well into 2009. No-one denies that the new progressive facility will be a vast improvement when it opens and when all the forensic inmates are transferred to it. However, prior to patients being moved there, the practice of locking them in their cells for 18 hours a day should cease. Indeed, it should never have been implemented.

The removal of 28 guards from Long Bay has led to this inhumane treatment of mentally disturbed people. Their removal was clearly a cost-cutting exercise, a part of the Minister's so-called Way Forward, the end result of which has been the failure of Corrective Services to acknowledge and abide by the duty of care that is the patients' due. The Minister is embroiled in an industrial dispute with the prison guards and their union, the Public Service Association. Whatever the rights or wrongs of that dispute, it is unconscionable that it should result in the infliction of further punishment of patients. Health professionals, in particular psychiatric nursing staff from the New South Wales Nurses Association, are outraged at the existing regime, not because of the industrial dispute but because it compels them to reduce the level of care they owe to their charges. They believe the lock-in regime is detrimental to these inmates. They feel frustrated because their clinical work is being daily underdone. There is clinical evidence of the deleterious

impact of seclusion on mentally ill people. I will refer later to letters that the Greens, and I am sure other members of the House, have received from forensic psychiatrists. From a legal rather than a mental health perspective, the Greens submit that the 18-hour lock-in regime contravenes section 154 of the Crimes (Administration of Sentences) Regulation 2008, formerly section 153 of the 2001 regulation which has been repealed. The regulation states:

An inmate must not:

(b) be subjected to:

(i) solitary confinement, or ...

(c) be subjected to any other punishment or treatment that may reasonably be expected to adversely affect the inmate's physical or mental health.

Section 68 of the Mental Health Act 2007 states that people with a mental illness or mental disorder should receive the best possible care and treatment in the least restrictive environment enabling the care and treatment to be effectively given. Graeme Innes, Human Rights and Equal Opportunity Commissioner, reminded the Minister in a lengthy letter dated 8 May 2008 that the lock-in regime is contrary to article 7 of the International Covenant on Civil and Political Rights, which states:

No one shall be subject to torture or to cruel, inhuman or degrading treatment or punishment.

The Greens have received a petition from 41 inmates asking for an end to the regime. My office receives regular phone calls from a distressed inmate who regards the regime as inhumane, barbaric and maddening. This goes against the assertion by the Minister and others from Corrective Services that the patients prefer the regime. I do not for one moment doubt that the number of serious incidents may have declined. But by that logic the Minister would argue that all prisoners should be locked in their cells for 24 hours a day and thereby reduce the number of serious incidents to zero. Admittedly, it is necessary to confine inmates, but that confinement must be balanced with periods outside of cells and interaction with other human beings. This is part of the rehabilitation of all prisoners and certainly part of the treatment for mentally ill patients in forensic facilities. I also have received a number of communications from the nurses union and psychiatrists, all of whom say locking patients in their cells for 18 hours a day is not good health practice and is likely to exacerbate a patient's psychotic symptoms. In a letter dated 17 June 2008, David Crosbie, Chief Executive Officer of the Mental Health Council of Australia, states:

The new lock-down arrangements ... seem to breach your duty of care with regards to prisoners with a mental illness, in fact causing exacerbation and/or prolongation of their illnesses.

Isolation is the enemy of good mental health and your government must take steps to ensure that the health of the prisoners under your care is properly managed.

**The Hon. John Hatzistergos:** All orchestrated by Justice Action.

**Ms SYLVIA HALE:** The Minister interjects that this correspondence is all orchestrated by Justice Action. Someone has to stand up for the rights of these prisoners, who are the most vulnerable people in our community. They are not even prisoners; they are inmates because they have never been found guilty of a crime. They have been found unfit to plead. They are not guilty; they are not prisoners. It has taken Justice Action to say this is not good enough. It is deplorable that so much expert evidence condemns what the Minister is doing. He should be ashamed to maintain his stance.

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As David Crosbie said:

Isolation is the enemy of good mental health and your government must take steps to ensure that the health of the prisoners under your care is properly managed.

The New South Wales Nurses Association wrote to the Minister for Justice on 29 April. The General Secretary, Brett Holmes, said:

I would like to reiterate our opposition to the practice of locking down or "secluding" mentally ill inmates/patients and medical/surgical inmates/patients in the new Long Bay Hospital from 4 p.m. until the following morning.

While the practice may be consistent with the Department of Corrective Services (DCS) policy "The Way Forward", in our view a cost cutting exercise that imposes such deleterious consequences on the physical and mental health of people in your custody is absolutely unacceptable.

... it is neither safe nor humane to detain and isolate mentally ill persons for prolonged periods. There is a wealth of evidence that indicates isolating mentally ill persons exacerbates their symptoms and increases their risk of harm. They require human contact and interaction to improve their mental health.

Professor Paul Mullen, the Clinical Director of Forensicare—the peak government forensic mental health authority in Victoria—wrote to Justice Action on 13 May outlining the impact of isolation on someone suffering from a mental illness. He said:

The placing of mentally disordered individuals in effective isolation for a large part of the day is likely to be even more potentially distressing and disturbing than it would be to the general prison population ...

In people with serious mental illnesses an important element in coping with their active psychotic symptoms is the interaction both with mental health staff and with other custodial staff and fellow prisoners. Left to themselves the delusions and the hallucinatory experiences become the sole way in which they understand and experience the world. They lose both the reality checks

provided by everyday social interactions and the opportunity to obtain some kind of therapeutic assistance through interactions with trained professionals. The effect of this over any lengthy period is to potentially drive them further and further into their psychotic state.

We know that the lock-in regime is taking its toll. The Greens have received reports that the consumption of valium by patients has increased within the hospital, presumably as a way of coping with the stresses of longer lock-ins and consequent aggravation of symptoms. Kathryn Sullivan of the New South Wales Nurses Association briefed the crossbench on Tuesday and spoke of the increased use of medication and sedation at Long Bay as a result of the lock-in.

Ms Sullivan also noted other ways in which patients were being affected. Group meetings and appointments usually occur in the mornings, and the afternoons used to be the time for social interaction and the time for phoning family members and friends. No longer. To the physical isolation of being confined in a cell has been added the psychological and social isolation from being denied contact with the outside world. In persisting with the regime the Minister effectively dismisses the clinical evidence and refuses to acknowledge that he is inflicting an additional punishment on people who have found to be so unfit that they have never been tried and, therefore, have never been convicted of an offence. These patients have now been subject to an 18- hour a day lock-in since April—that is, for more than seven months.

Forensic psychiatrist Bruce Westmore wrote to the Minister on 8 May—five months ago. It should be noted that all this correspondence to the Minister occurred within four, six or eight weeks of the introduction of the extended lock-in. So even at that stage experts in the field were extraordinarily perturbed at what was happening. But still the regime continues. Dr Westmore stated in his letter to the Minister:

An important issue will be how long the new arrangements are to remain in place. If these administrative changes are likely to continue for weeks and months, then that is obviously of concern and the new policies should be reviewed. I do not know when the new hospital—

He is referring to the new forensic hospital—

expects to open but obviously the less restrictive an environment is for a mentally ill person, the better it is in a general sense for their overall mental state and general being.

Clearly, the Minister ignored Dr Westmore's warning: the lock-in period has continued and we still have no end in sight. On 16 May Alison Peters, Director of the Council of Social Services of New South Wales, wrote to the Minister saying:

NCOSS further believes these changes are in breach of NSW and International standards for the care of people with mental illnesses including the Charter of Mental Health Care in NSW which states that "every person in NSW has the right to mental health services that provide care in the least restrictive environment".

Again, the Minister has had months to end this regime but he has not done so.

The Government should end it now. Which one of us would relish spending 18 hours of every day locked in a tiny cell with only a television for company? At the least, most of us would emerge resentful and depressed. How much worse must it be for a person experiencing auditory or other hallucinations to be stuck in a cell unable to talk to another person or be ministered to by a health professional except in cases of dire emergency? As Dr Westmore noted:

Mentally ill people are vulnerable because of their mental illnesses and even prisoners who do not suffer mental illnesses develop psychological and sometimes psychiatric symptoms when they are placed in seclusion.

What the Government is doing is not even financially rational. Whereas it costs \$70,000 per prisoner per year to incarcerate an individual, at \$200,000 per patient per year the cost of confining forensic patients is almost treble that amount. Yet this inhumane, unconscionable regime is aggravating patients' symptoms and no doubt prolonging their confinement.

The Minister should end this regime today. He should immediately instruct the Commissioner of Corrective Services to return the afternoon shift of prison officers to its former strength and thereby enable patients to remain safely out of their cells until 9 p.m., as was the case until April this year. The Minister and the Department of Corrective Services are still responsible for the facility. It will take months for forensic patients to be transferred into the new facility. In the meantime the Minister and the Government should uphold and observe the law and ensure that inmates are not subjected to solitary confinement nor "subjected to any other punishment or treatment that may reasonably be expected to adversely affect the inmate's physical or mental health". I commend the motion to the House.

**The Hon. JENNIFER GARDINER** [11.47 a.m.]: This issue arises—

**The Hon. John Hatzistergos:** Do you know what you are talking about?

**The Hon. JENNIFER GARDINER:** You are patronising as usual. This issue arises due to the fact that the facility for forensic patients at Long Bay, being built next door to the prison hospital, is not yet fully up and running. Consequently, inmates are being kept in the prison hospital, which is performing a dual role: it is a prison hospital as well as providing accommodation for forensic patients. Those patients will fall under the sole management of Justice Health when the forensic hospital is up and running, and conditions are expected to be quite different from those that they encounter at the prison hospital. The Department of Corrective Services is the agency responsible for the prison hospital and Justice Health personnel have access to offenders in that hospital. The extended lock-in that has been in operation since April this year whereby patients with a mental illness are locked in their cells from 4 p.m. rather than 9 p.m. arose because of Corrections staffing issues.

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In September the Attorney General advised the House that the Department of Corrective Services was considering entering into a contract with Justice Health to undertake management of part of the hospital. He said that that would mean that the Department of Corrective Services would still be involved but that a greater proportion of responsibility would be assigned to Justice Health. He also said that a full risk assessment of the reform would be carried out by Justice Health and Treasury prior to the final decision being made and that the Government would ensure that the reform would not involve any additional cost being borne by taxpayers. Healthcare professionals would be primarily responsible for inmates inside the hospital and Department of Corrective Services officers would retain the important security roles of screening visitors, manning the towers, operating the gate and conducting external excursions.

In answer to a further question from Ms Sylvia Hale about the 9.00 p.m. lockdown for prisoners in the forensic unit, the Attorney General said that come November forensic patients would be moved into the forensic hospital and would be fully managed by Justice Health. At present the prison hospital operates according to the Department of Corrective Services routine and the lockdowns have been initiated as part of that. The arrangements relating to the hospital are the subject of assessments, and once they are completed the routine will be supervised by Justice Health.

The Opposition agrees that protecting the community from people who have been found to have murdered or viciously attacked others, including those who have committed sex offences, be they forensic patients or other inmates of our corrections institutions, must be a top priority for any government. Of course, forensic patients are those who have been found not guilty because of mental illness and who must be kept in a secure facility. The State's worst psychiatric offenders are housed in the Long Bay Correctional Complex, and those responsible for protecting the community—the Department of Corrective Services staff—are also entitled to have their safety considered.

There is conflicting information on the public record about the impact that such long hours of lockdown might have or are having on forensic patients at Long Bay. One psychiatric nurse at Long Bay Prison Hospital, Mr Ray Gregory, told *Stateline* in June this year that, anecdotally, there had been an increase in aggression at lockdown and opening up times. Patients become frustrated and bang on doors and shout through windows when they are locked in for so long. The problem is exacerbated when the patients have other symptoms. He pointed out that some patients have auditory hallucinations—that is, they hear internal voices. He said that is it not just a matter of giving patients tablets and expecting them to improve; that is a small part of mental health treatment. Social interaction and mental health assessments are a huge part of the therapies and they go hand in hand. He went on to point out that nurses are expressing great frustration. It is very difficult seeing a patient they have known for months or

even years deteriorating significantly and to be unable to intervene. He also said that delivering care through a locked door is not easy.

When he was asked by the interviewer on *Stateline* whether he had access to the patients after the lockdown Mr Gregory replied that nurses have to alert officers that they need a cell door to be opened. They might have to call another ward to get officers to assist with the patient and wait until three officers are present before opening the cell door. He agreed that that would be particularly difficult in an emergency. He said that the client group that he and his colleagues deal with are particularly vulnerable to self-harm and suicidal behaviour. Mr David Crosbie, the Chief Executive Officer of the Mental Health Council of Australia, said on *Stateline*:

Having worked in prisons, I can tell you that attending to people's mental health problems early is a very good investment, because if you don't, you end up with greater problems in the prison, not only around management, but around the need for acute care for hospital beds and more intensive supervision. Isolating them further by locking them up at four o'clock is only gonna make the situation worse and end up costing you more and costing the community more.

The transition from Long Bay prison hospital to the new forensic hospital is problematic and the Opposition agrees that the longer lockdown provisions are an unsatisfactory way to deal with forensic patients. The Opposition supports the motion.

**Mr IAN COHEN** [11.55 a.m.]: I will speak very briefly to this motion. I do not want to reiterate the fine speeches made by Sylvia Hale and Jenny Gardiner in support of the Greens motion. I did not plan to make a contribution to this debate but I am very concerned because I heard representatives of Justice Action explain the situation in a cross-bench briefing. As has been clearly enunciated, forensic patients are suffering an extreme form of solitary confinement. It is an unreasonable punishment, particularly given that many of the people concerned have not been convicted—they have been declared to be extremely ill. These people are not convicted criminals; they have serious mental health problems. As such, lockdowns are a cruel and unusual punishment. I like to think that we in New South Wales inhabit a civil society that looks at these situations and acts accordingly.

I understand that this situation is the result of a staffing dispute. To say that that is a reasonable excuse to leave forensic patients in solitary confinement for many hours is completely and utterly inappropriate in our society. I do not know how many members have experienced anything like what these people suffer. I spent a weekend in jail as a result of civil protest, so I have a fleeting knowledge of what it is like to be confined and to have no real mental stimulus. The people who confined me unreasonably denied me any reading material and I found it very

difficult. As privileged members of this society we should step back for a moment and look what is happening to our most vulnerable citizens.

It has been clearly enunciated that this money spent to solve the problem is an investment because the only contact people in that situation have is with prison officers who look into their cell to make sure they are not literally bouncing off the walls or self-harming. This State Labor Government is allowing that to happen for days, weeks and months. That is unconscionable. Those responsible for this regime are torturing the most vulnerable people in our society. I support the motion moved by Ms Sylvia Hale and I ask those responsible to take notice of the concerns that have been raised in this debate.

The Minister's comments encouraged me to contribute to this debate. He said the lockdowns were driven by Justice Action. Members of Justice Action are effectively representing prisoners in this State and they have a point because, unlike most members, they have experienced imprisonment. I remind members that the Movember campaign is underway to raise awareness of men's depression and other illnesses. One can only imagine how those conditions are exacerbated by this type of treatment. It is incumbent upon this Parliament to note the dire circumstances facing these individuals and to act. It is a simple matter of rearranging the work protocols.

**Reverend the Hon. Dr GORDON MOYES** [11.59 a.m.]: When Captain Cook, Joseph Banks and others came into what we now call Sydney Harbour, the island Mat-te-wan-ye—

**The Hon. John Della Bosca:** They came into Botany Bay.

**Reverend the Hon. Dr GORDON MOYES:** I know that, and they also mapped it. I do not want to get sidetracked. They discovered what they called Rock Island.  
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In 1788 Governor Arthur Phillip had a convict he described as mad and bad, one Thomas Hill, put on solitary confinement and on bread and water, and the island became known as Pinchgut. Long Bay prison hospital is no different. I ask the Minister, have we learned anything about the containment of psychotic detainees in the past 220 years?

Pursuant to sessional orders business interrupted and set down as an order of the day for a later hour.