

# Long Bay Correctional Complex Hospital Lock-in Hours (Proof)

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Business - Business of the House, Division, Motion

## LONG BAY CORRECTIONAL COMPLEX HOSPITAL LOCK-IN HOURS

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**The Hon. JOHN HATZISTERGOS** (Attorney General, Minister for Justice, and Minister for Industrial Relations) [2.31 p.m.]: One of the problems with motions in this House that emanate from that largely discredited organisation known as Justice Action is that they lack factual accuracy. It is incumbent on members of this House, when they choose to act, essentially, as Justice Action's ventriloquist dummies to ensure that what they are putting to the House has some cogency and truth. Unfortunately, this motion does not meet either of those two criteria.

Let me firstly deal with the motion and then I will pass to more detailed comments in relation to it. The first paragraph of the motion refers to inmates of the Long Bay prison hospital. Everyone knows that the current situation at Long Bay prison hospital is temporary. I say temporary because it is envisaged that on 28 November this year the new forensic hospital will commence to operate. When that occurs some of those persons detained in the Long Bay prison hospital who are forensic patients will move into the new forensic hospital under a regime that will be managed entirely by Justice Health. However, those inmates who remain in the prison hospital will not be forensic inmates but can include people, for example, who are aged and require services of the aged and rehabilitation unit or the medical unit, or who have other medical or mental health issues that do not necessarily qualify them to go into the forensic hospital. So the first paragraph of the motion concerns two groups of people—the forensic patients and those other patients who are in Long Bay prison hospital who are not forensic patients.

In effect, what Ms Sylvia Hale is attempting to say is that the persons in the Long Bay prison hospital who are not forensic patients should have somewhat greater privileges than persons in the rest of the correctional system. One of the things I intend to do once this debate is concluded is to send her comments, and those of other members, to the victims groups that represent many of the people who have been the subject of murders, rapes, bashings or other activities that have led to people coming into the custody of Corrective Services so the victims groups can see how they are being insulted by the vitriol that Ms Sylvia Hale regularly dishes up in this House and passes

for some form of informed commentary. Her interests are always with those people who offended rather than those people who are offended against.

**The Hon. Rick Colless:** But can't you separate them?

**The Hon. JOHN HATZISTERGOS:** Yes, they will be. On 28 November the forensics hospital will commence operation. I now move to the second paragraph of Ms Sylvia Hale's motion. It refers to the Premier's statement that the quality of health services provided will improve and forensic patients will no longer be housed in a correctional centre but in a health facility that will be purpose-built to cater for their needs. The next paragraph of the motion states:

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 [the] Premier's assurances in 2004.

That is factually inaccurate. The new hospital will start taking people from 28 November. I do not know what the new facility the member is talking about is. I imagine it is the new facility. The prison hospital is not the forensic hospital. Unfortunately, Ms Sylvia Hale does not seem to understand the difference between the two. There is a forensic hospital and there is a prison hospital. The new facility she is talking about is the forensic hospital and when it opens it will operate under the regime of Justice Health. The prison hospital is also new but it replaces the old prison hospital. We are being condemned because we are building two brand-new facilities—a brand-new prison hospital and a brand-new forensic hospital—which will provide a high standard of care for patients.

The forensic patients who were previously in the old prison hospital had to move across to the new prison hospital as a temporary arrangement so that the new forensic hospital could be built and become operational. Then those patients were to transfer across to the new forensic hospital. Ms Sylvia Hale says this is terribly urgent. Her motion has been on the notice paper since June but she gets to move it two weeks before the new forensic hospital starts to take its first patients. That demonstrates the sincerity of this whole argument. Then she moves that this regime happened to contravene a number of provisions. One is section 12.4 of the Department of Corrective Services Operation Procedure Manual. That is interesting, because that section refers to searching. I do not understand what this issue has to do with searching. I do not think Ms Sylvia Hale explained how this provision applies to anything she has had to say. She did not even raise the issue in her speech, and that is not surprising. This is what happens when you are given this sort of script by people who want to use and abuse you. The member corrals people into an argument when she does not know what she is talking about.

The motion also alleges a breach of section 153 of the Crimes (Administration of Sentences) Regulation 2001. That section does not exist: it has been repealed. The member did not say anything about that provision, and that is not surprising. It used to exist but it does not exist any more. In a moment I will come to what it used to say to see whether there was any substance in that provision. The next paragraph of the

motion refers to a person who wrote to me describing the new regime as maddening, un-therapeutic, destructive, oppressive, savage, barbaric, depressing and frustrating, and then it refers to some qualified psychiatrists saying that subjecting mentally ill people to long periods of solitary confinement can exacerbate psychotic or schizophrenic symptoms. We do not practise solitary confinement in Corrective Services. The member referred in her contribution to a letter that was written to me, no doubt emanating from similar complainants, by Mr Innes from the Human Rights and Equal Opportunity Commission. I replied to that letter on 30 June 2008, and said:

The operational routine at Long Bay Hospital cannot be categorised as segregated custody, nor can it be equated with an extended period of isolation as in the case of Scott Simpson. I am advised that after approximately 7 hours' daily exercise, inmates are secured in cells with large windows and good lighting, beds, intercom, television, personal possessions, reading material and an ensuite, including a shower, hand basin and toilet. Inmates can initiate contact with custodial or health staff via the intercom system at any time while they are in their cells. I am further advised that Justice Health staff have all-hours access to the forensic patients in Long Bay.

Then I go on:

It should be noted that the Mental Health Act 2007 is now in operation and that the Department of Corrective Services is ever mindful of its duty of care when a forensic patient's trajectory of care intersects with Long Bay Prison Hospital.

I enclose a copy of my answer in Parliament on 24 June 2008 to a question without notice on this matter.

Then I said this:

I would be happy to discuss the matter with you if it would be of assistance.

Yours faithfully

I did not receive a response to that letter from Mr Innes, which probably explains why we are debating this motion, which seeks to up the ante. Because of that lack of response Ms Hale now seeks to have the House call upon Mr Innes to investigate. Those are my preliminary and opening comments. I announced in this House as part of the new arrangements, once the transfers commenced, that we are in discussions with Justice Health about the management of offenders in relation to the prison hospital itself. I note that on 25 September Justice Action had this to say:

The NSW government has decided to transfer control of Long Bay prison hospital to the Health Department. We acknowledge the preparedness of the government to listen to the community's concern, said Mr Collins.

I cannot see the urgency for the motion. The new hospital will start taking new patients, we are investigating arrangements to transfer the prison hospital after the patients move into Justice Health, and issues with respect to due diligence and various requirements into costing and so on are now being analysed. As to the current arrangements, which have been the subject of significant focus, my advice is that there is no instance where a clinician has been unable to access an offender when they wish to do so.

**The Hon. Rick Colless:** An offender or a patient? I thought these people were patients.

**The Hon. JOHN HATZISTERGOS:** Some are offenders, some are patients and some are both.

**The Hon. Rick Colless:** So an offender and a patient can be mixed up together?

**The Hon. JOHN HATZISTERGOS:** That is correct. Some of those persons may be charged with criminal offences but they may be unfit to plead at the present time or they may have gone to court and the court may have found them not guilty on grounds of mental illness and they are therefore forensic patients. There are a variety of persons. I make this point quite clear: When I first was Minister for Justice and we announced that we were going to build these new facilities there was criticism, believe it or not. Some people said it was a waste of money. Those facilities are first class. They meet the needs of particular individuals, not only to ensure that their health needs are met but also to ensure that the public health system is not burdened with persons being transferred into other facilities. Members can see the so-called dingy, dark decrepit environment that Ms Hale talks about in this brochure that I now table.

### **Document tabled.**

Anyone can look at the accommodation that is provided. These cells have been designed to the highest contemporary standards. They provide natural light, air-conditioning, ensuite bathrooms, a television in each cell and cell-call systems to allow communication 24 hours per day. I take exception to the vitriol from some members who have never actually seen this accommodation and I invite Ms Hale and other persons to do so, but only in a group; I am not going to arrange a special visit for one person. If members wish, through the Standing Committee on Law and Justice or another committee, to go down and look at the facilities—

**The Hon. Christine Robertson:** She is on that committee.

**The Hon. JOHN HATZISTERGOS:** I have always said that I will not allow individual visits, but members of Parliament want to go as part a group, that right will be respected. Members can look at the facilities and if they do not return and tell me that they are a significant improvement on what used to be at Long Bay hospital, then frankly they are not being fair dinkum in this debate. By the way, Ms Hale herself admitted in the estimates debate that she understood that the facilities were very good.

**Ms Sylvia Hale:** The new facilities, but the trouble is they are not in those facilities. For the last six months—eight months almost—they have been locked in cells in the old facilities. They are not in the new facilities.

**The Hon. JOHN HATZISTERGOS:** This is further evidence that Ms Hale does not know what she is talking about. Not only that, she is not listening to what I am talking about. The old prison hospital no longer exists; it has been demolished. There is a brand-new prison hospital. These people are there, and there is a brand-new forensic hospital, which will start taking inmates. These people are not housed at an old facility; it is a brand-new facility, and that is the facility to which the member takes

exception and is saying people are subjected to solitary confinement.

**Ms Lee Rhiannon:** Minister, can you just clarify: Are they in the new facility right now?

**The Hon. JOHN HATZISTERGOS:** They are in the new prison hospital, yes.

**Ms Lee Rhiannon:** Right now?

**The Hon. JOHN HATZISTERGOS:** Yes, the new prison hospital. Here are the pictures of it; go and have a look at it. It is a brand-new prison hospital. One would think that people involving themselves in this debate and being self-righteous about what is occurring would at least know that we have a brand-new prison hospital.

**Ms Lee Rhiannon:** We know that.

**The Hon. JOHN HATZISTERGOS:** No, you didn't know that. You said it was the old facility a moment ago. Let me not be distracted by ignorant people; I will refer to the adverse incidents mentioned. Ms Hale asked questions and received responses about that. She was advised during the estimates committees that to determine whether or not there had been an increase in an adverse incidents associated with the new regime, we undertook an analysis of those types of incidents that occurred in the same period last year and we compared them to the new figures. In the same period last year there were 60 adverse incidents. In the period since the centre was opened that figure was reduced to about 30. Very specifically, in terms of issues involving assaults on staff, in the period last year before the introduction of the new regime there were 12 reported assaults on staff. That has been reduced to five in the equivalent period since the new regime was introduced.

*[Interruption]*

**The PRESIDENT:** Order! Members of the public should remain silent. I direct the attendants to clear the public gallery.

**The Hon. JOHN HATZISTERGOS:** The Department of Corrective Services has been closely monitoring the prevalence of adverse incidents in the hospital under the new regime. It quite rightly takes very seriously the safety of staff and the safety of offenders. As the Department of Community Services analysis of the figures between those two periods reveals that there has been a decrease in the number of adverse incidents, we believe that people are safer under this regime. I make the point that the regime is exactly the same as the regime that is operating currently in pods 19 and 20 of the Mental Health Screening Unit at the Metropolitan Remand and Reception Centre [MRRC], a facility jointly managed by Justice Health and the Department of Corrective Services.

The experience with that arrangement has been very positive. I am advised that staff from the screening unit at the MRRC have observed that the majority of behavioural incidents occurred between 4.00 p.m. and 9.00 p.m., by which time some inmates

become agitated and overstimulated. The new routine has now been in place for more than 18 months and this has coincided with a decrease in incidents of self-harm, assaults and disruptive behaviour. At the same time, I am advised, there have been no complaints from clinicians familiar with the MRRC.

Earlier this year the Department of Corrective Services had a good opportunity to see how offenders who had been living in the Long Bay hospital prior to the change in routine would respond to the new regime. That is when we moved 20 offenders from Long Bay prison hospital into one of the accommodation units at the MRRC that was operating on the 8 to 4 arrangements, with no adverse responses recorded. In fact, I am advised, the offenders indicated to staff that they wanted to remain there; they did not want to go back to the hospital. Those are my comments in relation to adverse incidents.

I have already referred to section 12.4 of the Operations Procedures Manual of the Department of Community Services, which deals with the searching of inmates and correctional centres, including the searching of transgender offenders, the searching of offenders by transgender officers, pat searching offenders, pat searching offenders by correctional officers of the opposite sex, and the searching of offenders with artificial limbs, bandages and dressings. I do not understand how that provision was even included in the motion. I imagine it was a typographical error, but I would have thought Ms Hale would pick that up before it manifested itself on the *Notice Paper*. Clause 153 of the Crimes (Administration of Sentences) Regulation 2001 was repealed on 1 September 2001 so is no longer in force. That clause deals with prohibited punishments such as being put into a dark cell or under mechanical restraint as a punishment or being subjected to solitary confinement, corporal punishment or torture.

Does Ms Sylvia Hale suggest that the practices we have at the prison hospital amount to putting people into dark cells or under mechanical restraints, or subjecting them to corporal punishment, torture or solitary confinement? Before Ms Sylvia Hale's puts her name to these sorts of motions—and, moreover, seeks to debate them—she at least has an obligation to explain to the House how these provisions she has taken such exception to, one of which has been repealed, are transgressed and what action she has taken in relation to them.

I will now deal with the mental health issues. The objects of the Mental Health Act are to provide for the care, treatment and control of persons who are mentally ill or mentally disordered; facilitate the care, treatment and control of those persons through community care facilities; facilitate the provision of hospital care for those persons on a voluntary basis where appropriate and, in a limited number of situations, on an involuntary basis; while protecting the civil rights of those persons, to give an opportunity for those persons to have access to appropriate care; and facilitate the involvement of those persons, and persons caring for them, in decisions involving appropriate care, treatment and control.

The Long Bay prison hospital satisfies those objects of the Act. The hospital provides care, treatment and control of persons who are mentally ill or mentally disordered,

including facilities required to implement this, and respects the civil rights of persons in its care and control who are receiving treatment. The Mental Health Act is an expansive Act, and it would be useful if Ms Sylvia Hale were to enlighten us as to the section or sections of it that she believes the Long Bay prison hospital contravenes. I could go into other issues, specifically in relation to the Universal Declaration of Human Rights; however, in light of the fact that I have already referred to the Human Rights and Equal Opportunity Commissioner's communication and my response to it, and, moreover, the fact that I have received no further communication from him, that is probably unnecessary. In short, this motion is not urgent because it was raised in April and has not come on for debate— [*Time expired.*]

**Ms SYLVIA HALE** [2.52 p.m.], in reply: The Minister has taken me to task for referring to section 154 of the Crimes (Administration of Sentences) Regulation. However, I refer the Minister to my opening remarks, in which I said that 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, which was formerly section 153 of the 2001 regulation, since repealed. The Minister also noted in his contribution that the 2001 regulation was repealed on 1 September 2008. I gave notice of this motion on 5 June. Since June I have asked questions about the issue, but we have received no response.

I concede that the prisoners have moved into the new Long Bay hospital, but they have not moved into the forensic unit. However, so long as they remain in the new Long Bay hospital they are subject to the ongoing regime of being locked in their cells for 18 hours a day. That is the issue we are concerned about. The Minister somehow suggests that I have no sympathy for victims. Indeed, I have every sympathy for victims. I concede that some of the inmates may have committed absolutely ghastly crimes—as the Minister said, rapes, bashings, murders, and so on. But the law has determined that they were of such unsound mind that they were either unable to plead because they were found to be unfit to plead or they were not guilty by virtue of their mental incompetence. What the Minister has said in that regard is irrelevant. We are talking about patients who are suffering extreme mental illness, and about subjecting them to a regime whose only outcome can be to aggravate, exacerbate and worsen the psychotic experiences they endure. I have the transcript of a *Stateline* program on 27 June 2008, to which the Hon. Jennifer Gardiner also referred. One of the prisoners in the unit rang in and was questioned by Deborah Rice, a *Stateline* presenter. The caller was asked:

So what have you got in your cell when you're locked in solitary confinement?

The caller replied:

I have six concrete walls plus a couple of boxes which I have my legal documents in; clothing in it basically. There is nothing, absolutely nothing, except, I mean, of course there is a toilet and a sink.

This fellow also said, "Look, I suffer from claustrophobia. For the first time in my life, because I am locked in my cell for so long, I am taking Valium. It's the only way." This is a fellow who has been judged to be criminally insane. I believe that the Minister in his response has tried to evade the issues. He did not address the issue of the Universal Declaration of Human Rights. I return to the *Stateline* transcript and what the Assistant Commissioner for Corrective Services, Luke Grant, had to say. Luke

Grant came out with the same line that the Minister has produced today: that somehow the number of serious incidents has decreased and this indicates how well the system is working. This is absurd. If you lock people who are clinically highly disturbed in their cells and claim to have fewer serious incidents, as I said in my opening remarks, by that logic you would keep everybody locked in their cells 24 hours a day and you would solve the problem. But, of course, you can only solve the problem at the expense of a complete abuse of any duty of care you have to those people or by ignoring their human rights. Luke Grant, the Assistant Commissioner of Corrective Services, said:

We had more time out of cells and we reduced it back in the centre when we observed that there were high levels of agitation and adverse incidents occurring in the afternoons. So we reduced the time out of cells and found a corresponding and very positive response which was a decrease in self-harm and also assaultive and other disruptive behaviours.

Deborah Rice asked:

So, was the change for therapeutic reasons or was it a work practices issue?

Luke Grant replied:

Well, I think that's a case of two things coming together at the same time, so we were looking at reduced hours out of cells. But the decision for that was not based entirely on an economic rationale. It was also based on the fact that surveys of inmates indicated that a number of them preferred to be removed from the face-to-face contact. That if you're in the correctional system it can be fairly chaotic, and a lot of people like to have the time in their cells as opposed to being out when they're exposed to risks that they may perceive exist in that environment.

The Government says: "These people are delusional; they are suffering from hallucinations. We will lock them in their cells." But, of course, that means that their delusions, hallucinations and psychoses are aggravated. Deborah Rice then asked Luke Grant:

But inmates do have the choice of going to their cells to remove themselves from the rest of the inmate crowd?

In other words, she asked him: If the inmates want to go back to their cells, surely they can do so? Luke Grant replied:

They can but can't lock their cells.

Somehow, the key thing is that they are acting in the interests of these inmates by locking them in their cells. Deborah Rice just could not accept this. She asked:

Are you seriously saying that inmates actually want to be in their cells for longer?

Luke Grant replied:

I am. And what I would say from the literature is that what is useful is to have a variety of experiences. Some experiences that provide a lot of stimulation and opportunities for quiet time. We're trying to provide that balancing.

DEBORAH RICE: 18 hours in a cell doesn't sound like a good variety though.

LUKE GRANT: Um, well, 18 hours in a cell does sound like a long time.

Minister, even your employees cannot accept what you are saying. Minister may not call it solitary confinement but the term is "secluded". These prisoners, inmates, patients, highly disturbed people, are secluded from 4 o'clock in the afternoon until the next morning—some 18 hours. We are supposed to believe that this is done for

the benefit of their mental health when the evidence of the nurses who deal with these people is that they are suffering as a result. To merely say, "We have moved them into a facility at Long Bay and we will eventually move them into the new one", is not acceptable. Because we know that will entail the 18-hour seclusion regime continuing for possibly another six months, and that is just not acceptable.

The Greens and Justice Action have no objection to the new facility. In fact, we all welcome the new facility. It is not a waste of time; it is overdue and it is an extraordinarily good facility—I believe it is world class. But what is not acceptable is the Third World standards that are adopted in running these facilities in such a way that tremendous damage is caused to the unfortunate occupants of those cells, and that is the point of my motion. It is basically incorrect and contrary to law; it is contrary to every notion of the way in which people with serious psychiatric illnesses should be treated. For the Minister to sit in this House and endeavour to justify the situation is shameful. People used to say after World War II—

[Time expired for debate.]

**Question—That the motion be agreed to—put.**

**The House divided.**

**Ayes, 18**

Mr Ajaka	Mr Gay	Mrs Pavey
Mr Clarke	Ms Hale	Ms Rhiannon
Mr Cohen	Dr Kaye	
Ms Cusack	Mr Khan	
Ms Ficarra	Mr Lynn	<i>Tellers,</i>
Mr Gallacher	Mr Mason-Cox	Mr Colless
Miss Gardiner	Ms Parker	Mr Harwin

**Noes, 21**

Mr Brown	Reverend Nile	Ms Voltz
Mr Catanzariti	Mr Obeid	Mr West
Mr Della Bosca	Mr Robertson	Ms Westwood
Ms Fazio	Ms Robertson	
Ms Griffin	Mr Roozendaal	
Mr Hatzistergos	Ms Sharpe	<i>Tellers,</i>
Mr Kelly	Mr Smith	Mr Donnelly
Reverend Dr Moyes	Mr Tsang	Mr Veitch

**Pair**

Mr Pearce	Mr Macdonald
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**Question resolved in the negative.**

**Motion negatived.**

