

**Dr Andrew Ellis**  
Forensic Psychiatrist  
Level 7  
Macquarie Chambers  
183 Macquarie St Sydney

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29 August 2021

Ms Emma Manea  
Solicitor  
Legal Aid New South Wales  
PO Box K847  
Haymarket NSW 1240

Dear Ms Manea,

**RE: THE IMPACT OF COVID-19 ON THE MENTAL HEALTH OF NSW PRISONERS**

**INTRODUCTION**

Thank you for requesting an updated psychiatric report to assist solicitors in advocating for clients and making submissions to the court when determining release applications, variations of bail and sentence matters, with regard to the potential impact of COVID-19 delta variant on their client's mental health. This report should be read in conjunction with my previous report of 9 April 2020, relating to the onset of the novel coronavirus pandemic. The recommendations in that report remain relevant.

You have asked that the report address specific questions which I will answer individually in the opinion section.

You have asked the report addresses for each question issues facing NSW prisoners, children in detention and detainees in immigration detention.

**CODE OF CONDUCT FOR EXPERT WITNESSES**

I, Dr Andrew Kenneth Ellis, acknowledge for the purpose of Rule 31.23 of the Uniform Civil Procedure Rules 2005 that I have read the Expert Witness Code of Conduct in schedule 7 to the said rules and agree to be bound by it.

**SOURCES OF INFORMATION**

- My previous report of 9 April 2020 and all materials used in that report

- CSNSW offender population report up to 15 August 2021
- Current justice health policies concerning covid-19
- Further information concerning Parklea CC
- Letter to Kirby Institute dated 23 August 2021
- Article <https://www.croakey.org/urgent-calls-for-new-south-wales-government-to-address-covid-risk-in-prisons/>

## OPINION

1. *What effect or impact if any, has the recent outbreak of the COVID-19 pandemic, in particular the delta variant, had or would be reasonably expected to have on the mental health of people in custody/detention in NSW?*

My previous answer to this question remains relevant. A pandemic will have mental health effects by two mechanisms. The first will be direct contribution to development of new psychiatric conditions in individuals by infection with a virus. The second will be the effects of social changes such as isolation, quarantine or service reconfiguration used to combat population wide infection. While there has been no definitive research to determine if these factors have indeed been determinative in prisons and other places of detention, review of the literature indicates that anecdotally across the world impacts of the current pandemic have been negative on prisoner and detainee mental health.<sup>1</sup> There is insufficient publicly available local data (such as current rates of suicide, violence, self harm and psychiatric morbidity in custody) to determine the present effects of the pandemic locally.

Currently there are cases of direct infection of detainees in custodial settings in NSW. There are cases of infection of workers who attend the facilities. There are more clear reports of infection and its effects in overseas jurisdictions.

Therefore based on experience from previous novel coronavirus pandemics, overseas jurisdictions and the current delta variant wave it would be reasonable to presume an increase in the development of post traumatic stress disorder and depression and subclinical symptoms of these conditions in those who are infected and recover physically, or are subject to quarantine, isolation and reduced mental health service delivery. There is

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<sup>1</sup> Johnson, L., Guttridge, K., Parkes, J., Roy, A., & Plugge, E. (2021). Scoping review of mental health in prisons through the COVID-19 pandemic. *BMJ open*, 11(5), e046547.

likely to be worse mental health status in those with pre-existing conditions. There is likely to be an increase in the rates of self harm, and possibly suicide in these populations.

There is one study showing decreased rates of self harm behaviours in youth detention early in the pandemic, coinciding with improved service provision at that time. It remains to be established if this success can be maintained with the second wave of delta variant.<sup>2</sup>

*2. In your opinion are there some groups in custody/detention which may be affected more than others with regard to their mental health, and in what way? Is there a more vulnerable group and if so who? Please elaborate on what steps should be implemented to address these issues? Would some client's have difficulties complying with directions regarding appropriate physical distancing requirements?*

The answer to this question remains the same as the previous review. Persons with major mental illness, cognitive disorders, youth, the elderly and persons from non-english speaking backgrounds remain vulnerable. Indigenous persons as a group are more vulnerable at both young age and aged over 45 due to exposure to multiple negative risk factors for ill health in general. It should be noted that the *Mental Health (Forensic Provisions) Act 1990* has been superseded by the *Mental Health and Cognitive Impairment Forensic Provisions Act 2020*. The previous recommendations for diversion of eligible persons for summary offences and the transfer of forensic patients from prison to hospital settings apply equally to the new act. The better outcomes for re-offending with diversion programs and forensic mental health treatment outside of prison remain relevant.

*3. Is there any additional literature since your last report which is relevant to the issue of mental health of prisoners/children/detainees who are kept in segregation or isolation?*

The literature on segregation of prisoners shows similar findings to earlier literature. The evidence indicates the practice is associated with worse mental health symptoms, greater risk of suicide and greater risk of self harm.<sup>3</sup>

*4. Can you comment on prioritising early release of prisoners/young detainees to parole, and if so, are there particular cohorts who should be prioritised?*

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<sup>2</sup> Kasinathan, J., Haysom, L., Andriotis, H., Wheaton, M., Lloyd, T., Langstaff, R., ... & Wilson, C. (2021). Keeping COVID out: a collaborative approach to COVID-19 is associated with a significant reduction in self-harm in young people in custody. *Australasian psychiatry*, 10398562211006125.

<sup>3</sup> Stephenson, T., Leaman, J., O'Moore, É., Tran, A., & Plugge, E. (2021). Time out of cell and time in purposeful activity and adverse mental health outcomes amongst people in prison: a literature review. *International Journal of Prisoner Health*.

The same recommendations are maintained as per my previous report. There was a significant reduction in both adult and youth detention populations from March 2020 without a commensurate increase in offending. A similar reduction has not occurred with the current wave, although I note custody levels have not risen to the same numbers as 2019. The previous recommendations for diversion of eligible persons and the transfer of forensic patients from prison to hospital settings apply. The better outcomes for re-offending with diversion programs and forensic mental health treatment outside of prison remain relevant. Release with conditions of mental health treatment is likely to obtain the best outcomes. While release can be a time of instability, with appropriate supports and risk assessment it can be safely managed.

*5. Would you be able to comment on the known and likely effect on conditions in which inmates/detainees are held resulting from COVID-19 procedures, namely to :*

*the physical conditions in which prisoners are held;*

*access to exercise;*

*access to training and education programs and other services;*

*access to medical care;*

*mental health*

The previous report's responses apply to this question. As the pandemic spreads amongst the community, workers are at greater risk of contracting the virus or becoming a close contact. In either circumstance workers are required to furlough to prevent further spread. Both custodial and health care staff shortages can impact upon access to health care and training/education/recreation activities. This is likely to apply variably across institutions, dependent on the presence of infections. The rates of vaccination amongst staff and prisoners will also likely impact on this access.

*6. Would you be able to comment on the known and likely effect on the conditions in which inmates/detainees are held that is likely to result if and when the delta variant spreads within NSW Correctional Centres and/or Youth Detention Centres, in particular as these relate to :*

*the physical conditions in which prisoners are held;*

*inmates' access to exercise;*

*inmates' access to training and education programs and other services;*

*inmates' access to medical care;*

*inmates' mental health and psychosocial needs*

I am aware that the virus has been spread, or suspected of spread within some NSW institutions. As per the previous report, this would lead to more stringent lockdown procedures and further reduced access to services. This is again likely to apply variably across institutions, dependent on the presence of infections.

*7. What new issues have arisen since your last report was provided, that are likely to impact inmates'/detainees' liberties due to the outbreak of the delta variant (e.g. existing restrictions on the availability of personal visits and likely restrictions on inmates' capacity to interact with other inmates and to engage in physical exercise)*

The use of prison wide lockdowns to contain spread has been applied to my understanding. Visits remain by audio-visual link only. With the extent of the current outbreak and statewide lock down, these conditions are likely to be longer than the restrictions imposed in the first wave of COVID in 2020.

*8. What risk does a sentence of full-time imprisonment served during the COVID-19 pandemic pose to a prisoner's/ health(including both physical and mental health)?*

If a prisoner is subjected to changed procedures, reduced services and quarantine without infection with COVID there is a risk of development of PTSD or depression over and above the usual risk of developing these conditions in prison. If they suffer an existing mental health condition, then reduced access to treatment is likely to lead to a worse prognosis, in addition to the effects of reduced services and quarantine. There is likely an increased risk of engaging in self harm or suicidal behaviour.

If infected with COVID 19 the risk of developing further psychiatric morbidity is raised, due to increased exposure to quarantine, the psychological impact of suffering a life threatening infection and risk of neuropsychiatric symptoms as discussed at question nine.

*9. What other issues have arisen since your last report with regard to COVID-19, for example 'long covid' and factors after infection? How are they relevant to the mental health of prisoners/detainees?*

As in previous respiratory pandemics, respiratory viruses have been associated with neuropsychiatric effects. This has been termed "long COVID" in the current pandemic. Some patients present with anosmia (loss of smell and subsequently taste), cognitive and attention deficits, new-onset anxiety, depression, psychosis, seizures, and suicidal behaviour. These present before, during, and after respiratory symptoms and are unrelated to respiratory insufficiency, suggesting independent brain damage. Follow-ups conducted in Germany and the United Kingdom found post- COVID-19 symptoms in 20% to 70% of patients, including young adults, and lasting months after respiratory symptoms resolved suggesting brain involvement

persists. This psychiatric burden could be expected in custodial populations infected with COVID 19, in addition to respiratory effects.<sup>4</sup> The exact effects and causes of these long term sequelae are yet to be determined at population and individual levels. The virus may enter the brain through the olfactory bulb, inflammatory processes can effect the brain, as can lack of oxygen.

*10. Please comment on the impact of service delivery in the current pandemic to those with mental health illnesses that require care, treatment including consultations.*

This has been answered in response to question five.

*11. Any other matters in addition to those already addressed that are relevant in your opinion to the mental health issues of prisoners, children detained in Juvenile Justice and detainees held in immigration detention relating to COVID-19?*

Nil further to add.

I trust this information has been of assistance to you. Please contact if there are further questions.

Yours faithfully,



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**Dr Andrew Ellis**

**B. Med MA MSc FRANZCP**

**Consultant Forensic Psychiatrist**

**Conjoint Senior Lecturer UNSW**

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<sup>4</sup>Boldrini, M., Canoll, P. D., & Klein, R. S. (2021). How COVID-19 affects the brain. *JAMA psychiatry*, 78, 682-683.