

# De facto life sentences for the mentally ill

## A forum on mental health

By Tania Evers

On Tuesday, 10 February 2004 the Ethics Section of the NSW Law Society, in conjunction with the Lawyers Reform Association, held a forum titled 'De facto life sentences for the mentally ill.' Tania Evers, barrister and Vice-President of the Lawyers Reform Association, who chaired the forum, provides the following overview of proceedings.

A panel of eminent speakers recently gathered at the Law Society to discuss the complex and varied issues arising from the trial, representation and detention of persons with mental illness or intellectual disability, who commit serious criminal offences. The forum concentrated on the difficulties caused by ministerial or executive discretion over the release and treatment of prisoners found 'not guilty by reason of mental illness' (forensic patients).

The forum was attended by a large number of barristers and solicitors as well as representatives of bodies such as the Mental Health Review Tribunal, the Mental Health Association, the Department of Corrective Services and Corrections Health, the Mental Health Advocacy Service, public defenders, crown prosecutors and solicitors from the DPP.

The consensus among the speakers was that ministerial discretion was inappropriate, and that the decision as to where such persons be detained and when or whether they be released, should not be politically controlled. Rather, it should reflect the informed recommendations of objective experts. Many of the speakers discussed the misconception in the community about mental illness and forensic patients in particular.

The Hon Justice John Dowd AO, Chairman of the Executive Committee of the International Commission of Jurists, and former attorney general was among the speakers. Justice Dowd's paper drew upon his experience as a judge of the Supreme Court to outline the difficulties encountered by the judiciary in dealing with mentally ill offenders. His Honour concluded that, in his view, ministerial discretion was not appropriate.

The next speaker was Robert Wheeler, Solicitor in Charge of the Mental Health Advocacy Service of the Legal Aid Commission of NSW. Mr Wheeler was very critical of the recent decline in the numbers of forensic patients to be approved for conditional release by the minister, despite recommendations by both experts and the Mental Health Review Tribunal that they be so released. Instead, the health minister's office is conducting its own internal reviews, which are not transparent and thus cannot be challenged or addressed by the patient or his/her legal representative.

Professor Duncan Chappell, President of the Mental Health Review Tribunal, presented the forum with facts, figures and outcomes for forensic patients in New South Wales. Professor Chappell's presentation used statistics to illustrate a recent

decline in the number of persons conditionally released into the community (despite the recommendation of the tribunal that they be released).

Three forensic psychiatrists also gave papers. Dr Jonathan Carne spoke about international and national standards for forensic psychiatry services, international conventions and the standard minimum rules for the treatment of prisoners as well as international and Australian practice.

Professor Greenberg, Director, Clinical Community Court Liaison, spoke about the complexities in dealing with forensic patients, issues relating to drug induced psychoses, the appropriateness of detaining forensic patients within a gaol system and questions of community safety.

Dr Stephen Allnutt, a forensic psychiatrist, gave an emotional account of the difficulties encountered by forensic patients within the prison system, the prevalence of mental illness within the gaol system and the review that has been conducted by himself and Mr Tony Butler on mental illness amongst NSW prisoners.

The final speaker was Dr Richard Matthews, Chief Executive Officer of Corrections Health Service and currently Acting Director General, Strategic Development at the NSW Health Department. Dr Matthews outlined the current government policy in relation to forensic patients and future directions of the government including a total review of the *Mental Health Act 1990*, including the Act as it applied to forensic patients (including a review of the ministerial discretion).

A resolution was moved and unanimously passed<sup>1</sup> by the large number of attendees (approximately 160) in the following terms.

This forum, representing lawyers, mental health workers, psychiatrists and community members, strongly recommends to the minister and the New South Wales Government that the law relating to mentally ill offenders be amended so as to transfer ministerial discretion to a specialist tribunal with ultimate judicial review, appropriately supported by mental health professionals and an adequately resourced mental health system.

In the light of the current review of this legislation by the Department of Health, it is very important that any views that barristers have on this subject, particularly in support of this resolution, be conveyed to the Minister for Health, the Hon Morris Iemma MP, as soon as possible.

Papers were produced by most of the speakers and have been posted on the Lawyers Reform Association web site [www.lra.org.au](http://www.lra.org.au) The papers include a brief analysis on the law relating to the mental illness defence and the question of fitness to be tried.

<sup>1</sup> Dr Matthews abstained