

Mental health and policing

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Abstract

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A. Introduction

This historical report focuses on selected reforms involving people with mental health issues and the impact of these reforms on police and policing (whether by police or others).

A1. Background

It may now seem incredible that the world's previous peak organization for disability advocacy, Rehabilitation International, had a policy from 1922 to 1980 that people with disabilities could attend but not speak at their conferences. This restriction was indicative of how people with disabilities were generally ignored prior to 1980. At that time, for example, most buildings, public toilets and modes of public transport were inaccessible by wheelchair (SBS News) and people with disabilities were rarely involved in employment or their own advocacy and services. However, people with disabilities became aware during the Civil Rights Movement of the 1960's and 1970's that they were facing challenges as a minority group. They protested their lack of voice at Rehabilitation International's 1980 conference in Canada and a breakaway organisation was formed, Disabled Peoples International (DPI). In 1981, DPI organised a conference in Singapore that signalled a paradigm shift from disability as a diagnosis (with treatment and care provided by medical and allied health professionals) to disability as a social issue. People with disabilities united to claim their rights to self-determination, self-representation and equitable access to the law and employment (PWD n.d.), and this trajectory has continued to the present day.

A2. Mental disability

This report focuses on people living in Australia with mental disability and mental health issues, and how they and the policing sector are affected by populist reforms. The jurisdictions considered will primarily be Commonwealth and Victorian. Studies have found a significant proportion of the population has mental illness, particularly in the prison population (Butler et al. 2006:272). 20% of the general population and 40% of Australian prisoners have had a mental illness or disorder in both Australia (DHHS 2019; ABS 2018; AIHW 2022b) and Victoria (DHV 2022; ABS 2018; Glass 2015:6).

Mental health and mental disability definitions vary markedly according to their purposes. There are clinical diagnoses for mental disorders (Scott et al. 2021; WHO 2022); legal definitions for advancing inclusion and participation of people with disability (s.4 *Disability Discrimination Act 1992* (Cth); s.3 *Disability Act 2006* (Vic); Appendix); policy-based definitions for healthcare (NDIS 2022); or question-based definitions for statistics (e.g. ABS

2018; ABS 2019; ABS n.d.; AIHW 2022). All are relevant to people with mental disabilities, but this report shall follow the Victorian Police (2021:5) in adopting the general definition of the *UN Convention on the Rights of Persons with Disabilities* (2006:4) because it incorporates social interaction and impact:

Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.

Several of these barriers to full participation shall be examined in the context of neoliberal populist policing.

A3. Neoliberalism and populism

‘Neoliberalism’ is an economic term with negative connotations and conflicting definitions (Rodrik 2017; Birch 2017) (a more neutral term is ‘laissez-faire economics’). Neoliberalism is often used to criticize conservatives such as Reagan, Thatcher and Trump who have tended to reduce taxes, social spending, union power and government intervention/employment while increasing defence spending, prison populations, competition, and isolationism/nationalism (yet with globalisation from freely flowing finances). Neoliberalism favours free-market capitalism, free trade, privatisation and deregulation of markets (Kenton 2021, Kenton 2022). Left-leaning governments, however, sometimes engage in aspects of neoliberalism, examples being Blair’s New Labour ‘tough on crime’ policies, expanded policing, ‘war on terror’ and ‘individual responsibility’ at the expense of individual liberties (Wheeler 2007; Reiner 2008; Silverman 2009), and the Andrews Government’s privatisation of Port of Melbourne, the Land Titles Office and public housing estates, as well as the recent partial privatisation of VicRoads’ registration and licensing (R&L) and custom plates business (a 40-year joint venture partnership with a private consortium – Cosoleto 2022 - which the Victorian Greens labelled a ‘neo-liberal shocker’ - 2022).

Neoliberalism is often associated with populism whereby leaders appeal to ordinary people rather than the establishment (Kenton 2022). Australia populists have often displayed a larrikin element, eschewing political correctness, procedures and immigration (Moffitt names Bjelke-Peterson, Palmer, Katter, Hanson, Lambie and Bernardi - 2017). Again, there

can also be left-wing populists, Whitlam (land rights and dismissal speech), Hawke (consensus and Americas Cup speech) and Rudd (morning show battles with Joe Hockey and national apology), and internationally Xi (Babones 2017), Putin (Gurganus 2017) and Lasn (Asquith 2016) being examples. The complex relationship between neoliberalism and populism is well illustrated by Donald Trump. As a billionaire property tycoon then host of *The Apprentice*, Trump portrayed himself to the public as a tough businessman. In the primaries and then against Hillary Clinton, he was a populist, connecting with alienated people by promising to 'drain the swamp.' It was then 'Mr Trump goes to Washington' but instead of battling corruption, neoliberals and bureaucrats, Trump engaged in at least 3,737 conflicts of interest including not divesting from his business interests as was the norm and making 547 visits to his properties (which attracted politicians and lobbyists from around the world – CREW 2021). Trump made a show of ripping up trade agreements and treaties and engaging in trade wars (which was contrary to neoliberal free trade), but he was ultimately an extreme neoliberal in most other ways, including lowering taxes on the rich (Bessner and Sparke 2017).

Greater economic growth may result from neo-liberal policies (Kenton 2022), but the shift from public to private/corporate power and responsibility also leads to more powerful corporations, higher prices and expenses for consumers, poorer services, poorer healthcare, poverty, homelessness and other social injustices (Kenton 2022; Rodrik 2017). Policing (including private policing, security and prisons) then becomes more necessary to preserve the power of the corporations, investor interests, property rights, contract enforcement and invisible-hand forces that control the free-market economy when government partially withdraws (Rodrik 2017; Majaski 2022). Policing maintains order in the face of reduced equality, stability, inclusion, democracy and justice; and reduced funding for psychiatric hospitals (many have closed), counselling, social work, shelters, housing and mental health teams (Rodrik 2017). The rich welcome this more intrusive risk-based policing, but so do the poor even though they are being more heavily controlled, because Governments and the media engage in fearmongering and mediated signals with regard to public, family and individual safety (Innes 2004:350-352), and 'Minority Report'-style 'PreCrime' policing (Spielberg 2002) becomes accepted in order to control increasing uncertainty in the world

(Ericson 2007:207), currently without evidence for or against the effectiveness of predictive policing (Meijer and Wessels 2019).

B. Authoritarian policing

B1. Populist neoliberal policing

Pratt (2016:1322) credits Feely and Simon with being among the first to recognise (in the areas of corrections, prisoner classification and parole revocation) a major shift from traditional criminal law and order (with punishment for crimes committed and rehabilitation as primary goals) to an actuarial risk management approach (with populist identification and control of potentially troublesome groups and individuals, often through increased reliance on imprisonment, ostensibly to protect public rights) (Feely and Simon 1992:449-450,456; Ericson and Haggerty 1997:5-14).

Populist neoliberal policing abounds in ironies. It has a tendency to usurp the very rule of law and democratic principles that it was established to protect and uphold. While endeavouring to encourage the general public to pursue their self-interest without government intervention, the government ironically steps in to control individual lives through authoritarian policing in ways that contravene the rule of law and democratic principles. The justification is said to be that risks are being managed for the greater good of the public. From the disability perspective, a little crack opens up in society each time a person with mental illness is treated as a risk rather than a person. As Julia Gillard said when reading the NDIS Bill for the second time, 'Disability can affect any of us and therefore it affects all of us' (*National Disability Insurance Scheme Bill 2012* (Cth)). As the police follow "tough-on-crime" directives with both punitive and preventative measures to supposedly stamp out crime, more and more people are ironically swept into criminogenic living arrangements such as prison, juvenile detention or back into a toxic household after exiting prison. Even if they avoid incarceration, they may continue in alienation, kept under surveillance and controlled by the elite, especially if in elevated risk categories such as being poor, homeless, a minority, mentally ill, physically unhealthy, with an intellectual disability, abused, angry, excluded, under the influence of drugs or alcohol, an ex-offender, friends

with a gang member or born into a criminal family (Dowse 2021:4,7; Young 2022; Hunter 2021). A further irony is that the perceived risks often arise because entrepreneurs and corporations are acting in their own interest and disregarding the poor and vulnerable. Whereas disregarding disadvantaged people can lose democratically elected governments votes, this action by a corporation can be ignored or even welcomed by self-interested shareholders. Populism could aid democracy (for example, when ‘people power’ removes corruption – Espiritu 2017), but history has shown that when populists start losing the backing of ‘the people’, they dangerously redefine the opposition as ‘not the people’ (e.g. the last days in power of Bjelke-Petersen - *The Age* 2005 – and Trump’s role in what he termed the ‘insurrection hoax’ – Riga and Payne 2022).

Traditional responsibility for not committing a crime has morphed into neoliberal responsibility for second-guessing where the government and police stand on one’s current risk rating in multiple areas (Peeters 2015:163,178).

B2. Institutions, damage and deinstitutionalization

Opened in 1867, the huge “lunatic asylum” at Ararat was one of three opened in Victoria to cater for the influx of thousands of gold-seekers (Burgin). Whether it was the harsh conditions when unsuccessful or the alcohol when successful (Burgin), Victoria had the highest rate of insanity in the world (Giese). In Victorian times, large ‘benevolent asylums’ were a way for society to show care but also signal that it was civilized. A drawing of it in the *Argus* shows a beautiful illustration of the Italianate buildings and gentlemen and ladies in fine clothes promenading through the gardens. The text reads, ‘The grounds are laid out as pleasure gardens for the patients’ (Illustrated Australian News for Home Readers 1869:92).

In 1887, the Asylum took control of the old Ararat prison and used it for the criminally insane. Any escapees were fired upon (Mount Alexander Mail 1901:3). Known as J-Ward, it was Victoria’s maximum-security facility for the criminally insane until it closed in 1991. In 1883, an Asylum patient out on probation, wrote a letter to the *Ballarat Star* complaining of gross and violent illusage (that is ‘ill-usage’ or abuse). She alleged treated patients with brutal conduct. The Inspector of Lunatic Asylums expressed the opinion that the patient’s

‘statements are not founded on fact’ and he enclosed a letter from... the superintendent of the Ararat asylum, throwing discredit on Mrs Cutler’s allegations’ (Geelong Advertiser 1883:3). The Inspector said he would investigate, although by today’s standards, the findings would appear already drawn. A Commission investigated the Asylum two years later and confirmed Mrs Cutler’s version (Advocate 1885).

This example illustrates the hypocrisy of the Victorian era, with mental health a taboo subject; a grand building to be shown to the world; and hidden patients inside being subjected to systemic abuse by attendants (Alford 2018).

Despite evolving over the next century with lobotomies, leucotomies and electro-convulsion therapies being discontinued and the Lunatic Asylum being renamed ‘Aradale’ (Alford 2018), the abuse of the voiceless and vulnerable residents continued until a major investigation by the Health Department in 1991, and the hospital was closed in 1994 (DHV 1991; Alford 2018).

The author of this report was brought up in Ararat. During the final 15 years of operations of the hospital, most Aradale residents were released into the community. Some have criticized this deinstitutionalization across Victoria in the 1980’s and 1990’s (e.g. Rosenberg 2015; Dowse 2021:8; Gooding 2017), but in Ararat it was considered a great success. This may have been due to pharmacological developments (Rollason 2017) and the fact that there was no Town Hall meeting, fuss or fearmongering from any section of the community prior to the change (Innes 2004:350-352). Such a large-scale release into the township does, however, put strain on local police, social workers and health workers (Dowse 2021:8; Gooding 2017).

B3. Positive example of neoliberalism

The Productivity Commission’s *Report on Government Services for 2011-2012* was released on 31 January 2012 (PC). The Australian Human Rights Commission (AHRC) quoted this report with regard to police services for people living with disability (n.d.:3.2). It may seem extraordinary that such a neoliberal organisation would be quoted, but the PC is not a self-

interested corporation. It does have a focus on money, but its purpose is to get the best value for Australian society so needs to listen to all stakeholders. PC was subsequently the driving force behind the NDIS (2011a; 2011b) and was thanked first in the second reading speech for that Bill (2012). The PC also delivered the comprehensive Inquiry Report into mental health, recommending as a priority that police receive increased funding for responding to mental illness-related incidents (2020:3,41) as well as recommending that mental health workers accompany police when they attend these incidents (2020:28-29,45-46). Journalist Bernard Keane (who is equally cutting towards both sides of politics) describes the PC as 'neoliberal in the best sense, the sense that demands better public policy to maximise outcomes for the community. The sense most often ignored by politicians' (2018).

B4. Negative example of populism

The populist heading, '[Killers, rapists and other criminally insane patients walking streets of Melbourne](#)' is repeated twice in the online Herald Sun article (McMahon and Dowsley). Pure fearmongering, the text is full of exaggeration, hyperbole and emotive trigger words, making the reader think that the Thomas Embling Hospital has engaged in a mass release of killers, rapists, arsonists and other criminally insane people. The basis for the article was that an inmate who was considered a low security risk was "allowed out on day leave" and stabbed two people after an argument, but further down it is revealed that the inmate was in a low-security part of the hospital at the time. The Minister immediately responded to the uproar by cancelling the day leave program and ordering a review. The opposition leader competed by saying the "safety and security" of the community must be put ahead of the rehabilitation of patients. There is no discussion of the rights of inmates or the process of slowly giving inmates more and more freedom so that they can be deinstitutionalized or reintegrate in society. Keeping inmates locked up may remove risk, but this would deny people with treated mental illness who have served their time and been clinically assessed as suitably low risk to be released on day leave according to their rights and rule-of-law principles.

E. Conclusion

Populism manipulates and divides society and neoliberalism fractures democracy and community.

Since the 1980's, advocates, and the Human Rights Commission itself, have called for people with disabilities to be treated as 'equal before the law.' Their legal capacity is not diminished by any diminished mental capacity. However, it is submitted that equal treatment may entrench disadvantage. People with disabilities are not well-served by authoritarian policing or populist, neoliberalism, both of which serve the rich and powerful and make little allowance for the poor and vulnerable. People with disabilities need policing and community actions that go beyond equal treatment by others, instead achieving self-determined equitable outcomes.

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