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WESTERN AUSTRALIA.

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REPORT

OF THE

ROYAL COMMISSION

ON

Claremont Hospital for the Insane

(Custody of Criminally Insane Persons)

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*Presented to both Houses of Parliament by His Excellency's Command.*  
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[SECOND SESSION OF THE SIXTEENTH PARLIAMENT.]

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ROYAL COMMISSION

WESTERN AUSTRALIA, } By His Excellency Sir James Mitchell,
TO WIT. } K.C.M.G., Lieutenant-Governor in and
JAMES MITCHELL, } over the State of Western Australia
Lieutenant-Governor. and its Dependencies in the Common-
[L.S.] wealth of Australia.

To Henry Doyle Moseley, Stipendiary Magistrate, Perth,
Western Australia:

I, THE said Lieutenant-Governor, acting with the advice
and consent of the Executive Council, do hereby ap-
point you Henry Doyle Moseley to be a Commissioner
to investigate, report, and advise upon the following
matters:—

1. The methods observed in connection with the
custody of criminally insane persons at the
Claremont Mental Hospital and the precau-
tions observed to prevent their escape;
2. The circumstances of the escape of Edward
Nicholas Kelly and John Edward Rowe on
the 7th day of November, 1936, from the
said Hospital;

And to make such recommendations as you may think
fit for improving the methods of preventing escape of
criminally insane patients from the said Hospital.

And I declare that you shall, by virtue of this Com-
mission, be a Royal Commission within "The Royal
Commissioners' Powers Act, 1902," as reprinted in the
Appendix to the Sessional Volume of Statutes for the
year 1928, and that you shall have the powers of a Royal
Commission or the Chairman thereof under that Act.

And I hereby request you, as soon as reasonably may
be, to report to me in writing the result of this your
Commission.

Given under my hand and the Public Seal of the
said State, at Perth, this 17th day of Novem-
ber, 1936.

By His Excellency's Command,

J. WILLCOCK,
Premier.

GOD SAVE THE KING !!!

Report of the Royal Commission on the Claremont Hospital for the Insane.

To His Excellency Sir James Mitchell, K.C.M.G. Lieutenant-Governor in and over the State of Western Australia and its Dependencies in the Commonwealth of Australia.

May it please your Excellency—

On the 19th day of November, 1936, I received your Excellency's Commission to investigate, report, and advise upon the following matters:—

- (1) The methods observed in connection with the custody of criminally insane persons at the Claremont Mental Hospital and the precautions observed to prevent their escape:
- (2) The circumstances of the escape of Edward Nicholas Kelly and John Edward Rowe on the 7th day of November, 1936, from the said Hospital:

and to make such recommendations as I might think fit for improving the methods of preventing escape of criminally insane patients from the said Hospital.

I commenced my inquiry on the 23rd day of November, 1936. A copy of the notes of evidence is attached hereto and my findings, expressed in greater detail throughout my report, may briefly be summarised as follows:—

- (1) Certain criminally insane persons to be transferred from Claremont Hospital for the Insane to Fremantle Prison.
- (2) Board of Specialists in Mental Diseases to decide place of detention of criminally insane persons.
- (3) Increased staff at Hospital for the Insane.
- (4) Immediate examination of all locks and check of all keys.
- (5) Members of staff to hand in keys when going off duty.
- (6) External doors to have double or treble locks and automatic locking.
- (7) Installation of clock system of check on vigilance of attendants in Wards.

(1) The methods observed in connection with the custody of criminally insane persons at the Claremont Mental Hospital and the precautions observed to prevent their escape.

It soon became apparent to me that in being given the responsibility of the care and custody of criminally insane persons under the conditions which at present obtain at the Hospital for Insane at Claremont, the Inspector General of the Insane has been placed in a position of difficulty and embarrassment.

As criminals—and possibly dangerous criminals—his wards should be kept in strict custody. Obviously this is of first importance. As insane patients, in whose mental condition it is desired to effect improvement, a system which would insure their safe custody would, from the point of view of mental treatment, appear inappropriate.

The Inspector General of the Insane is of the medical profession, concerned with the care and treatment of persons mentally affected; he is not a gaoler. The Hospital for the Insane is—or should be—a refuge for persons so affected—in every sense a hospital—and not a gaol.

The two forms of institution are in their nature so widely different that an attempted combination appears entirely unreasonable. But as conditions are to-day, an attempt is being made to use the Hospital for the Insane in such a dual capacity, and the attempt is no more successful than would be imagined.

But taking the conditions as they exist, my duty is to comment on the methods employed.

In the Hospital for the Insane at Claremont there are at the present time twelve persons classified as criminally insane. Eight were charged with taking, or attempting to take, life in one form or another, and either acquitted on the ground of insanity or convicted and subsequently certified to be insane, and the remaining four were charged with rape, unlawful wounding, indecent dealing and habitual drunkenness. In the last-mentioned case, that of a woman, the patient can scarcely be termed "criminal," but she has spent almost a lifetime of over-indulgence in alcohol for which extravagance she has received many terms of imprisonment. While in gaol she developed hallucinations which have apparently become chronic. Another inmate, a young man acquitted of a charge of murder on the ground of insanity, is being held at the Hospital for the Insane during His Majesty's pleasure; he is regarded by the Hospital authorities as sane, and has been so reported. This is an unusual case in that he seems very happy at Claremont; but he is given great freedom, and because of tubercular trouble is allowed to sleep in the open under no restraint. If he were not responsible for his crime he should not be punished; if he is not insane he should not be at Claremont Hospital.

But these are the twelve—and, according to their varying types of insanity, so they are accommodated in various parts of the Hospital in which it may be mentioned there is to-day a total of 1,320 patients.

These criminally insane persons are distributed in numbers varying from one to three in wards each containing from 73 to 143 patients. The majority of those classed as criminally insane are quiet, and need no close observation; they are considered to be definitely insane, and such treatment as is appropriate is given to them without the necessity of close confinement; but there are some who are violent and noisy, others restless and occasionally troublesome, and it is with the method of keeping these persons that I am chiefly concerned. There is no special part of the Hospital set aside for their accommoda-

tion, and the institution being, as it is, hopelessly overcrowded, there can be, in the present buildings, no special place for them.

In the majority of cases of the criminally insane, the methods of providing for their safe custody have, strangely enough, in the past, proved sufficient. One has a feeling that this has been due to the fact that the patients have not been inclined to escape. In five years there has really been only one escape from amongst the number of criminally insane, that of E. N. Kelly on 7th November last. (Rowe, who escaped with him, is not classified as criminally insane.) There was another case—in February, 1934—of a man 71 years of age who was awaiting trial on a criminal charge, but he was engaged at work in the dairy, and merely walked away; he was returned to the institution on the same day. But even the one case which I have mentioned has shown how easily possible escape is, and how inadequate, in a case of that kind, are the means of preventing such a happening.

The custody of patients in the day-time—when they congregate in the airing courts—is no doubt reasonably safe. From the airing courts they are taken to the dormitories after the evening meal, special escort being provided for those who require observation out of the ordinary.

Each of those cases requiring special observation is the subject of a "ticket" which denotes that special care is necessary because of suicidal or homicidal tendency or a possibility of attempted escape, and the "ticket" is handed on from one attendant to another as the various periods of duty cease. The "ticket" contains an instruction that the patient concerned is not to be allowed out of sight. Such a patient is searched more thoroughly than is usual on his arrival under escort in the dormitory; he divests himself of all his clothing, each garment being searched as it is taken off. If he wishes to use a lavatory—which is part of the dormitory—the rule requires that an attendant shall go with him.

When all the patients have reached the dormitory and are in bed, an inspection of all beds is made, all patients are checked and all doors examined to insure their being locked. This having been completed, one would imagine that little more could be done to provide for their safety, and possibly that might be so if one could be certain that all doors were properly locked, and that no keys were in the hands of unauthorised persons. I am afraid these are matters of which there can be no certainty. The lock of a dormitory door which figured largely in the evidence during my inquiry was found to be faulty, and although it was a double lock it could not be opened by a key of the special class which should open it, but it could be—and was in fact—opened by an ordinary key in the possession of one of the attendants. How long that lock had been faulty is not clear. It was discovered to be so on the morning after Kelly and Rowe made their escape.

The keys used appear to be somewhat fragile, but that would perhaps not be important if the locks on the doors were satisfactory. But it is important that there is no proper check on the keys. The store-keeper who is the officer responsible, has no knowledge of the number of keys there should be; all those to whom keys are issued keep the keys permanently in their possession whether they are in the institution or away from it. The keys are not all

numbered, and if a key is lost or worn out another is made to replace it, and if numbered, no regard is paid to the number (if any) on the key lost or worn out. Keys should, in no circumstances, be taken from the Institution. There should be a custodian of the keys in something more than name. There should be an immediate and complete check of all keys—the number in existence of each class being ascertained as well as the identity of the persons to whom they are issued. Members of the staff should hand in their keys when going off duty. I see no great difficulty in bringing this about. There is a lodge at the main gate in which an attendant might well be stationed, to whom all keys should be handed by the staff when leaving the Institution, and from whom they can again be obtained by attendants when resuming duty. If, by reason of the different exits and entrances in use, the suggested location is not convenient, some central depository should be established. I am not greatly concerned as to its location. It may be somewhat inconvenient to attendants; the imposition of proper precautionary methods may well cause minor inconvenience, but still be justified.

I should like to see, as a check on the vigilance of attendants at night, a clock system installed by which a responsible officer might satisfy himself at frequent intervals that the attendants were alert. It may be that in the wards containing troublesome patients, attendants are necessarily alert; vigilance should, however, be assured in all wards. The equipment is, I understand, already at the Hospital. It should, in my opinion, be used.

It is rather surprising to find that no bars are placed on the windows of wards which accommodate criminally insane patients. This would seem an obvious defect, but when one remembers that patients other than those classified as criminally insane are also in the wards, one appreciates the desire of the medical staff that the Institution shall in no way assume the appearance of a prison. The windows are certainly blocked to prevent their opening to a greater extent than about eight inches, but small people have been known to get through by breaking a pane of glass, and it would appear quite possible for a person of any size to escape by breaking the partitions dividing the panes. However, the majority are, I think, obviously not inclined to escape, and provision of a different kind having been made (which later will be recommended) for those whose cases demand special precaution, the windows should, I feel, remain as they are.

All external doors, *i.e.*, those giving access from wards to airing courts, and from airing courts to the grounds should be supplied with either double or treble locks requiring a master key to open them and the number of the master keys in existence should be the smallest number possible. Preferably, all doors should be automatic locking, *i.e.*, when slammed the first lock will engage so that even on the first lock the door cannot be opened without a key.

I have endeavoured to point out that even relying on careful watching by the attendants, the provisions at present existing for the custody of criminally insane patients are inadequate, and as patients of this class are distributed throughout six wards, I shall not, I think, be departing from the Terms of Reference if I draw attention more emphatically than by the passing comment I have already made, to the

greatly overcrowded condition of the Hospital generally. This state of affairs, apart from the discomfort of the patients, must be most prejudicial to complete vigilance on the part of the attendants. They have described to me what they have called a typical night in a dormitory, and I am convinced that they have more than sufficient to occupy their attention. It may well be that several patients require attention at the same time, and it must be remembered that these are not ordinary hospital patients. They are noisy—disturbing other patients; unreasonable—requiring to be humoured; exacting—sometimes to the point of violence, and unclean in their habits. In such conditions one can readily imagine that two of sixty patients in a dormitory could, by choosing the proper time, find it possible—if they had the means at their disposal—to escape without attracting the notice of two attendants busily engaged for the moment with other patients.

From this point of view, as well as from that of the attendants themselves, it seems to me that certain wards should be provided with an increased staff.

The system of lighting in the dormitory—a shaded lamp suspended over the attendants' table—would make observation less likely, and yet, again remembering that it is a dormitory for sick people it would not be reasonable to suggest any alteration in the lighting arrangements. To provide adequately against a patient's cunning will be to ignore the fact that he is in the Institution for mental treatment, and may tend to make his lot even more unhappy than it must be in existing conditions.

The overcrowding which I have mentioned affects all patients at Claremont whether criminally or otherwise insane, but to deal only with those who are my present concern it is my considered opinion that in being sent to Claremont, a criminal who was insane when committing the crime, and therefore at law not responsible, is being more harshly punished than his fellow criminal in Fremantle Prison, who committed a similar crime knowing at the time full well what he was doing.

(2) The circumstances of the escape of Edward Nicholas Kelly and John Edward Rowe on the 7th day of November, 1936, from the said Hospital.

In dealing with Clause (1) of the Terms of Reference, I have described generally the routine observed in the Hospital for the safe keeping of criminally insane patients, and have endeavoured to draw attention to some of the difficulties.

To consider now the escape of the two patients, Kelly and Rowe, it appears that the first unusual occurrence on the evening of the 7th November was the discovery by attendant Kimpton at about 6.30 or 7 p.m. that a door next to Kelly's bed in the upstairs dormitory of Ward 2 was open. Kelly and Rowe at this time had not been brought to the dormitory. This door gives access to a flight of stairs to the ground floor, from which floor another door leads in to an airing court. From the airing court a door opens into the Hospital grounds.

Kimpton says that the dormitory door being open was most unusual—he had never known it to happen before. He locked the door. Unusual, as it apparently was, to find that door open, he did not regard it as deserving of mention in his nightly report, even

though the door was later that evening again found to be open and two patients had escaped. Nor is it even clear that he mentioned the matter to the attendants who relieved him, and who made the discovery of the escape. I do not suggest that Kimpton was guilty of any active complicity in the escape. I mention this merely as evidence of the casual attitude adopted by him in carrying out his duties. The other attendant in the dormitory—Mayo—regarded the occurrence in the same casual way.

All the patients were in bed at 8.20 p.m., at which time all lights were turned out with the exception of the one over the attendants' table already described. Kelly visited the lavatory attached to the dormitory at about 9.30 or 10 p.m., and Rowe went there just before Kelly, so that between that hour and 11.30 p.m., when it was noticed that the two were not in their beds, and that the door next to Kelly's bed was open, it is impossible to say at what exact time they made their escape. Kelly and Rowe were both the subjects of "tickets." Kimpton says he had walked around the dormitory close to Kelly's bed about every half hour, and each time he saw, or thought he saw, Kelly in bed; but it is obvious, I think, that on one or more of his visits he had been misled by the arrangement of Kelly's bed clothes into the belief that Kelly was there. The exact time of the escape is, however, not important. The feature which causes concern is that two patients unlocked a door of the dormitory and walked out whilst two attendants were supposed to have them under the closest observation. I am prepared to agree that in the overcrowded state of the dormitory there are extenuating circumstances in favour of the attendants, that at the moment of escape, which was no doubt carefully chosen, their attention might well have been concentrated on other patients; but I find it difficult to understand how in his periodical close inspection of Kelly's bed attendant Kimpton was misled into a belief that Kelly was there.

The earlier discovery of his absence from the dormitory would possibly not have prevented his escape from the grounds, though it might indeed have resulted in his earlier capture: but Kimpton's failure to notice his absence when inspecting the beds shows a lack of vigilance on his part which cannot be regarded otherwise than seriously.

The other attendant—Mayo—was occupied with various patients during the evening but he noticed Kelly's bed each time he passed it and was misled just as Kimpton was. He must bear his share of the blame. There is a difference of opinion as to the condition of Rowe's bed: but whether it was arranged to mislead or otherwise, the attendants should have noticed his absence.

Regarding the means used to open the dormitory door, it appears, beyond doubt, that Kelly and Rowe must have been in possession of a key—and no doubt a master key. Three doors must have been opened because it seems clear that, after leaving the dormitory, they escaped from the ward by the door on the ground floor leading into the airing court, and from the airing court by the door leading into the grounds. The ground floor and airing court doors were locked again. Even supposing it were possible to unlock the doors by means of an improvised key—which seems extremely doubtful—it would not be possible, in my view, to lock the doors again by the same means: but supposing, if one may, that even that

could be managed, one can scarcely imagine two men intent on escape using valuable time on a task which, even if possible, could not be performed hurriedly. One can understand their not locking the dormitory door: to do so would be to risk attracting the notice of the attendants.

Kelly told the Inspector General that he had a key made of wire, but the opinion of those who have had the care of Kelly is that his statements are unreliable. Another patient said he saw Kelly with a key made of a rough piece of iron, but the statement of an insane person is of doubtful value.

It is impossible to form any conclusion as to the means by which Kelly and Rowe acquired possession of that class of key which would open the three doors, but I have drawn attention to what is, in my opinion, a slackness in the control of the keys, and with such a slackness in evidence, anything would be possible.

Two things only appear certain—that the men left by means of the three doors mentioned, and that they were in possession of a regulation key with which to unlock them.

My findings on the second clause of the Terms of Reference are to an extent inconclusive, but I think one's concern should be more for the future than the past.

In framing my report, I have endeavoured to keep three purposes in view:

- (a) The protection of society.
- (b) The relieving of the inmates of the Hospital for the Insane from association with criminals.
- (c) The securing, for the criminally insane, care and appropriate treatment.

The more closely I have considered these three purposes, the more apparent it has become to me that without additional buildings of a very different type from those now at Claremont, none of them can be achieved. I should prefer to see any further accommodation which may be contemplated at Claremont used for the greater comfort of the large number of patients whose proper place is undoubtedly a Hospital for the Insane. I have suggested precautions which should be taken wherever may be the future location of the criminally insane: if they are still to be housed at Claremont, there must necessarily be a limit to precautions if the Institution is to retain its present identity as a hospital, but I am convinced

that it is not fitting that all criminally insane persons should be kept in that Institution.

It is difficult to suggest a provision which would apply generally to all. For some, the Hospital for the Insane may be the proper place: for others, Fremantle Prison may be more appropriate. It is a question of type.

For those in whom the criminal tendency is more developed than insanity, I think Fremantle Prison is more suitable. From their own point of view, unless the insanity is undoubted, and the case requires continuous treatment, no one should be kept in such an atmosphere as exists at Claremont. Kelly's is, I think, an outstanding case which calls for transfer to Fremantle. It is agreed that he has violent tendencies, but there is a conflict of medical opinion as to his insanity. There may be others of a somewhat similar type. This will be for experts to determine by an investigation of each case.

I suggest that the portion of Fremantle Prison known as the "new division" be set apart for those criminally insane persons in whose cases a Board of Specialists in Mental Diseases recommends Fremantle Prison as the proper place of detention. The accommodation, subject to minor alterations, is ready at Fremantle. It is separate and apart from that used by other prisoners, and is completely self-contained. Its exercise yard which can, without difficulty, be converted into a garden—similar to those in other parts of the Prison—cannot be overlooked except from the hospital and a screen can easily be provided to remedy this defect.

Staff must be provided by the Inspector General, but in view of the small number of persons to be affected, this should not be costly.

In Fremantle Prison persons of the type mentioned will be safely kept without possibility of escape: the insane patients at Claremont will not be affected by association with them, and treatment (if necessary) can be given to those transferred to Fremantle under the direction of the Inspector General for the Insane.

I have the honour to be,

Your Excellency,

Your obedient servant,

H. D. MOSELEY,

Royal Commissioner.

15th December, 1936.