



Mental Health  
Review Tribunal

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**9 August 2017**

## **Submission to the Sentencing Council Review of victims' role in sentencing**

Thank you for extending the deadline to allow the Tribunal to make a submission for this review.

### **Background**

The Mental Health Review Tribunal (the Tribunal) has a statutory decision making function under the *Mental Health (Forensic Provisions) Act 1990* ("MHFPA") in relation to forensic patients. Part of that function involves the maintenance of a victims register.

Under s 76 MHFPA the Tribunal may receive submissions from victims - when a forensic patient is to be granted leave or conditionally released - in relation to a non-association order and/or the imposition of a geographical restriction on patient. The Tribunal may also inform itself as it sees fit, and this may include taking into account other information provided by registered victims to the Tribunal.

Tribunal hearings are generally open to the public under s 151(3) of the *Mental Health Act 2007*. Victims also have a right to attend Tribunal hearings in their capacity as members of the public. It has been the Tribunal's practice to facilitate this by linking victims into the hearing by phone or video link, in the event that they are unable to attend the hearing venue (which is usually a secure mental health facility or a correctional centre).

### **Victim impact statements should be available where the accused person is being dealt with under the *Mental Health (Forensic Provisions) Act 1990***

The Tribunal considers that a victim impact statement should be able to be made in Court in matters where the accused will become a forensic patient.

The *Crimes (Sentencing Procedure) Act 1999* s. 28 currently provides that a victim impact statement may be given to the Court after a person has been *convicted*. There is no conviction where the person was unfit to plead and dealt with by way of a special hearing or found not guilty by reason of mental illness. Therefore no victim impact statement can be made under the Act as currently framed.

The policy considerations behind allowing the primary victim or the family of a deceased victim are equally important where the accused is found not guilty by reason of mental illness or where a special hearing has been held and a finding made that, on the limited evidence available, the accused person committed the offence charged.

The *Mental Health (Forensic Provisions) Act 1990* is focused on the care, treatment and control of mentally ill persons. In this context, it is inappropriate to seek to acknowledge the distress of victims at Tribunal review hearings, or to involve them in the review process unless they are seeking a non-association condition or a place restriction condition or have

relevant information to offer. The involvement of victims in a patient's routine care and treatment reviews can inhibit the effective discussion of the patient's health and treatment, and may be traumatic for the victim.

In the Tribunal's experience, some victims regularly seek a far greater involvement in Tribunal proceedings and this can be inappropriate and contrary to the ongoing efforts of the forensic system to rehabilitate forensic patients. They often (and understandably) seem to be motivated by unresolved grief and loss, but the Tribunal is not an appropriate forum for the expression of these matters.

In my view it would be highly desirable if the right to present a victim impact statement at court were to be extended to such victims. This would give victims an appropriate opportunity to have their suffering, loss and grief publicly acknowledged and would rectify the inaccurate perception that the occasion for doing this is at Tribunal hearings.

### **Establishment of a Forensic Victims Support Unit as part of the Victims Services, the Ministry of Justice**

Where an accused is being dealt with under the MHFPA, the court process may be particularly difficult for victims. It is relatively rare for matters to be dealt with under the MHFPA and so those matters may be outside the ordinary practice of lawyers and witness assistance officers. Those assisting victims in these circumstances are unlikely to be familiar with the forensic system. There may also be lengthy delays if time is needed to resolve the question of fitness.

The rarity of these matters and the extra delays can exacerbate the distress of victims for a number of reasons.

Victims are sometimes given misleading information by lawyers or victim/witness support officers. In the Tribunal's experience, this has included statements such as "don't worry, he will be detained in high security for many years". Victims are understandably distressed when they find out, through the Tribunal processes, that this is not necessarily the case. Secondly, where the accused has been found not guilty by reason of mental illness, there is no fixed time frame within which the person will be able to have leave or release. The uncertainty about the future pathways of a forensic patient can be very difficult for victims.

Early, accurate information for victims is an important part of supporting them in their own recovery. The Tribunal has proposed and supports the establishment of a specialist forensic victims support unit within Victims Services to support people who may become victims of forensic patients. The workers in the specialised unit could become involved with victims from the time that an individual is charged, support the victim through the court system and later assist with Tribunal hearings. The proposal is modelled on the Queensland Health Victims Support Service and has been discussed at length with Victims Services NSW.



**His Honour Judge Richard Cogswell SC  
President**