



Mental Health
Review Tribunal

Building 40 Gladesville Hospital, Gladesville
PO Box 2019 Boronia Park NSW 2111
Tel: (02) 9816 5955 Toll Free: 1800 815 511
Fax: (02) 9817 4543
Fax: (02) 9879 6811 (Forensic only)
Website: www.mhrt.nsw.gov.au
Email: mhrt@doh.health.nsw.gov.au

Submission to NSW Department of Justice by the Mental Health Review Tribunal

In response to the discussion paper on

Royal Commission into Institutional Responses to Child Sexual Abuse: Criminal Justice Report

Victim Impact Statements

The Mental Health Review Tribunal (the Tribunal) wish to extend the circumstances in which a victim impact statement can be made to matters where the accused will become a forensic patient.

There are a number of matters where a person charged with historical sexual offences has become unfit, for example where an elderly accused now has dementia. If the person remains unfit the matter can be resolved in the court in New South Wales at a special hearing and the person may come under the jurisdiction of the Mental Health Review Tribunal after their matter is finalised by the court. Victims in those matters are currently not entitled to present the court with a victim impact statement.

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. 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 experience of the court process may be more difficult for a victim in these matters. One factor is the length of time needed to resolve the matter where a person has been found unfit. Another factor impacting on victims is that the court process for these matters is outside the ordinary course for lawyers and witness assistance offices. They are not as familiar with the process and so cannot explain it to victims with confidence.

The Tribunal supports the establishment of a specialist forensic victims unit within Victims Services to support people who may become victims of forensic patients. The workers in the specialised unit could become involved from the time of charging, support the victim through the court system and assist with Tribunal hearings.

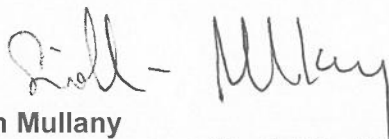
The Mental Health Review Tribunal has a limited statutory responsibility under the *Mental Health (Forensic Provisions) Act 1990* (MHFPA). Under s 76 MHFPA the Tribunal may receive submissions from victims when a forensic patient is to be granted leave or conditionally released in relation to a non-association order and/or the imposition of a geographical restriction on patient.

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 seem to be motivated by unresolved grief and loss, but the Tribunal is not an appropriate forum for the expression of these matters.

As Tribunal hearings are generally open to the public under s 151(3) of the Mental Health Act, 2007, victims 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).

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. 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 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.



Siobhan Mullany

Forensic Team Leader | **Mental Health Review Tribunal**

Building 40, Digby Road, Old Gladesville Hospital, Gladesville 2111

Tel 02 8876 6315 | Fax 02 9879 6811

smull@doh.health.nsw.gov.au

www.mhrt.nsw.gov.au

29/9/17