

## **Peak Body’s Concerns Ignored Regarding *Victims Bill***

The MHCC has made three submissions (October 2017, September 2018 and October 2018) about the now passed bill, which echo key concerns outlined by Justice Action regarding the potentially detrimental implications of not disclosing Victim Impact Statements (VIS) in the rehabilitation process of forensic patients.<sup>1</sup> Their concerns were not addressed in the now-passed Bill.

The Council suggests that continued interaction with victims may impact the recovery and safety of forensic patients’ within the community. The MHCC states “ongoing presentations by victims at the six month review of the patients progress...may result in unnecessarily traumatic encounters between parties.”<sup>2</sup> Victims SA highlights the significant risks of ‘secondary victimisation’ – in that poor treatment intensifies negative feelings, which can lead patients to indicate symptoms of Post-traumatic Stress Disorder that consequentially hinder the rehabilitation process.<sup>3</sup> If the reforms seek to empower victims, it has evidently failed in fulfilling this purpose as such a process voluntarily initiates the recurrence of distress and traumas experienced by victims. Booth reciprocates such a notion in his description of the expressive function a VIS possesses for the victim, noting how this purpose is perverted when the VIS becomes a means to examine harm. He accentuates how VIS consequentially becomes another piece of evidence, rather than an accurate reflection of the ‘feelings and loss’ felt by the victim.<sup>4</sup> This assertion is implicitly touched upon in the MHCC submissions.

The MHCC broadly agrees with changes made to terminology, which more accurately describe mental health and mental illnesses within the framework of the law. Yet the organisation highlights that the exact wording of this terminology requires improvement. The MHCC is also pushing for better treatment of forensic patients and greater coordination of resources and support to prevent reoffending or abuse of forensic patients, upon reintegration back into the community.

Whilst the MHCC acknowledges that there are benefits in facilitating victims to express themselves, the MHCC disagrees with accepting submissions of VIS to the tribunal in cases involving forensic patients. The crux of the August submission accentuates a major point of contention, in that implementing this change is

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<sup>1</sup> MHCC ‘Submission - NSW Health Review of the Mental Health Tribunal in Respect of Forensic Patients: Discussion Paper’ (Submission, October 2017) <[https://www.mhcc.org.au/wp-content/uploads/2017/04/mhcc\\_sub\\_mhrt\\_forensic\\_review\\_2017\\_v\\_f\\_2017\\_10\\_06.pdf](https://www.mhcc.org.au/wp-content/uploads/2017/04/mhcc_sub_mhrt_forensic_review_2017_v_f_2017_10_06.pdf)> (‘October 2017 Submission’); MHCC ‘Submission: Mental Health (Forensic) Provision Amendment (Victims) Bill 2018’ (Submission, 5 September 2018) <<https://www.mhcc.org.au/wp-content/uploads/2018/09/Submission-NSW-DoJ-MHCC-Forensic-Provisions-Bill-2018-v.5F-05.09.18.pdf>> (‘September 2018 Submission’); MHCC, ‘Department of Justice: Review of draft Regulations related to the Mental Health (Forensic Provisions) Amendment (Victims) Bill 2018’ (Submission, 18 October 2018) <<https://www.mhcc.org.au/wp-content/uploads/2018/10/Submission-Forensic-Victims-Regs-v.1F-18.10.18.pdf>> (‘October 2018 Submission’), respectively.

<sup>2</sup> September 2017 Submission, above n 1.

<sup>3</sup> Victim Support Service, ‘Transforming Criminal Justice: Putting People First’ (Submission, March 2015) 6.

<sup>4</sup> Virginia Booth, ‘Victim Impact Statements and Sentencing Homicide Offenders: A Critical Analysis of Recent Changes to the *Crimes (Sentencing Procedure) Act 1999* (NSW)’ (2018) 41(1) *University of New South Wales Law Journal* 130, 153.

inconsistent with the existing procedures in non-forensic cases. The submission draws emphasis to the fact that “victims do not have the right to make submissions at any point where decisions are being made about an accused or convicted person.”<sup>5</sup> The new changes propounded by the bill consequentially conflict with this standard, and therefore the organisation has noted that it “does not support a different standard because a person has mental illness.”<sup>6</sup> Victims in the criminal justice system may only make a VIS at leave or release applications.

Ultimately, the suggestions of the MHCC, outlined in their submissions, form the crux of a parallel perspective to that of Justice Action’s stance. Both groups have raised significant concerns regarding the amendments of the Bill. These amendments constitute contradiction in their purpose, in that despite seeking to empower victims, it facilitates for victims to experience re-induced trauma and distress through unnecessary intervention of victims in the rehabilitation of forensic patients. Consequentially, the amendments of the bill conflicts existing procedures and ultimately undermine the restorative justice purpose of VIS. Whilst it is disappointing to see that neither of the organisations’ concerns were addressed in the amendments, Justice Action will continue to fight for forensic patients to see the VIS.

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<sup>5</sup> MHCC, ‘Submission: Mental Health (Forensic) Provision Amendment (Victims) Bill 2018’ (Submission, 4 August 2018) 2 < <https://www.mhcc.org.au/wp-content/uploads/2018/08/NSW-DoJ-MHCI-Forensic-Provisions-Bill-2018-v.4F-01.08.18.pdf>>.

<sup>6</sup> Ibid.

## Reference List

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Virginia Booth, 'Victim Impact Statements and Sentencing Homicide Offenders: A Critical Analysis of Recent Changes to the *Crimes (Sentencing Procedure) Act 1999* (NSW)' (2018) 41(1) *University of New South Wales Law Journal* 130