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Submission: Mental Health (Forensic) Provision Amendment (Victims) Bill 2018

The Mental Health Coordinating Council (MHCC) thanks the NSW Department of Justice for inviting us to provide a further submission to the review in relation to proposed amendments now contained in Stage 1 of the reform process, namely a Bill making discrete victims' focused amendments to the *Mental Health (Forensic Provisions) Act 1990* (MHFPA).

Our principle concern is that the Bill provides for a broader power for victims of forensic patients beyond what are the equivalent rights for victims of sentenced prisoners - s.74A provides that they may make submissions on leave and release matters. However, victims are not limited to making submissions that just seek non-association and geographical restrictions. The Bill reads inconsistently in that s. 76M (3) (b) provides that victims may make a submission at all Tribunal reviews.

We also note that s. 76M (3) (c) is imprecise as to what form submissions may take. This is likely to lead to ongoing presentations by victims in person at every 6 month review of a patient's progress. This may result in unnecessarily traumatic encounters between parties.

MHCC query reference to Schedule 2 *Amendment of Crimes (Forensic Procedures) Act 2000* No 59. In investigating s 88 it would appear that there is a later amendment act, the *Crimes (Forensic Procedures) Amendment Act 2009* No 111, which indicates that it deals with the same issue of destruction of records.

As mentioned in our submission earlier in August we reiterate recommendations concerning language, particularly objecting to the word "suffering" used in Section 40 Objects (b) and used frequently throughout the draft Bill. We suggest this be amended to "experiencing" in line with contemporary 'recovery' terminology.

We also have concerns about the proposed legislative change to the *Charter of rights of victims of crime* (in s.3 of the MHFPA (Victims) Bill) which is to introduce the word "unlawful" into that Charter which is not used elsewhere in the Bill. We make the point that forensic patients have not committed an "unlawful act" because they have not been found guilty of that act.

MHCC are pleased to see victims' rights expanded more generally elsewhere in the Bill which now aligns more comfortably with the Charter of rights.

MHCC express their willingness to be consulted further in regards to this and other related reviews. For any further information regarding this submission please contact Corinne Henderson, Principal Advisor/ Policy and Legislative Reform. T: 02 9555 8388 #101 E: corinne@mhcc.org.au



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