

**REVIEW OF THE  
NEW SOUTH WALES  
FORENSIC MENTAL HEALTH  
LEGISLATION**

August 2007

Hon GREG JAMES QC



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Attorney General

The Hon Reba Meagher MP  
Minister for Health

The Hon Paul Lynch MP  
Minister Assisting the Minister for Health (Mental Health)

1 August 2007

Dear Ministers

In 2006, your predecessors required me to conduct a review of Chapter 5 of the *Mental Health Act 1990* (NSW) as it relates to forensic patients, and related matters arising under the *Mental Health (Criminal Procedure) Act 1990* (NSW). The terms of reference for the review required me to consider specific issues which had remained unresolved after the lengthy review of the *Mental Health Act 1990* which produced the *Mental Health Act 2007*. I was asked to convene and chair a Taskforce in relation to those matters and to examine options for reform and to consult stakeholders and the public on those options. I was also asked by the Minister Assisting the Minister for Health (Mental Health) to conduct an Administrative Review of the Mental Health Review Tribunal in accordance with terms of reference then provided. Those reviews have complemented each other. I have conducted both reviews and will forward my report on the Administrative Review under separate cover.

In conducting this review, I issued a Consultation Paper which built on earlier consultations on the proposals for the 2007 Act. That Paper outlined current law and practice, and options for reform, in relation to the matters under review. It was released in December 2006 and widely circulated. Some fifty formal submissions were received in response, (the content of two of which was confidential), further I have conducted scores of consultation meetings with doctors, staff, patients and

others involved in all aspects of the forensic mental health systems in New South Wales and elsewhere receiving both open and confidential submissions. I am deeply grateful for their contributions.

I would also like to thank the Hon Dr Brian Pezzutti and those who participated in the Legislative Council Select Committee on Mental Health's inquiry into mental health services in NSW (2002) and the NSW Law Reform Commission's Inquiry on People with an Intellectual Disability in the Criminal Justice System (1996), as well as those who provided assistance and submissions to the review of the *Mental Health Act 1990*. In preparing this report I was able to build on all of that work.

I have also convened the Taskforce which comprised 25 members, appointed by the former Minister Assisting the Minister for Health (Mental Health) to represent a number of important stakeholders, agencies and organisations and I have considered the issues raised by the Terms of Reference and the content of the submissions with each participating member. I am most grateful for the contributions made by those members and the agencies they have represented.

The central issue considered in this review is the appropriate authority to make decisions as to the terms and conditions of detention and release of forensic patients. This Report recommends that the resource intensive and lengthy process of control of patients by executive discretion (which NSW adopted from English law), supported by six monthly cycles of review and recommendation to the Minister or the Governor-in-Council, be replaced with a more continuous monitoring and less cumbersome structured system operating through a Special Forensic Division of the Mental Health Review Tribunal, presided over by a judge or former judge making determinations subject to appeal to the NSW Supreme Court in the public interest. The report also makes various other recommendations regarding the detention, care, treatment and release of forensic patients, including as to the role of victims in the process.

I am grateful for the assistance of many people in preparing this Report, including Mr John Feneley, recently appointed as a Deputy President of the Tribunal (formerly Assistant Director-General, Attorney General's Department). Dr Richard Matthews (Deputy Director-General, NSW Health), Deputy President Maria Bisogni, the other Deputy Presidents, The Registrar Rodney Brabin, the Forensic

Team Leader Ms Sarah Hanson, the Forensic Assistant Ms Pauline Brady and other members of staff at the Tribunal, and all of those who provided submissions and participated in consultations for this Review.

I particularly wish to acknowledge the dedication and skill of my Executive Assistant Ms Margaret Lawrence and the invaluable contribution of Ms Gaby Carney, Principal Policy Officer, who was seconded from the Department of Premier and Cabinet for some weeks to produce the Consultation Paper and later to assist in the research, drafting and writing of the Report. Ms Lawrence undertook the production of the final report and did so with marked ability and conscientiousness. Ms Carney worked with me as an assistant and a colleague and shouldered much of the burden of the preparation of the Consultation Paper and the Report. My gratitude for her assistances reflects the skill and conscientiousness she brought to assisting me which allowed me to undertake the extensive consultation process, the review and the writing of the Report and to continue to fulfil my duties as President of the Mental Health Review Tribunal while doing so.

I enclose my report.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Greg James', written in a cursive style.

The Hon Greg James QC

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## **Executive Summary**

### **The Review**

This Review arose out of a broader review of the *Mental Health Act 1990* (NSW), which commenced in 2004. Due to the complexity of issues involved in the area of forensic mental health, and the range of reform options available, the NSW Government considered that further work was necessary to determine the appropriate way forward. Accordingly, the Hon Greg James QC was required to conduct a review of Chapter 5 of the *Mental Health Act 1990* (NSW) as it relates to 'forensic patients', and any related matters arising under the *Mental Health (Criminal Procedure) Act 1990* (NSW) and furnish this report.

In December 2006, the Review released a Consultation Paper which outlined the current law and practice, and options for reform, in relation to the matters under review. The Review received 50 submissions in response to the Paper, and conducted scores of consultation meetings with stakeholders involved in all aspects of the forensic mental health framework. Mr James was also required to convene and consult a Taskforce comprising 25 members, representing various agencies and organisations which has provided input at various stages of the Review process.

In early 2007, the NSW Parliament passed the *Mental Health Bill 2007* (NSW), which is the culmination of the broader review. When it commences operation, the *Mental Health Act 2007* (NSW) will repeal the *Mental Health Act 1990* (NSW), and will transfer the Chapter 5 provisions dealing with the detention, care, treatment and release of forensic patients into the *Mental Health (Criminal Procedure) Act 1990* (NSW), with some amendments.

### **Overview of the Report**

The core issue for the Review was whether the existing system requiring executive decision for the care, detention, treatment, leave and release of prisoners transferred into hospital as mentally ill and of persons found not guilty by reason of mental illness or unfit for trial should be replaced. The Review was also asked to

examine the appropriateness of structures for the determination of such matters and for appeals from those determinations. In particular, the Review was to consider public safety and the role of victims in the forensic review process.

### **Executive Discretion**

The present system of exercise of Executive discretion for decisions on the care, detention, treatment, leave of absence and release of forensic patients:

- Results in the detention of unconvicted patients in gaol so long that in many cases that detention extends longer than public safety would require and also longer than any sentence which would have been imposed had the patient been convicted and sentenced.
- Such detention often extends longer than required by any clinical necessity for treatment which can often be safely and effectively given by existing Health Department agencies in the community.
- The system is cumbersome, lengthy, overly bureaucratic, resource intensive, operates without transparency or accountability, without conformity to the general principles of mental health legislation, and is liable to administrative challenge. It has been the subject of widespread criticism. It is out of accord with other systems for care and treatment of forensic patients in Australia and elsewhere.
- It is counterproductive to appropriate detection and treatment of those with mental illness coming into the justice system.
- The system presents difficulties for patients, families, carers and victims who need a formal transparent process in which to express their views and concerns. The present process can be anti therapeutic for patients and distressing for other affected persons.

### **The appropriate authority**

Consistently with the amendments to the Mental Health (Criminal Procedure) Act 2005 which conferred power on the courts to release forensic patients and to ensure safety and public accountability, the Executive discretion should be replaced by a specially constituted division of the Mental Health Review Tribunal

holding public hearings, presided over by a judge or former judge, and including members with particular qualifications in forensic mental health.

That Division of the Tribunal should conduct regular reviews and monitor forensic patients in detention and in the community. It should determine care, detention, treatment, leave and release according to clinical requirements and public safety considerations. It should have wide powers to obtain information and should be required to have regard to independent risk assessments as well as specified statutory criteria when determining release. It should have power to call up patients for non-compliance with conditions of release and be provided with wide powers to impose conditions requiring treatment or hospitalisation. It should be able to release patients on condition that they are treated in the civil mental health system.

### **Criteria for Release**

The Review also recommends a more formal framework for making decisions to conditionally or unconditionally release forensic patients, which would more comprehensively address the public safety and other issues concerned. This includes an expanded legislative test that would require the Forensic Division to be satisfied, on the available evidence, that:

- The safety of the patient or any members of the public will not be seriously endangered by the person's release;
- Effective care and treatment of a less restrictive kind (if any is needed) is reasonably available to the patient within the community; and
- Reasonable arrangements have been made to ensure that any necessary care and treatment will be given within the community.

The legislation should also include a list of matters to which the Forensic Division must have regard when making these decisions, including the report of at least one qualified forensic psychiatrist or psychologist (as appropriate) who is independent of the treating team and has recently examined the forensic patient to determine as to whether the safety of the patient or that of any members of the public will be seriously endangered by the persons release.

## **Appeal**

Having regard to the public interest, the Attorney-General and the Minister for Health should have the right to appear and make submissions to the Tribunal and to appeal its decisions to the Supreme Court.

## **The Law Reform Commission**

The Review noted the discriminatory and adverse treatment in the criminal law of those suffering from mental illness and other conditions not justified by clinical or safety considerations. The application of laws and procedures which may have drastic effects on liberty, but no value for treatment, presently turn on classifications of mental states derived from nineteenth century jurisprudence, long criticised and widely thought to be completely outmoded.

The Law Reform Commission is already concerned with inquiring in to part of the relevant law. It should be given a reference or expanded reference to consider the concepts of mental illness, mental condition, intellectual disability and unfitness as they impact on the Court process, to review the subsequent treatment of persons in the justice system, and to conduct a comprehensive review of the criminal law and procedure, applying to those with cognitive and mental health impairments.

The Review concluded that the present system of indefinite detention of those found not guilty by reason of mental illness and the quasi-trial and quasi-sentencing of those found unfit but found on limited evidence to have committed the acts in question is entirely unsatisfactory, and makes indicative reform proposals to the Commission.

## **Intellectual Disability, Women and Children**

Certain special needs patients including persons with intellectual disability, women and children, clearly require their specific needs addressed by appropriate legislative and administrative programs which should be developed by the Human Services and Criminal Justice Chief Executive Officers.

## **The Legislation**

The present legislation is unclear, complicated, difficult to apply and contains flaws and inconsistencies. In consequence, agencies frequently fail to comply with it and forensic patients are adversely, sometimes wrongly, treated under it. Under the present legislative processes there is a disconformity between the treatment of forensic patients in the courts and in the Tribunal and their treatment in correctional facilities.

The drafting of the legislation and of the definitions, particularly that of “forensic patient”, should be improved. Consistently the legislation dealing with forensic patients should include the general principles expressed in the *Mental Health Act 2007* applicable to other mental illness patients. The legislation should clearly define how a person becomes a forensic patient and how that status terminates. The legislation should specify the power to detain, treat, make Community Treatment Orders and supervise patients in the community and when detained. The legislation should provide for prisoners transferred to a hospital as mentally ill to remain subject to their sentences but unconvicted patients should be subject to medical treatment and not treated as prisoners. When a prisoner requires treatment both the correctional facilities and treatment regimes should apply.

Under the present legislation, although provision has been made for agreements for inter-jurisdictional transfers and inter-jurisdictional implementation of orders the requisite mechanisms are ineffective for forensic patients to be returned to their state or territory of origin or to allow for out-of-state treatment in most cases. Usually many years go by before release on conditions that permit travel or return, nor is there an ability to ensure that patients are treated in accordance with New South Wales orders outside New South Wales. The legislation should provide for effective inter-jurisdictional arrangements and recognition of and compliance with Tribunal orders in other jurisdictions.

## **Victims**

Victims have a clearly recognisable interest in issues of release and conditions of release so far as their own safety and welfare are concerned and should be entitled to put their concerns before the Tribunal. The Tribunal should have power to make orders as little as possible restrictive of the liberty of the patient but which allow safe and effective care in the community.

The Tribunal should maintain the Victims' Register and victims should be allowed to choose to be placed on the register. They should have the option of deciding whether to be notified or not to be notified of the Tribunal's proceedings. The Tribunal should have a process to notify those victims that wish of its hearings and to receive submissions from victims, who should be entitled to attend hearings if they wish. There should be power to include non-contact and place restriction orders in conditions of release.

## **The Administrative Review**

In conjunction with this Report, an additional report examining the present administration of the Tribunal and the probable impact on that administration of the recommendations made here for reform has been prepared and will be provided with this report to the Minister Assisting the Minister for Health (Mental Health).

## Terms of Reference

Under the Terms of Reference, the review has been asked to:

1. Review and make recommendations in relation to the legislative provisions of Chapter 5 of the *Mental Health Act 1990* (NSW) relating to forensic patients, and in particular, to consider:
  - The appropriate authority or person to make decisions in relation to the terms and conditions of detention, release and conditional release of forensic patients;
  - Mechanisms for ensuring issues of public safety are properly considered and addressed in reviews of forensic patients;
  - The role of victims of crime, and in particular means by which their views and concerns can be addressed in the forensic review process;
  - The appropriate structure for review and decision making process, having regard to the 4 Options;
  - The current definition of forensic patient, and in particular whether there should be two categories of patients, namely 'forensic patients' and 'security patients', the latter to cover persons who are transferees from a correctional centre;
  - The ability of the Mental Health Review Tribunal to make Community Treatment Orders for people who are in prison and who are mentally ill;
  - How those recommendations relate to the work of the review of the Mental Health Review Tribunal administrative practices and procedures and its role within the forensic system;
2. Review and make recommendations on the provisions of the *Mental Health (Criminal Procedure) Act 1990* (NSW) as may arise out of clause 1; and
3. Report to the Minister for Health and Attorney General within 12 months.

# List of Recommendations

## General Principles and Powers

1. Amend the forensic mental health legislation to insert the objects and principles set out in the *Mental Health Act 2007* (NSW) suitably drafted to ensure that these provisions continue to apply to forensic patients and accommodate their special needs and public safety principles.
2. Amend the legislation to provide a narrative definition of a 'forensic patient' that expressly and comprehensively defines the circumstances in which a person becomes a forensic patient.
3. Amend the legislation to define expressly and specifically the powers to detain, treat, and release a forensic patient, as well as the termination of forensic patient status.

## Special Needs Patients

4. The NSW Government should:
  - Refer to the Human Services and Criminal Justice Chief Executive Officers the development of specific legislative and administrative proposals dealing with the detention, care, treatment, release and co-ordinated community support of forensic patients and transferees with intellectual disability or who are women or children;
  - Request that they provide a report to the Premier on these legislative and administrative proposals within 12 months of this report; and
  - Implement approved reforms arising out of this process within 12 months of the Human Services and Criminal Justice Chief Executive Officers' report.

## **Jurisdictional Issues**

5. The NSW Government should consider the need for specific provisions in relation to forensic patients (including transferees) detained in NSW on behalf of other jurisdictions, and liaise with relevant jurisdictions to develop and implement such provisions.
6. The Minister for Health should take the legislative and administrative action necessary to ensure an effective framework for the inter-jurisdictional transfer of forensic patients (including those conditionally released into the community) and the inter-jurisdictional application of the legislative provisions, and consider the need for arrangements in relation to forensic patients who may wish to move overseas.

## **Concepts of Mental Illness**

7. The NSW Law Reform Commission should review the concepts of mental illness, mental condition, intellectual disability and unfitness for trial used in the law generally and in forensic mental health legislation.

## **Transferee Patients**

8. Amend the legislation to create a new category of patient known as ‘transferee patients’, which includes people who are on remand or serving a sentence of imprisonment and transferred to a mental health facility for treatment, and provide:
  - To the extent possible, that transferee patients should be subject to the civil provisions of the *Mental Health Act 2007* (NSW) in relation to their admission to a mental health facility, and their care and treatment while accommodated in the facility; and
  - Specific provisions for transferee patients in relation to the commencement and termination of their transferee status, their management in terms of security, access to leave and release arrangements, initial and periodic reviews by the Tribunal, and provisions for transfer to other jurisdictions. These provisions should reflect the existing legislative provisions for this category of patient, subject to the reforms outlined in this report.

9. Amend the legislation to include specific provisions for forensic patients including those detained in Corrective Services facilities that reflect the existing legislative provisions for this category (subject to the reforms outlined in this report), and provide that they override any administrative arrangements that apply by virtue of the patient's detention in the prison system.

### **Community Treatment Orders**

10. Amend the legislation to:
  - Provide a detailed legislative framework for the making and implementation of Community Treatment Orders in the correctional context; and
  - Require the Tribunal to review the case of any person who is subject to a Community Treatment Order and detained in a correctional centre, at least once every three months.

### **Transferee's Sentences**

11. Amend the legislation to provide that a transferee patient is detained pursuant to his or her sentence of imprisonment, rather than the order transferring him or her to a mental health facility for mental health treatment, and, that the Tribunal should retain the power to make a forensic patient a Continued Treatment Patient but that power should be capable of being exercised within six months prior to the expiry of the minimum term or non parole period or thereafter.

### **Executive Discretion**

12. Replace the present system of executive decision-making in relation to forensic patients with a legislative framework in which a special Forensic Division of the Mental Health Review Tribunal is responsible for decision-making in relation to the detention, care, treatment, leave and release of forensic and transferee patients.

### **Forensic Division of the Mental Health Review Tribunal**

13. Amend the legislation to:
  - Establish a Forensic Division of the Mental Health Review Tribunal to conduct reviews and make decisions in relation to forensic and transferee

patients and provide that the President should have power to make Rules and give Practice Directions for the conduct of its business.

- Provide that a Panel of the Forensic Division will be constituted by three members, being:
  - a legal member (being the President or a Deputy President and who, in the case of any hearing involving the possibility of a forensic patient's release, is a current or former judge);
  - a current practising psychiatrist (for patients with a mental illness) or a current practising psychologist or other relevant expert (for patients with an intellectual disability); and
  - a member with qualifications or experience in the mental health or intellectual disability field (as appropriate).
  
- Require the Forensic Division to give notice of each forensic hearing to the forensic or transferee patient, his or her treating team and legal representative, any registered victims or family members who may wish to make submissions, and (for hearings involving the possibility of release) the Attorney General and Minister for Health. The relevant notice periods should be 14 days for release hearings, and 7 days for any other hearings, subject to exceptional circumstances, and the form of notice should be prescribed in the regulations.
  
- Require the Forensic Division to consider specified reports and other information when reviewing a patient, and give it the power to order the making and production of these reports and the supply of other information (powers and requirement may be set out in Practice Directions or regulations).
  
- Require the Forensic Division to give written reasons for all decisions involving the question of release, and for other decisions upon request by any person with a direct interest in the proceedings.

14. Amend the legislation to give the Minister for Health and Attorney General the right to make submissions at any hearing relating to the possible release of a forensic or transferee patient.

### **Appeals**

15. Amend the legislation to provide for the following appeals framework in relation to Tribunal determinations:
  - All decisions other than those involving conditional or unconditional release should be subject to appeal to a single judge of the Common Law Division of the NSW Supreme Court, while release decisions should be subject to appeal to the Court of Appeal.
  - Appeals should be heard by way of rehearing for error of law or fact, determined on the evidence used in the Tribunal together with any additional evidence the Court thinks fit to receive. It should also be open to the Court hearing the appeal to have the benefit of assessors if it considers it appropriate generally, or in the particular case.
  - Given the public interest involved in such decisions, the Minister for Health and Attorney General should have the right to make submissions at any hearing dealing with the possible grant of conditional or unconditional release, and a right of appeal in relation to such decisions on the grounds of error of law or fact.

### **Compliance**

16. Amend the legislation to provide that:
  - If any public sector agency or official is not able to comply with a Tribunal order in relation to the detention, care, treatment and release of a forensic or transferee patient within one month of it being made (or the date specified in the order), the agency must forward a written report to the President of the Tribunal providing reasons for such non-compliance;

- If the President is satisfied that the non-compliance was not justified in the circumstances, he or she may report the matter to the Supreme Court; and the Supreme Court may deal with the matter as if it were a contempt of the Court, subject to a defence of reasonable excuse.

### **Law Reform Commission**

17. In the inquiries it is already undertaking or in a further reference in addition to the review recommended in Recommendation 7 the NSW Law Reform Commission should conduct a comprehensive inquiry into the criminal law and procedure applying to people with cognitive and mental health impairments. This inquiry should cover the matters outlined in Chapter 6 of this report, and should give consideration to the indicative reform recommendations contained in it.

### **Notification of Jurisdiction**

18. The Attorney General, Minister for Health, Minister for Justice and the Tribunal should develop a formal protocol for the Tribunal to be notified that it has acquired jurisdiction over a forensic patient within seven days of that event occurring.

### **Reviews**

19. Amend the legislation to provide that:
  - The Forensic Division of the Tribunal must review the case of each forensic patient and transferee patient at least once every six months but may, on a case-by-case basis, extend the period for a specific review to a maximum of 12 months from the conduct of the last review.
  - The Forensic Division may only do so where:
  - The patient has made a written request for an extension and a panel of the Forensic Division is satisfied that there are reasonable grounds for granting the extension; or

- A panel of the Forensic Division is satisfied on reasonable grounds that: (i) there has been no substantial change in the patient's condition; (ii) there is no reasonable basis for changing the patient's conditions of detention, care and treatment; and (iii) to hold a review at that time would be anti-therapeutic for the patient; and the patient (and legal representative) has been given a reasonable opportunity to make submissions in relation to its proposed extension, and the panel has considered any submissions made; and
- The Forensic Division's decision is subject to the same avenue of appeal as exist in relation to other decisions.

**20** Amend the legislation to provide that, where a prison inmate has not been transferred to a mental health facility within a specified period:

- Justice Health and the Department of Corrective Services must provide the Tribunal with monthly written reports as to the person's condition and the reasons for the delay;
- A panel of the Forensic Division of the Tribunal must conduct a review on the papers, and may make such orders regarding the
  - Detention, care and treatment of the person that are considered appropriate; and
- The Forensic Division must, in any case, conduct a review in the person's presence at least once in every three-month period.

**21.** Amend the legislation to provide that, where a forensic patient has not had a special hearing, or a transferee patient is on remand, the President (or a nominated member) must informally review the person's case every three months to determine whether the legal proceedings have been delayed, and if so, take such action as it considers appropriate.

## **Leave and Release**

- 22.** Forensic patients who are detained in correctional centres should be subject to a new classification system applying in lieu of the prisoner classification system contained in the *Crimes (Administration of Sentences) Act 1999* (NSW). The Minister for Health should develop the new classification system in consultation with the Attorney General, the Ministers for Justice and Juvenile Justice, and the Mental Health Review Tribunal.
- 23.** The new classification system should include a protocol that addresses therapeutic and security matters such as a forensic patient's security conditions, and access to programs and courses, and leave and release arrangements, while detained in a correctional centre. In particular, the protocol should ensure that there is no impediment to a forensic patient's eligibility for leave, or for release once his or her detention is no longer justified on public safety grounds, and it should be given formal, enforceable status.
- 24.** Amend the legislation to provide that:

  - Forensic patients retain access to leaves of absence authorised directly by NSW Health (for mental health facilities), and the Department of Corrective Services (for correctional centres) in accordance with the protocol outlined in Rec 23; and
  - The Forensic Division of the Tribunal should also have a statutory power to grant leaves of absence if satisfied, on the available evidence, that neither the safety of the patient nor that of any member of the public will be seriously endangered by the person's release. This power should apply to all forensic patients, whether detained in a mental health facility, correctional centre or other place of detention.
- 25.** Amend the legislation to provide that an order for the conditional or unconditional release of a forensic patient is not to be made unless the Forensic Division is satisfied, on the available evidence, that:

  - The safety of the patient or any members of the public will not be seriously endangered by the person's release;

- Effective care and treatment of a less restrictive kind (if any is needed) is reasonably available to the patient within the community; and
- Reasonable arrangements have been made to ensure that any necessary care and treatment will be given within the community.

**26.** Amend the legislation to provide that, for the purpose of making this determination, the Forensic Division must have regard to the following matters:

- The nature of the person's condition
- The likelihood of a relapse or deterioration in the person's condition once released into the community and whether serious public safety concerns are likely to arise as a result of this;
- The need to ensure that the person receives the best possible care and treatment in the least restrictive environment enabling the care and treatment to be effectively given;
- The need to ensure that any restriction on the liberty of person and any interference with his or her rights, dignity and self-respect are kept to the minimum necessary in the circumstances; and
- The report of at least one qualified forensic psychiatrist or psychologist (as appropriate) who is independent of the treating team and has recently examined the forensic patient to determine as to whether the safety of the patient or that of any members of the public will be seriously endangered by the persons release.

**27.** Amend the legislation to:

- provide a non-exhaustive list of conditions that may be applied when granting release back into the community.

**28.** Amend the legislation to:

- Remove the present limited Attorney General's power to object to the release of a forensic patient, and the requirement to notify the Minister for Police of a patient's release.

### **Agency Compliance**

**29.** Amend the legislation to empower the Tribunal to require the agencies specified in a forensic or transferee patient's release plan to comply with their obligations under that plan in relation to the supervision, treatment and care of the patient, and to co-operate with other relevant agencies specified in the plan.

**30.** The Minister for Health should develop an agreement with each other Minister responsible for the agencies involved in the supervision, treatment and care of forensic patients, and the Mental Health Review Tribunal, to provide an administrative framework to facilitate agency and patient compliance with the conditions of release, and the release plan.

**31.** Amend the legislation to provide:

- That the President of the Tribunal has the power to call up a conditionally released forensic patient or transferee patient for an alleged breach of a release condition, or serious deterioration in the patient's condition, and refer the matter to a panel of the Forensic Division of the Tribunal;
- A hierarchy of options available to the Tribunal in determining an appropriate response, depending on safety and therapeutic considerations; and
- Any decision by the Forensic Division is subject to appeal.

### **Victim's Participation Process**

**32.** Retain the recently introduced administrative arrangements as recently revised and supplemented by the Tribunal in relation to victims' involvement in Tribunal hearings.

- 33.** Amend the legislation to provide that the Tribunal must keep and maintain the Victims Register, and provide that the Tribunal must notify those registered victims who wish to be notified of:
- Tribunal hearings (see also Rec 13);
  - Tribunal decisions in relation to the granting of leave or release;
  - Appeal proceedings in relation to a Tribunal decision;
  - The proposed release of a forensic patient; and
  - The termination of a person's forensic patient status.
- 34.** Amend the legislation to provide a framework for the Forensic Division of the Tribunal to make notification, non-contact and place restriction orders in relation to a forensic patient. This should include a framework for a registered victim, immediately family member of a deceased victim, and/or immediate family member of the forensic patient to make applications for such orders; and an enforcement framework.