

29 January 2021

To the Justice Select Committee

Victim Support submission on the Rights for Victims of Insane Offenders Bill

Introduction

Our offender-centred criminal justice system is a high-risk environment for victims, who may face revictimisation instead of healing and closure. Those who take the risk of participating in the justice system are often shocked by how few genuine opportunities exist for them to have a voice and other procedural justice needs.¹ That's why the rights to make a victim impact statement, be kept informed of the offender's progress, and to have a say on parole are so important to victims. Yet, victims of insane offenders – or forensic or special patients – are denied all of these rights.

Victim Support strongly supports the intent of the Rights for Victims of Insane Offenders Bill to make the rights for victims whose offender is dealt with in the health system comparable to those whose offender is dealt with in the criminal justice system. However, we propose further amendments to ensure that any legislative changes fully address the legitimate needs and concerns of this neglected group of victims.

Victim Support is a non-government organisation that has been offering practical and emotional support to victims of crime and trauma for more than 30 years. Last year Victim Support helped more than 40,000 victims of crime and trauma in the immediate aftermath, through the justice process, and beyond.

Our submission is informed by our work and research, examination of the New South Wales and Queensland jurisdictions, and a case study involving interviews with five victims of a person recently found not guilty on account of insanity.

Procedural justice: Why it matters

Evidence suggests that what often matters more to victims is *procedural justice* - the perceived fairness of the process by which the outcome in court is reached - rather than the outcome itself.² Appraisals of both satisfaction with the outcome (verdict) and procedural justice are known to be more influential than the offender's punishment in predicting victims' psychological stress.³ Positive evaluation of procedural elements may cushion a negative assessment of the outcome and vice versa.⁴

¹ J.L. Herman, "Justice from the victim's perspective," *Violence Against Women* 11, no. 5 (2005).

² K. Murphy and J. Barkworth, "Victim Willingness to Report Crime to Police: Does Procedural Justice or Outcome Matter Most?," *Victims & Offenders* 9 (2014).

³ Orth, "Secondary victimization of crime victims by criminal proceedings."

⁴ E.A. Lind and T.R. Tyler, *Critical issues in social justice. The social psychology of procedural justice*. (New York, NY, US: Plenum Press, 1988).

Procedural justice needs include information, participation, voice, apology, accountability, validation, vindication, fairness/respect, material reparation/compensation, and repairing relationships.^{5 6 7 8}

Our 2019 research by Victim Support Researcher Dr Petrina Hargrave examined satisfaction with procedural justice and the justice system. It found that 68% of serious crime victims felt justice had not been served in their case, despite 86% of cases resulting in a guilty verdict and 52% resulting in imprisonment for the offender. Victims' most important procedural justice needs were support, voice, and information. The research revealed three key barriers to justice: **fear**, **exclusion**, and **unfairness**. Victims expressed **fear** for their physical and emotional safety and that justice would not be served. They felt **excluded** by the justice system because they had few opportunities to be heard, and they found the courts dehumanising, cold, and mechanical. They felt the justice system was **unfair** because it was offender-focussed, and there was a lack of accountability for offenders and lack of acknowledgement of the harm caused to them as victims. In sum, a lack of procedural justice left victims feeling the justice system did not genuinely care about them.

Similar findings by the Chief Victims Advisor⁹ and Hāpaitia te Oranga Tangata Safe and Effective Justice advisory group¹⁰ have prompted a call to action by Chief Victims Advisor Dr Kim McGregor to improve the experience of *all* victims of crime in our justice system.

Procedural justice matters because satisfaction with the justice system leads to greater participation in the justice system¹¹ and greater willingness to co-operate with it, as well as a greater willingness to report future victimisation.¹² It is recognised that meeting victims' procedural justice needs may play a critical role in crime prevention. We applaud the Government for signalling its commitment to enhancing victims' procedural justice rights in the criminal justice system (e.g. Sexual Violence Legislation), but attention must equally be paid to victims whose offender is dealt with in the mental health system. Currently, victims of those found not guilty by reason of insanity have virtually no procedural justice rights at all, as illustrated in the case study below.

Case study

Glen Collins was one of the kindest people you could meet. He was a much-loved and respected family man; a 45-year-old loving dad of two boys. When a new workmate named David Charles Gilchrist joined his workplace, Glen taught him how to drive his employer's trucks. When Glen learned Gilchrist was homeless and sleeping in his car, he invited his new workmate to live with him in Upper Hutt.

Unbeknown to Glen, Gilchrist suffered from schizophrenia involving persecutory delusions and had been without medication for some time since leaving Whangārei where he was under the care of the Northland District Health Board. Glen was also unaware that the police had stopped Gilchrist on the night of September 19, 2018 and charged him with theft. Despite knowing he had been reported

⁵ H. Clark, "What is the justice system willing to offer?" Understanding sexual assault victim/survivors' criminal justice needs," *Family Matters* 85 (2010).

⁶ K Daly, "Sexual violence and victims' justice interests," in *Restorative Responses to Sexual Violence* (Routledge, 2017).

⁷ Herman, "Justice from the victim's perspective."

⁸ H Strang and L. W. Sherman, "Repairing the harm: Victims and restorative justice," *Utah L. Rev.* (2003).

⁹ Chief Victims' Advisor (2019). *Te Tangi o te Manawanui: Recommendations for Reform*. Retrieved from <https://chiefvictimsadvisor.justice.govt.nz/assets/Documents/Publications/Te-Tangi-Final-PDF.pdf>

¹⁰ Hāpaitia te Oranga Tangata Safe and Effective Justice (2019). *Public Survey of Attitudes Toward the Justice System*. Retrieved from <https://safeandeffectivejustice.govt.nz/assets/Research-Evidence-Files/bcc5d4f5d9/2019-survey-attitudes-justice-system.pdf>Victim Support (2019).

¹¹ P.S. Hudson, "The crime victim and the criminal justice system: Time for a change," *Pepperdine Law Review* 11 (1984).

¹² R.B. Ruback, A.C. Cares, and S.N. Hoskins, "Crime victims' perceptions of restitution: The importance of payment and understanding," *Violence and Victims* 23, no. 6 (2008).

as a missing mental health patient, Gilchrist was released without psychiatric intervention to appear in court at a later date.

The next day, September 20, Gilchrist stabbed Glen to death without warning. He believed Glen was evil, had been persecuting him, and that the world would be better off without him.¹³ Gilchrist was charged with murder, but for the grieving family, the nightmare was just beginning. Their questions about how Gilchrist managed to dodge his treatment and why police did not hold him in custody remained unanswered. They faced last minute court date postponements due to the mental health of the defendant, who had name suppression.

“He definitely had more rights than us and was treated with more dignity than us,” says Glen’s mother, Karilyn Collins.

“The whole process felt geared up for the offender,” says Jayne Collins, Glen’s former wife and mother of his children. “It leaves victims feeling their loss means nothing.”

“He has so many rights. He was very protected,” says Glen’s partner, Lisa Gosper.

In March 2019, the family arrived at Wellington High Court to learn the verdict of Gilchrist’s murder charge. From the moment they entered the courtroom, they felt sidelined and disrespected. Glen’s son was told to remove his father’s fisherman’s hat that he was wearing in memory of his dad and Karilyn recalls two security guards that accompanied the defendant turning their back on him and facing Glen’s family instead “as if we were the ones who’d done wrong”.

“One of the things that really, really impacted me was in court he didn’t even have to look at us,” says Jayne. “I was disgusted. I felt like he doesn’t have to deal with anything.”

“We felt invisible,” explains Glen’s only surviving brother, Tiri Tipuna. The family had already lost their middle son, Wayne, to suicide.

Then came the judge’s words that would cement their course in the justice system: *not guilty on account of insanity*. “When you heard it in the courtroom, it’s like a kick in the guts. That topped it. I still hear the judge saying it; I dream about it,” says Karilyn. “There was no closure. There was no reassurance.”

“It was sickening,” says Jayne. “Just because he’s insane, no one can deny he didn’t do it.

“I was really angry at the verdict. There’ll be no criminal record for him. I was hoping justice would be served properly and he’d be in jail,” says Lisa. “It’s hard for the kids trying to make sense of how it can be a not guilty verdict. Although you’re semi-prepared, there’s no closure for us.”

Because Gilchrist was found not guilty, the family were denied the right to make a victim impact statement – often a victim’s only official opportunity for a voice in the justice system. However, in this case the judge made an exception, allowing only one member of the family to read a victim impact statement.

“We were stopped from expressing our emotions at a very traumatic time,” says Karilyn, who was given permission to read her statement in court.

¹³ Nightingale, M. (2019, March 18) *Man not guilty of murder in Upper Hutt stabbing due to insanity*. The New Zealand Herald. Retrieved from: https://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=12213869

“We should have all been able to go up and have our say just as you would in a court,” says Jayne. “You want to feel that you’ve got it out there.”

As the verdict sank in, so did the reality of how few rights Glen’s family had.

“With mental health, you don’t get much say. That insanity carries a lot of weight,” says Gloria Henshaw, Lisa’s mother. “There’s a lot they don’t have to tell us.”

The right to be informed of Gilchrist’s first unescorted leave or unescorted overnight leave is of little comfort to Glen’s family. “We only find out once, but what about next time?” says Gloria.

The family lives in a state of anxiety, their sense of safety depending on knowing where he is at any given time and the state of his mental health.

“It’s the not knowing,” says Karilyn. “We got a letter saying he’s moving but we weren’t allowed to know where he was going or when he was going. I’m frightened; I’m really, really frightened. I double check 100 times my windows, my doors. He could find my address. He was saying he thought Glen was Hitler. But what if he comes for me because I’m Hitler’s mother? When I’m on the bus I’m scared about who’s sitting behind me.”

The family also feels frightened and disempowered by not having any right to give their views should Gilchrist be considered for discharge from hospital.

“My health is just completely stuffed. It’s destroyed all of us,” says Karilyn. “I probably wouldn’t survive if I couldn’t have a say [about his discharge]. That would be the end of the road for me.”

“If they were thinking of releasing him, I’d want to be able to have a say. I want to be able to go to a board and say, ‘what grounds have you got for releasing this guy?’” says Jayne. “He’s impacted our lives for the rest of our lives; we should be able to have a say on what impacts his life.”

“He’s continually looked after, protected. My brother wasn’t protected so why is he?” says Tiri. “We just don’t think Glen is getting justice.”

How the Bill can help victims like Glen’s family

Proposed amendment 1

Renaming the verdict of ‘not guilty on account of insanity’ to ‘the acts or omissions are proven but the defendant is not criminally responsible on account of insanity.’

As our case study shows, those two words, “not guilty”, deeply undermine and minimise the experience of victims. Because the defendant is considered innocent until proven guilty, victims enter the justice system as alleged victims. Victims of defendants acquitted on the insanity defence remain alleged victims – there is no acknowledgement of their suffering, or that they are even victims in the first place. Our research shows that acknowledgment (that they were wronged and that they were believed) is among victims’ most important justice needs.¹⁴

We contend that the current wording of the verdict also diminishes offenders’ accountability. Out of 14 procedural justice needs, accountability (the extent to which the offender was held accountable/took responsibility) was ranked lowest in satisfaction by victims in our research. Given

¹⁴ Victim Support (2019).

that those found not guilty on account of insanity may not be capable of taking early responsibility for their actions, it is up to the court to ensure that some sort of accountability is communicated to victims.

Victim Support's recommendation:

We believe the proposed wording would sensitively and more accurately acknowledge the fact the defendant lacked criminal intent (mens rea) due to their mental illness, but that an offending act (actus reus) did in fact occur, and therefore there are legitimate victims with legitimate needs and concerns. It would open up a path that is currently inaccessible for victims of such offenders, with the acknowledgement required to help them move forward. We note that New South Wales has recently changed the wording of the insanity verdict to 'act proven but criminally responsible' as part of its commitment to victims in its forensic mental health reforms.

Proposed amendment 2

Giving certain victims of insane offenders the right to be sent a certificate of clinical review, to make submissions to the Minister about whether continued detention is necessary, or, if relevant, to the Mental Health Review Tribunal for a review of the patient's condition.

New Zealand has obligations under the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power in 'allowing the views and concerns of victims to be presented and considered at appropriate stages of the proceedings where their personal interests are affected'.¹⁵ There is no justifiable basis in the declaration to discriminate against or exclude victims of crime in the forensic health system. Yet, New Zealand's legislation does not adequately address these rights for victims of special patients. These victims have no right to submit a victim impact statement, no opportunity to submit their safety concerns or to express their views about the patient's release, and, in fact, no formal opportunity at any stage of the court or rehabilitation process to be heard.

The Ministry of Health's *Special Patients and Restricted Patients: Guidelines for Regional Forensic Mental Health Services* states: 'When managing special patients, forensic mental health services are required to balance the rights, treatment and rehabilitative needs of the individual patient against the safety of the public **and the concerns of victims**'.¹⁶ We acknowledge that victims who are family of the special patient are consulted for clinical reviews, however there is no process for other victims like Glen Collins' family to express their concerns.

New Zealand lags behind many other jurisdictions in terms of enabling victims' concerns to be heard in the mental health system, including the United Kingdom and Australia.¹⁷ Examples of how victims are supported in New South Wales and Queensland are presented below.

New South Wales

New South Wales has had an annual average of 24 defendants found not guilty by reason of mental illness over the last five years.¹⁸ New Zealand had 40 last year and an annual average of 33 over the

¹⁵ United Nations (1999). *Handbook on Justice for Victims: On the Use and Application of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*. United Nations Office for Drug Control and Crime Prevention. p 36.

¹⁶ Ministry of Health (2017). *Special Patients and Restricted Patients: Guidelines for Regional Forensic Mental Health Services*. Ministry of Health. p III.

¹⁷ For a comparison, see the table of leave and release criteria comparing NSW before its changes with the rest of Australia and the UK in: Mental Health Review Tribunal. (2017). *A Review in Respect of Forensic Patients: Appendices*. p 6.83. Retrieved from <https://www.health.nsw.gov.au/mentalhealth/reviews/tribunal/Documents/mhrt-appendices.pdf>

¹⁸ New South Wales Criminal Court Statistics (2019). Retrieved from https://www.bocsar.nsw.gov.au/Pages/bocsar_court_stats/bocsar_court_stats.aspx

same period.¹⁹ Despite these relatively low numbers, NSW has recently made extensive changes to its legislation to improve victims' rights and participation in forensic health cases following a review.²⁰ The state has even established a dedicated support service for victims of forensic patients, offering support and advocacy through the forensic mental health process.

Prior to the changes, NSW victims were able to be notified of relevant details including upcoming hearings, and whether the Mental Health Review Tribunal was considering changes to the patient's arrangements or any request to release the patient. They were also able to make written submissions to the Tribunal requesting non-association and geographical restrictions in relation to the patient's leave or release and to attend Tribunal hearings.

These rights for NSW victims already surpassed what New Zealand currently has, yet the review found they were insufficient. It concluded: **'in the process of applying the leave and release test, the system is weighted too heavily towards the interests of patients, without due consideration for the safety and interests of victims'**.²¹ It also found that victims had 'genuine and legitimate concerns' that should not be lumped under the umbrella of public safety concerns. Victims submitted that they felt shut out of the Tribunal proceedings and wanted to be able to make oral submissions and ask questions of the Tribunal panel. The review concluded that 'the present system must be improved in order that the voices of victims of crime are heard and that the mental health system is not indifferent to their needs.'²²

Based on the review's recommendations, NSW has extended victims' rights in the forensic health system including allowing victims to prepare and read a victim impact statement in court that is also forwarded to the Tribunal for consideration at reviews, and to make broader submissions on the impact on them of patients' leave and release. The review found that giving victims the opportunity to make a written submission to the Tribunal was insufficient – victims wanted to have a voice at the time of the verdict as this gave them more assurance that their views were being heard. The NSW Crimes (Sentencing Procedure) Act 1999 was amended last year to include special provisions for victims of forensic patients to make a victim impact statement in court after the verdict. The court may consider the statement in deciding the conditions to be imposed on the release of the accused person (but not in determining the limiting term to be imposed on the accused person). This gives victims a right similar to victims whose offender is dealt with in the criminal justice system.

Queensland

Queensland underwent two reviews in 2006 and 2016 that prompted significant legislative improvements for victims of forensic health patients. These included the establishment of the Queensland Health Victim Support Service, which supports victims of forensic patients through the mental health system; and an "information notice" register whereby victims can be informed of the timing and outcome of Mental Health Tribunal reviews, information about appeals, and information about patient absences if it is relevant to the safety and welfare of the person. Victims may also submit a victim impact statement to the court and Tribunal which may include a request for a non-association or geographical restriction.

¹⁹ Ministry of Justice Data Tables (2019). *Unfit to Stand Trial or Not Guilty By Reason of Insanity*. Retrieved from <https://www.justice.govt.nz/justice-sector-policy/research-data/justice-statistics/data-tables/#unfit-insanity>

²⁰ Mental Health Review Tribunal (2017). *A Review in Respect of Forensic Patients*. Retrieved from <https://www.health.nsw.gov.au/mentalhealth/reviews/tribunal/Publications/mhrt-review-report.pdf>

²¹ Ibid. p 33.

²² Ibid. p7.

Michael Power, Director of Queensland Health Victim Support Service, said the legislative changes coupled with victim support, have improved victims' trust in the mental health system.²³ "Some people get confidence over time that the person is being managed well and the risk is being managed. They build some confidence in the system."

The service supports approximately 300 clients per year, about half of whom have information notices. Support workers provide psycho-education to victims, supporting them at court and Tribunal hearings, and helping them understand the terminology of the court and Tribunal, how risk is managed, treatment, and decisions through accurate and information.

"Giving them the choice about attending the Tribunal hearing is important. Victims need to be supported and well-prepared if they attend the Tribunal in person. It can be valuable for some," said Power. The Tribunal is required to provide a brief explanation about any decision to victims who choose to receive the information notice. "Informing the victim that leave has been granted because the patient is improving is important, otherwise people live in fear that [the patient] is still just as unwell." The Queensland Mental Health Act 2016 provides the following examples of brief, plain English examples of explanations that could accompany a decision to increase a patient's treatment in the community:

- *an authorised doctor has stated that the patient has responded well to treatment during a stated time period*
- *an authorised doctor has stated that the patient has complied with limited community treatment conditions*
- *the patient has participated in programs recommended by the Mental Health Court*
- *the patient has undertaken to comply with non-contact conditions.*

In New Zealand, Victim Support already provides support to victims of special patients and would support them to make submissions to the Mental Health Review Tribunal if the law were changed. However, it is especially challenging to support victims when their needs are not recognised by the law.

Benefits of balancing the rights of offenders and victims

We acknowledge that the purpose of detaining a forensic patient in a mental health facility is safe treatment and rehabilitation rather than punishment and deterrence. We acknowledge the rights of people held in secure facilities and do not seek to impinge on those rights. However, we strongly believe that the focus must be on **procedural fairness/justice and balancing the rights of victims and special patients. Balancing the rights of both the defendant and the victim are paramount to procedural fairness/justice.**

As an Australian academic law paper states: 'concern that a patient might suffer some temporary discomfort because a victim is going to make a written or oral submission should generally not be sufficient by itself to make the [Mental Health Review] Tribunal exercise a discretion to prohibit such involvement'.²⁴

Internationally-recognised New Zealand mental health law expert Dr Warren Brookbanks and forensic psychiatrist Dr Jeremy Skipworth have already argued the benefits of allowing victims to make submissions concerning patients' leave and release:

²³ Personal communication. 17 November, 2020.

²⁴ Barnett, M. and Hayes, R. (2009). *The Role of Victims in NSW Forensic Patient Proceedings*. University of Western Sydney Law Review, 13, 7-35. p 21. Retrieved from <http://138.25.65.17/au/journals/UWSLRev/2009/2.pdf>

These changes would be consistent with the emerging jurisprudence and practice around victims' rights. They would also, however, create a measure of goodwill towards hospital staff as they would be seen as offering a measure of transparency for victims, instead of creating perceptions that they are hiding behind a shield of 'privacy concerns' as a reason for not adequately informing victims of significant milestones in the management and rehabilitation of forensic patients.²⁵

The authors state that conditions imposed by the Parole Board to allay victims' fears of encountering the offender in the community are 'often in the offender's interests as much as victims, as most offenders prefer not to re-traumatise their victims, not jeopardise their reintegration by such publicity and attention'.²⁶ Victim Support agrees that increased transparency, through increased opportunities for victims' voices, will encourage the understanding of mental health and victims' issues, which benefits victims, patients, and society alike.

Victim Support's recommendation:

In concordance with the UN declaration, the NSW and Queensland reviews, and academic literature, Victim Support strongly supports increased opportunities for victims to make submissions to the Mental Health Review Tribunal in New Zealand. However, we believe being sent a certificate of clinical review as often as every six months could be unnecessarily retraumatising and burdensome for victims. Consideration must be given to how to tailor meaningful opportunities for victims to be heard.

Victims' have needs and concerns at different stages of the justice/forensic health pathway - from court, throughout the patient's rehabilitation, and up until their release into the community. Legislation must serve their needs and concerns at each stage. We gauge a large amount of distrust among victims of the forensic mental health pathway. We believe trust can be built by considering victims' views when it matters, and the Australian reviews suggest this is at the time of the verdict and in relation to leave and release.

For these reasons, **we recommend that victims be given rights based on those afforded to victims of forensic patients in NSW and Queensland to:**

- **include a section in the Mental Health (Compulsory Assessment and Treatment) Act 1992 to acknowledge the rights of victims.** Queensland's Mental Health Act 2016 outlines not only the principles for patients, but the principles by which a victim of a forensic patient should be treated. These include recognising the harm caused to them with compassion and acknowledging the benefits to the victim of being able to express their views. NSW has a charter of victims' rights of forensic patients outlining similar principles.
- **submit (and request to read) a victim impact statement in court after returning a verdict of *the acts or omissions are proven but the defendant is not criminally responsible on account of insanity*, which the judge may consider in relation to the conditions imposed on release of the special patient, and provide a copy to the Mental Health Review Tribunal.** Victims in comparable jurisdictions including NSW and Queensland have the right to make a victim impact statement under these conditions because the benefits to victims have been recognised. If we want to make the rights for victims of special patients comparable to victims of offenders in the criminal justice system, and make a tangible difference to victims, we believe it is essential that this right be extended to victims of those not criminally

²⁵ Brookbanks, W. and Skipworth, J. (2015). *Reclassification and leave of special patients unfit to stand trial*. New Zealand Law Journal, 215, 215-219. p 219.

²⁶ Ibid. p 219.

responsible on account of insanity. If the wording of the insanity verdict changes as proposed, we don't believe it would be defensible to continue to deny victims the right to submit a victim impact statement. This would also mean that rather than victims making fresh submissions potentially every six months, the Tribunal could consider the victim impact statement when making review decisions, as occurs in NSW and Queensland. Victims could update their statements as required. In practice, some victims in New Zealand have been allowed to read an impact statement in court after the person has been found not guilty on account of insanity, but this is not a right and there is no formal recognition of the value of the victim's input. The fact they've had to fight for it only highlights the disenfranchisement and lack of genuine concern for victims.

- **request a non-association/non-contact order in relation to the patient's leave and release.** This would be comparable to the provision that victims of violent offenders imprisoned for more than two years have, who can request a non-contact order when the offender is released. This would give victims confidence that they could go about their daily lives without the fear of being contacted by him/her. The NSW and Queensland reviews found this was deeply important to victims and allayed many of their fears. Indeed, New Zealand's Victims' Code states that victims should be treated on the principle "that [their] safety and the reduction of harm [is put] first".²⁷
- **make submissions to the Mental Health Review Tribunal, either in writing or in person, and have the opportunity to ask questions of the Board, on the impact of any leave and release decisions.** This would be comparable to victims' rights with the Parole Board and give them a formal avenue to be heard in a decision that is of legitimate interest to them. In NSW victims can now include in their submission:
 - the forensic patient's behaviour (past or present) and its impact on them and their family
 - the risks the patient poses to them, their family, and others
 - the impact on them and their family if the patient was granted leave or release.
- **to be notified of review decisions about leave and release, accompanied by a brief, plain English explanation for the decision.** This is a legal requirement now in NSW and Queensland, prompted by stakeholder concerns. We believe this will help aid transparency and allay victims' fears.
- If the above recommendations are implemented, we do not believe it would be necessary or relevant for victims to apply to the Review Tribunal for a review of the patient's condition or to make a submission to the Minister concerning whether the patient's continued detention is necessary. **The focus of victim inclusion should be not on the patient's condition *per se*, but on leave (outside the hospital grounds) and release decisions, which will stem from clinical review of their condition.**
- If more evidence is required for these recommendations to be accepted, we strongly recommend that Government takes this opportunity to undertake a review of the forensic mental health process, with the view to balancing offenders' and victims' rights and interests.

Proposed amendment 3

²⁷ Ministry of Justice, Victims Code, (2015).

Providing certain victims of persons detained in a hospital or secure facility in connection with an offence with prior notice of every unescorted leave of absence from a hospital or secure facility into the community, rather than just the first of each such leave as is currently required.

We agree that victims should be notified of each and every unescorted leave. Restricting notification to only the first such leave does not offer victims any meaningful benefit. As Glen Collins' mother described, victims often have a life-long fear of encountering the patient in the community. A wide body of research, including our own, shows that information is one of victims' most important needs.²⁸ Information empowers victims and enhances their sense of safety. Knowing that a patient is on leave is likely to be less anxiety-inducing than not knowing at all.

However, we believe that in order to have the greatest benefit, **the definition of "unescorted leave" needs to include leave Steps 4-7 in the Ministry of Health's guidelines,²⁹ including Step 4: staff-escorted community leave where the patient is left unescorted at the destination** (e.g. community programmes). Victims whose offender is in prison are notified of leave (temporary release), except when the offender is to be accompanied *throughout* by one or more constables. The NSW review found that victim confidence in the supervision of patients on leave could be improved, and recommended GPS supervision of patients as a means of addressing this. The report noted that while recidivism among forensic patients was low, the safety concerns of victims and the public for patients with a particularly violent history needed to be considered alongside the interests of rehabilitation. It's important to note that emotional safety (*feeling safe*) can be just as important to victims as physical safety (*being safe*).

Victim Support's recommendation:

We submit that notification of every unescorted leave (including staff-escorted community leave where the patient is left unescorted at the destination, such as community programmes), will help address the heart of victims' safety concerns. This needs to be coupled with the right to request a non-association/no contact restriction, to make a submission to the Tribunal on leave decisions, and to be reassured of the safety measures in place for the patient while on leave.

Conclusion

Entering the criminal justice system is hard enough for victims, but for victims of "insane offenders" the experience can be even more revictimising. Our law unfairly discriminates against anyone who is harmed by someone not criminally responsible on account of insanity, every step of the way. It fails to meet the principles of the United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power and is inconsistent with the spirit of the Victims Rights Act, the rights afforded to other victims in our criminal justice system, and the rights for victims in the forensic health system in overseas jurisdictions.

This Bill is an opportunity for New Zealand to get to the heart of victims' needs in the mental health system, and to develop legislation that has therapeutic benefits for victims whose legitimate concerns must be heard. We must learn from jurisdictions that have researched and accelerated victims' rights and take this opportunity to make the changes we know victims need.

²⁸ Victim Support (2019). *Victims' Voices: The Justice Needs and Experiences of New Zealand Serious Crime Victims*.

²⁹ Ministry of Health (2017). *Special Patients and Restricted Patients: Guidelines for Regional Forensic Mental Health Services*. Ministry of Health.

We strongly believe that there will be benefits to victims, patients, and society if victims' procedural justice rights are strengthened in the mental health system and if the system becomes more transparent. Increasing transparency would aid victims' and society's confidence that the system was doing the right thing. We cannot expect trust in a system that is, by all accounts, indifferent to the needs of victims.

To recap, Victim Support supports the intention of this Bill but advocates for more elaborate changes to some legislation as summarised on the following page.

Summary of recommendations

- Renaming the verdict of 'not guilty on account of insanity' to 'the acts or omissions are proved but the defendant is not criminally responsible on account of insanity'.
- Including a section in the Mental Health (Compulsory Assessment and Treatment Act) 1992 to acknowledge the rights of victims.
- Giving victims the right to submit (and request to read) a victim impact statement in court after returning a verdict of *the acts or omissions are proven but the defendant is not criminally responsible on account of insanity*, which the judge may consider in relation to the conditions imposed on release of the special patient, and provide a copy to the Mental Health Review Tribunal for consideration in the review process.
- Giving victims the right to request a non-association/no contact order in relation to the patient's leave and release.
- Giving victims the right to make submissions to the Mental Health Review Tribunal, either in writing or in person, and have the opportunity to ask questions of the Board, on the impact of any leave and release decisions.
- Notifying victims of review decisions about leave and release, accompanied by a brief explanation for the decision.
- Giving victims the right to be notified of every unescorted leave of absence from a hospital or secure facility into the community, including staff-escorted community leave where the patient is left unescorted at the destination (e.g. community programmes).
- If the above recommendations are implemented, we do not believe it would be relevant or necessary for victims to have the right to apply to the Review Tribunal for a review of the patient's condition or to make a submission to the Minister concerning whether the patient's continued detention is necessary.

Oral submission

Victim Support requests the opportunity to make an oral submission to the Committee. Please contact:

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