



THE LAW SOCIETY
OF NEW SOUTH WALES

Our Ref: SSH:MM:1304326

13 April 2010

The Hon. Greg James QC
President
Mental Health Review Tribunal
PO Box 2019
BORONIA PARK NSW 2111

Dear President,

Re: Erosion of patient rights due to proposed changes to the function of the Mental Health Act 2007

The Law Society's Human Rights Committee (Committee) has a number of concerns arising from the proposed changes to the manner in which mental health inquiries are held.

The Committee notes that as a consequence of the *Courts and Crimes Legislation Further Amendment Act 2008* the Magistrate review of involuntary patients has been replaced by a review by the Mental Health Review Tribunal (Tribunal). While the Committee supports the move to mental health inquiries being held by an experienced legal member of the Tribunal, it has significant concerns regarding the timing of such reviews and the use of video conferences in these circumstances.

Timing of Mental Health Inquiries

Section 27(d) of the *Mental Health Act 2007* requires that a person who is detained in a mental health facility must be presented for review (a mental health inquiry) "as soon as practicable". Currently mental health inquiries conducted by Magistrates take place within one week of a patient being detained.

The Committee understands that when the Tribunal commences conducting mental health inquiries, hearings will take place in the third or fourth week of a person's detention. The Committee sees this as a concerning increase in the time spent in detention without independent review, particularly when the legislative requirement that hearings take place "as soon as practicable" remains unchanged.

The Committee notes that a large number of early mental health inquiries are adjourned. However without further information, it is not clear to the Committee that these hearings are unnecessary as recently suggested in the media. Prompt hearings are essential for ensuring that due process has been followed, and this function may still be performed even where hearings are adjourned. For this reason, early review of detention (within 24

hours of arrest) is a well-established feature of criminal procedure despite the fact that early mentions regularly result in an adjournment.

The Committee urges the Tribunal to make efforts to reduce the wait time for mental health inquiries, with the aim of ensuring a patient's current right to a hearing within one week is maintained.

Audio-Visual Links

The Committee is also concerned about the impact of audio-visual link (AVL) technology on the conduct of mental health inquiries, particularly given the special needs of persons living with mental illness. The Committee is not aware of any data on the effect of AVL on hearings involving mentally ill persons. However, the Committee is concerned to ensure that hearings conducted by AVL are as fair to participants as possible and that the mode of communication does not adversely affect patients' interests.

The Committee asks that the Tribunal closely monitor AVL hearings to ensure the effectiveness of the hearing is not unduly compromised by the use of this technology.

Yours sincerely


Mary Macken
President

Cc: The Hon. John Hatzistergos MLC, Attorney General
The Hon. Barbara Perry M.P, Minister Assisting the Minister for Health (Mental Health)