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SUBMISSION – REVIEW OF THE CRIMES (MENTAL IMPPAIRMENT AND UNFITNESS TO BE TRIED) ACT 1997

Chapter 4—Unfitness to stand trial

Threshold definition

1 Should the test for determining unfitness to stand trial include a threshold definition of the mental condition the accused person would have to satisfy to be found unfit to stand trial?

Not if the absence of a threshold definition hasn't caused any problems. We are unable to identify any problems caused by the absence of a threshold definition.

Decision-making capacity or effective participation

2 Does the current test for unfitness to stand trial, based on the Pritchard or Presser criteria, continue to be a suitable basis for determining unfitness to stand trial?

Yes. Further expansion of the criteria will risk increases in the number of cases and stretching already limited resources.

3 Should the test for unfitness to stand trial include a consideration of the accused person's decision-making capacity?

No. The current criteria adequately take into account a person's understanding of the trial and ability to provide instructions to a legal practitioner. Decision-making capacity appears to be a very broad concept. Inclusion of that test could possibly result in too broad a range of persons being subject to supervision under the Act - those with a mild intellectual disability, persons suffering stress or persons from poor educational backgrounds, for example. The supervisory regime under the Act can be long-term and onerous. It should not be applied to more people than is absolutely necessary.

5 If the test for unfitness to stand trial is changed to include a consideration of the accused person's decision-making capacity, should the test also require that the lack of any decision-making capacity be due to a mental (or physical) condition?

See Question 3.

6 If not decision-making capacity, should the test for unfitness to stand trial include a consideration of the accused person's effective participation?

No. We note Smith J's comments in *R v Presser* [1958] VR 45: 'He need not, of course be conversant with Court procedure and he need not have the mental capacity to make an

able defence; but he must, I think, have sufficient capacity to be able to decide what defence he will rely upon and to make his defence and his version of the facts known to the court and to his counsel, if any.'

Rationality

7 Should the accused person's capacity to be rational be taken into account in the test for unfitness to stand trial?
If yes, is this best achieved:
(a) by requiring that each of the Presser criteria, where relevant, be exercised rationally
(b) by requiring that the accused person's decision-making capacity or effective participation be exercised rationally, if a new test based on either of these criteria is recommended, or
(c) in some other way?

This is already implicit in the Presser criteria. Expert psychiatric evidence will identify irrational behaviour or delusions when addressing the ability of the accused person to meet the criteria.

Issues specific to the Presser criteria

8 If the unfitness to stand trial test remains the same, are changes required to the Presser criteria?

No. The current criteria in s 6 of the Act permit a broad look at a person's ability to understand and take part in the court process.

9 Should the criteria for unfitness to stand trial exclude the situation where an accused person is unable to understand the full trial process but is able to understand the nature of the charge, enter a plea and meaningfully give instructions to their legal adviser and the accused person wishes to plead guilty to the charge?

Yes. There is a difference between being fit to stand trial and being fit to plead guilty which the law should recognise.

In many cases it is not in the accused's best interests to be found unfit to be tried and put on a supervision order, particularly for less serious offences. Many such accused are later unable to have their supervision orders revoked because they continue to breach the conditions of the order or commit offences. Further, they remain at risk of the order being varied from non-custodial to custodial if they continue to pose a danger to the community.

A person who is able to understand the process involved in a plea of guilty will often be better off being dealt with by a criminal sanction, rather than being placed on an indefinite supervision order.

10 Do any procedural, ethical or other issues arise in creating this exclusion from the unfitness to stand trial test?

Close scrutiny would need to be given to ensuring that the accused person:

- understands the charge;
- understands what it means to plead guilty to it;
- understands and is able to meaningfully participate in the consequent legal process; and
- is able to meaningfully give instructions to their legal representatives.

11 Are changes required to improve the level of support currently provided in court in trials for people who may be unfit to stand trial?

It is desirable in some cases to have a carer assist the accused in court.

The availability of a formal education program that aims to restore a person's fitness to stand trial would be appropriate.

It may be desirable to have a provision allowing the judge to direct that the person not be in court (either by video link, or completely absent) where the person is represented and would be distressed or confused by the proceedings.

13 Should the availability of support measures be taken into consideration when determining unfitness to stand trial?

If appropriate supports can be put in place, then it may be a relevant consideration. For example, there have been cases where the expert witnesses recommend the person could be fit to be tried with frequent breaks and an opportunity to have his lawyer explain the process.

14 What changes can be made, if any, to enhance the ability of experts to assess an accused person's unfitness to stand trial?

Access to full medical histories.

Requirement to 'plead' in a committal proceeding

15 Is there a need for a uniform procedure in committal proceedings where a question of unfitness to stand trial is raised?

Yes.

16 What procedure should apply where a question of an accused person's unfitness to stand trial is raised in a committal proceeding?

If the accused person is to be committed to stand trial, they should not be required to enter a plea.

The role of lawyers in the process for determining unfitness to stand trial

17 What ethical issues do lawyers face in the process for determining unfitness to stand trial?

Is raising the issue of unfitness to be tried in the best interests of the accused?

The role of experts in the process for determining unfitness to stand trial

19 Are there any issues that arise in relation to the role of experts and expert reports in the process of determining unfitness to stand trial?

The court has power to order an independent expert report concerning unfitness but is reluctant to do so even in the case of unrepresented accused.

The process of obtaining a report from Forensicare can take many months – as at early August, appointments were not available before October, which means a delay of at least 4 months while a report is obtained.

Jury involvement in all investigations of unfitness to stand trial

20 Should the CMIA provide for a procedure where unfitness to stand trial is determined by a judge instead of a jury?

Yes.

If yes:
(a) should the process apply only where the prosecution and the defence agree that the accused person is unfit to stand trial or should a jury not be required in other circumstances?

The process should apply in every case, regardless of whether the parties agree.

(b) what safeguards, if any, should be included in the process?

The judge should still be required to be satisfied by evidence that the accused is unfit to stand trial and make a finding to that effect.

A 'consent mental impairment' hearing following a finding of unfitness to stand trial

21 Should a 'consent mental impairment' hearing be available following a finding of unfitness to stand trial?

Yes.

The length of the process

23 Would removing the jury's involvement in investigations of unfitness to stand trial be likely to expedite the process?

Yes.

24 How frequent is it for an accused person to be acquitted at a special hearing, following a finding of unfitness?

It's not uncommon.

25 What procedures could be implemented to expedite the unfitness to stand trial process?

A judge alone procedure.

A simplified evidentiary procedure when commission of the offences is not in dispute.

Suitability of findings in special hearings

26 Should changes be made to the findings available in special hearings?

Not if the currently available findings haven't caused any problems. We are unable to identify any problems caused by the currently available findings.

Directions to the jury on findings in special hearings

27 What is the most appropriate way of directing the jury on the findings in special hearings?

The judge should only have to direct the jury on the findings open on the evidence.

Chapter 5—Defence of mental impairment

Paragraph 5.42 of the Consultation Paper says a 'disease of the mind' has been held to be synonymous with a 'mental impairment' and refers to *R v Falconer* (1990) 171 CLR 30, 53 and *R v Radford* (1985) 42 SASR 266. However, the actual quote in *Falconer* (at page 53) from *Radford* (at page 274) is that "the expression 'disease of the mind' is synonymous… with 'mental illness'", not 'mental impairment'.

The meaning of 'mental impairment'

29 How does the defence of mental impairment work in practice with 'mental impairment' undefined?

There is uncertainty about what conditions can constitute a 'mental impairment'. For example, it is unclear whether an intellectual disability can constitute a mental impairment.

30 Should 'mental impairment' be defined under the CMIA?

Yes.

31 What are the advantages or disadvantages of including a definition of mental

impairment in the CMIA?

The advantage is certainty about what conditions may constitute a 'mental impairment'.

32 If mental impairment is to be defined in the CMIA, how should it be defined?

This question would be best answered by appropriate medical experts.

33 What conditions should constitute a 'mental impairment'? Are there any conditions currently not within the scope of a mental impairment defence that should be included? If so, what are these conditions?

'Mental impairment' should include all major known conditions (that are not self-induced) which could have the effect that:

- the person did not know the nature and quality of the conduct; or
- the person did not know that the conduct was wrong.

This question would be best answered by appropriate medical experts.

The test for establishing the defence of mental impairment

35 How does the test establishing the defence of mental impairment in the CMIA operate in practice? Are the current provisions interpreted consistently by the courts?

We are not aware of any significant inconsistencies in the way the courts interpret the test in the case of mental illnesses. However, there is considerable uncertainty as to what other conditions, if any, constitute a 'disease of the mind' or mental impairment. Some County Court cases result in a verdict of not guilty by reason of mental impairment because of an intellectual disability, whereas *Sebalj* and *Falconer* suggest that the defence does not apply to intellectual disability. There is therefore inconsistency in the application of the test.

36 If a definition of mental impairment were to be included in the CMIA, should it also include the operational elements of the M'Naghten test for the defence of mental impairment? If so, should changes be made to either of the operational elements?

The operational elements must be included. Otherwise, it might be argued that simply having the relevant condition at the time of the offence establishes the defence. If no significant problems can be identified with respect to the current operational elements, then no changes should be made to them.

37 Are there any issues with interpretation of the requirement that a person be able to reason with a 'moderate sense of composure'?

There are no issues that we are aware of.

The role of experts in the process for establishing the defence of mental Impairment

40 Are there any issues that arise in relation to the role of experts and expert reports in the process for establishing the defence of mental impairment?

The Act empowers the court to order expert reports in respect of fitness (under s 10(1)(d)) but not in respect of mental impairment. There should be a power for the court to order expert reports in respect of mental impairment.

Jury involvement in the process and consent mental impairment hearings

41 Should there be any changes to the current processes for jury involvement in hearings and consent mental impairment hearings?

Yes. Juries should not be involved in consent mental impairment hearings after a finding of unfitness.

Order of considering the elements of an offence

42 What approach should be adopted in directing juries on the order of the elements of an offence in cases where mental impairment is an issue?

Judge Cannon's approach in *DPP v Soliman* [2012] VCC 658 should be adopted.

The relevance of mental impairment to the jury's consideration of the mental element of an offence

44 What approach should be adopted in determining the relevance of mental impairment to the jury's consideration of the mental element of an offence?

Judge Cannon's approach in *DPP v Soliman* [2012] VCC 658 should be adopted.

Legal consequences of the findings

45 Are changes required to the provision governing the explanation to the jury of the legal consequences of a finding of not guilty because of mental impairment?

The Act should be amended to clarify what is required by s 22(2)(a).

Chapter 6—Application of the CMIA in the Magistrates' Court

Issues with the lack of jurisdiction

47 What issues arise in relation to the Magistrates' Court's lack of jurisdiction to determine unfitness to stand trial?

The Commission has identified the principal issues at pages 119 and 120 of the Consultation Paper.

The power to determine unfitness to stand trial

48 Should the Magistrates' Court have the power to determine unfitness to stand trial?

Yes.

If yes, consider:
(a) Should the power to determine unfitness to stand trial be limited to indictable offences triable summarily or include certain summary offences?

It should include all indictable offences triable summarily and all summary offences.

(b) When can the question of unfitness to stand trial be raised to bring it within the Magistrates' Court's jurisdiction?

The issue should be able to be raised at any time provided there are reasonable grounds for raising it.

(c) What should trigger the Magistrates' Court's investigation into unfitness?

'Reasonable grounds' for an investigation would be a satisfactory test.

(d) Should the Magistrates' Court retain a discretion not to proceed with the investigation into unfitness to stand trial?

Yes. There may be circumstances in which the investigation should proceed in a higher court.

(e) What test for determining unfitness to stand trial should apply in the Magistrates' Court?

The same test that would apply in the County Court and the Supreme Court appropriately modified for the Magistrates' Court.

49 What are the cost implications of giving the Magistrates' Court the power to determine unfitness to stand trial?

A procedure in the Magistrates' Court is likely to cost less than the current procedure in the County Court, which in many cases involves two jury trials.

50 Is a broad, discretionary power to make orders in relation to people with a mental illness, intellectual disability or cognitive impairment a better alternative to giving the Magistrates' Court an express power to determine unfitness?

Further research should be done on the New South Wales and Commonwealth experience before such a power is introduced in Victoria.

53 If the Magistrates' Court is given the power to determine unfitness to stand trial, what process should apply to determine whether the accused person committed the offence charged?

The same ‘special hearing’ procedure that is conducted in the higher courts, except conducted as nearly as possible as if it were a summary contest.

54 If the Magistrates’ Court is given the power to determine whether the accused person committed the offence charged, should the process be limited to indictable offences triable summarily or include certain summary offences?

It should include all indictable offences triable summarily and all summary offences.

Defence of mental impairment in the Magistrates’ Court

55 What issues arise because of the Magistrates’ Court’s lack of power to make orders in relation to people found not guilty because of mental impairment?

The Commission has identified the principal issues at page 126 of the Consultation Paper.

The power to make orders following a finding of not guilty because of mental impairment

56 Should the Magistrates’ Court have the power to make orders in relation to people found not guilty because of mental impairment?

Yes.

57 If yes, should the power to make orders be limited to indictable offences triable summarily or include certain summary offences?

It should include all indictable offences triable summarily and all summary offences.

Options for expanding the orders available in the Magistrates’ Court

58 If the application of the CMIA is expanded in the Magistrates’ Court, what orders should be available:

(a) if the Magistrates’ Court is given the power to determine unfitness to stand trial and the criminal responsibility of an accused person found unfit to stand trial?

Custodial and non-custodial supervision orders, subject to a time limit (not indefinite orders).

(b) in relation to people found not guilty because of mental impairment?

Custodial and non-custodial supervision orders, subject to a time limit (not indefinite orders).

59 What are the cost implications of the options for expanding orders available in the Magistrates’ Court?

Proceedings in the Magistrates' Court are likely to cost less than proceedings in the County Court, which is the alternative in many cases.

Chapter 7—Consequences of findings under the CMIA

Section 47 certificates on availability of facilities and services

60 Are there appropriate and sufficient facilities and services for people subject to the CMIA?

It is our understanding that there are currently no custodial facilities for persons with intellectual disabilities who do not 'present a serious risk of violence'. That is because s 152(1)(b) of the *Disability Act 2006* provides that a person with a disability may only be admitted to a residential treatment facility if the Secretary is satisfied that the person 'presents a serious risk of violence'. While the report identifies 19 places as being available for persons who meet the criteria for admission, we are aware of only 6 people who occupy those places pursuant to the *Crimes (Mental Impairment and Unfitness to be Tried) Act 1997*.

Reports on the mental condition of people declared liable to supervision

61 Are changes needed to the provisions under the CMIA governing mental condition reports and/or section 47 certificates to ensure adequate and timely information is provided to the courts?

Where the defence seek an unconditional release, the court is required by s 40(2) to seek a report before it can release the accused unconditionally. This means that where defence seek an unconditional release and the Crown seeks a supervision order, the court must first order a s 40(2) report and then, if the court decides to declare the accused liable to supervision, the court must order both a s 47 certificate and a s 41 report. Practically what often occurs is that the court orders a s 47 certificate and a s 41 report prior to declaring the person liable to supervision, with a request that the s 41 report address the matters in s 40(2). However, this may be contrary to s 41(1), which requires that the report be provided 'if a person is declared liable to supervision'. The Act should be amended to provide that a s 47 certificate and a s 41(1) report which addresses the matters in s 40(2) is sufficient in this circumstance.

Indefinite nature of the order with a 'nominal term'

62 Is the use of a nominal term an effective safeguard in balancing the protection of the community with the rights of the person subject to a supervision order?

Yes.

The method for setting a nominal term

63 Should the method for setting the nominal term be changed? If so, how should it be changed?

Not if no problems can be identified with the current method. We are unable to identify any problems with the current method. We note that in any case when making a supervision order the court may direct that the matter be brought back for review at the end of the period specified by the court. Further, the person can apply for variation of a custodial supervision order to a non-custodial supervision order, or for extended leave (in the case of a custodial supervision order), or for revocation of a non-custodial supervision order at any time during the nominal term.

Principles underpinning appeals

67 Are there any barriers to people subject to supervision orders and other parties pursuing appeals against supervision orders?

There are no barriers of concern to the DPP.

Ancillary orders and other consequence of findings under the CMIA

68 Should the ancillary orders and administrative consequences that follow in usual criminal proceedings apply to findings made under the CMIA?

See question 69.

69 Which ancillary orders and administrative consequences are appropriate and why?

Forensic samples orders should be available upon a finding of not guilty by reason of mental impairment or a finding that the accused 'committed the offence charged' for the purposes of criminal investigations and prosecutions. We note that forensic samples orders are available upon a finding of not guilty by reason of mental impairment, however they are not available upon a finding at a special hearing that the accused 'committed the offence charged'. Forensic sample orders should also be available upon a finding that the accused 'committed the offence charged'.

Compensation and restitution orders should be available upon a finding of not guilty by reason of mental impairment or a finding that the accused 'committed the offence charged'. In one recent case, the offender murdered his wife in front of their young daughter. Property was restrained for the purposes of future compensation to the daughter. However, the accused was found not-guilty by reason of mental impairment and so no compensation order was available. Compensation orders should be available in such circumstances. Compensation and restitution orders are discretionary and so if such an order was inappropriate in the circumstances of a particular case the judge could decline to make one.

Orders under the *Confiscation Act 1997* should be available upon a finding of not guilty by reason of mental impairment or a finding that the accused 'committed the offence charged'. However, to address any potential punitive effect that may be caused by confiscation in these circumstances, confiscation in these cases should occur only in relation to proceeds and benefits of the crime and also for the purpose of preserving property for satisfaction of potential restitution and compensation orders made under the

Sentencing Act 1991. It would be inimical to the objects of the confiscation scheme if a person, however impaired, is permitted to retain their criminal spoils. Disgorging those benefits merely returns the person to the position they were in prior to the commission of the offence and puts them in no worse position, unlike forfeiture of lawfully acquired instruments of crime which has a punitive aspect.

Licence cancellation and disqualification orders should be available upon a finding that the person committed the offence charged. It is incongruous for a person who is found guilty of culpable driving to lose their licence, while the person 'found to have committed' culpable driving keeps theirs. Further consideration should be given to whether it is appropriate for licence cancellation and disqualification orders to be available upon a finding of not guilty by reason of mental impairment.

Sex offender registration consequences are necessary for community protection.

Working with children check consequences are necessary for community protection.

Chapter 8—Supervision: review, leave and management of people subject to supervision

Review, variation and revocation of orders

70 Are changes required to the provisions for reviewing, varying and revoking supervision orders to make them more just, effective and consistent with the principles underlying the CMIA? If so, what changes are required?

Section 38C provides that the Director must give victims and family members of the accused 14 days of notice of reviews and other hearings. There is no definition of what the Director must do to 'give notice' of more than 14 days before a hearing. Section 74 requires that a notice must be sent by registered post. In the past the letters have been sent by registered post at least 21 days before the hearing because s 49 of the *Interpretation of Legislation Act 1984* provides that 'give notice' means 'unless the contrary is proved, be deemed to be effected at the time at which the letter would be delivered in the ordinary course of post'. This allows a week for the sending of the letter by registered post and for Australia Post to deliver the letter/card and for the person to collect the letter from the post office.

The contrary will be proved when the Australia Post card comes back stating that the letter was 'unclaimed' or 'refused' or 'not at this address'. What if the person refuses to collect their registered post article from the Post Office? The Act should be amended to provide that 'the DPP is taken to have complied with the requirements of s 38C if registered post letters containing the information required in s 38C and s 38E are posted 21 days (for example) before the hearing date.'

Registered post is an antiquated and unreliable system for notification. Section 38C requirements should include alternatives such as email or other postal systems where receipt of notification can be confirmed.

Currently all 'family members' (as defined) are required to be notified. Where the accused has no contact with them or does not want them notified, it should not be a requirement that they be notified. What often happens is that the reviewee (through his

solicitor) does not notify the DPP of family members with whom he may not have contact or a close relationship, which can result in criticism of the DPP if those family members are subsequently disclosed in medical reports. It should be sufficient for one or more family members to be notified rather than all of them.

71 In your experience as either a person subject to a supervision order, a family member of a person subject to a supervision order or a victim in a CMIA matter, how has the frequency of reviews affected you?

Where a hearing is adjourned for a period less than 3 months, an ordinary post letter advising an adjournment should be sufficient. It can be onerous for victims and family members to continually attend the post office in business hours to collect letters.

73 Does the CMIA strike the right balance between allowing for flexibility in the frequency of reviews and ensuring that people subject to supervision orders are reviewed whenever appropriate?

In general, the Supreme Court does not fix a period of review for custodial supervision orders, despite the nominal term being 25 years. This is a recognition that those persons are usually significantly unwell and unlikely to become well for a considerable period of time. Because applications for extended leave can be made at any time, there is adequate flexibility in not requiring the court to conduct regular reviews that require substantial resources, including court time. Further, such regular reviews are a constant reminder and source of anxiety about the potential outcome to victims of the offences. In addition, many reviewees find it distressing to have a review process when the outcome is likely to be a confirmation of the existing order. While there is a provision that provides that the reviewee can be excused from the proceedings, this does not prevent the reviewee being distressed by the preparation for the review hearing.

Leave of absence under supervision orders

74 Are changes required to the leave processes to make them more just, efficient and consistent with the principles underlying the CMIA? If so, what changes are required?

Section 38C(2)(d) provides that the Director must give victims and family members of the accused 14 days of notice of an application for extended leave, if the granting of the application would significantly reduce the degree of supervision to which the person is subject. Applications for extended leave must be made every 12 months until the order is varied to a non-custodial supervision order. This means that we write to victims and family members every 12 months even though the granting of the subsequent applications would not be expected to significantly reduce the degree of supervision. The reason for this is that we don't have information about whether the subsequent granting will not be expected to significantly reduce the degree of supervision. Section 38C(2)(d) should be amended to provide that we have to notify victims and family members of the granting of extended leave only where the person was not on extended leave at the time of the application - i.e. only the initial granting of extended leave.

Responsibility for people subject to supervision orders

79 Is there sufficient clarity in the arrangements for monitoring people subject to noncustodial supervision orders?

The Act requires certain procedures to be followed if the Department of Health is to supervise a person on a supervision order (in the case of a person with a mental illness). The Act provides similar procedures to be followed if the Department of Human Services is to supervise a person on a supervision order (in the case of a person with a cognitive impairment including an intellectual disability). The Act does not require that one or other of those agencies be appointed to supervise the order. Consequently, in some cases, persons have been released on a supervision order that is supervised by a private medical practitioner. This results in none of the requisite procedures being followed, namely bringing the matter back to court for a major review, or apprehending the person in the event of a breach of the order. It also means that the annual report under s 41 of the Act (which enables the court to oversee the supervision) is not prepared. The person becomes lost in the system despite the best intentions of the judge hearing the matter. To prevent people from being placed on supervision orders that are not properly monitored, reported on, enforced or returned to court, the Act should provide that in imposing a supervision order, a court must appoint either the Department of Health or the Department of Human Services to supervise the order.

80 If no, what changes should be made to ensure that people on non-custodial supervision orders are adequately monitored?

See question 79.

Application of the principles and matters the court is to consider

88 Should the court continue to consider the 'dangerousness' of the person subject to the supervision order?

Yes.

89 Should the court continue to consider the likelihood of the person endangering themselves?

Yes.

90 What role should the seriousness of the offence play in the making, varying and revocation of orders and applications of leave?

It is relevant to the assessment of the person's dangerousness.

The role and interests of victims and family members

98 Do the CMIA provisions allow for effective participation by victims and family members?

Victims currently have no active role in the trial process other than an opportunity to provide a s 42 report.

Only a small number of victims and family members opt out of receiving notice. However, a significant number do not collect their registered post letters from the Post Office, which may be an indication that they do not want to receive notice of hearings. Sometimes this is because the DPP is required to send multiple registered post letters to victims because a hearing is adjourned, or reviews are held frequently (for example, yearly or every 6 months). Receiving constant reminders about the offences can be distressing for some victims.

The Act requires the DPP to notify victims and family members of certain hearings while the person is on the supervision order. In some cases this may mean that the first notification they receive is of a major review 25 years after the order was made (or the Governor's pleasure order converted to the Act). In many cases the police informant has not maintained contact with the victims (or may have left the police force) and is in no better a position to advise the DPP on the current contact details for the person. The Victorian Electoral Commission enables searches of people in Victoria, but frequently there are multiple persons with the name of a victim.

Representation of community interests

99 Should community interests be represented in the CMIA system of supervision?

Yes. But it should be noted that paragraph 9.100 overstates the concern in that it states that 'potentially the prosecution and three government bodies acting in opposition to the person'. In fact, potentially it would be the prosecution (DPP) and two government bodies (A-G and *either* Department of Health or Department of Human Services). Either the Department of Health and Department of Human Services is nominated to supervise the order, not both.

Practically, the DPP is not involved in the hearings of reviews, major reviews, applications for revocation or extended leave applications other than in relation to his obligations under s 38C to give notice to victims and family members. Section 41 does not require the Department of Health/Human Services to provide the DPP with copies of the medical reports. The DPP does not make a submission about the hearing before the court, confining his role to informing the court about notice to victims and family members, whether victims or family members have prepared a report, and any other matters relating to the Act that the court requires assistance with. The DPP usually seeks to be excused from the proceedings once his representative has informed the court about these matters. That leave is usually granted by the court.

The DPP also has a role in Supreme Court cases to prepare the summary of facts and proceedings in the case as required by s 76A(2) of the Act. In the County Court the DPP provides the other parties with copies of the depositions, or Crown opening, or other documents from the original court hearing.

However, there have been cases where the DPP rather than the Attorney-General has made an application for variation from a non-custodial supervision order to a custodial supervision order where the person continues to offend (for instance), so those circumstances do arise where the DPP would wish to exercise a right for such an application and the right to an appeal from such a hearing.

However, we would question whether the DPP ought to have a right of appeal in respect of orders to revoke a supervision order, or to appeal a refusal to revoke extended leave or grant extended leave as the DPP takes no role in these hearings. Perhaps the Act should make it clear that the DPP's role is limited to notifying victims and family members and informing the court about those matters.

100 Does the involvement of a number of agencies representing the community's interests increase costs unnecessarily?

If the Act were amended to provide that victims and family members who wish to be notified of future hearings should be notified, then procedure for notifying them could be passed to the Attorney-General, which would remove the DPP's involvement in the ongoing review of supervision orders.

23 August 2013