



## President's Update

Welcome to the first communique for 2023. I hope that everyone was able to enjoy a safe and relaxing break.

### Public Sector Act 2022 – Working Groups

Thank you to those members who expressed an interest in participating in a working group to assist the MHRT in preparing for the implementation of the *Public Sector Act 2022*. All interested members should have received an initial email about the group to which they have been allocated and the first meetings will be occurring soon.

### Mental Health Court decisions – reasons and transcripts

Unfortunately, we have been experiencing delays in the receipt of reasons and transcripts out of the Mental Health Court. The Registry has advised that this is due to the change in the third party service provider engaged to produce these documents. In some instances, this delay has meant that the reasons and transcripts were not available to the MHRT prior to the first scheduled hearing. We have raised this issue with the Mental Health Court and will continue to press for the receipt of these documents in a timely fashion.

### Statements of reasons – Christmas break

The MHRT's office closure at Christmas can impact the ability to provide SORs to requestors within the 21-day timeframe. I would like to thank members for their assistance in drafting and reviewing SORs so quickly in the lead up to the Christmas closure. Members' efforts meant that no SORs were delivered late during that time.

## Monthly Stats

Please note that this data is approximate only.

December 2022	

MHC Orders	3 made up of: <ul style="list-style-type: none"> <li>• 2 FOs on the basis of unsound mind (1 a PPO)</li> <li>• 1 TSO</li> </ul>
Appeals to MHC lodged	6
MHRT Hearings where a decision was made	799
MHRT Hearings where an adjournment occurred	143
SORs requested	27
Adjournment rate	15%

## Executive Officer's Update

### HR/Office Matters

#### Corporate Services

The Corporate Services team has increased in size with Monique (Mon) Watson returning from maternity leave and Melissa (Mel) Gazelle commencing in the Administration Officer position. Mel will also be assisting with Executive Support Officer duties while recruitment to the role is underway and she may be in contact with you in relation to parking and other matters.

#### Consumer Engagement

Arone Lenihan will be commencing in the Consumer Engagement Officer role on 12 February. Arone was previously the IPRA at PA Hospital and we are looking forward to her leading the operationalisation of our Consumer Engagement Strategy.

#### Hearings Coordination

There will be a change in the Team Leader role with Lani concluding her time in the role in February to move back into the Hearings Coordinator role looking after The Park and Logan-Beaudesert AMHSs. Patrick (Pat) Brittan will be taking on an opportunity to act in the Team Leader role. Recruitment activities for a new Hearings Coordinator are nearing conclusion with the new starter likely to commence in February.

A reminder too that if members are not sure which hearing room they are sitting from in the office, please just check the whiteboard in the hallway in the HC area and you will see what AMHS is in what room.

## Hearings

### In Person hearings

The Tribunal has ramped up the return of members to sitting in person at services in January and are looking to continue to increase our presence in February and moving forward. We have already received positive feedback from members and services about being back at more venues and we are hopeful that this will encourage consumers and support networks to attend in person more regularly.

There may be instances where processes have changed or do not run as smoothly as remembered. The Hearings Coordination team is working closely with services to ensure that we are across any issues that might affect hearings but if members do have any feedback about sitting in person at venues please provide that to the Manager of our Hearings Coordination team, Matt Bennett, at [Matthew.Bennett@mhrt.qld.gov.au](mailto:Matthew.Bennett@mhrt.qld.gov.au).

## Corporate Services

### Member Appointment and March Roster

For those Members who are up for reappointment we are anticipating an announcement will be made in mid-February, however please note that this timeframe is out of the MHRT's control and it is therefore an estimate. Since the MHRT does not know exactly when the appointments will be made, we operate as per usual until we receive notification. This means that all learning and development opportunities for example will be conducted in the usual way. Please do not take invitations, or lack thereof as an indication of future appointments. Similarly, you may also receive an automated notification that your novell account will be terminated on 27 February. This also isn't an indication of future appointments, the date is in line with your current term end date and can't be extended until a decision is made from the Governor in Council.

The March schedule will be released as soon as possible after the decision from Governor in Council has been communicated.

### Expense Claims

With a return to sittings at AMHSs, we expect that members will once again commence lodging mileage and expense claims. Please note that if you are submitting the forms electronically, they can be emailed to [MHRT.CorporateServices@mhrt.qld.gov.au](mailto:MHRT.CorporateServices@mhrt.qld.gov.au). If you are lodging hard copies, please hand to a member of the Corporate Services team. Can members please ensure that they complete all sections? Unfortunately with the number that we receive, we don't have enough staff to fix up every form and therefore if the form is completed incorrectly or not fully completed, it may be returned to the member for amendment. Please ensure these forms are lodged weekly where possible.

### Parking

Members are reminded that if they are driving to the office for hearings, they may wish to allow some time for car parking. With more people returning to their offices in the CBD, car parking may become more limited. A reminder that approved parking is at 53 Albert St and at the Royal on the Park. Should both these car parks be full, you will need to find an alternative car park and obtain a receipt for payment so that you can be reimbursed. Where possible please obtain your parking voucher from Corporate Services team before your hearings or during your lunch break.

## Q&A

### Human rights – international

Section 48 of the *Human Rights Act 2019* provides that international law and the judgements of domestic, foreign and international courts and tribunals relevant to a human right may be considered in interpreting the Act. For that reason, we have set out below some international cases that members may find interesting. Information about these cases will be included in the Case Bank – Human Rights Cases available on the members' website.

Climate change impacts: [Daniel Billy and others v Australia \(Torres Strait Islanders Petition\)](#)

A number of Torres Strait Islanders submitted a petition to the United Nations Human Rights Committee claiming that changes in weather patterns have had a direct, harmful consequence on their livelihood, culture and traditional way of life and that Australia had failed to adapt to climate change by upgrading seawalls and reducing greenhouse gas emissions. The petition outlined that this failure had breached the petitioners' human rights under the International Covenant on Civil and Political Rights:

- Article 6: Right to life (similar to s16).
- Article 17: Right to be free from arbitrary interference with privacy, family and home (similar to s25).
- Article 27: Right to culture (similar to ss27, 28).

In respect of the impacts of climate change, the petitioners noted:

- severe flooding caused by tidal surge had destroyed family graves and left human remains scattered.
- maintaining ancestral graveyards and visiting and communicating with deceased relatives is at the heart of their culture.
- the most important ceremonies, such as coming-of-age and initiation, are only culturally meaningful if performed in the community's native lands.
- heavy rainfall and storms have degraded the land and tress and have consequently reduced the amount of available food from traditional fishing and farming.

In September 2022, the United Nations Human Rights Committee found that Australia's failure to protect against the impacts of climate change violated the petitioners' rights to enjoy their culture and be free from arbitrary interferences with their private life, family and home. In doing so, the Committee took into account the Islanders' spiritual connection with traditional lands and the dependence of their cultural integrity on the health of their surrounding ecosystems. The Committee did not consider the right to life breached.

Life imprisonment without parole: [R v Bissonnette](#) (2022 Canada)

In January 2017, Mr Bissonnette killed six people with a semi-automatic rifle in a mosque in Quebec. At trial, he pled guilty to all charges, including six counts of first degree murder. The sentence for first degree murder in Canada was imprisonment for life without the possibility of parole for 25 years. Usually, offenders serve each of their sentences at the same time (concurrently), however, at trial the prosecution asked the Judge to apply a section of their criminal code (s745.51) which allows the periods of eligibility for parole for each murder conviction to be served back-to-back (consecutively). This would have meant Mr Bissonnette would need to serve a total of 150 years before being eligible for parole.

The Canadian Supreme Court found that s745.51 violates the Canadian Charter of Rights and Freedoms in a way that cannot be justified in a free and democratic society, specifically the right not to be subjected to cruel and unusual punishment (similar to s17). The Court said a life sentence without a realistic possibility of parole presupposes the offender is beyond redemption and cannot be rehabilitated. This is degrading in nature and incompatible with human dignity. Therefore, Mr Bissonnette was required to serve a life sentence without eligibility for parole for a total of 25 years.

This case follows the reasoning in *Vinter and others v United Kingdom* in 2013 in which the European Court of Human Rights held that it is a violation of human dignity to deny life prisoners any prospects of release or review of their sentence.

However, these cases can be contrasted with the position taken in New Zealand in *R v Tarrant* where in 2020 the Court sentenced Mr Tarrant to life imprisonment without parole on 51 charges of murder; concurrent terms of 12 years imprisonment on 40 charges of attempted murder and life imprisonment on a charge of committing a terrorist act. Mr Tarrant had killed 51 people at two mosques in Christchurch.

## **Person on an FO or TSO may never have had a mental illness**

A few members have recently flagged that they have heard forensic matters in which it has been argued that the person has never had a mental illness and the original finding on that point by the Mental Health Court was incorrect. This may be due to a misdiagnosis, including due to malingering on the person's behalf. This situation can be difficult to navigate and the case law from the Mental Health Court provides some guidance but not absolute clarity. Below is a look at some of the Mental Health Court's relevant decisions. Please remember that any deidentified appeal cases (those starting with AppealtoMHC) are available only to members and copies (even though they are deidentified) cannot be shared with anyone else.

- **SWZ:**
  - The MHC said that a person's current existing mental condition, while an important consideration, is but one of a number of matters which must be considered when deciding whether to revoke or confirm a forensic order.
  - Despite the MHRT finding that the person did not have a mental illness at any time, the MHC seemed to favour the idea that the patient in this case did have a mental illness at one point that was in remission.
- **Appeal to MHC020:**
  - In this case, the MHC found that it could not be satisfied that the person had a mental condition at the time of offending.
  - The MHC noted that the safety of the community was compromised whether or not the person was subject to a forensic order and that a treatment support order was not going to be of any usefulness.
  - The MHC referred to SWZ and said that while the patient's offending was serious, it was not as serious and did not give rise to the same level of concern as the index offence in SWZ.
  - Note: MHC noted this was a peculiar case that cannot be readily applied to other cases.
- **Appeal to MHC025:**
  - In this case, the MHC gave some commentary about the source of the risk considered – it found that the family law and domestic violence legislation were more appropriately positioned to address certain issues of risk rather than the forensic order.
  - The commentary in this case might assist if members are considering what risk the patient poses to the community.
- **Appeal to MHC035:**
  - In this case the forensic order was revoked because the MHC considered it was not justified in relation to protecting the public (on the basis that the risks had reduced compared to the time of the offending) and the found that the forensic order was not doing anything to protect the safety of the community.
- **Appeal to MHC038:**
  - This case includes commentary about the purpose of the forensic order regime.
  - It may provide guidance around the intended purpose of having forensic orders and when people should continue to be subject to a forensic order.

