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# •DPP SPEECH•

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## Launch of Prosecuting Mental Impairment Matters

Wednesday 28 November 2012

**DPP JOHN CHAMPION S.C.**

Good morning and welcome to the launch of this important guide, “Prosecuting Mental Impairment Matters”.

I particularly acknowledge the presence today of the Chief Justice the Hon Marilyn Warren, Chief Judge the Hon Michael Rozenes, Public Advocate Colleen Pearce, a representative of our funding partner from the Victims Support Agency Suzanne Whiting, the Chief Crown Prosecutor Gavin Silbert S.C., and the Solicitor for Public Prosecutions Craig Hyland. We also welcome the newly-appointed Chief Magistrate Peter Lauritsen and congratulate him on his appointment.

We are all here today because we have an interest and involvement in the prosecution of people pursuant to the provisions of the *Crimes (Mental Impairment and Unfitness to be Tried) Act 1997*. I thank you all for coming along.

As you all know, this area of indictable prosecutions can be particularly daunting and confusing for victims and family members of both the victim and the accused.

The brochure that we are launching today, in my view, fills a vacuum that has existed for too long. Until now, there has been no substantive, detailed but “user-friendly” information relating to the prosecution of crimes that involve mental impairment issues. I am pleased that this vacuum has now been filled.

The often violent nature of the offending in this area, coupled with the acceptance of the mental illness of the accused person, too frequently leaves victims and their families feeling that the offending behaviour has in some way, been excused. Being found not guilty of a crime due to mental impairment, and the imposition of non-custodial supervision orders in particular, can be difficult outcomes for victims and their relatives and families to comprehend, and accept. My own experience shows that this difficulty often extends to the general community.

For instance, a common misunderstanding is that Supervision Orders are viewed as not amounting to a sufficient form of punishment. This brochure clarifies that



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supervision orders are indefinite and can often have onerous conditions attached. For those on indefinite supervision orders, the periodic reviews can go on for many years.

Complications in understanding arise due to the fact that a large number of these matters involve homicides within families - so there are family members grieving for a loved one, while on the other hand dealing with the trauma of another loved one being prosecuted for the death.

On top of that, due to a series of different hearings and processes involved, matters involving mental impairment can seem to take longer to finalise than if the offence was being dealt with under the normal court process. The different processes can seem even more mysterious, and can lead to confusion for those involved as lay participants.

What we have set out to do with this publication is explain to victims of crime and family members that there is a considered process and approach behind these outcomes. However, there is also scope in this brochure to assist accused people and their families to understand what is occurring. I can envisage the brochure being used widely throughout the community in an educational way, to assist in enhancing the better understanding of processes of the criminal justice system that can too often seem opaque, and mysterious.

This brochure explains the terminology, processes, potential outcomes, and the rights and entitlements of victims, their families and the families of accused.

It explains what it means for a person to be deemed unfit to stand trial and the subsequent legal processes that can follow, including a special hearing.

It explains in straightforward language the defence of mental impairment and how this is dealt with by the criminal justice system, and it provides details about Supervision Orders – the difference between a custodial and non-custodial supervision order; how long they last; what the court takes into consideration; whether they can be changed; who can appeal and how breaches are dealt with.

As well as these detailed explanations, what I view as an important development has been included – the inclusion of a detachable form to assist in the writing and provision of “Victim or Family Member Reports”. The brochure includes a pro forma letter that people can use to opt out of receiving notifications about these hearings.

These reports provide victims and family members with the opportunity to express their views about what the Supervised Person has done and the impact of their conduct on them.

Under Section 42 of the Act, a family member of the person or a victim of the offence may make a report to the court for the purpose of:

- (a) assisting counselling and treatment processes for all people affected by an offence; and



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- (b) assisting the court in determining any conditions it may impose on an order....or in determining whether or not to grant a person extended leave.

At present, our OPP lawyers involved in this field report that most people involved in these matters usually write a Victim and Family Member Report for the initial hearing but not for the review process, despite being made aware of this right.

We believe that having access to this form will result in more victims and family members exercising that right. The form will make it easier to complete a report, and will also assist in determining the type of information that is relevant to the court. In this way, it should assist the court in its deliberations in relation to conditions for supervision orders.

At the OPP, we have two Legal Prosecution Specialists in General Crime and Mental Impairment – Julie Carpenter and Louise Wilkinson – both of whom are highly experienced in this area, and who provide advice on these types of prosecutions, and who respond to reviews of supervision orders.

In 2012 to date, there have been 19 new Supervision Orders imposed and overall there are 187 Supervision Orders currently in place. Within the next 12 months, there are 66 matters with a hearing date scheduled. For each of these hearings, the victims and family members involved – which can involve several people for each matter – are entitled to submit a Section 42 report to the Court.

So while the number of matters involving mental impairment are not high compared to the thousands of matters we prosecute each year, as I have said, they often involve violent offending and are accompanied by high levels of fear by the victims and their families. I believe the production of such a specialist publication that will help these participants prepare for the long and complex process that accompanies these matters, is long overdue.

The development of this brochure will give victims involved in mental impairment matters a voice; facilitate greater participation by them in the prosecution process; and will give the court a more complete picture of the circumstances of the offending and the impact of the crime that may not otherwise have been provided by the prosecution during various hearings.

My congratulations to those members of the OPP's Witness Assistance Service – in particular Melissa Griffiths – who have developed this brochure with input and expertise from Julie Carpenter and Louise Wilkinson. You have achieved a clear and concise explanatory guide that will assist people when they are feeling vulnerable and confused.

My thanks also to the Victim Support Agency who provided the funding for this publication and whose members also contributed to its content development

**John Champion S.C.**  
**Director of Public Prosecutions**  
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