

MENTAL HEALTH REVIEW BOARD — LEGAL REPRESENTATION

**180. Hon Sally Talbot to the Minister for Mental Health:**

- (1) Does the new *Mental Health Bill* planned for introduction this year remove the right to legal representation at Mental Health Review Board hearings:
  - (a) If so, will the Minister consider returning that right to the Bill; and
  - (b) If not, was this removal deleted from earlier drafts of the Bill and why?
- (2) Is the model of the Mental Health Tribunal contemplated by the Bill a model without lawyers?

**Hon Helen Morton replied:**

- (1) No. The proposed new Mental Health Bill establishes a Mental Health Tribunal to replace the Mental Health Review Board, and does not remove the right to legal representation at hearings.
  - (a) Not applicable.
  - (b) No.

The wording in the draft Mental Health Bill 2011 inadvertently limited the right to legal representation at Mental Health Tribunal hearings.

The Green Mental Health Bill 2012 which was tabled in Parliament on 8 November 2012, provides adults with an unambiguous right to legal representation. Clause 426(1)(a) states that ‘in a proceeding, a party who has reached 18 years of age may appear in person or be represented by another person’.

In relation to children the current wording of the Green Bill inadvertently contains a prerequisite to representation, requiring that the representative, in the opinion of the Tribunal, be willing and able to represent the child’s interests. The Mental Health Commission has provided Drafting Instructions to Parliamentary Counsel to remove this prerequisite. It was not a policy position to place a prerequisite on representation.

The right to legal representation is fundamental and the final drafting of the Mental Health Bill 2013 will contain a right to representation for children and adults.
- (2) No.