

# INFORMATION SHEET



## VICTIMS – MENTAL HEALTH REVIEW TRIBUNAL REVIEW OF FORENSIC PATIENTS

### INTRODUCTION

In performing its functions, the Mental Health Review Tribunal (the Tribunal) complies with the objects of the *Mental Health and Cognitive Impairment Forensic Provisions Act 2020* (MHCIFPA) including section 69(f) to acknowledge the harm done to victims and to protect their safety.

### PURPOSE OF THIS INFORMATION SHEET

This information sheet provides a brief overview of the Tribunal’s function to review forensic patients – it does not explain the law or procedure – these are explained in the [Tribunal’s Practice Direction - The Participation of Victims in Tribunal Reviews](#). The Practice Direction sets out who is a victim under the legislation and how to make a submission to the Tribunal. There is no obligation on a victim to make submissions or otherwise participate in the review process.

### WHAT IS A TRIBUNAL REVIEW OF A FORENSIC PATIENT?

The legislation requires the Tribunal to review the forensic patient’s care and treatment, and this can include ordering a place of detention or whether a forensic patient can have leave or be conditionally or unconditionally released.

### WHAT DOES THE TRIBUNAL REVIEW NOT INCLUDE?

The Tribunal has no function to sentence or punish a forensic patient. The Tribunal will issue apprehension orders to apprehend and detain a forensic patient who absconds, or who does not comply with a condition of release, or who is deteriorating in mental health. Such orders are made by Presidential members who are available afterhours, 7 days per week.

All forensic patients have been before the criminal courts prior to being referred to the Tribunal. The criminal courts are responsible for verdicts (such as “act proven but not criminally responsible”; or a finding after a special hearing, in the case of a person unfit for trial, that on the limited evidence available the defendant (subsequently forensic patient) committed the offence charged. When a limiting term is set, after a finding that on the limited evidence available the defendant (subsequently forensic patient) committed the offence charged, the criminal court will address the nature of the offending, consider criminal sentencing principles and receive victim impact statements.

At a review, the Tribunal will consider the orders and findings of the criminal court and consider the contents of any victim impact statements provided to the court. The legislation makes clear that the focus of a Tribunal review is different from the criminal court – the Tribunal is to review the forensic patient’s detention, care and treatment. Given this focus, the Tribunal review does not focus on the offending act (although it does consider it) and must consider the treatment and care of the forensic patient.

For this reason, Tribunal reviews can be distressing for victims.

## WHEN ARE REVIEWS REQUIRED TO BE HELD?

The legislation in general requires a review every six months, and this starts soon after a person is classified as a forensic patient (for example when a limiting term is set or upon a verdict of act proven but not criminally responsible).

There are also reviews of the fitness of a patient who has been found unfit to be tried by the court. What this means is that from a short period of time after court proceedings there can be regular six-monthly reviews, and this can occur over a lengthy period of several years while a forensic patient is detained and/or on conditional release in the community.

## WHAT ORDERS CAN BE MADE ON A TRIBUNAL REVIEW?

The legislation sets out the orders which can be made upon review. Section 81 MHCIFPA states that:

On a review of a forensic patient under this Act, the Tribunal may make an order as to—

- a) the patient's detention, care or treatment in a mental health facility, correctional centre, detention centre or other place, or
- b) the patient's release (either unconditionally or subject to conditions).

The legislation requires the Tribunal to apply the objects found in s69 MHCIFPA, including victim safety under s69(f). The objects in s69 are:

- a) to protect the safety of members of the public,
- b) to provide for the care, treatment and control of persons subject to criminal proceedings who have a mental health impairment or cognitive impairment,
- c) to facilitate the care, treatment and control of any of those persons in correctional centres or detention centres through community treatment orders,
- d) to facilitate the provision of hospital care or care in the community through community treatment orders for any of those persons who require involuntary treatment,
- e) to give an opportunity for those persons to have access to appropriate care,
- f) to protect the safety of victims of forensic patients and acknowledge the harm done to victims.

Section 84 MHCIFPA says that the Tribunal must not make an order for the release (including the conditional release) of a forensic patient unless it is satisfied that the safety of the patient or any member of the public will not be **seriously endangered** by the patient's release. When the Tribunal considers this question it will listen to evidence from the treating team, the patient, and victims and registered victims if they want to make submissions.

## WHAT CONDITIONS MAY APPLY ON CONDITIONAL RELEASE?

The legislation sets out several conditions which can be imposed by the Tribunal on a forensic patient who is conditionally released to the community. The legislation does not limit the conditions which can be imposed, and the Tribunal will decide appropriate conditions on a case-by-case basis. In general terms the Tribunal sets conditions to address the safety of the community and victims, and conditions to ensure ongoing treatment and monitoring by community clinicians.

Conditions can include:

- use of medication;
- the use or non-use of alcohol and other drugs;
- drug testing and other medical tests;
- accommodation and living conditions;
- requirements for the purposes of monitoring (including by electronic means) compliance with the conditions of release;
- enrolment and participation in educational, training, rehabilitation, recreational, therapeutic or other programs;
- agreements as to conduct;
- association or non-association with victims or members of victims' families;
- prohibitions or restrictions on frequenting or visiting places;
- appointment of specific clinicians such as a psychiatrist, case manager or other health care professional to assist in the care and treatment of the forensic patient; and
- conditions as to the care, treatment and review of the patient by the specified clinicians including home visits to the patient.

#### WHAT IS A REVIEW LIKE?

The review is usually held at the facility where the forensic patient is detained – this can be a correctional facility, a secure or medium-secure forensic mental health facility, or another place. Reviews usually involve the Tribunal panel attending the facility where the forensic patient will also be present, and any other observers and some clinicians will join the review by video-link. Sometimes the Tribunal panel will conduct the review with the facility by video-link rather than be on site.

Before each review the Tribunal panel Members will have considered any victim impact statements given in court proceedings, any submissions made by victims, and at the review should acknowledge the harm done to victims.

Because the legislation requires the Tribunal to review the forensic patient's detention, care and treatment, the focus in the review is on that care and treatment and where it should occur. Unlike the court proceedings, held before the person becomes a forensic patient, the focus is not on the offending act which led to the court proceedings.

Where a leave of absence or a conditional or unconditional release order is being considered the focus is also on the safety of victims and the community, as well as the forensic patient's safety and care needs.

#### CAN A VICTIM PARTICIPATE IN A TRIBUNAL REVIEW AND WHAT MIGHT BE INVOLVED?

Victims can make written submissions to the Tribunal which will be considered at a review – please refer to the Practice Direction which sets out how to do this and where assistance to do so is available. Registered Victims may request that the Tribunal make place restriction orders or non- association orders - again the Practice Direction should be referred to for more information.

## CAN THE VICTIM ATTEND IN PERSON OR SEND A REPRESENTATIVE?

Many victims choose to have their representative attend the review on their behalf. The representative observes the review and provides advice of what occurred to the victim after the review. In some cases, the Tribunal also provides written reasons for its decision to be forwarded to registered victims by the Commissioner for Victims Services.

A choice by a victim to have the representative observe the review on their behalf, is an understandable one for two reasons –

- because the reviews are held every six months, over several years where change may be slow, it can be a traumatic and exhausting experience to observe the forensic patient being reviewed on so many occasions; and
- because the focus of the review is on the treatment of the forensic patient and the progress being made during treatment, the review can be distressing or alienating for victims who are also experiencing the ongoing loss and grief arising from the offending act.

A victim and a registered victim may attend the review and do so usually by video-link. Given that the review hearing may be a difficult or traumatic experience for victims, as outlined above, victims are encouraged to discuss with their support people and their representative whether it is beneficial to observe the review directly or have their representative do so on their behalf and report back.

The Tribunal conducts many forensic hearings from secure facilities which do not provide public access and therefore observers usually attend proceedings by audio-visual link. Although the Tribunal attempts to create a therapeutic and trauma-informed setting for its hearings, the technology and room setup at forensic facilities are governed by the hosting venue. Consequently, victims attending by audio visual link should be aware that there are occasions where the forensic patient may appear on-screen.

A victim may choose to be represented by the Specialist Victims Support Service (SVSS) or by a representative of their choice.

The Practice Direction sets out in detail the way that a victim and registered victim may make submissions to the Tribunal at reviews.

## DEFINITION OF VICTIM IN LEGISLATION, AND WHAT IS A “REGISTERED VICTIM”?

A victim under the MHCIFPA is defined as “*a primary victim, or a family victim, of an act of violence [within the meaning of the Victims Rights and Supports Act 2013].*” The definition differs from the one which applies to making victim impact statements in court proceedings. However even if a person who made a victim impact statement for court proceedings is not a victim under the forensic legislation, the Tribunal receives all victim impact statements from the criminal court proceedings and considers those victim impact statements at each review.

A *primary victim* is a person who has been injured or died as the result of the violent act of the forensic patient.

A *family victim* is defined as:

*is a person who is, at the time that act is committed, a member of the immediate family of a primary victim of that act who has died as a direct result of that act.*

*A member of the immediate family of a primary victim is—*

- a) the victim's spouse, or*
- b) the victim's de facto partner who has cohabited with the victim for at least 2 years, or*
- c) a parent, guardian or step-parent of the victim, or*
- d) a child or step-child of the victim or some other child of whom the victim is the guardian, or*
- e) a brother, sister, half-brother, half-sister, step-brother or step-sister of the victim.*

## REGISTERED VICTIMS

A registered victim is defined as a victim registered on the Victims Register. The legislation provides that a victim may apply to be a registered victim.

The Victims Register records the names of victims of forensic patients who have requested that they be given notice of the review by the Tribunal of those patients. The Victims Register is to be kept by the Commissioner of Victims Rights. The Commissioner of Victims Rights must give notice in writing, to a registered victim of a forensic patient, of the following matters relating to Tribunal proceedings:

- particulars of proposed orders to be sought in relation to the forensic patient at a review of the Tribunal and the location of that review,
- particulars of the reasons for a decision by the Tribunal about an application for a grant of leave to, or the release of, the forensic patient,
- safety concerns relating to the victim known to the Commissioner in relation to a review before the Tribunal or arising out of a breach of an order relating to the forensic patient,
- if the forensic patient is reclassified as an involuntary patient.

**Dated: 23 January 2024**

**Magistrate Carolyn Huntsman**

**President**

**Mental Health Review Tribunal**