

# Practice Direction

## Forensic No.9

### Approval of Change of Name by Forensic Patient



This Practice Direction is issued under s160(3) of the *Mental Health Act 2007* (MHA).

#### 1. Purpose

- 1.1. The *Births, Deaths and Marriages Registration Act 1995* makes the Tribunal the supervising authority for an application to the Registrar of Births, Deaths and Marriages for registration of a change of name by a forensic patient. This Practice Direction sets out the process which will apply.
- 1.2. The *Births, Deaths and Marriages Registration Act 1995* (BDMA) provides for change of name by Registration – by an application to the Registrar (of Births, Deaths and Marriages (BDM)) or a registering authority.
- 1.3. However before an application to the Registrar BDM/registering authority can be made by “restricted persons” approval must be sought from the supervising authority. Forensic patients are defined as restricted persons and the supervising authority under the BDMA is the Mental Health Review Tribunal (the Tribunal).
- 1.4. The Tribunal is not permitted to approve an application to the Registrar BDM/registering authority for a change of name for certain restricted persons unless the Tribunal has consulted the Commissioner of Corrective Services, and the Commissioner has given concurrence (ie: the Commissioner has agreed) (s31D(3) BDMA). The restricted person to whom this requirement applies is a forensic patient who is also an inmate, or a person on remand, or a parolee, or a periodic detainee, or a person subject to a supervision order. See s31B and s31D(3) of BDMA.

#### 2. Contents of application for approval of change of name

- 2.1. The written application for approval should provide the following details:
  - 2.1.1. Current name.
  - 2.1.2. Proposed change of name.
  - 2.1.3. Reasons for change of name, if any.
- 2.2. If the treating team of the forensic patient has a view about the impact of the change of name on the person’s treatment and/or wellbeing a written report addressing that issue should be provided.

#### 3. Mandatory considerations should be addressed in application

- 3.1. Applicants for approval should be aware of the considerations mandated by s31D of the BDMA to be considered by the Tribunal as supervising authority, and address same in the written application if appropriate. The 31D BDMA considerations include:
  - 3.1.1. the supervising authority (the Tribunal) may provide approval only if the satisfied that the change of name is in all the circumstances necessary or reasonable; and

- 3.1.2. the supervising authority (the Tribunal) must not approve the making of an application to the Registrar for registration of a change of name if the Tribunal is satisfied that the change of name would, if registered, be reasonably likely:
  - 3.1.2.1. to adversely affect the security, discipline or good order of any premises or facility at which the restricted person is held or accommodated, or
  - 3.1.2.2. to jeopardise the restricted person's or another person's health or safety, or
  - 3.1.2.3. to be used to further an unlawful activity or purpose, or
  - 3.1.2.4. to be used to evade or hinder the supervision of the restricted person, or
  - 3.1.2.5. the proposed name would be reasonably likely to be regarded as offensive by a victim of crime or an appreciable sector of the community.

#### **4. Process to be followed**

- 4.1. Where approval is sought from the Tribunal as supervising authority, for an application to the Registrar BDM to register a change of name, the following process will apply:
  - 4.1.1. A written application providing the information at paragraph 2 and paragraph 3 of this Practice Direction is to be sent to the Tribunal.
  - 4.1.2. An application may be made by the forensic patient or on their behalf (s31C BDMA).
  - 4.1.3. The Tribunal will be constituted by the President or Deputy President to determine whether to give approval (cl 16(2) of *Mental Health Regulation 2019* (MH Regulation)). This will proceed on the papers by consideration of the written application and any material provided in support.
  - 4.1.4. If the Tribunal decides that the approval should not be given, the decision will be notified pursuant to paragraph 6 below. If the Tribunal decides that approval might be given then the further steps below will apply.
  - 4.1.5. If the Tribunal considers an approval may be appropriate and there is a registered victim the Commissioner of Victims Rights/SVSS will be notified of the request for approval of the application for change of name and the victim/SVSS will be invited to make a submission.
  - 4.1.6. The Tribunal will review and carefully consider any submission received from a victim before making a decision whether to approve the application to the Registrar BDM.
  - 4.1.7. If the Tribunal considers an approval may be appropriate and the change of name application relates to someone who is a forensic patient in addition to being in the class of inmate/parolee etc as set out in paragraph 1.4 of this Practice Direction (s31B and s31D(3) of BDMA), then the Tribunal will forward the written application to the Commissioner of Corrective Services under the requirement to consult and seek concurrence/agreement (s31D(3) BDMA).
  - 4.1.8. Where the process in paragraph 4.1.7 of this Practice Direction applies, the Tribunal will review the response of the Commissioner of Corrective Services and if there is concurrence/agreement with approval of the application to the Registrar

BDM/registering authority for change of name, the Tribunal will further review the application to decide whether to approve.

## 5. Where approval by Tribunal

5.1. If the Tribunal approves the making of an application to the Registrar BDM or a registering authority for registration of a change of name of a forensic patient, the Tribunal will:

5.1.1. as soon as practicable, give written notice of the approval to the person who intends to make the application, and

5.1.2. give a copy of the written notice of approval to the Registrar or the registering authority (as the case requires).

5.2. If there have been submissions by a victim, the Tribunal will notify the Commissioner of Victims Rights/SVSS of the decision of the Tribunal so that notice can be provided to the victim.

## 6. Where refusal by Tribunal of approval

6.1. Where the Tribunal (constituted by a Presidential member as per cl 16 of MH Regulation – see paragraph 4.1.3 of this Practice Direction) refuses to give approval for the making of an application to the Registrar or a registering authority for registration of a change of name of a forensic patient, the BDMA provides for an appeal.

6.2. A restricted person may appeal to the Forensic Division of the Mental Health Review Tribunal against a decision of the Tribunal (constituted by Presidential Member) to refuse to approve the making of an application to the Registrar BDM/registering authority for registration of a change of name of the restricted person (s31K BDMA).

6.3. The Forensic Division of the Tribunal, a three member panel, is constituted by the President or Deputy President and two other members under s148 of the *Mental Health and Cognitive Impairment Forensic Provisions Act 2020* (MHCIFPA). For the purposes of the appeal the Forensic Division of the Tribunal will be constituted by a different Presidential member to the decision maker who refused approval in the first instance decision. The Forensic Division may hold an in person hearing or decide the application on the papers. If the restricted person wishes to have an in-person hearing this will generally be held.

6.4. The restricted person may appeal the decision of the Forensic Division of the Tribunal to the Supreme Court in accordance with s163 of the *Mental Health Act 2007* (MHA) (see s31K(3) BDMA).

Magistrate Carolyn Huntsman  
**President**

Dated: March 2025

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