



Mental Health Review Tribunal Information Sheet for Victims of Forensic Patients

Introduction

In performing its functions, the Mental Health Review Tribunal (the Tribunal) complies with the legislation under which it makes decisions: the *Mental Health and Cognitive Impairment Forensic Provisions Act 2020* and the *Mental Health Act 2007* and related regulations. The Tribunal is required to observe the objects of the *Mental Health and Cognitive Impairment Forensic Provisions Act 2020* (MHCIFPA) including section 69(f) - to protect the safety of victims of forensic patients and acknowledge the harm done to victims.

The Tribunal has regard to, and is committed to applying, the Charter of Victims Rights. The Charter is found in legislation: the *Victims Rights and Support Act 2013* currently in force, and the *Victims Rights and Victims of Crime Commissioner Act 2025* which is yet to commence. The *2013 Act* refers to the Commissioner of Victims Rights while the *2025 Act* refers to the Victims of Crime Commissioner (the Commissioner).

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 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.

The Tribunal provides for the participation of victims in Tribunal reviews by applying the legislation, however there is no obligation on a victim to make submissions or otherwise participate in the review process.

This Information Sheet aims to assist victims in deciding whether and how they participate in Tribunal reviews.

Please note that the Specialist Victims Support Service (SVSS) is funded to provide support and information to victims of forensic patients and can be contacted for information about, and assistance with, Tribunal reviews. This Information Sheet while intended to be of assistance recognises that there is a need for support for victims which is available through SVSS. The SVSS can be contacted on [Link to SVSS](#)

What is a Tribunal review of a forensic patient?

The legislation requires the Tribunal to review the care, treatment and control of forensic patients and to make orders on such review for:

- the detention, care and treatment of a forensic patient; OR
- the patient's release (either unconditionally or subject to conditions) (s81 MHCIFPA); and
- the Tribunal may also grant leave of absence to a forensic patient who is detained (s94 MHCIFPA)
- NOTE that the Tribunal must not make an order for the release (including the conditional release) of a forensic patient, or grant leave of absence, unless it is satisfied that the safety of the patient, a victim or any member of the public will not be seriously endangered by the patient's release (s84(2), s94 MHCIFPA)

The legislation (s75 MHCIFPA) states that in all reviews the Tribunal should consider:

- whether there are reasonable grounds for believing that care, treatment or control of the forensic patient is necessary for protection of the patient or others from serious harm (s75(b) MHCIFPA); and
- whether the person has a mental health impairment or cognitive impairment, and
- the continuing condition of the person, including any likely deterioration in the person's condition and the likely effects of that deterioration.

What does the Tribunal review not include?

The legislation gives the Tribunal no function to sentence a forensic patient for the offence. Legislation gives all sentencing functions, as well as the process of arriving at verdicts or deciding outcomes for criminal offences, to the criminal courts.

The legislation sets out the Tribunal's functions to review whether there is a mental health and/or cognitive impairment and whether care, treatment and control of the forensic patient is necessary. The legislation gives the Tribunal powers to order detention, care and treatment, or release. The legislation requires the Tribunal to consider the protection of victims and members of the public. The Tribunal has regard to the offending that led to the forensic status, in assessment of risk and in recognition of harm done to victims, however the Tribunal has not been given a function to sentence the patient for the offence.

Is there a power to apprehend a forensic patient where increased risk?

The legislation allows the Tribunal to act quickly where there is an increase in risk, whether due to breach of Tribunal orders by the forensic patient or arising from a reported deterioration in mental health. The Tribunal has powers to issue apprehension orders which the police can execute to apprehend and detain the patient in a place ordered by the Tribunal. Such orders are made by the Tribunal's Presidential members who are available 24 hours a day, 7 days per week.

How do forensic patients come to the Tribunal?

All forensic patients were defendants charged with a criminal offence listed before a criminal court. The criminal offence has been finalized by the criminal court with a verdict/outcome which causes the defendant to become a forensic patient. The law requires the court to refer the forensic patient to the

Tribunal. A defendant becomes a forensic patient where the criminal court makes a verdict such as “act proven but not criminally responsible”; or in the case of a person unfit for trial, that on the limited evidence available the defendant (subsequently forensic patient) committed the offence charged/alternative offence. Penalties a court can impose on the verdict that on the limited evidence available the defendant/forensic patient committed the offence include the nomination of a limiting term. The limiting term is the court’s best estimate of the sentence of imprisonment that would have been imposed on a finding of guilt at trial. On nomination of the limiting term the court may detain the forensic patient in a correctional facility, mental health facility or other place pending review by Tribunal. When a limiting term is nominated, after a finding that on the limited evidence available the defendant/forensic patient committed the offence, the criminal court will address the nature of the offending, consider sentencing principles and receive victim impact statements. The forensic patient is then referred by the court to the Tribunal. Legislation requires that the Tribunal review the forensic patient during the limiting term until the term expires. The forensic status of a patient on a limiting term can be extended by the Supreme Court, and the Tribunal will review the forensic patient during the period of extension.

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.

When are reviews required to be held?

The legislation requires a review every six months, and this starts soon after a defendant is referred by the criminal court as a forensic patient. There are also Tribunal reviews of the fitness of a patient who has been found unfit to be tried by the court.

The requirement for regular reviews, imposed on the Tribunal by the legislation, means that shortly after conclusion of criminal court proceedings, there will be regular six-monthly Tribunal review hearings, for several years while a forensic patient is detained and/or on conditional release in the community. The forensic patient status and requirement for Tribunal reviews continues while on conditional release in the community and also while on a limiting term. A limiting term can be extended by the Supreme Court and then the forensic patient status and Tribunal reviews continue while on an extension order. The reviews will cease when the defendant is no longer a forensic patient, for example, when there is an order made by the Tribunal for unconditional release, or when the limiting term/extension order ends.

What orders can be made on a Tribunal review?

As referred to above, the legislation sets out the orders which can be made upon review. Section 81 MHCIFPA states that on a review of a forensic patient, the Tribunal may make an order as to—

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

No order for release, or for leave of absence from detention, where risk of serious endangerment

Sections 84 and 94 MHCIFPA state that the Tribunal must not make an order for the release (including the conditional release) of a forensic patient, or grant leave of absence, unless satisfied that the safety of the patient, the victim or any member of the public will not be seriously endangered by the patient's release. When the Tribunal considers this question, it will consider any independent risk assessment report obtained under s84, and the evidence at the hearing from the treating team, the patient, and victims and registered victims if they have decided to make submissions. Victim Impact Statements given to the criminal court will also be considered.

What conditions may apply on conditional release?

The legislation (s85 MHCIFPA) sets out a number of 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 in a Tribunal order, and the Tribunal will decide appropriate conditions on the evidence at the review hearing about the circumstances of the particular patient. Generally the conditions address safety concerns and well as ongoing treatment and monitoring of the forensic patient.

The Tribunal places conditions in its orders to address the safety of the community and victims, which can include conditions restricting movement and activities of the forensic patient. Other conditions require the patient to engage in ongoing treatment and monitoring by clinicians. Evidence of the engagement of the forensic patient with treatment since the last review, and compliance with conditions, is considered at each review hearing. Conditions may 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;

- restrictions on use of and access to social media and digital communications; 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 Tribunal review like?

The Forensic Division of the Tribunal conducts the review hearing and the forensic patient, family members, treating clinicians and victims and their representatives may attend, by Audio-Visual Link (AVL) or in person. The forensic patient is usually legally represented by a solicitor from the Mental Health Advocacy Service of the Legal Aid Commission or a private legal representative. At a hearing the Forensic Division of the Tribunal will include the President or a Deputy President of the Tribunal, who is a current or former judicial officer; a second member who will be a psychiatrist, a psychologist or other suitable expert in relation to a mental condition, and a third member with suitable skills and experience.

The review hearing may be 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 involve the Tribunal (the three-member panel) attending the facility where the forensic patient will be present with members of the treating team, and observers and some clinicians, and victims who wish to attend, will join the review by video-link. Sometimes the Tribunal will conduct the review from the Tribunal's hearing rooms with the forensic patient and treating team attending from the health facility by video-link.

The new Tribunal premises at level 4, 580 George street, Sydney, has a private room where victims with a representative and/or support person can view review hearings by Audio-Visual Link (AVL) in privacy.

Before each review the Tribunal 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. Where an order granting 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 need for ongoing treatment and monitoring, and the patient's safety.

Because the legislation requires the Tribunal to review the forensic patient's care, treatment and control, the focus in the review is on that care, 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 proceeding, although this is always considered by the Tribunal in each review.

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. Victims may attend in person, observe by Audio-Visual Link (AVL) or send a representative to observe on their behalf.

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 details 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. Victims should discuss with their support person and/or representative whether in person attendance would be appropriate for them at an upcoming review. Reasons that it can be of benefit to have a representative attend on behalf of a victim include:

- because the reviews are held every six months, over a number of 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
- because the legislation requires the Tribunal to review the care, treatment and control of the forensic patient, this means there can be time spent in a review looking at the progress with treatment made by the patient since the previous review hearing. This can be alienating and distressing or traumatising for victims who are experiencing 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. A victim may choose to be represented by the Specialist Victims Support Service (SVSS) or by a representative of their choice.

The new Tribunal premises at level 4, 580 George street, Sydney, has a private room where victims with a representative and/or support person can view review hearings by AVL in privacy.

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 is set out in the Practice Direction which should be referred to. The definition in the MHCIFPA 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.

Judge Carolyn Huntsman

President | Mental Health Review Tribunal

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