



POLICY NO.2

APPLICATION OF CHARTER OF VICTIMS RIGHTS TO MENTAL HEALTH REVIEW TRIBUNAL

1. INTRODUCTION

- 1.1. NSW legislation, the Victims Rights and Support Act 2013 (“the 2013 Act”) and/or the Victims Rights and Victims of Crime Commissioner Act 2025 (“the 2025 Act”) sets out a Charter of Victims Rights “(the Charter)” for victims of crime and victims of forensic patients. The provisions apply to government agencies exercising official functions in administration of the affairs of the State. The provisions which specifically apply to forensic patients are:

1.2 6A.2 (2013 Act) / 7.2 (2025 Act)

Treatment of victim

A victim will be treated with respect and compassion, having regard to the fact that proceedings may touch on painful or tragic events in the victim’s life and cause the victim to experience further grief and distress.

A victim making a submission before the Mental Health Review Tribunal should be listened to respectfully and in a way that is cognisant of the effects of the victim’s experience and the benefit of expressing views about its impact.

6A.3 (2013 Act) / 7.3 (2025 Act)

Information about reviews of and other proceedings relating to forensic patients

A victim will be informed in a timely manner of any matter before the Mental Health Review Tribunal, or the release of or granting of leave to a forensic patient or any other matter, that the victim is required to be informed of under the Mental Health and Cognitive Impairment Forensic Provisions Act 2020.



1.2. The Tribunal has processes to comply with 6A.3/7.3 by providing information about reviews and decisions to the Commissioner for Victims Rights/Victims of Crime Commissioner (“the Commissioner”) under Information Sharing Protocols (see s161 *Mental Health and Cognitive Impairment Forensic Provisions Act 2020*) given the legislative obligation of the Commissioner to notify registered victims.

1.3. The requirement to observe the Charter is in s7 of the 2013 Act, and s8 of the 2025 Act:

“An agency or person exercising official functions in the administration of the affairs of the State, other than judicial functions, must, to the extent it is relevant and practicable, have regard to the Charter in addition to other relevant matters”.

2. COMPLAINT OF BREACH OF CHARTER PROVISIONS

2.1. The *Victims Rights and Support Act 2013* (“the 2013 Act”) and/or the *Victims Rights and Victims of Crime Commissioner Act 2025* (“the 2025 Act”) provides that the Commissioner for Victims Rights, and subsequently the Victims of Crime Commissioner (“the Commissioner”), is responsible for investigation of complaints of a breach of the Charter of Victims Rights (“the Charter”).

2.2. Consequently, all complaints that the Tribunal has breached the Charter should be made directly to the Commissioner. The Commissioner will sometimes request the Tribunal investigate the Charter complaint and report back to the Commissioner.

2.3. There are issues about which it is impermissible for the Tribunal to comment, or which do not fall within the Charter. To assist, this Policy outlines matters that come within a Charter complaint, and the process to be followed by the Tribunal. This policy document is limited to Charter complaints, that is, complaints of breach of the Charter of Victims Rights. A separate Complaints Policy applies to complaints generally - see link [FEEDBACK / COMPLAINTS](#).

3. SCOPE OF CHARTER FOR TRIBUNAL

3.1. The Tribunal is committed to observing the Charter in all processes and considers all Charter complaints as important feedback to incorporate in professional development and ongoing education of Members, and to guide improvements in Tribunal processes. This includes all Charter complaints involving exercise of the hearing functions which may be outside the scope of the Charter and the Commissioner’s investigation function. The different application of the Charter processes to staff, and to Members of the Tribunal conducting hearings, is set out below.

Staff of Tribunal

3.2. The Tribunal Registrar and Registry staff, as employees of the Ministry of Health, are within an agency (a government department) and are therefore bound to observe the Charter of Victims Rights *“to the extent it is reasonable and practicable, having regard to the Charter in addition to other relevant matters”* (s7 of the 2013 Act, and s8 of the 2025 Act).

Complaint of breach by staff – procedure

- 3.3. On receipt of a complaint of breach of the Charter by Tribunal staff the following process will apply:
 - 3.3.1. Where the Tribunal receives a complaint that Registry staff have breached the Charter the complainant will be advised to lodge the complaint with the Commissioner.
 - 3.3.2. Where the complaint of breach of the Charter by Registry staff is made to the Commissioner, and the Commissioner requests investigation by the Tribunal, the complaint will be referred to the Registrar of the Tribunal for investigation and response.
 - 3.3.3. The Tribunal will acknowledge receipt of the complaint in writing to the Commissioner.
 - 3.3.4. The time frames for response set out in the Tribunal's general complaints policy (within 35 days) will apply.
 - 3.3.5. If the response cannot be provided within 35 days the Tribunal will so inform the Commissioner.

Tribunal Member – scope of Charter

- 3.4. For reasons detailed below, the Charter investigation and response process does not apply to Tribunal members exercising the hearing functions. There is a limited Charter application within the hearing function due to operation of 6A2/7.2 of the Charter in relation to listening to a victim submission.

Complaint of breach by Tribunal Member - procedure

- 3.5. Where the Commissioner refers a complaint of breach of 6A2/7.2 of the Charter in relation to listening to a victim submission, or any alleged breach of the Charter by a Tribunal Member occurring in the hearings function, the following process will apply:
 - 3.5.1. If a complaint of breach of Charter by a Tribunal Member within the hearing process is made directly to the Tribunal, the complainant will be advised to contact the Commissioner.
 - 3.5.2. If the Commissioner refers the complaint of the breach of the Charter to the Tribunal, the receipt of the referral will be acknowledged by the Tribunal in writing to the Commissioner.
 - 3.5.3. A full time Deputy President of the Tribunal will assess the complaint and the circumstances including audio recording of the hearing where relevant.

- 3.5.4. The Tribunal will focus on whether the complaint of breach raises matters where improvements could be made or where Member education is indicated.
- 3.5.5. The Tribunal will treat the results of the assessment of the Charter complaint as an opportunity to improve processes if indicated.
- 3.5.6. The Tribunal will provide the Commissioner with a response to the Charter complaint, within 35 days, which will have regard to and may be confined by:
 - 3.5.6.1. the legislative limitations on the application the Charter to Tribunal Members and the hearing process/judicial functions (see below), and
 - 3.5.6.2. the limitations on the functions of the Commissioner to investigate a complaint about an alleged contravention of the Charter which would result in interference with the exercise of the jurisdiction of a court or tribunal (s23(iii) 2025 Act).
- 3.5.7. If the response cannot be provided within 35 days the Tribunal will so inform the Commissioner.

4. LEGISLATED LIMITATIONS ON APPLICATION OF THE CHARTER TO TRIBUNAL MEMBER

- 4.1. In general terms, the legislation does not apply the Charter to Tribunal members as they are not part of an agency exercising official functions in the administration of the affairs of the State. Tribunal Members are appointed by the Minister for Mental Health, and as independent statutory appointments are not within an agency. Nor is the Tribunal, which is constituted under the *Mental Health Act 2007* as the President and Members, an agency or government department, and the Tribunal is not “a person”. That the Tribunal is not an agency is made clear by the *Government Sector Employment Act 2013*. Only the MHRT Registry staff who are employed within the Ministry of Health are within an agency.
- 4.2. The legislation limits the application of the Charter to the Tribunal: s7 of the 2013 Act, and s8 of the 2025 Act which are in similar terms, state: “*An agency or person exercising official functions in the administration of the affairs of the State, other than judicial functions, must, to the extent it is relevant and practicable, have regard to the Charter in addition to other relevant matters*”.
- 4.3. The Tribunal as an independent statutory tribunal constituted under the *Mental Health Act 2007* is not an agency or person.

5. EXCLUSION OF JUDICIAL FUNCTIONS

- 5.1. The legislation expressly excludes the Charter from judicial functions. A hearing of the Forensic Division of the Tribunal is presided over by a Deputy President or President who is a current or former judicial officer. Under legislation which applies to those hearings, the Tribunal must decide issues such as the detention and/or restriction of movement of an individual forensic patient. In conducting the hearing and making the decision and order, Tribunal Members are

required to act judicially. The requirement that Members act judicially while undertaking hearings and decision making thereby involves exercise of judicial functions. The Charter does not apply to judicial functions: s7 of the 2013 Act, and s8 of the 2025 Act.

- 5.2. The Charter extends a limited application within the hearing process, in relation to listening to victims' submissions (6A2/7.2 of the Charter, set out above). However, the powers of the Commissioner to investigate any complaint about this limited Charter application, must operate within the restriction that there be no interference with the jurisdiction of the Tribunal (s23(iii) 2025 Act).

6. INTERFERENCE WITH TRIBUNAL JURISDICTION

- 6.1. The Tribunal exercises a protective jurisdiction as explained by the Supreme Court of NSW (see *A (by his tutor Brett Collins) v Mental Health Review Tribunal (No4) [2014] NSWSC 31*). The Tribunal has statutory obligations and must comply with legislation. The hearing process requires that the Tribunal provide procedural fairness to all parties or participants including patients, clinicians, victims, family members. Tribunal hearing processes include control of proceedings to ensure fairness and relevance. Control of proceedings can on occasion require a firm hand.
- 6.2. Hearing/judicial processes require independence from political, or media generated pressures, or other influences, in addition to independence from all participants or parties to proceedings. Absence of bias must not only be actual but perceived. As the Tribunal must be free from bias and must be perceived to be so, the maintenance of independence is crucial. This independence, free from bias and/or influence, is integral to public confidence in judicial processes.
- 6.3. All decisions must be based on the evidence at the hearing and not any extraneous material or considerations. The 2025 Act recognises this by expressly limiting the functions of the Commissioner to investigate a complaint about an alleged contravention of the Charter which would *result in interference with the exercise of the jurisdiction of a court or tribunal* (s23(iii) 2025 Act).
- 6.4. The challenge of maintaining independence is particular to the Tribunal's review jurisdiction. While a person remains a forensic patient, their matter is an active matter before the Tribunal and in accordance with the legislation the Tribunal reviews each patient at least once every six months over several years. There will therefore be several hearings with the same participants over many years. The Tribunal must conduct each hearing fairly and without prejudice.

7. COMPLAINTS OTHER THAN CHARTER COMPLAINTS

- 7.1. Consistently with other Tribunals, MHRT has a complaints policy which is applied if there is a complaint about Member conduct, as distinct from a Charter complaint – a link to that policy is at paragraph 2.3 of this policy. It should be observed that Forensic Division hearings are

presided over by Deputy Presidents who are former or current judicial officers. For current judicial officers all conduct complaints are to be made to the Judicial Commission of NSW.

8. TRANSITIONAL AND FUTURE PROCESSES

Transitional Provisions

8.1. The Tribunal response to Charter complaint investigations instigated by the Commissioner prior to the commencement of this Policy will be finalised carefully in a manner that does not infringe the Tribunal's exercise of its jurisdiction. From the date of commencement of this Policy, being 25 May 2026, the Tribunal's response to allegations of breach of Charter will be in accordance with this Policy.

A Note About Future Procedures

8.2. The Tribunal relocated to modern premises in the Sydney CBD in April 2026 and will be developing new processes around support for attendance and participation of victims in Tribunal hearings over coming months. These processes will align with Charter provisions.

Judge Carolyn Huntsman
President | Mental Health Review Tribunal

22 May 2026