



Forensic Guidelines

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SECTION 1. INTRODUCTION TO THE FORENSIC GUIDELINES

The purpose of these Guidelines is to document the Mental Health Review Tribunal's processes in relation to the work of its Forensic Division under the *Mental Health (Forensic Provisions) Act 1990* ("the MHFPA").

The aim is to ensure that all of those who are involved in the lives of forensic patients understand their roles and responsibilities, as well as what they can expect from the Tribunal.

Members of the public who have an interest in the workings of the Tribunal will hopefully find the answers to their questions here.

Victims should seek further information from the [Specialist Victims Support Service](#) ("SVSS"). The SVSS is a specialist unit within [Victims Services](#) NSW that has been set up to provide victims of forensic patients with crisis support, case management and information about forensic proceedings.

SECTION 2. THE FORENSIC DIVISION OF THE TRIBUNAL, FORENSIC PATIENTS AND CORRECTIONAL PATIENTS

The Mental Health Review Tribunal (“the Tribunal”) is a specialist body constituted under the *Mental Health Act 2007* (NSW) (“the MHA”). It is independent of other health agencies, including hospitals and doctors.

What is the Forensic Division of the Mental Health Review Tribunal?

The Tribunal is made up of a President, two full time Deputy Presidents, a number of part time Deputy Presidents and approximately 140 part time members. When the Tribunal conducts forensic hearings, it sits as a three member panel, which must include:

- the President or a Deputy President who is a lawyer and who chairs the hearing;
- a psychiatrist, and
- another suitably qualified member (for example, a psychologist).

All Tribunal members have extensive experience in mental health or other relevant experience, and some have personal experience with a mental illness or caring for a person with mental illness.

The Forensic Division of the Tribunal has a statutory role in making decisions about forensic patients. A “forensic patient” means that a person who is mentally ill (and/or has some other form of mental or cognitive impairment) has been charged with a serious criminal offence and has been found:

- unfit to be tried for the offence and refused bail;
- unfit to be tried for the offence and detained under a “limiting term” (estimate of the sentence that would have been imposed in a normal trial process) nominated by the court, or
- not guilty by reason of mental illness and detained or conditionally released.

What is the Tribunal’s Role in Making Decisions About Forensic Patients?

The Tribunal conducts regular reviews or hearings for forensic and correctional patients.

The Tribunal is required to conduct regular reviews of forensic patients and make orders about whether and where the patient should be detained. Forensic patients are reviewed by the Tribunal until they are unconditionally released (or, in the case of a person who has been detained subject to a limiting term, until that term has expired).

The Forensic Division also has certain statutory functions relating to people who are found unfit to be tried and given bail, and some people in custody who have a mental illness (“correctional patients”).

The Ministry of Health has issued a [Policy Directive for Forensic Mental Health Services](#), which sets out the Ministry’s standards and governance arrangements for forensic patients. This Policy Directive will be referred to in these guidelines as “the Forensic Policy Directive”.

Regular Reviews of Forensic Patients

Why are review hearings conducted?

The Tribunal is required to conduct regular reviews of forensic patients and to make orders about whether and where the patient should be detained while they are receiving treatment. A review hearing is the opportunity for a fresh consideration of any aspect of a patient's care and treatment.

If a patient is well enough to live in the community, the Tribunal can make an order that the patient be conditionally or unconditionally released. However, the Tribunal can only make these orders if it has reviewed the forensic patient and it is satisfied that the safety of the patient, the victim or any member of the public will not be in serious danger if the patient is released.

Although the Tribunal will usually leave day-to-day decisions about care and treatment to the forensic patient's treating team, the Tribunal does have the power to make orders about a patient's care or treatment.

How often does the Tribunal conduct reviews?

The Tribunal conducts review hearings of forensic patients every six months. It can extend this time frame to 12 months if the patient's condition is stable and more frequent reviews may be detrimental to the patient, or if there are other good reasons to do so (s 46(5) of the MHFPA).

What information will the Tribunal consider during a review hearing?

The Tribunal's powers of review under ss 46 and 47 of the MHFPA are very broad.

The Tribunal must, of course, have regard to the personal circumstances of the patient, including the circumstances of the events that lead to a person becoming a forensic patient, and the Tribunal's accumulated store of knowledge about the patient.

A review may focus on:

1. whether the patient is currently receiving appropriate care and/or treatment;
2. any issues of risk that need to be addressed
3. the patient's own hopes and aspirations
4. any submissions or victim impact statements from registered victims
5. any submissions from the Minister for Mental Health or the Attorney General, and
6. planning for the patient's future pathway, including ensuring that the patient lives in the least restrictive environment that is consistent with safe and effective care.

A patient and/or their advocate will have the opportunity to raise any issues of concern at a review. Registered victims and/or their support person will also have an opportunity to ask questions with the Tribunal's approval.

The Tribunal can also make requests of the Ministry of Health, the Commissioner of Corrective Services, Family and Community Services and any other agency responsible for the detention, care or treatment of a forensic or correctional patient. Those agencies must use their best endeavours to comply with a Tribunal request (s 76K of the MHFPA).

Finally, the Tribunal has the power to make recommendations (s 76A(1) of the MHFPA). This power will be used by the Tribunal to highlight issues of concern which it wishes to raise formally.

Some reviews require the Tribunal to consider specific statutory issues. These are discussed below.

Fitness to Stand Trial

When a court has decided that a person who has been charged with an offence is unfit to stand trial, the court must refer the person to the Tribunal (s 14 of the MHFPA).

The Tribunal then reviews the person (s 16 of the MHFPA) and determines whether, on the balance of probabilities, it is likely that the person will become fit to be tried in the 12 months following the court's decision.

The Tribunal does this by considering the reasons why the person was not fit to be tried at the time that the court made its decision, and decides whether the person's condition is likely to change.

A person who has been found unfit because they have a major mental illness, and released on bail, should be linked into their local Community Mental Health Team or may also have private arrangements for psychiatric care. Psychiatric treatment and care will improve the likelihood of a person becoming fit to stand trial. The Community Forensic Mental Health Service ("CFMHS") will arrange to interview a person who has been found unfit to stand trial because of psychiatric difficulties. The CFMHS will provide the Tribunal with a report and will be available to advise the patient's community treating team about strategies for care and treatment.

If a person is released on bail by the court, the person does not become a forensic patient and so will only be reviewed by the Tribunal once under s 16 of the MHFPA. The Tribunal cannot make any orders about a person's care, treatment or detention if the person is on bail. However, the Tribunal can make a recommendation to the Court.

If a person is found unfit to be tried by a court and then detained, the person will become a forensic patient (even though they have not been tried) and the patient will continue to be reviewed by the Tribunal every six months.

The [Sentencing Bench Book](#) and the [Criminal Courts Trial Bench Book](#) contain information that may assist with a bail application.

Reviews of people in custody/correctional patients

If a person in custody becomes mentally ill and needs treatment in a mental health facility, the Director-General (or delegate) of the Ministry of Health can order his or her transfer to a mental health facility (s 55 of the MHFPA).

The Tribunal is required (s 58 of the MHFPA) to review a person in who is in custody and who has been ordered to be transferred to a mental health facility, but where the transfer has not yet taken place. The person is reviewed by the Tribunal every month until the transfer takes place, or until the transfer order is revoked. The Tribunal must decide whether the person should be transferred to a mental health facility or to some other place.

Once a person who is in custody has been transferred to a mental health facility, the person is called a “correctional patient” and is reviewed by the Tribunal again to see if s/he is a mentally ill person and should continue to be detained in a mental health facility. After that initial review, the correctional patient is reviewed every six months unless the Tribunal extends this review time frame to up to 12 months.

The Tribunal can also make an order that a person in custody receive mental health treatment in a correctional centre that is not part of a mental health facility. These orders are called forensic community treatment orders (and are made under s 67 of the MHFPA).

Support for Victims

The Specialist Victims Support Service (SVSS) is a part of Victims Services NSW. It delivers crisis support, case management, counselling and advocacy to victims, from early in the justice process. The service operates a Victims Register that allows registered victims to be notified about Mental Health Review Tribunal hearings involving forensic patients, support victims to participate in the hearings and tell victims of the outcome of those hearings.

More information about the SVSS can found on their website.

Where do Forensic Patients Stay?

Forensic patients who are detained are housed in mental health facilities or in correctional centres. Patients also live in the community once the Tribunal or the Court has made an order that they can be conditionally released.

What Kinds of Orders Does the Tribunal Make?

Orders relating to a forensic patient's detention, leave and release

The Tribunal can make orders about where a forensic patient is to be detained, which is usually in a correctional centre or mental health facility. The Tribunal also decides when it is appropriate to transfer a person from one place to another. The Tribunal can make orders about the care and treatment which a patient is to receive, although most of the time decisions on this issue are left up to the treating staff in the correctional centre or mental health facility. The Tribunal is

alerted to the kinds of orders which either the patient or the treating team would like considered by the Notice of Intent, which is returned to the Tribunal several weeks before the hearing.

The Tribunal decides whether a forensic patient can be given leave of absence from correctional centres or mental health facilities. The Tribunal takes into account a range of factors, including the patient's mental state, the patient's future plans and whether there is any risk to the patient's safety or to public safety. Usually a patient will over time have increasing amounts of leave, with less and less supervision, to gradually allow that patient to safely adjust to living in the community.

The Tribunal also decides when it is appropriate for a person to live in the community on a conditional release order. The Tribunal must be satisfied that the patient or public would not be seriously endangered. The Tribunal usually imposes a significant list of conditions which the forensic patient must obey while they are in the community.

If a forensic patient breaches the conditions of their leave or conditional release, or becomes unwell for any other reason, the Tribunal decides whether the patient should be detained again, and if so, where the patient should be detained.

The Tribunal can make an order for unconditional release, but again must be satisfied that the patient or public would not be seriously endangered. If a patient has been detained subject to a limiting term, then the patient is released when the limiting term expires unless their status as a forensic patient is extended.

Extension of forensic patient status for those subject to a limiting term

It is possible for a patient's limiting term to be extended by order of the Supreme Court. These applications are made by the Attorney General or the Minister for Mental Health¹ (following the scheme set out in Schedule 1 of the MHFPA).

The Tribunal can order that a patient who is six months from the end of their limiting term becomes an involuntary patient under the MHA, if the patient; remains mentally ill; poses a serious risk of harm to him/herself or other members of the community, and, still needs an involuntary hospital admission.

The Tribunal cannot classify a person as an involuntary patient unless both the Attorney General and the Minister for Mental Health have advised the Tribunal that they do not propose to apply for an extension order, or the Supreme Court has dismissed an application for extension of the person's forensic patient status.

¹ The MHFPA allows the Minister for Health a right of appearance before the Tribunal in matters relating to leave or release. However, responsibility for this aspect of the MHFPA is exercised by the Minister for Mental Health. The Tribunal's practice is to notify the Minister for Mental Health.

SECTION 3. TRIBUNAL HEARINGS FOR FORENSIC PATIENTS

The [Forensic Policy Directive](#) outlines the information that is to be provided to the Tribunal before reviews. The Tribunal has also issued [Practice Direction](#) dealing with the exchange of information before a Tribunal hearing.

Legal Aid NSW provides free legal representation for all forensic patients through the Mental Health Advocacy Service. However a forensic patient may choose to be represented by a private lawyer at their own expense.

Victims may also attend hearings with a representative. The SVSS provides free representation to all registered victims.

Before a Review Hearing

Regular Reviews

The Tribunal's hearings are usually listed six months apart, although the Tribunal may, if appropriate, decide to extend that time to 12 months. The patient and the treating team are usually notified of the review date six weeks before the date of the hearing.

Extra or Early Reviews

The Tribunal may conduct a review hearing at any time. If issues arise between the scheduled reviews, the Tribunal may arrange an early review hearing so that the issues can be considered.

If the patient wishes the Tribunal to hold an early review for any reason, the patient may write to the Tribunal outlining their reasons for seeking the early review. If the patient or treating team seeks an early review to consider a new request for leave or a conditional or unconditional release application, they should first contact the Tribunal on 9816 5955 and ask to speak to a Senior Forensic Officer. The Tribunal will decide if an early review is appropriate but will only list the early review when all the necessary reports have been filed with the Tribunal.

The Attorney General, the Minister for (Mental) Health, the Minister for Justice, the Minister for Juvenile Justice, the Secretary of the Ministry of Health or the medical superintendent of the mental health facility where the patient is detained may ask for a review at any time and the Tribunal must review the forensic patient's case (s 46(2) of the MHFPA).

What Does the Tribunal consider at a Review Hearing?

Notice of Intent

The Tribunal's practice is to ask a patient's treating team and/or lawyer to provide the Tribunal with advance notice of the orders that they will ask the Tribunal to consider at a review. This is done by completing a Notice of Intent form. The Tribunal's staff rely on the Notice of Intent to advise the Minister for Mental Health, the Attorney General and any registered victims of the

kinds of orders which the Tribunal will be considering at the review, so that those persons can consider whether they wish to exercise their statutory rights to attend the review and/or make submissions. The treating team/patient's lawyer will be notified of any Notice of Intent provided to the Tribunal, so that they are able to properly prepare for the review.

The Tribunal's staff will send a blank copy of the Notice of Intent form to treating teams and the Mental Health Advocacy Service before a hearing date. It is completed and returned to the Tribunal before the review date. The timeframes for the return of these forms are set out in the Tribunal's [Practice Direction](#) on Forensic Tribunal Procedures.

If the patient wishes to seek changes to the current orders in a way which is different from the treating team's proposal, the patient or their lawyer can complete a separate Notice of Intent.

The Tribunal advises the Minister for Mental Health¹ and the Attorney General of the kind of the application made in the Notice of Intent, to allow the Ministers to use their right of appearance if they wish to do so.

The Tribunal's procedure in relation to providing notification to the Minister for Mental Health and the Attorney General are set out in its [Practice Direction](#) on Forensic Tribunal Procedures.

Victims are entitled to make submissions to the Tribunal whenever the Tribunal is asked to consider a grant of leave or release. Victims may make a submission about any of the following:

- (a) the forensic patient's behaviour, both past and present, and the impact of the behaviour on the victim and the victim's family;
- (b) the risk posed by the forensic patient to the victim, the victim's family or any other person;
- (c) the impact on the victim and the victim's family if leave is granted to the forensic patient or the patient is released, whether unconditionally or subject to proposed conditions, and
- (d) the conditions that should be imposed on a grant of leave to or release of a forensic patient, including non-association and place restriction conditions.

The Tribunal will acknowledge the receipt of the submission.

A victim who makes a submission may also raise questions for discussion during the Tribunal proceedings. The Tribunal needs to agree to discussion of issues raised by victims. It is helpful if victims can let the Tribunal know in advance if there are issues that they would like discussed. The SVSS can help victims to do this.

Issues that a victim would like discussed can also be raised during the hearing. The Tribunal panel will invite victims to raise any issues at an appropriate time in the hearing.

A victim may also wish to request an order for non-association or place restriction or to provide information which may be relevant to the Tribunal's decision.

If a victim has made a Victim Impact Statement to the court, then this Statement will also be considered by the Tribunal.

At the hearing, the Tribunal may decide not to make orders in relation to leave or release which go beyond the orders sought in the Notice of Intent. Any decisions about leave or release which were not able to be dealt with at one review may be raised at a later review.

Conflict of Interest

When listing reviews the Tribunal tries to ensure that its members have no conflict of interest with a particular case. There could be the appearance of a conflict of interest if:

- A panel member has been a treating clinician of the patient within the last two years;
- A panel member was previously the legal representative of the patient;
- A panel member was a Judge involved in a matter before the court for the patient, or
- A panel member is a treating clinician at a mental health facility to which the patient may be transferred from the mental health facility or correctional centre where the patient is currently detained.

There may, of course, be other bases on which a panel member could appear to have a conflict of interest.

Every effort is made to ensure that the panel members who may appear to have a conflict of interest do not participate in reviews of the patient.

Anyone with a concern about apparent conflicts of interest for a panel member should contact the Tribunal, preferably before the hearing.

Evidence Before the Tribunal

The Tribunal expects that clinicians involved in working with the patient will provide the Tribunal with reports. The [Forensic Policy Directive](#) sets out examples of information to be included in reports. A pro forma report is Appendix 6 to that policy.

If a patient or their lawyer wishes the Tribunal to consider their own reports, documents or statements at the hearing, these should be provided to the Tribunal at least one week prior to the hearing. The Tribunal does not require evidence to be in a formal statement, but the Tribunal should be provided with a letter or email which outlines what the witness is expected to say.

The Minister for Mental Health and the Attorney General may also wish to provide the Tribunal with evidence in any matter in which they appear.

If a victim is requesting a place restriction or non-association order, then information about why this request is being made should be provided to the Tribunal. The SVSS can help a victim to put together the kind of information that will be useful for the Tribunal.

Any information should be forwarded to the Tribunal by emailing MHRT-Forensic@health.nsw.gov.au

Standard Clinical Report

Any report to the Tribunal should include at least the following information:

- A summary of the patient's background
 - Patient's general background and family history
 - Diagnosis and when diagnosed
 - Before the index event – life, activities, income, work and interests
 - Past forensic and psychiatric history
 - Any drug and alcohol history
 - Index event
 - Previous history of offending
 - Previous location and when admitted
- Progress since the last MHRT hearing (if relevant)
- Update on the patient's current mental health
- Current medications
- Current risk assessment
- Recovery pathway and future plans to ensure that the patient is receiving proper care and treatment in the least restrictive environment.

Where there is a multidisciplinary team treating the patient, it is not necessary to duplicate this information in each report, provided it is all covered in the reports of the treating team for each hearing.

Fitness

If a court decides that a person is unfit to stand trial, the court is to refer the person to the Tribunal (under s 14 of the MHFPA). The Tribunal must determine if the person is likely, on the balance of probabilities, to become fit to be tried for the offence within 12 months of the date of the court's determination that they were unfit (s 16 of the MHPFA).

There is a presumption (in s 15 of the MHFPA) that if the Court has found a person to be unfit, then the person remains unfit. The Tribunal would need to be persuaded by evidence to the contrary. The Tribunal needs to be satisfied on the balance of probabilities that the person is now fit.

The Tribunal will be assisted by an up to date report from a forensic psychiatrist or psychologist addressing:

- The person's diagnosis (if available);

- Current mental state;
- Whether the person currently meets the criteria for fitness laid down by the counts in *R v Presser* [1958] VR 45 and *Kesavarajah v The Queen* (1994) 181 CLR 230 for fitness (see para 1.4 of the [Forensic Policy Directive](#)), having regard to the offence with which the person has been charged, and the likely nature of a trial for that offence;
- Available treatment options;
- Whether the implementation of those options are likely, on the balance of probabilities to lead to the person becoming fit to stand trial within 12 months of the date of the court order, or
- Whether the person is suffering from a mental condition for which treatment is available in a mental health facility. If “yes” to the above, the report should include whether the person objects to being detained in a mental health facility.

If a person is detained in a correctional centre or a mental health facility at the time of a fitness hearing, the Tribunal will also conduct a review of a patient under ss 46 and 47 of the MHFPA. The report should contain the standard information about a patient’s background and progress.

Ongoing Fitness Reviews

If a patient has been found unfit by the court and is detained, the patient’s fitness to stand trial will need to be considered by the Tribunal at every following review until a special hearing has been held.

After the special hearing, if the patient has had a limiting term nominated, then the question of the patient’s fitness to be tried must be considered by the Tribunal at each review. A limiting term is imposed by the court and is an estimate of the sentence a person would have received at a normal trial.

The question of a patient’s fitness should be addressed in the report of the treating team at each review as below:

- Where the patient’s level of fitness varies, a detailed analysis is required, including a consideration of the *Presser* and *Kesavarajah* criteria;
- If the patient’s level of fitness is attributable to an organic condition, then it may be enough to say in subsequent reviews that there has been no change to the patient’s fitness to be tried, or
- If the team considers that a patient has become fit, this should be signalled to the Tribunal on the Notice of Intent, if possible.

Submissions by victims

The Tribunal will not disclose a victim’s submission directly to the forensic patient without alerting the victim (through the Specialist Victims Support Services) to their right to request non-disclosure.

To ensure procedural fairness, the Tribunal will usually provide the submission, or an edited version of the submission, to the forensic patient's lawyer.

The victim may ask the Tribunal not to disclose all or part of their submission to the forensic patient or the patient's lawyer.

A victim will be told, through the SVSS, if their submission is to be provided to the patient's lawyer. The Tribunal will provide the victim will have an opportunity to withdraw or amend their submission before it is provided to the patient's lawyer.

If a request for non-disclosure has been made, the Tribunal will only disclose the submission if it considers that it is *not in the interests of justice* for the review hearing to go ahead unless the forensic patient is able to read the victim's submission.

A victim's submission can only be provided to the patient's lawyer if the lawyer undertakes to the Tribunal that:

- The lawyer will only disclosure general information about the submission of the kind specified by the Tribunal;
- If the submission requests a place restriction, then the lawyer can tell the forensic patient about the areas that the victim requests will be covered by the restriction. The lawyer cannot identify where the victim lives, works or frequents. Equally, the lawyer cannot identify where the victim's family or friends live, work or frequent.
- The edited submission will not be disclosed to the forensic patient without the consent of the Tribunal.

If a victim's submission contains information that they do not wish to be disclosed to the forensic patient's lawyer, the victim should provide the Tribunal with two different copies of their submission:

1. The full submission for the Tribunal to read; and
2. An edited copy of their submission that the victim agrees may be disclosed to the forensic patient's lawyer.

If the victim does not agree to an edited copy of the submission being provided to the lawyer, then the Tribunal will hold a hearing to decide whether procedural fairness requires that the lawyer (or the forensic patient) should be given a full or edited copy of the submission.

The Tribunal and/or the patient's lawyer may also raise a concern that the edited submission provided by the victim does not meet the requirements of procedural fairness. In that case, the patient's lawyer may liaise with the SVSS to address any concerns that the edited submission does not meet the requirements of procedural fairness.

The SVSS will liaise with the patient's lawyer with the consent of the victim. If the victim does not consent to the SVSS liaising with the patient's lawyer, or the SVSS and patient's lawyer

cannot reach an agreement, the patient's lawyer can ask for a Tribunal hearing to determine whether a full or differently edited copy of the submission should be provided.

The Tribunal may also decide to list a hearing of this kind.

If, following a hearing, the Tribunal decides that a full or edited copy of the submission should be provided, then before handing across the submission, the Tribunal will give the victim, through the SVSS, an opportunity to withdraw the submission, or make other amendments to the submission.

The SVSS can help victims to prepare an edited copy of the submission to be provided to the patient's lawyer.

If the victim has concerns about providing the edited version of the submission to the patient's lawyer, the SVSS can also help the victim to raise these concerns with the Tribunal.

A person who wishes to represent a victim at a hearing, by speaking on their behalf, must complete a statutory declaration. The statutory declaration has to be in the approved form and provided to the Tribunal. A copy of the form is available on the [Tribunal's website](#) and from SVSS.

Victim request for place restriction or non-association

So it can decide if an order should be made, the Tribunal will need some information from a victim about why the victim wants an order to be made.

Non-association orders

If the victim would like an order prohibiting the forensic patient from contacting particular people, then the following kinds of information will be useful to the Tribunal:

- the names of the people who are not to be contacted;
- the relationship of those people to the victim;
- whether the forensic patient is likely to know or recognise the named people; and
- the reasons why a non-association order is sought.

Geographical restrictions

If the victim would like an order preventing a forensic patient from going to particular places, then the following kinds of information will help the Tribunal:

- A description of the places that the victim does not want the forensic patient to visit. Many registered victims choose to describe the places by referring to the Local Government Areas. For example, if a registered victim lives in Quakers Hill, the Tribunal may be asked to prohibit the forensic patient from visiting the Blacktown Local Government Area.
- Who goes to this place and their relationship to the registered victim or the forensic patient?

- Why does the person go to this place? Is this the place where the person usually works, lives, shops, plays sport or does other recreational activities, or is it the address of close family or friends?
- How often does the person expect to visit that place (unless the address is the usual work place or residential address)?
- The reasons why a geographical restriction is sought.

Transfer

The Tribunal is empowered to consider the place of a patient's detention, as well as the care and treatment that the patient is to receive. Consequently, the Tribunal will sometimes make an order transferring a patient from their current place of detention to another facility. This will usually be made on the basis that the patient could safely be housed in a less restrictive environment, or requires treatment or services of a kind that are not available in the current place of detention.

The requirements in relation to the handover of patients from one service to another are set out in the [Forensic Policy Directive](#).

Before making an order for transfer, the Tribunal would usually expect to see written evidence that the receiving facility has agreed that the patient is a suitable candidate for transfer to their facility.

The treating team should provide the Tribunal with up to date information about estimated timeframe for transfer in their reports, and the reasons for any delay in transfer.

The Tribunal will also conduct a review of a patient (under ss 46 and 47 of the MHFPA), and requires the standard information about a patient's background and progress.

Leave

Approved leave is required for a patient to access any place which is outside of the declared boundaries of the facility in which the patient is detained. The Tribunal must not make an order allowing a forensic patient leave unless it is satisfied that the safety of the patient or any member of the public (including the victim) will not be seriously endangered if the leave of absence is granted.

The types of leave that are available are:

- Ground leave
Ground leave is when a patient is granted permission to enter the grounds of the facility at which the patient is detained. During the ground leave, the patient may be escorted, supervised, or unsupervised. The grounds of a declared mental health facility are defined as only those grounds that are explicitly set out in the declaration of the facility. (Chapter 5 of the [Forensic Policy Directive](#) refers to this type of leave as Ground Access)

- **Escorted day leave**
Escorted day leave is leave granting access to a place or places outside a mental health facility, correctional centre or other place under close supervision and escorted by at least one member of staff of the facility.
- **Supervised day leave**
Supervised day leave means leave to a place outside a mental health facility, correctional centre, or other place, under the close supervision of at least one responsible adult (who is not a member of staff of the facility). Supervisors should be formally approved by the Medical Superintendent or delegate.
- **Unsupervised day leave**
Unsupervised day leave is leave from a mental health facility, correctional centre, or other place without being accompanied by a supervisor or an escort. It may be given in general terms, or for specific purposes.
- **Supervised overnight leave**
Supervised overnight leave enables a forensic patient to be absent from a mental health facility, correctional centre, or other place, for periods of up to 24 hours per day, while under the close supervision of at least one responsible adult. Supervisors should be formally approved by the Medical Superintendent or delegate.
- **Unsupervised overnight leave**
Unsupervised overnight leave is leave enabling a patient to be absent from a mental health facility, correctional centre, or other place, for periods of up to 24 hours per day, while not being subject to supervision or accompanied by an escort.

In describing the categories of leave, the Tribunal uses the same terminology as the [Forensic Policy Directive](#). The [Forensic Policy Directive](#) sets out the matters the treating team should consider when preparing for leave. The Tribunal expects that these issues are specifically addressed in the treating team's report.

Section 49 of the MHFPA provides that only the patient can apply for leave but that the Tribunal can also consider making an order for leave on its own motion. Practically speaking, it is often treating teams that complete the Notice of Intent. The Tribunal treats the Notice of Intent as a suggestion from the treating team which the Tribunal then considers of its own motion.

Where a patient has previously been leave, access to and progress on any leave is included in the next report to the Tribunal, highlighting both the successes and any incidents that have occurred on leave.

Any significant incidents that have occurred whilst the patient is on leave should be brought to the Tribunal's attention in between review hearings as soon as possible after the incident occurs.

The Tribunal will also conduct a review of a patient under ss 46 and 47, and so will also require the standard information about a patient's background and progress.

Conditional Release

Preparing an application for conditional release can take some time, both to ensure that all of the necessary clinical steps have been taken and to assemble the reports. Ideally, plans for conditional release will be foreshadowed at the Tribunal hearing 6 months before it is proposed to make a conditional release application (see 7.2.3 of the [Forensic Policy Directive](#)).

The conditions that the Tribunal can impose on release are set out in s 75 of the MHFPA.

Critically, under s 74(d) of the MHFPA, the Tribunal cannot grant conditional release unless it has a report by a psychiatrist who is not involved in treating the person, which provides an opinion as to risk required under s 74(d). These are usually provided by the CFMHS. However, a patient may also engage a private psychiatrist or psychologist to conduct the necessary assessment and provide a report and evidence to the Tribunal.

The [Forensic Policy Directive](#) sets out the matters to be addressed by the treating team when preparing for conditional release. The Tribunal expects the report to include:

- Evidence that the patient has been compliant with their current forensic order;
- Details of the risk assessment and proposed risk management plan, including recovery based interventions;
- If the patient is going to be supported in the community by a community mental health service or other support service, written confirmation that the service accepts the referral;
- If the forensic patient has a mental illness, then the name of a psychiatrist and case manager from a Local Health District who will be responsible for management of the forensic patient;
- Evidence of a home/accommodation assessment that has been conducted by appropriate staff, and
- Evidence that the conditional release plan has been discussed with the patient and their designated carer or a principal carer provider under the MHA.

The patient's treating team will ensure that a representative of the service to which the patient will be released is available (at least by phone) to attend the hearing.

The Tribunal will also conduct a review of a patient under ss 46 and 47, and requires the standard information about a patient's background and progress.

A patient may be conditionally released by the Court after a decision that they are not guilty by reason of mental illness. The Tribunal is obliged to conduct a review as soon as possible after the Court's verdict. The Tribunal's order after the review will supersede the Court's order.

Conditional Release for Patients with Cognitive Impairment

Patients who have a cognitive impairment and do not have a mental illness are generally not eligible for independent risk assessment by the CFMHS for their conditional release application. In these circumstances, the report required by the Tribunal may be provided by an independent psychiatrist or psychologist. The Tribunal may be able to fund the report. These funds are very limited and generally only one report can be paid for in relation to any particular forensic patient. It is important therefore that the report is obtained only where it is likely that an application for release will be made within the next 6 to 12 months. The process for obtaining a report is set out in the Tribunal's [Practice Direction](#).

Conditional Release for Patients on a Limiting Term

When a patient is subject to a limiting term, the Tribunal must consider whether the patient has spent "sufficient time in custody" before granting a conditional release application (s 74(e) of the MHFPA). The Tribunal has published several decisions in which it considered the interpretation of the phrase "sufficient time in custody": [Adams \[2013\] MHRTNSW 1](#) and [Talbingo \[2015\] NSWMHRT 6](#).

If there is any doubt about whether a patient who is subject to a limiting term has served sufficient time in custody, then the Tribunal is prepared to consider two conditional release applications for limiting term patients. The first application will consider only whether the person has served sufficient time in custody, and there may be limited information available about the proposed conditional release arrangements. The second application will consider whether there is any reason to depart from the Tribunal's earlier determination that sufficient time in custody has been served, and then to consider the appropriateness of the conditional release arrangements themselves.

Working With a Forensic Patient Who Has Been Conditionally Released

The [Forensic Policy Directive](#) outlines the ways in which a forensic patient is to be managed whilst on conditional release.

A forensic patient will usually be required to be linked to their local community mental health team and to see a public case manager and public psychiatrist. The Tribunal ordinarily imposes a range of other conditions relating to accommodation, drug and alcohol use and testing, and engagement in therapeutic programs.

The case manager and the patient should work together to complete the Notice of Intent for future reviews. If there is a disagreement about what should be sought, separate Notices can be lodged with the Tribunal. The patient's case manager and psychiatrist will be required to provide a report to the Tribunal prior to each review hearing. Ideally both the case manager and psychiatrist will be available to attend the Tribunal hearing. However, the Tribunal expects that, at least the case manager will be available to attend.

Patients who are conditionally released and who have a major mental illness will also be reviewed by the CFMHS before every Tribunal review. The case manager is responsible for

making arrangements for the patient to be interviewed by the CFMHS. If there is a proposal for a change to the order or a significant event the CFMHS will prepare a report. At the review, the case manager and psychiatrist should be able to comment on the CFMHS report and their ability to implement the CFMHS recommendations. The CFMHS is also available to provide advice to case managers between reviews if issues of concern arise.

If any issues of concern arise between hearings, the case manager is responsible for notifying the Tribunal – see Section 6 of these Guidelines.

If a forensic patient has been conditionally released, but does not have a major mental illness, it may not be necessary or appropriate to require the involvement of a Community Mental Health Team. The Tribunal is likely to require an alternative public sector case manager, who will be able to liaise with the Tribunal, provide reports for hearings and alert the Tribunal of any concerns between hearings. In those circumstances the CFMHS will not provide a report to the Tribunal.

Unconditional Release

Para 7.3.3 of the [Forensic Policy Directive](#) outlines the preparations that will be needed before an application for unconditional release is made. The Tribunal expects to see these matters documented in a report.

Critically, under s 74(d) of the MHFPA, the Tribunal cannot grant unconditional release unless it has a report by an independent forensic psychiatrist or psychologist providing the opinion as to risk required under s 74(d). These are provided by the CFMHS if the patient has a mental illness.

However a patient may also engage a private psychiatrist or psychologist to conduct the assessment and provide a report and evidence to the Tribunal.

The Tribunal may also make a Forensic Community Treatment Order, as part of the unconditional release application (s 67(5) of the MHFPA).

Timing

The Tribunal has issued a [Practice Direction](#) in relation to the timing of reports.

Distribution of Material by the Tribunal

The Tribunal will copy the material provided by the treating team and any other party and provide it to the patient's legal representative and to its own panel members.

If the CFMHS reviews a patient, they provide a copy of that report directly to the treating team, and the Mental Health Advocacy Service as well as to the Tribunal.

The reports provided by the CFMHS, the treating teams or other service providers are not made available to the public or registered victims. The reports will be provided to the Minister for

Mental Health or the Attorney General, if the Minister or Attorney General is exercising their right to appear before the Tribunal.

Hearings

The Tribunal holds regular review hearings for forensic patients, usually sitting as a panel of three.

Where Hearings are Held

The Tribunal conducts hearings for forensic and correctional patients in correctional centres, inpatient mental health facilities and community mental health centres. The Tribunal usually travels to venues in the Sydney, Wollongong and Newcastle regions. Some hearings take place at the Tribunal's premises in Gladesville. Hearings for people living outside these areas are usually held by video conference.

The hearing room is set up informally, with the Tribunal panel sitting on one side of a table, and the other participants sitting on the other side of the table.

Accessing hearings - Registered Victims

Tribunal hearings are open to the public.

If the patient has been conditionally released into the community, the Tribunal hearing is held either at the Tribunal's hearing room in Gladesville or via a videolink from Gladesville.

If the patient is detained in a correctional centre or a mental health facility, hearings are usually held in the place at which a patient is detained, which means that the Tribunal panel sits inside a correctional centre or a mental health facility. This can make it difficult for safety and security reasons, for victims who wish to watch hearings or make submissions to get access to the hearing room.

Access and security arrangements for correctional facilities and mental health facilities are determined by the Commissioner of Corrective Services and/or the Medical Superintendent of the mental health facility. The Tribunal has very limited influence over who may access these facilities.

However, the SVSS can assist a victim to watch the hearing from their premises in Parramatta.

SVSS will liaise between the Tribunal and registered victims to:

- Tell registered victims about upcoming hearings;
- Assist a registered victim to make a submission to the Tribunal if appropriate;
- Accompany a registered victim while they watch a Tribunal hearing from the SVSS premises;
- Watch the Tribunal hearing without the victim, and then advise the victim of what occurred at a hearing.

A person who wishes to represent a victim at a hearing, by speaking on their behalf, must complete a statutory declaration. The statutory declaration has to be in the approved form and

provided to the Tribunal. A copy of the form is available on the [Tribunal's website](#) and from SVSS.

More information about how the SVSS will help support victims to watch and participate in Tribunal hearings can be found on the [Victims Service website](#).

Accessing hearings – members of the public

The Tribunal cannot publish lists of upcoming hearings. The name of a person who has been brought before the Tribunal cannot be published by law (s 162 of the MHA). However, on request, the Tribunal's Registrar can advise of the time and date of any particular hearing.

If the hearing itself is being held in a correctional centre or a mental health facility, the Tribunal does not control access to that facility. Access to the facility to attend a Tribunal hearing would need to be arranged directly with the facility. For members of the public that are interested in watching a Tribunal hearing, arrangements can be made to listen to the hearing by phone or watch it by video link.

There are restrictions on the publication or broadcast of information about Tribunal hearings: see ss 162 and 189 of the MHA and the Tribunal's [Practice Direction](#).

Procedure at a Hearing

The central focus of the hearing is on the forensic patient or correctional patient as the person about whom the review is being held. An effort will always be made to hear the patient's point of view.

The Tribunal will be facing the patient. If necessary, the hearing room furniture is rearranged to ensure that this is achieved. Where video link is used to facilitate the participation of other people, the room is arranged to ensure that this does not distract from the focus on the patient.

The dignity of the patient is respected at all times. The patient is addressed directly and not discussed in the third person as if he or she were not present.

At the start of each hearing, all of the participants (patient, lawyer, family, treating team and any members of the public) come into the Tribunal room together. If people are attending the hearing by video link or telephone, they will be contacted by the Tribunal staff at the same time.

The Tribunal conducts each hearing in an informal way. Although informal, each hearing still remains part of a legal process. The Tribunal ensures procedural fairness. However, it is not bound by the formal rules of evidence.

If a person considers that a Tribunal panel member has a conflict of interest and the issue has not been raised before the hearing, the issue is raised at the beginning of any hearing (see **Conflict of Interest**).

It is a legal requirement that all Tribunal hearings are recorded (s 159 of the MHA).

The precise format of each hearing will vary depending upon the patient, whether there are victims, the issues to be decided and who is present. Generally speaking, a hearing follows this format:

- If any victims are watching or listening to the hearing, the presiding member may give a short overview of the format of the hearing before the patient and treating team come into the hearing room. If victims have issues that they would like the Tribunal to discuss in the hearing, this is a useful time to raise those questions with the Tribunal panel;
- The Tribunal members will introduce themselves and invite all those in attendance to give their names;
- If a Victim Impact Statement has been made by the victim, the Tribunal will acknowledge that it has read that Statement.
- If a victim has made a submission to the Tribunal, the Tribunal will acknowledge that it has read that submission.
- The Tribunal will ask for the patient's views. Questions may be directed to the patient him or herself, or to the patient's lawyer. A patient will always have an opportunity to express their own views in their own words;
- If either Minister is represented at the hearing, the representative will be invited to outline the Minister's position;
- The Tribunal will invite the treating team, usually starting with the psychiatrist or case manager, if there is anything to add to the written reports, or other comments that they wish to make. The psychiatrist may be invited to present a summary of the key issues regarding the patient for the purposes of the review;
- Members of the Tribunal may ask questions of the treating team and the patient to clarify any issues in the reports or in the evidence given in the hearing, or to raise matters of concern;
- If victims have requested a non-association order or place restriction and there is an issue about whether the Tribunal should make that order, the victim(s) may be invited to speak about their request or to answer any questions from the Tribunal members;
- The Tribunal will invite the patient's representative to ask any questions which the patient wishes to ask;
- If there are any other participants at the hearing (community mental health team, staff from Corrective Services NSW, or the Department of Ageing Disability and Home Care (DADHC)) that person may be invited to add to their report or contribute to the discussion;
- Any Ministerial representatives will be given an opportunity to ask questions of the patient and other participants, and
- The Tribunal may invite any family or support person to add any comments.
- The Tribunal will ask a victim if there are any additional questions that a victim wishes to raise for discussion, and the Tribunal will decide whether those issues should be discussed.

If anyone else wishes to ask a question of another person in the room, it is done through the presiding member of the Tribunal.

Any written submissions from registered victims or any other participant will be considered by the Tribunal as part of the hearing.

Tribunal hearings are inquiries with a patient focus. The hearing is not adversarial and no one bears an onus of proof. However, there will be occasions where robust advocacy is necessary. The Tribunal's presiding member may intervene to ensure the content and tone of questions is appropriate

At any time or after all the evidence has been taken, the Tribunal may take a short break to discuss the matter privately amongst the members of the panel.

If the decision can be announced on the day then the presiding member will do so and a brief summary of the reasons for decision will be given.

However, any orders made by the Tribunal do not take effect until a formal sealed order is issued by the Tribunal. The process that is followed after a hearing is discussed in more detail under the heading **Orders and Reasons for Decision**.

The Tribunal will provide a copy of the order and reasons for decision to those directly affected by them. This will usually be: the patient, through their legal representative; the treating team, either through the psychiatrist, case manager or the Tribunal's contact person; the Minister for Mental Health (in leave and release matters); and the Attorney General in release matters.

Registered victims have a right to receive particulars of the Tribunal's reasons for decision about an application for leave or release. These will be provided to the SVSS in a separate document from called "Particulars of reasons for decision for victims". The SVSS will be able to provide them to the registered victim.

The Tribunal will also consider a request by a registered victim to obtain a full copy of the reasons for decision where non-association and place restriction orders have been made and the victim is contemplating an appeal to the Supreme Court. A request for reasons can be made by writing to the Tribunal's Registrar.

Time of Tribunal Hearings

Most Tribunal hearings are completed in about 45 minutes. However, sometimes they take longer to complete, depending on what may be needed to make sure that each person receives a full and fair hearing.

An approximate start time is given for patient's reviews. Every effort is made to keep to the proposed time frame, but all participants should be aware that issues arise unexpectedly and Tribunal hearings may run early or late.

Recording of Hearings

The proceedings of the Tribunal are recorded. A digital recorder will be turned on at the commencement of the hearing and everyone in attendance asked to identify themselves for the purposes of the recording.

The Tribunal has issued a [Practice Direction](#) about accessing copies of the recordings.

The Tribunal does not routinely prepare or provide transcripts of the proceedings.

Who Attends Hearings and what is their role?

It is preferable for the following people attend Tribunal hearings:

- The patient;
- The patient's legal representative;
- The treating psychiatrist (or registrar) and/or case manager, and
- A representative of the nursing staff or other allied health professionals who are members of the treating team.

Others who may wish to attend a Tribunal hearing are the designated carers and the principal care providers, family or other support persons, or members of the public. The role of each participant is discussed below. The treating team is responsible for notifying family, designated carers and principal care providers and ensuring that they have access to the hearing venue.

Patient and the Patient's Representative

An important part of the review process is for the Tribunal to hear from the patient, and understand any concerns or desires that the patient might have.

Forensic patients must be represented by a lawyer, unless they chose not to be (see **Representation**). The lawyer's role is to communicate their client's instructions to the Tribunal.

If a patient refuses to attend a hearing of the Tribunal, the Tribunal can conduct the review in the patient's absence. In that case, it is useful if the legal representative is able to communicate to the Tribunal the patient's instructions including the fact that the patient does not wish to attend.

On rare occasions, a patient will not be well enough to attend a Tribunal hearing. In that case, the Tribunal may decide to take preliminary evidence from the treating team as to the patient's mental state. The Tribunal may move to where the patient is detained and take evidence from the patient at that location, if appropriate. Alternatively, a member of the Tribunal (usually the psychiatrist panel member) may visit and speak with the patient if possible, and convey their observations to the balance of the panel.

Representation

A forensic patient or correctional patient must be represented unless they do not want to be. The Mental Health Advocacy Service (a part of the Legal Aid NSW) provides free legal representation for forensic patients and correctional patients. Alternatively, the patient can engage a private lawyer, at the patient's own expense.

In addition, someone who is not a lawyer may assist the client as his or her advocate, as long as the Tribunal agrees to this.

The Tribunal is keen to support and assist people through the hearing process, and generally encourages and welcomes the involvement of advocates and non-legal representatives.

Someone wishing to assist a forensic patient before the Tribunal should advise the Tribunal before the hearing on fax number 9879 6811 or email MHRT-Forensic@health.nsw.gov.au. If you have any questions about the procedure, please contact the Tribunal on 9816 5955 and ask to speak to a Senior Forensic Officer.

A brief application requesting permission to speak on the patient's behalf is made at the start of the hearing. The proposed representative should indicate his or her name, relationship to the patient, and the reasons for asking to be the patient's assistant. The Tribunal will usually ask some preliminary questions before it decides about the appropriateness of the proposed representation.

Treating Team

Before the hearing, the treating team will have prepared written reports which are provided to the Tribunal and a copy is provided to the patient's legal representative and other clinicians.

At the hearing, the treating team speak to their reports and update the Tribunal about any recent progress or developments since the reports were prepared. The team discuss its plans for the patient's future, both short and medium term. The Tribunal may have other questions for members of the treating team.

Designated Carers and Principal Care Provider, Friends or Family of a Patient

Support from family and friends is an important part of a patient's recovery. A patient may, if they wish, nominate up to two people to be a designated carer. A designated carer may be the same as the person who is primarily responsible for providing support or care to the person.

Section 78(h) of the MHA provides that a designated carer and principal care provider are to be notified if a patient has any matter before the Tribunal.

The MHFPA also requires that the treating team must take all practicable steps to consult any designated carers, principal care providers when plans are made for release or leave, follow-up treatment or other action.

Other family and friends are welcome to attend the hearing to offer support to a patient. The treating team will make the arrangements for a designated carer and a principal care provider, family or friends of the patient to attend the hearing in secure venues, if they wish to do so.

Registered Victim

The term 'victim' is defined in the MHFPA in accordance with the *Victims Support and Rehabilitation Act 1996*. A person is entitled to register as a victim if they are the primary victim of an act of violence committed by the patient or a member of the immediate family of a victim who has died as a result of an act of violence committed by the patient.

The SVSS is responsible for managing the Specialist Victims Register.

Victims who have requested to be on the register (“registered victims”) have the right to be notified if:

- the forensic patient is due for a mandatory review hearing by the Tribunal;
- an application is made for a review of the forensic patient;
- the Tribunal makes or varies an order granting the forensic patient leave or release;
- an order is made to apprehend and detain a forensic patient after a breach of their leave and release conditions under s 68 or the patient escapes and a request for apprehension is needed under s 70;
- there is an application for an extension order or an extension order is made in relation to the forensic patient;
- the forensic patient appeals against a decision of the Tribunal, or
- the forensic patient is reclassified as an involuntary patient.

Registered victims must also be given notice of:

- particulars of proposed orders to be sought by the forensic patient at a review hearing and the location of that hearing;
- about the document “Particulars of Reasons for Decision by the Tribunal” about any application for leave or release, and
- any known safety concerns relating to the victim in relation to a review hearing (or arising out of the breach of an order relating to the forensic patient).

Victims can choose their level of contact with the SVSS, and the information that they receive about Tribunal reviews. A victim’s level of involvement can be changed at any time by advising the SVSS of their wishes. More information about the supports that the SVSS offers registered victims on their [website](#).

Registered victims are welcome to watch Tribunal hearings. This is usually done through a video link to the SVSS offices.

If a request for leave or release is being considered by the Tribunal, registered victims can ask the Tribunal to make an order that the forensic patient not contact them or other people whom they need to name. A victim can also ask that the forensic patient not go into certain geographical areas.

Victims can also make more general submissions at Tribunal hearings where leave/release is being considered. These submissions can cover:

- the forensic patient’s behaviour, both past and present, and the impact of the behaviour on the victim and the victim’s family,
- the risk posed by the forensic patient to the victim, the victim’s family or any other person,

- the impact on the victim and the victim's family if leave is granted to the forensic patient or the patient is released, whether unconditionally or subject to proposed conditions,
- the conditions that should be imposed on a grant of leave to or release of a forensic patient, including non-association and place restriction conditions.

These submissions can be made at the hearing, but it is much more helpful if they are written down and provided to the Tribunal in advance.

The SVSS can help victims to make submissions and will support victims during Tribunal hearings.

What applications can a registered victim make to the Tribunal?

Registered victims can ask the Tribunal to make two types of orders;

- A restriction on the forensic patient contacting certain people, and
- A restriction on the forensic patient going to particular areas.

These orders are made under s 76 of the MHFPA.

Applying for a non-association order

To be able to decide if an order should be made, the Tribunal needs some information from registered victims about why they would like the order to be made.

If a registered victim would like an order prohibiting the forensic patient from **contacting particular people**, then the following kinds of information will be useful to the Tribunal:

- The names of the people who are not to be contacted;
- The relationship of those people to the registered victim,
- Whether the forensic patient is likely to know or recognise the named people.

Applying for a place restriction

If a registered would like an order prohibiting a forensic patient from **going to particular areas**, then the following kinds of information will be useful to the Tribunal:

- A description of the area that the registered victims ask to be restricted. Many registered victims chose to describe the areas by referring to the Local Government Areas. For example, if a registered victim lives in Quakers Hill, the Tribunal may be asked to prohibit the forensic patient from visiting the Blacktown Local Government Area
- Who goes to this area and their relationship to the registered victim or the forensic patient?
- Why does the person go to this area? Is this the area where the person usually works, lives, shops, plays sport or does other recreational activities, or is it the address of close family or friends?

- How often does the person expect to visit that area (unless the address is the usual work place or residential address)?

Reporting concerns about potential breaches of leave or release

If a registered victim is concerned that a forensic patient has not abided by their conditions of leave or release, the person can contact the Tribunal. The Tribunal will then investigate those concerns.

Anyone with immediate concerns for their safety should contact the Police on 000.

For more information, victims should contact the SVSS by phone on [1800 411 822](tel:1800411822) or email on svss@justice.nsw.gov.au or look at the information on the [SVSS website](#).

Interpreters

People who speak a language other than English, or who require a sign interpreter, have a right to a free health care interpreter. Interpreters should always be involved in any Tribunal hearing where any person appearing before the Tribunal has a language difficulty, or where there is some doubt about that person's capacity to comprehend English. If a non-English speaking family member of the patient is attending to support the patient, an interpreter may also be required.

The mental health facility or correctional centre where the hearing is to be held is responsible for organising an interpreter for the patient, or their family if needed. If the hearing is to be held by video link at Gladesville, the interpreter needs to be located with the patient, and so should be organised by the hosting mental health service or correctional centre.

The Tribunal's strong preference is for an interpreter to be present at the hearing with the patient. If this is not possible, then a telephone interpreter service should be arranged.

The SVSS can arrange for an interpreter to assist registered victims if needed.

Restricting participation in hearings - closing hearings

Tribunal hearings are open to the public (s 151(3) of MHA). This means that usually all information is discussed in an open and public forum.

However, the Tribunal may decide to take some evidence in private, or restrict the disclosure of evidence at a hearing for a range of reasons including:

- Assisting a forensic patient to confidently discuss highly sensitive and personal information;
- Making sure that a forensic patient's safe and effective care, and the safety of the public are not jeopardised by a public discussion of information that is relevant to a Tribunal decision, and
- Assisting registered victims to feel safe when providing information to the Tribunal.

Under s 151(4) of the MHA, the Tribunal can make an order to:

- Conduct some or all of the hearing in private. This would usually involve putting external participants (or observers) on mute or asking participants in the room to leave while the Tribunal hears evidence on a particular topic or from a particular person;
- Prohibit the publication or broadcast of particular proceedings;
- Prohibit the publication of evidence given before the Tribunal,
- Restrict the disclosure of evidence given before the Tribunal to some or all of the parties to the proceedings.

If a registered victim, patient or treating team thinks that it is important that there should be restrictions on the public discussion of information in a Tribunal hearing, it is best if they raise it with the Tribunal before the hearing. The SVSS can assist victims to do this.

Otherwise, the issue can be raised at the commencement of the hearing. The Tribunal will then usually hear evidence and submissions on this issue, before deciding whether to close some or all of the hearing.

To seek to close part or all of the hearings contact the Tribunal on fax number 9879 6811 or email MHRT-Forensic@health.nsw.gov.au. If you have any questions about the procedure, please contact the Tribunal on 9816 5955 and ask to speak to a Senior Forensic Officer.

Adjournments

The Tribunal may from time to time adjourn its proceedings to such times, dates and places and for such reasons as it thinks fit. The purpose of adjourning proceedings is to ensure they are properly conducted. The Tribunal may, for example, adjourn proceedings if it is necessary to arrange for appropriate legal representation, or for an interpreter to assist the person or family or to allow for the production of important evidence.

The President or a Deputy President sitting alone can consider an adjournment application.

After a Hearing

Orders and Reasons for Decision

Although the panel members of the Tribunal will try to give an indication of their decision at the time of the hearing, the Tribunal's orders only take effect when a formal, sealed order is issued. The Tribunal will also prepare written reasons for its decision.

Sealed orders and the Tribunal's reasons for decision will be provided to the following people/agencies:

- The patient or their lawyer;

- The patient's case manager or treating team at the mental health facility that detains a patient;
- Corrective Services NSW (if the patient is detained in a correctional centre);
- The Minister for Mental Health (for leave and conditional/unconditional release orders);
- The Attorney General (for conditional/unconditional release orders), and
- The Minister for Police (for conditional/unconditional release orders only, not reasons).

Registered victims will be advised of the outcome of a hearing by the SVSS, if they have asked to be informed about this.

Where an application for leave or release has been made, registered victims will also be provided with the document "Particulars of Reasons for Decision by the Tribunal" from SVSS. This document will set out the key evidence and reasons for a Tribunal decision.

Orders for Transfer including time limited orders

Where the Tribunal has considered the transfer of a patient from one place of detention to another, the Tribunal may make an order for the immediate transfer of a patient. More often, the Tribunal will order that the patient be transferred "when a bed becomes available" and specify the patient's place of detention in the meantime. In any particular case, the Tribunal may make an order for the transfer of the patient within a particular timeframe (these are called "time limited orders"). The Tribunal has published an official report of its reasons for decision in a matter where the Tribunal considered whether to make a time limited order: [Mr Hallam \[2014\] NSWMHRT 1](#).

If the Tribunal is concerned about delays to a patient's transfer, or considers that a time limited order should be considered at the next review, the Tribunal will note this in its reasons for decision.

Between review hearings, the Tribunal may also request updates from the treating team about bed availability.

On occasion, the need for a time limited order only becomes apparent at or shortly before a Tribunal review hearing. In that case, the Tribunal will make every effort to contact the Statewide Clinical Director for Forensic Mental Health of the Justice Health and Forensic Mental Health Network and allow the Director an opportunity for comment before making the time limited order. If the Director cannot be reached, the Tribunal may nonetheless consider it appropriate to proceed to make that order.

Orders and Reasons for Decision—Fitness

Where a court has found a person unfit to be tried and referred the person to the Tribunal for review under s 16, the Tribunal Registry will forward its orders and reasons for decision to the

Judge or Court Registrar and the Director of Public Prosecutions (DPP). A copy will also be sent to the patient's legal representative.

Where the Tribunal reviews a patient again, before a special hearing has been held and within 12 months of the court's finding of unfitness, the Tribunal's orders and reasons for decision will also be sent to the Court, the DPP and the person's legal representative.

Once 12 months has passed from the court's finding of unfitness, or after a limiting term has been set, whichever is the earliest, the Tribunal will only send a copy of its order and reasons for decision to the DPP and the Court if it reaches the view that the patient has become fit to be tried.

Timeframes for Orders and Reasons for Decision

In straightforward matters the Tribunal's orders and reasons for decision will generally be made available as follows:

- Sealed orders relating to
 - transfer from one place of detention to another;
 - escorted leave from a mental health facility or correctional centre; or
 - arrangements in relation to care or treatment

will be provided within a few days of the Tribunal's hearing.

- Sealed orders relating to supervised or unsupervised leave will be provided (together with the Tribunal's reasons for decision) within six weeks of the Tribunal hearing.
- Where the Tribunal conducts a review, but does not make any changes to the existing orders following that review, a copy of the Tribunal's reasons for decision will be provided within six weeks of the Tribunal hearing. However, no new order will be issued.

Further Distribution of the Tribunal's Orders and Reasons for Decision

The Tribunal's orders and reasons for decision are subject to the restriction on disclosing information that can be found in s 189 of the MHA. Those who receive the orders and reasons for decision may distribute them further, if they do so in connection with the administration and execution of the MHA or the MHFPA. Otherwise anyone distributing the orders or reasons for decision may be committing a criminal offence.

Publication of reasons - Official Report of Tribunal Proceedings

The Tribunal has the power to issue an official report of its proceedings (s 162(2) of the MHA). A document which is an official report of the Tribunal's proceedings can be published. An Official Report will contain the significant information but will have any identifying information about the particular patient removed. The Tribunal has issued a [Practice Direction](#) on this issue

If a document does not describe itself as an official report of Tribunal proceedings, then it is not one. Publication of that document would be a breach of either or both sections 162 and 189 of the MHA.

The published Official Reports of the Tribunal's proceedings can be found on its [website](#) and on the [Austlii website](#).

Other Communications from the Tribunal Registry

For the purposes of a review, the Tribunal may communicate with anyone, take any action and make any recommendations it thinks fit.

Sometimes the Tribunal recommends that certain action be taken by the treating team or some other person or organisation following a hearing. In that case, the Tribunal's Registry staff will contact the organisation after the hearing and confirm the Tribunal's recommendation in writing.

Between Review Hearings

The patient's case manager or treating team keep the Tribunal's Registry informed of changes to a patient's circumstances.

Part of the Tribunal's role is to monitor the progress of forensic patients between reviews. This monitoring has a number of purposes. The Tribunal may need to issue an order for a patient's apprehension and detention if the patient has breached the conditions of their leave or release, or simply if a patient has become very unwell and is at risk of serious harm to themselves or others.

The Tribunal is also able to arrange an early review for patients and may decide to do so where the patient's circumstances have changed or need closer monitoring e.g. where a patient has changed living arrangements, had a period of physical or mental ill health, where travel plans are being made and need to be discussed, or if there has been an incident during leave or release. The Tribunal decides whether an early review is warranted, and the kind of information that it might need for that review, or the information provided by the patient's treating team.

The Ministry of Health's policy on the provision of mental health services to forensic patients sets out the circumstances in which the Tribunal will be contacted [see [Forensic Policy Directive](#)].

Treating teams will naturally need to use their discretion about the need to inform the Tribunal if circumstances change. However, as a guide, the Tribunal expects to be informed where:

- There is a change of case manager or psychiatrist for conditionally released patients;
- Any incident of concern occurs during leave;
- The patient is admitted to hospital for a physical or mental illness;

- The patient proposes to change living arrangements, including their address or the person with whom they are sharing their accommodation;
- The patient returns a positive drug screen;
- The patient misses appointments without explanation;
- The patient cannot be contacted by the case manager;
- There are any concerns for a patient's mental health;
- There is any other alleged non-compliance with the conditions of leave or release,
- There is a proposal to travel (see Part 8 in [Forensic Policy Directive](#)).

Travel

A forensic patient may be forbidden to travel without first seeking the Tribunal's approval. These restrictions may apply to travel within NSW, outside of NSW or internationally.

If a forensic patient's travel is restricted, then a travel plan should be provided to the Tribunal to review before the patient travels. A Presidential member of the Tribunal will review the proposed travel plan. If there are concerns about the proposed travel plan, an early review will be held to discuss the proposed travel arrangements.

The Tribunal does not assess whether a patient is well enough to undertake the proposed travel. That is the role of the case manager and treating team. (See Part 8 in [Forensic Policy Directive](#).)

SECTION 4. BREACH OF LEAVE OR CONDITIONAL RELEASE

The President or a Deputy President may issue an order for the apprehension and detention of a forensic patient where it appears to the President or Deputy President that the person has breached a condition of their leave or release, or has suffered a deterioration of mental condition so that the person is at risk of causing harm to themselves or others.

If a significant breach occurs out of hours, the Tribunal can be contacted on its out of hours emergency contact number.

Part 10 of the [Forensic Policy Directive](#) deals with breaches of conditions of leave.

The Tribunal usually becomes aware of breaches of the conditions of leave or release after being informed by the patient's treating team.

The treating team will first contact the Tribunal by telephone. A written report may be requested. The Tribunal will consider the seriousness of the breaches and the likelihood of there being a deterioration in the patient's condition and decide whether or not to issue an order under s 68.

A registered victim of a forensic patient must be notified after the Tribunal has issued an order for the apprehension and detention of the patient under s 68. The Tribunal will provide notice of this to the SVSS.

Deteriorations in Mental State

If a conditionally released patient's mental state deteriorates and the patient needs to attend hospital for assessment or treatment, the treating team has three options. It is for the treating team to decide which of these options to pursue.

Voluntary Admission

It is usually a condition of a patient's release that a case manager may direct a patient to attend a mental health facility for review or assessment. Even if it is not a condition of a patient's release, the patient can be encouraged to attend voluntarily.

The Tribunal should be informed that the patient has been admitted as a voluntary patient and be kept advised of the patient's progress. The Tribunal should be advised of the discharge.

Involuntary Admission under the MHA

It may also happen that a forensic patient detained as an involuntary patient under the MHA: s 76HA of the MHFPA. In that case, the patient must meet the criteria for involuntary detention under the MHA and the procedures in the MHA should be followed. If a certificate is issued under s 19 of the MHA (a "Schedule") the police may also apprehend the patient.

Admission as an involuntary patient allows the patient to immediately access leave (subject to the Medical Superintendent's discretion). The patient may also be discharged at the discretion of the Medical Superintendent.

The authorised medical officer of the mental health facility must notify the Tribunal of the forensic patient's admission and discharge.

It is useful to refer to the Tribunal's [Practice Direction](#) on this issue.

Detention Order Issued by medical superintendent under Section 68A of the MHFPA

Under s 68A of the MHFPA, an authorised medical officer of a mental health facility may apprehend a person or direct that person be apprehended if the person fails to return to the facility at the end of a period of leave or fails to comply with a condition of leave.

A forensic patient may be apprehended by police under this section. Police assistance is authorised if the authorised medical officer is of the opinion that there are serious concerns relating to the safety of the person or other persons if the person is taken to the mental health facility without the assistance of a police officer.

This provision may be useful where a forensic patient is detained at a mental health facility with a grant of leave. The authorised medical officer can arrange for the apprehension of a forensic patient (with or without police assistance) without the need to obtain an order from the Tribunal.

The Tribunal must be notified:

- (a) when the authorised medical officer makes a decision to direct a forensic patient's apprehension, and
- (b) when the forensic patient is apprehended.

Outside of business hours, the Tribunal can be notified by using the out of hours email address. The treating team should not hesitate to contact the Tribunal on the out of hours phone number, if the team considers that the Tribunal needs to be immediately alerted.

If a forensic patient is detained in a mental health facility under s 68A, they continue to have access to any previously granted leave. If a direction has been issued under s 68A, leave should not be reinstated by the treating team until the matter has been discussed with the Tribunal.

Detention Order Issued by the Tribunal under Section 68 of the MHFPA

The Tribunal may issue an order to detain a patient who is at risk of causing serious harm to himself or herself or to any member of the public as a result of a deteriorating mental condition (s 68 of the MHFPA).

If the treating team considers it is appropriate to take action for a breach of the conditions of the release or leave through an order under s 68, it provides the Tribunal with a report (an email is

sufficient) outlining the patient's mental state and its concerns for the patient's safety, or the safety of others.

As discussed below, a patient who is ordered to be apprehended and detained under s 68 must be taken to the mental health facility named in the order, cannot access leave until reviewed by the Tribunal and may only be discharged from the facility on the Tribunal's order.

Order for Apprehension under Section 68

The order for apprehension issued under s 68 of the MHFPA will specify the place at which the patient is to be detained. The treating team is responsible for identifying an appropriate mental health facility in which to detain the patient. Issues of bed availability may need to be discussed with the Statewide Clinical Director of the Justice and Forensic Mental Health Network.

An order for apprehension issued under s 68 allows a police officer to apprehend the patient and to take them to the place specified in the order, and ONLY to that place.

If there are difficulties placing the patient at the mental health facility where the patient has been ordered to be detained, the Director General's delegate may order the transfer of the patient to another mental health facility under s 76E of the MHFPA. The Director General's delegates are set out a part 9.3.2 of the [Forensic Policy Directive](#).

The patient must not be granted leave until reviewed by the Tribunal.

Registered victims can ask to be notified if a forensic patient has failed to return from leave and an order is issued under s 68.

Review Following a Section 68 Order for Apprehension

The Tribunal will list a review of the patient as soon as practicable after the patient has been apprehended and detained.

The Ministers have a right to appear at a review (s 68(2) of the MHFPA) and will be notified of the review date at least 2 business days before the review.

At this review, the Tribunal may:

- confirm the person's ongoing release (perhaps with altered conditions), or
- revoke the conditional release order and require their ongoing detention care or treatment in a mental health facility, correctional centre or other place, or
- adjourn the hearing.

In preparation for the review, the Tribunal will require a report from:

- the psychiatrist, and treating team where the patient is detained, commenting on the patient's current mental state, any contributors to the patient's deterioration, whether

- a grant of leave at the medical superintendent's discretion is appropriate and any plans for discharge; and
- a report from the patient's case manager commenting on the circumstances of the breach or deterioration and the patient's current mental state (if known).

The Tribunal may decide to adjourn the review of the patient (s 155 of the MHA) for a variety of reasons including:

- to allow the patient's mental state to stabilise;
- to obtain a report from the CFMHS or other necessary information;
- to allow for further engagement in treatment or therapeutic programs best delivered in the mental health facility; or
- to allow for appropriate discharge planning.

If the hearing is adjourned the Tribunal may also grant the person leave from the mental health facility (s 49 of the MHPFA).

SECTION 5. REVIEW OF CORRECTIONAL PATIENTS

An inmate in a correctional centre who becomes mentally unwell can be transferred to a mental health facility. A gazetted mental health facility is located within the Long Bay Correctional Complex.

The Director General (or delegates – see para 1.5 and 9.2.5 of the [Forensic Policy Directive](#)) can order a transfer (under s 55 MHFPA). There must be two certificates in the form set out in Schedule 2 of the MHFPA. If the inmate appears to be a mentally ill person (as defined in the MHA), the inmate can be transferred regardless of the inmate's consent. If the inmate is suffering from a mental condition for which treatment is available in a mental health facility, the transfer can only take place with the inmate's consent.

The Tribunal should be sent the following information:

- A copy of the transfer order signed by the Director General or delegate;
- A copy of the two Schedule 2 certificates,
- A copy of the request for a s 55 order, including the inmate profile completed by the applicant.

The forms can be faxed to Tribunal on fax number 9879 6811 or emailed to MHRT-Forensic@health.nsw.gov.au. If you have any questions please contact the Tribunal on 9816 5955 and ask to speak to a Senior Forensic Officer.

Limited Reviews of Inmates Awaiting Transfer to a Mental Health Facility

If an inmate is still waiting for transfer one month after the s 55 order was made, the Tribunal must review the person (s 58 of the MHFPA). These reviews may be conducted by a Presidential member sitting alone.

The Tribunal Registry is advised that if a correctional patient has been transferred or discharged from a mental health facility 4, or the discharge order has been revoked. If the person has not been transferred, the Tribunal will review the person every month under s 58.

At the monthly s 58 review the Tribunal will require:

- A report from a psychiatrist outlining the patient's current mental state and whether there is an ongoing need for transfer
- A letter from the Commissioner of Corrective Services as to the reason for the delay in the transfer.

The information can be faxed to Tribunal on fax number 9879 6811 or emailed to MHRT-Forensic@health.nsw.gov.au. If you have any questions please contact the Tribunal on 9816 5955 and ask to speak to a Senior Forensic Officer.

After Transfer to a Mental Health Facility

Once a person is transferred they become a correctional patient and must be reviewed by the Director General or delegate within seven days to decide:

- if the person is a mentally ill person or is suffering from a mental condition for which treatment is available in a mental health facility, and
- care of an appropriate kind is not reasonably available in the correctional centre.

If the delegate is not satisfied that these two criteria are met, the person must be transferred back to a correctional centre.

The Tribunal must conduct a review as soon as practicable after the person has been transferred to a mental health facility.

The Tribunal must consider whether the person is a mentally ill person who should continue to be detained in a mental health facility. If not satisfied, Tribunal may order that the person be transferred back to the correctional centre.

At this review the Tribunal requires a report from the treating team outlining the patient's current mental state and whether there is an ongoing need for detention in the mental health facility.

The Tribunal Registry is advised if a correctional patient has been transferred or discharged from a mental health facility, or if the transfer order has been revoked.

Ongoing Review of Correctional Patients

After the initial review, the Tribunal reviews a correctional patient at least every six months but may review the case of any correctional patient at any time. The Tribunal's Registry advises the treating team of the date of a review hearing. At these hearings, the Tribunal receives a report from the treating team outlining the patient's current mental state and whether there is an ongoing need for detention in the mental health facility.

The Tribunal is not able to grant leave to a correctional patient, but may make recommendations to the Commissioner of Corrective Services (s 62 of the MHFPA).

If a correctional patient is within six months of the end of their sentence, the Tribunal can consider making the person an involuntary patient (s 65 of the MHFPA). This process is discussed under the heading **Classifying a limiting term patient or a correctional patient as an involuntary patient**.

Transfer Back to a Correctional Centre

The Director General's delegate may order that a correctional patient be transferred back to a correctional centre if the correctional patient is no longer suffering from a mental illness or mental condition, or care of an appropriate kind is available at the correctional centre.

It may be appropriate to seek a Forensic Community Treatment Order to minimise the possibility of a relapse into an active phase of mental illness. See Section 7 of these guidelines.

If a patient is transferred back to a correctional centre, the Tribunal should be informed.

The Tribunal itself may also order that the patient be transferred back to a correctional centre.

SECTION 6. URGENT MATTERS

Absconding or Escaping Patient

If a forensic patient has escaped from their detention in a correctional centre or mental health facility, the Tribunal does not need to make an apprehension order. Section 70 of the MHFPA allows the medical superintendent, authorised person or a police officer or person assisting these people to apprehend an escaped patient. The Tribunal should be notified and staff can be contacted on the out of hours contact mobile number.

If a patient has been given leave, and does not return from leave (ie, has absconded) then this is treated as a breach of a condition of leave, and the Tribunal may issue an order under s 68 of the MFHP. The Tribunal's staff will contact any registered victims who have asked to be contacted in these circumstances.

A registered victim of a forensic patient must be notified if the patient escapes and a request is made to apprehend the patient under s 70. The Tribunal will provide notice of this to the SVSS.

Incidents on Leave or Release

If a significant incident occurs during a period of leave or release, outside of office hours, the patient's treating team contact the Tribunal's emergency contact number.

If a patient does not return from leave, the Tribunal may decide to issue an order under s 68 of the MHFPA.

Physical Health Problems Requiring Out of Hours Treatment

The Director General or delegate can approve a leave of absence from a mental health facility where there is a medical emergency (s 50(2) of the MHFPA). In a medical emergency, the Medical Superintendent of a mental health facility is delegated to authorise leave (see Part 4.7.2 of the [Forensic Policy Directive](#)). There is no need to get prior approval or an order from the Tribunal to take a patient to hospital in a medical emergency.

The protocols to be followed for medical emergencies (including the obligations to provide an appropriate escort) are set out in the Para 4.7 of the [Forensic Policy Directive](#).

The Tribunal is advised of the emergency leave as soon as practicable.

Special Circumstances Leave

The Director General can approve a leave of absence from a mental health facility in "special circumstances", provided that the safety of the patient and the public will not be endangered (s 50(1) of the MHFPA).

Special circumstances leave is appropriately used for regular medical appointments. There may be other special circumstances, such as attending key family events, where the Director General's delegate may consider it appropriate to grant special circumstances leave.

Para 4.7 of the [Forensic Policy Directive](#) sets out the processes to be followed in these circumstances.

The Tribunal is advised of the emergency leave as soon as practicable.

ECT

If emergency ECT is required, the Tribunal can be contacted on the afterhours ECT mobile number.

Emergency Surgery

If a forensic patient or a correctional patient requires urgent surgery and is capable of consenting to the operation, there is no need to contact the Tribunal. (Surgery is defined in s 98 of the MHA to mean “a surgical procedure, a series of related surgical operations or surgical procedures, and the administration of an anaesthetic for the purpose of medical investigation.)

If the patient is not capable of consenting, an authorised medical officer of the Director-General may consent to emergency surgery (s 99 MHA).

The authorised medical officer or Director General must be satisfied that:

- (a) the patient is incapable of giving consent to the operation, and
- (b) it is necessary, as a matter of urgency, to perform a surgical operation on the patient in order to save the patient’s life or to prevent serious damage to the patient’s health or to prevent the patient from suffering or continuing to suffer significant pain or distress.

The Tribunal and the patient’s designated carer(s) and principal care provider (if the principal care provider is not a designated carer) must be notified of the surgery as soon as practicable after it has taken place.

Emergency Special Medical Treatment

Special medical treatment is a treatment, procedure, operation or examination that is intended, or is reasonably likely, to have the effect of rendering the person permanently infertile.

Emergency special medical treatment does not require the prior approval of the Tribunal. A medical practitioner may carry out special medical treatment on a patient if of the opinion that it is necessary, as a matter of urgency, to carry out the treatment on the patient in order to save the patient’s life, or to prevent serious damage to the patient’s health.

The patient’s designated carer(s) and principal care provider (if the principal care provider is not a designated carer) must be notified as soon as practicable after the special medical treatment has been carried out. The Tribunal is also be notified on fax 9879 6811 or email MHRT-Forensic@health.nsw.gov.au, or call the Tribunal on 9816 5955 and ask to speak to a Senior Forensic Officer.

Refer to [Section 7 of the Tribunal's Civil Hearing Kit](#).

SECTION 7. COMMUNITY TREATMENT ORDERS FOR FORENSIC, CORRECTIONAL PATIENTS AND PEOPLE IN CUSTODY

A Community Treatment Order (CTO) is a legal order made by the Mental Health Review Tribunal. A CTO authorises compulsory care for a person not in a mental health facility. It sets out the terms under which a person must accept medication and therapy, counselling, management, rehabilitation and other services.

The MHFPA allows for a CTO (called a Forensic Community Treatment Order) to be made for:

- a forensic patient who is to be transferred to a correctional centre or other place;
- a correctional patient ordered to be transferred to a correctional centre;
- a person subject to an order for transfer under section 55 of the MHFPA who has not yet been transferred, and
- an inmate of a correctional centre.

The CTO continues to apply once a patient or inmate has been released.

More information about how to apply for a CTO under the MHFPA can be found in the Tribunal's [Forensic CTO Information Kit](#).

SECTION 8. SPECIAL CIRCUMSTANCES ORDERS

Financial Management Orders

On the first review after:

- A forensic patient is transferred to a mental health facility, or
- A correctional patient is transferred to a mental health facility.

The Tribunal must consider the patient's capacity to manage her/his financial affairs (s 45 *NSW Trustee and Guardian Act 2009*). If the Tribunal is satisfied that the patient is not capable of managing his/her affairs the Tribunal can make a financial management order. A financial management order means that the patient's estate is managed by the NSW Trustee and Guardian.

An application can be made for a financial management order to be made by the Tribunal at any time. The application must be made by a person with a "sufficient interest". The following people can be applicants:

- a member of the treating team;
- a designated carer(s) or a principal care provider (if the principal care provider is not a designated carer), and
- a family member.

The Tribunal will consider whether any other person seeking a financial management order has "sufficient interest" on a case by case basis.

An application is made in writing before the review date, as specified in the Tribunal's [Practice Direction](#).

An order made by the Tribunal can be revoked by the Tribunal if the Tribunal is satisfied that the person is now capable of managing their own affairs, or revocation is in the person's best interests (see s 88 *NSW Trustee and Guardian Act 2009*. See also [Stephens \[2015\] NSW MHRT 5](#)).

For more information on what is needed to support an application for financial management, see [Section 5 of the Civil Hearing Kit](#).

Change of Name

A forensic patient who wishes to change his or her name must first seek the Tribunal's approval (ss 31 C and D of the [Births, Deaths and Marriages Registration Act 1995](#)).

The Tribunal can approve the application if it is satisfied that the application is necessary or reasonable in all of the circumstances, and is satisfied that the change of name would not:

- affect the security, discipline or good order of any facility at which the patient is accommodated;

- jeopardise the health or safety of the patient or another person;
- be likely to be used to further an unlawful activity or purpose or to evade or hinder the patient's supervision, or
- the proposed name would not be reasonably likely to be regarded as offensive by a victim of crime or an appreciable sector of the community.

To arrange a hearing to consider a change of name application, the patient's case manager provides the Tribunal with:

- A letter from the patient explaining why the patient wishes to change name.
- A letter from the case manager or psychiatrist outlining the patient's current mental state and giving an opinion as to whether the wish to change name:
 - is attributable to the symptoms of mental illness,
 - would affect the security, discipline or good order of any facility at which the patient is accommodated,
 - would jeopardise the health or safety of the patient or another person,
 - is likely to be used to further an unlawful activity or purpose or to evade or hinder the patient's supervision.

This information is provided to the Tribunal on fax 9879 6811 or email MHRT-Forensic@health.nsw.gov.au. Any queries by phone are directed to the Tribunal on 9816 5955 and ask to speak to a Senior Forensic Officer.

A hearing will be held to consider the application. The patient and her or his case manager attend.

Registered victims will be notified of the forensic patient's proposal to change their name and may make submissions on whether the new name is offensive to them.

A review hearing for a change of name can be conducted by a Presidential member sitting alone, although sometimes a panel of three is convened.

If the change of name application is approved, the Tribunal will write and advise the case manager and the Registrar of Births Deaths and Marriages. The patient will then apply separately to the Registrar to change his or her name.

Note that a forensic patient who is a registrable person under the [Child Protection \(Offenders Registration\) Act 2000](#) will also have to seek the permission of the Commissioner of Police before changing their name.

If the Registrar of Births Deaths and Marriages approves the name change:

- The Registrar of Births Deaths and Marriages will notify the Tribunal, and
- All documentation generated by the Tribunal from that point onwards will refer to the patient by his or her new name.

The Tribunal will advise the Minister for Mental Health, the Attorney General, and any registered victims to update their records to the patient's new name.

If a person wishes to change their name to their spouse's name following their marriage, the Registrar of Births, Deaths and Marriages has advised that there is no need for a formal application to change the surname. Similarly, a person may be able to change their name back to their birth name after a divorce.

The patient may change their name following marriage or divorce with official entities (banks, Roads and Maritime Services) using their birth certificate and marriage certificate/divorce certificate. The Tribunal will change its records once it has been provided with a copy of the patient's certificates and all available identification documents changed into the person's new name.

Classifying a limiting term patient or a correctional patient as an involuntary patient

Where a forensic patient is within 6 months of the end of their limiting term, the Tribunal has the option of classifying that person as an involuntary patient (under s 53 of the MFHPA). The Tribunal can only make an order classifying someone as an involuntary patient if the person meets the criteria for involuntary detention in the MHA.

Section 53(1A) provides that the Tribunal cannot classify a person as an involuntary patient unless both the Attorney General and the Minister for Mental Health have advised the Tribunal that they do not propose to apply for an extension order, or the Supreme Court has dismissed an application for extension of the person's forensic patient status.

Treating teams are aware of the end date of a forensic patient's limiting term. If the treating team expects that an involuntary patient order will be sought, it is helpful to foreshadow that possibility at earlier reviews. The Tribunal may ask the Ministers if they propose to make an application to extend a person's forensic patient status.

If the Ministers have advised the Tribunal that an application to extend the forensic patient's status will not be made (or the application has been dismissed by the Supreme Court) the treating team may advise the Tribunal in their Notice of Intent that it will seek an involuntary patient order. The Tribunal will then consider whether such an order is appropriate. The treating team's reports should address the statutory criteria in the MHA.

Once the Tribunal orders that a forensic patient be classified as an involuntary patient, the person ceases being a forensic patient. Their care and control is solely governed by the provisions of the MHA.

The Tribunal expects that a person who is classified as an involuntary patient will be detained in a mental health facility to receive care and treatment, rather than a correctional centre.

Under s 65 of the MHFPA, the Tribunal is also able to classify a correctional patient as an involuntary patient, if the correctional patient is within 6 months of the end of their sentence. Again, the person's condition needs to meet the criteria for involuntary detention under the MHA. An early review of a correctional patient can be requested if necessary. If an involuntary patient order is made, the person ceases being a correctional patient (ie a person serving a sentence) and becomes an involuntary mental health patient instead.

Electro Convulsive Therapy (ECT)

If a mental health facility intends to administer ECT to a forensic or correctional patient, the Authorised Medical Officer must first apply to the Mental Health Review Tribunal for an ECT Administration Inquiry.

A forensic or correctional patient is considered to be an involuntary patient when applying the ECT provisions of the MHA.

The steps to be taken when a facility intends to administer ECT to an involuntary patient are set out in [Section 6 of the Civil Hearing Kit](#).

An application for ECT for a forensic patient is faxed to the Tribunal (fax number 9879 6811) or emailed to MHRT-Forensic@health.nsw.gov.au. Application forms are available on the MHRT website (<https://mhrt.nsw.gov.au/>) or by phoning 9816 5955.

If the application is urgent the treating team should phone the Tribunal after faxing or emailing the application form and ask to speak to a Senior Forensic Officer to confirm receipt. The Tribunal has a dedicated out of hours ECT telephone number, which has been provided to all mental health facilities in the event of a person needing urgent ECT.

Surgery and Specialist Medical Treatment

For information about how to manage emergency surgery – see **Urgent Matters** above.

Non-Urgent Surgery

If the surgery is not an emergency and a forensic or correctional patient can and has given informed consent, the surgery may proceed on the basis of that consent.

If a patient is incapable of consenting to surgery, and is detained in a mental health facility, a designated carer is given 14 days to consider whether s/he consents to the surgery. If the designated carer consents in writing, an Authorised Medical Officer may apply for consent from the delegate of the Director General by contacting the Mental Health and Drug and Alcohol Office by telephone on 9391 9953 or by fax on 9391 9041.

If the designated carer:

- does not put their consent in writing;
- disagrees;

- is unsure, or
- does not respond within 14 days.

the Authorised Medical Officer applies to the Tribunal for consent.

If the patient's designated carer cannot be identified, then the Authorised Medical Officer approaches the Tribunal to seek consent to the surgery.

The Tribunal and the Director General have no legal authority to hear the application until 14 days have elapsed after written notification is provided to the designated carer, unless the Authorised Medical Officer is of the opinion that the urgency of the circumstances requires an earlier determination or the person notified indicates that the person does not object (s 101(5) of the MHA).

The process of applying to the Tribunal for consent to surgery is set out in [Section 7 of the Civil Hearing Kit](#).

An application for surgery for a forensic patient is faxed or emailed to the Tribunal (fax number 9879 6811 or emailed to MHRT-Forensic@health.nsw.gov.au). Application forms are available on the MHRT website (<https://mhrt.nsw.gov.au/>) or by phoning 9816 5955.

If the application is urgent the treating team should phone the Tribunal after faxing or emailing the application form and ask to speak to a Senior Forensic Officer to confirm receipt.

Special Medical Treatment

Special medical treatment is a treatment, procedure, operation or examination that is intended, or is reasonably likely, to have the effect of rendering the person permanently infertile. A termination of pregnancy is not classified as a medical treatment under the MHA.

A correctional or forensic patient is considered to be an involuntary patient for the purposes of the MHA provisions about special medical treatment. The process for applying for non-emergency special medical treatment is set out in [Section 7 of the Civil Hearing Kit](#).

As soon as the treating team are aware that they need to apply to the Tribunal for consent to a surgical procedure, or to a special medical treatment, they will start making the necessary arrangements. They can make a tentative booking with the Tribunal before the end of the 14 day notice to the designated carer, to ensure that the preferred time slot will be available.

The treating team will need to contact the Tribunal directly. To book a hearing for an individual patient/client to the treating team fax or email an application form to the Tribunal (fax number 9879 6811 or email MHRT-Forensic@health.nsw.gov.au). Application forms are available on the MHRT website (<https://mhrt.nsw.gov.au/>) or by phoning 9816 5955.

The Tribunal has a roster of when panels visit mental health facilities where forensic and correctional patients are detained. If the treating team need to have a hearing before the next panel is due to visit, they contact the Tribunal so that alternative arrangements can be made.

If the application is urgent the treating team should phone the Tribunal after faxing or emailing the application form and ask to speak to a Senior Forensic Officer to confirm receipt and to make arrangements for the hearing.

SECTION 9. ABBREVIATIONS

CFMHS	Community Forensic Mental Health Service
CTO	Community Treatment Order
FCTO	Forensic Community Treatment Order
Forensic Policy Directive	Ministry of Health Practice Directive for Forensic Mental Health Services forensic PD2012_050
MHA	<i>Mental Health Act 2007</i>
MHFPA	<i>Mental Health (Forensic Provisions) Act 1990</i>
The Tribunal	Mental Health Review Tribunal
SVSS	Specialist Victims Support Service