



The Participation of Victims in Tribunal Reviews

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

NOTE: General information describing the review process can be found in the [Information Sheet: Victims – Mental Health Review Tribunal Review of Forensic Patients](#)

1. Purpose

- 1.1. The purpose of this Practice Direction is to Section 69(1)(f) of the *Mental Health and Cognitive Impairment Forensic Provisions Act 2020* (the MHCIFPA) notes that one of the objects of Part 5 of the MHCIFPA is to protect the safety of victims of forensic patients and acknowledge the harm done to victims.
- 1.2. Section 145 of the MHCIFPA provides that a victim of a forensic patient may make a submission to the Tribunal if the Tribunal is considering the release of, or the grant of leave of absence to, the forensic patient.
- 1.3. The MHCIFPA and the related *Mental Health and Cognitive Impairment Forensic Provisions Regulation 2021* (the MHCIFP Regulation) contain a number of provisions relating to victim participation in Tribunal reviews.
- 1.4. The *Crimes (Sentencing Procedure) Regulation 2024* provides for the making of Victim Impact Statements to the courts, and the referral of those statements by the courts to the Tribunal. This sentencing legislation also provides for use and amendment of those Victim Impact Statements in Tribunal proceedings.
- 1.5. This Practice Direction is intended to provide guidance to victims, their representatives and other participants in Tribunal proceedings as to how victim submissions will be received and considered by the Tribunal having regard to the requirements under the legislation.
- 1.6. Any reference to a “victim” in this Practice Direction is also a reference to a “registered victim” excepting in the Definitions or where the distinction is made explicit.
- 1.7. This Practice Direction refers to the legislation containing the Charter of Victims Rights currently in force, the *Victims Rights and Support Act 2013*, in addition to the *Victims Rights and Victims of Crime Commissioner Act 2025* which is yet to commence. The *2013 Act* refers to the Commissioner of Victims Rights while the *2025 Act* refers to the Victims of Crime Commissioner.

2. Definitions

family victim	means a person who is a member of the immediate family of a primary victim who has died as a direct result of the act of violence. A member of the immediate family may be a spouse of the victim, a de facto partner of the victim, a parent, guardian or step-parent of the victim, a child or step-child of the victim, or a brother, sister, half-brother, half-sister, step-brother or step-sister of the victim (see s22 <i>Victims Rights and Support Act 2013</i>)
patient	means the forensic patient who is the subject of the review
primary victim	means a person who is injured or dies as a direct result of the act of violence (see s20 <i>Victims Rights and Support Act 2013</i>)
registered victim	means a victim registered on the Victims Register (see s156 of the MHCIFPA)
review	means the hearing conducted by the Tribunal to review a forensic patient
SVSS	means the Specialist Victims Support Service
treating team	means those persons who are ordinarily involved in the clinical management of the forensic patient
Tribunal	means the Mental Health Review Tribunal
victim	of a forensic patient means a primary victim, or a family victim, of an act of violence committed by the forensic patient
Victims Register	means the Register established under Part 8 of the MHCIFPA

3. Review proceedings must comply with legal requirements

- 3.1. The Tribunal recognises that while it is not always the case that the submissions of a victim will be different to that of a patient, there will often be different perspectives as to what is an appropriate outcome for a forensic patient.
- 3.2. Tribunal decisions are based on evidence presented at the review hearing, which may include evidence by independent experts as to risk assessment, as well as evidence by treating clinicians.
- 3.3. It is a legal requirement when conducting a review hearing that the Tribunal provide procedural fairness to all parties who have a proper interest in the matter.
- 3.4. In making its decision the Tribunal must follow the legislative requirements. That legislation requires consideration of a number of factors including:
 - 3.4.1. whether a proposal for leave or release of a patient seriously endangers a victim or any member of the public (s84(1)(b) and s94(3) MHCIFPA); and
 - 3.4.2. whether or not care of a less restrictive kind that is consistent with safe and effective care is appropriate and reasonably available to the patient, or the patient does not require care (s84(1)(a) MHCIFPA); and
 - 3.4.3. the objects of the MHCIFPA which include, amongst other matters, to protect the safety of victims of forensic patients and acknowledge the harm done to victims; to protect the safety of members of the public; to provide for the care, treatment and control of persons subject to criminal proceedings who have a mental health or cognitive

impairment; to give an opportunity for those persons to have access to appropriate care; and

- 3.4.4. the rights of victims in accordance with the Charter of Victims Rights set out in the Victims Rights and Support Act 2013/Victims Right and Victims of Crime Commissioner Act 2025.

4. Victims and registered victims

- 4.1. The MHCIFPA creates a distinction between a “victim” and a “registered victim”.
- 4.2. A victim may make a submission to the Tribunal if the Tribunal is considering the release of or grant of leave of absence to the forensic patient – s145(1) of the MHCIFPA.
- 4.3. A registered victim may make submissions to the Tribunal and may apply for a non-association order and/or a place restriction order – s146(2) of the MHCIFPA. The Tribunal interprets cl 11 of the MHCIFP Regulation to provide the same opportunity to victims as registered victims, to make submissions, so long as their identity is known to the Tribunal. However a victim must be a registered victim to apply for orders under s146(2).
- 4.4. A registered victim will receive notice from the Commissioner of Victims Rights/Victims of Crime Commissioner (the Commissioner) of various matters which are before the Tribunal concerning the relevant forensic patient. The legislation imposes the obligation for such notifications on the Commissioner.
- 4.5. The Commissioner of Victims Rights/Victims of Crime Commissioner has delegated certain functions to the SVSS. SVSS will provide support to victims in relation to Tribunal hearings. While victims are encouraged to use the services of a representative such as the SVSS they are not required to do so.

5. What can victims do at a Tribunal review?

- 5.1. Victims can listen to the proceedings either via an audio-visual link, or through a representative such as the SVSS. This is generally referred to as “observing the proceedings”.
- 5.2. At the new Tribunal premises at level 4, 580 George Street Sydney, there is a quiet room with audio visual facilities where victims and support people may attend to observe a review hearing.
- 5.3. Clause 13 of the MHCIFP Regulation provides that victims may appoint a representative subject to certain conditions. One of those conditions is that the representative must fill out a Statutory Declaration as to confidentiality and this is available at: [Involvement of Registered Victims](#)
- 5.4. Victims or their representative can make submissions to the Tribunal in certain circumstances (see paragraph 7 of this Practice Direction).

- 5.5. Registered victims or their representative can ask the Tribunal to consider certain orders in relation to the forensic patient in certain circumstances (see paragraph 8 of this Practice Direction).
- 5.6. Victims or their representative can ask questions with the permission (leave) of the Tribunal (see paragraph 9 of this Practice Direction).

6. Observing the proceedings

- 6.1. The legislation states that Tribunal proceedings are open to the public which means that a person, including a victim, may observe the proceedings. The Tribunal conducts many forensic hearings from secure facilities which do not provide public access and therefore observers usually attend proceedings by audio-visual link. The Tribunal has instituted procedures where members of the public advise the Tribunal in advance of their intention to view proceedings. Wherever possible, the Tribunal will advise other parties of the intended attendance by a member of the public or a victim.
- 6.2. Any person who observes Tribunal proceedings must not publish or broadcast the name of any person who is the forensic patient, a witness, a victim, or anyone mentioned or otherwise involved in the Tribunal proceedings unless they have the express consent of the Tribunal to do so – see s162 *Mental Health Act 2007* (MHA). This includes referring to any information that may lead to the identification of the person.
- 6.3. Victims or their representative appearing using audio-visual means can request to do so anonymously. If you do not wish your presence at the review to be made known to the forensic patient, please advise your representative if you have one or otherwise request this on the [Victim Submission Form](#) where indicated.
- 6.4. Victims who wish to observe proceedings can either seek the assistance of a representative such as the SVSS or contact the Tribunal at the following email address: MHRT-Forensic@health.nsw.gov.au. Arrangements for attendance should be made at least one week before any review date. Victims can request to access a private viewing room at the new Tribunal premises at level 4, 580 George Street Sydney: there is a quiet room with audio visual facilities where victims and support people may attend to observe a review hearing in private.
- 6.5. The SVSS will advise registered victims, or their representative, of the date and approximate time of the review however please understand that the Tribunal cannot guarantee that a particular review will start on time. Delays may be experienced due to some reviews running longer than expected or other matters intervening outside of the Tribunal's control.

7. Making submissions to the Tribunal

- 7.1. The legislation states that victims can make submissions to the Tribunal when the Tribunal is considering either a release of a forensic patient or leave for a forensic patient.
- 7.2. A release order can be unconditional or with conditions. Leave orders always have conditions attached. Victims can make submissions at the first application for leave or release, or subsequent applications and reviews where an order for release or leave may be made.

- 7.3. Clause 11 of the MHCIFP Regulation says that victims may make submissions to the Tribunal about the following matters:
 - 7.3.1. The forensic patient's behaviour and the impact of the behaviour on the victim or the victim's family,
 - 7.3.2. The risk posed by the forensic patient to the victim, the victim's family or any other person,
 - 7.3.3. The impact on the victim and the victim's family if the forensic patient is released or granted leave of absence, whether unconditionally or subject to proposed conditions,
 - 7.3.4. The conditions that should be imposed on the release of or grant of leave of absence to forensic patients including non-association conditions and place restriction conditions.
- 7.4. Submissions can be in writing, or they can be made orally. The Tribunal's preference is for submissions to be in writing. Submissions in writing provided before a hearing give all parties an opportunity to carefully consider those submissions. This can avoid the need for an adjournment or other delay in proceedings. Victims should refer to the following steps to provide submissions in writing:
 - 7.4.1. Make sure the review is one in which victim submissions can be made (see paragraph 7.1 of this Practice Direction).
 - 7.4.2. Find out when the review of the forensic patient is going to occur.
 - 7.4.3. Prepare the written submissions on the Victim Submission Form having regard to the matters set out at paragraph 7.2 of this Practice Direction. Use your own words and seek the assistance of a representative such as the SVSS if you wish to. The Form will ask you to indicate whether you have any wishes around disclosure of your submissions to various parties, whether you are seeking orders, and whether you wish to ask questions.
 - 7.4.4. Submit your submissions to MHRT-Forensic@health.nsw.gov.au no later than two weeks prior to the review date.
 - 7.4.5. If the submission will include an application for a place restriction order it should be submitted on the Victim Submission Form three weeks prior to the review (see paragraphs 8.4 and 8.6 of this Practice Direction).
 - 7.4.6. If the submission is returned later than three weeks prior to the review, the Tribunal may not be able to consider the request at the hearing.
- 7.5. If a victim intends to make submissions orally at the review, notice should be given at least two weeks prior to the date of review via the victim's representative or by sending an email to MHRT-Forensic@health.nsw.gov.au . Please note that the Tribunal has a discretion whether to allow oral submissions during a hearing depending on the particular circumstances.
- 7.6. A victim need not prepare new submissions for every review where leave or release is being considered. If a victim would like the same submissions considered at each such review of

the patient, the victim should so advise their representative so submissions can be resubmitted. If a victim is not represented, the submission will also need to be prior to each review.

- 7.7. The Tribunal can also be informed that the victims submissions are recurring submissions intended to be considered at every review hearing.
- 7.8. Where a Victim Impact Statement has been prepared by a victim for a court, in respect of a forensic patient, the court will provide that statement to the Tribunal when the court refers the patient to the Tribunal. The Tribunal will acknowledge that statement at each review. The Tribunal will consider and take into account the statement before determining an application by the forensic patient for release or grant of leave: see cl.16(2)(b) *Crimes (Sentencing Procedure) Regulation 2024*.
- 7.9. The victim may update their Victim Impact Statement, the legislation states that this must be with the consent of the Tribunal (see paragraph 11.1 of this Practice Direction below)

8. Seeking orders from the Tribunal

- 8.1. Registered victims can seek orders which:
 - 8.1.1. make or vary a non-association condition; and/or
 - 8.1.2. make or vary a place restriction condition,whenever the Tribunal is considering a grant of leave to, or conditional release for a forensic patient.
- 8.2. A non-association condition is one which prevents a forensic patient from contacting, approaching or being with the named person (usually a victim) including by electronic means, and may also restrict contacts being made through a third person.
- 8.3. A place restriction condition is one which prevents the forensic patient from entering or being within named localities.
- 8.4. A registered victim may seek such non-contact and/or place restriction orders by making it clear within their submissions what orders they are seeking (see paragraph 7 of this Practice Direction). The Victim Submission Form provides space to indicate, with detail, what orders are sought.
- 8.5. The Tribunal may make requested orders if there is sufficient evidence to support the making of such an order. Submissions should set out why the orders are sought. The submissions should set out the connection of the victim with the place the requested order is seeking to restrict the forensic patient from and/or other relevant reasons. References to large geographical areas without sufficient reasons being stated for why exclusion is sought may be insufficient to allow the Tribunal to make the order sought. Clear boundaries for any geographical area sought in the order will need to be identified, so that orders can be clear and certain. Sometimes geographical restrictions requested by a victim are not ordered because Tribunal orders already prevent the forensic patient from travelling to that area - for example, because the order is for escorted day leave on the hospital grounds.

- 8.6. The Victims Submission Form should be submitted to the Tribunal at least three weeks prior to the review date.
- 8.7. The SVSS can assist registered victims in drafting the orders they are seeking.

9. Asking questions at the Review Hearing

- 9.1. A victim who has made submissions to the Tribunal (see paragraph 7 of this Practice Direction) may, with the leave of the Tribunal, raise questions that the Tribunal considers to be appropriate for discussion at the review.
- 9.2. To ensure that a review can proceed fairly and efficiently the Tribunal directs that victims should prepare their questions, for which they seek leave, in writing on the Victim Submission Form. The form will need to be received at least three weeks prior to the review date. If the Tribunal allows the question or questions, it will determine who the best person is to respond to that question or questions.
- 9.3. The Tribunal will forward a copy of the proposed questions to the intended person or group so that that person or group has notice of the question and may prepare a considered response if the Tribunal grants leave in accordance with paragraph 9.4 of this Practice Direction.
- 9.4. The Tribunal will decide at the review which questions may be put at the review. Alternatively, the President or a Deputy President, may at an on-the-papers procedural hearing prior to the review, determine whether questions can be asked at review. The Tribunal may disallow a question however may suggest an alternative to the proposed question which may be put. The Tribunal panel hearing the review will manage how the hearing proceeds and may decide to depart from an earlier direction made on the papers, and considerations of procedural fairness will apply.
- 9.5. Proposed questions must be relevant to the Tribunal's determination, and it is therefore appropriate to avoid topics or issues which are unrelated to the Tribunal's function at the review.
- 9.6. Supplementary questions to responses given at a review may be put if the Tribunal grants leave.
- 9.7. A representative such as the SVSS can assist victims in the formulation of their proposed questions.

10. Disclosure of victim submissions

- 10.1. Ordinarily, victim submissions will be distributed to the usual participants in a review of a forensic patient. That means that, in addition to the Tribunal Members, the patient, the patient's legal representative, treating team members, and representatives for the Minister and/or Attorney General (if applicable) are likely to see the victim submissions.
- 10.2. The victim may not object to a full submission or an edited submission being disclosed to the forensic patient's lawyer or the treating team and in those circumstances the submission would ordinarily be shared. The legislation provides that a victim may request that whole or

part of the submission not be disclosed, and that such request will be determined by the President or Deputy President (cl.10 MHCIFP Regulation).

- 10.3. Section 145(4) of MHCIFPA states that the Tribunal is to agree to a request of a victim not to disclose the whole or part of a submission unless it considers that it is not in the interests of justice to agree to the request. Among other things that may be considered by the Tribunal is the question of procedural fairness to the forensic patient.
- 10.4. Where the Tribunal has decided under s145 that a submission not be disclosed and the Tribunal is of the opinion that information contained in the submission should be provided to the legal representative of the patient for reasons of procedural fairness, and the legal representative has agreed to the non-disclosure conditions in cl.12(2) MHCIFP Regulation, the Tribunal may disclose an edited version of the submission. The non-disclosure conditions in cl.12(2) MHCIFP Regulation include that:
 - 10.4.1. the edited submission must not be disclosed to the forensic patient without the consent of the Tribunal; and
 - 10.4.2. the following information may be disclosed, but not information identifying the location of the residence or place of work of the victim or the victim's family or friends or of other places frequented by the victim:
 - 10.4.2.1. information about proposed place restrictions,
 - 10.4.2.2. general information about the areas the proposed restrictions apply,
 - 10.4.2.3. the reasons for the victim's proposal,
 - 10.4.3. the legal representative must only disclose to the forensic patient general information about the submission of a kind specified by the Tribunal.
- 10.5. The legislation recognises that procedural fairness requires that patients have sufficient information around a victim's submission, question or order sought, so as to be able to provide informed instructions to their legal representative in response.
- 10.6. The Tribunal may disclose all or part of, or a summary of, a submission received from a victim of a forensic patient to a person who is treating the patient or their delegate. Decisions about such disclosure will be made by the President or Deputy President.
- 10.7. The legislation states that the edited version may be created by the victim or the Tribunal (cl. 12(3)) MHCIFP Regulation).
- 10.8. Where the Tribunal considers that submissions, either in whole or in part, should be disclosed to a participant in the review who is a person or group for whom the victim has requested non-disclosure, the Tribunal will give the victim the opportunity to withdraw or amend their submission before any such disclosure. This applies also to any edited version provided by the victim – if an edited version is to be disclosed, the victim may amend or withdraw the edited submission.
- 10.9. The Tribunal may decide to edit the submission and if this occurs the victim will be provided with the edited version and may request amendments to the edited version. The Tribunal

may consider the victim's request for non-disclosure before or at the review. If the Tribunal considers the request before the review, it will be undertaken by a Deputy President or President of the Tribunal who will review the request and any supporting documents. In considering the request the Deputy President or President may make further enquiries of any party (without disclosing matters the subject of the non-disclosure request) and may consider any relevant material on file. The Deputy President or President may recommend amendments to submission/request for the order so that the intent of the victim can be achieved.

- 10.10. Victims may identify the non-disclosure requirements they are seeking on the Victim Submission Form which should be submitted at least three (3) weeks prior to the review dates.
- 10.11. The Tribunal may issue procedural orders, rulings or advice prior to a review either on its own motion or at the request of a party or victim in order to facilitate efficient proceedings at review. A Deputy President or the President will give these orders, rulings or advice.

11. Victim Impact Statements

- 11.1. A victim who wishes to do so may update the Victim Impact Statement (VIS). The victim should notify the Tribunal in writing at MHRT-Forensic@health.nsw.gov.au of the request to update the VIS. The legislation provides that the VIS may only be updated with the consent of the Tribunal (see cl.16(3) *Crimes (Sentencing Procedure) Regulation 2024*).
- 11.2. The victim should provide a copy of the proposed updated VIS to the Tribunal at least three weeks prior to any listed hearing. The updated VIS can be sent by the victim's representative or direct to the Tribunal at MHRT-Forensic@health.nsw.gov.au.
- 11.3. Except as provided in paragraph 11.4 of this Practice Direction, the Tribunal will only disclose the contents of a victim impact statement to the forensic patient's legal representative in the circumstances in which, and subject to any conditions on which, the court permitted the disclosure (see cl.16(4) *Crimes (Sentencing Procedure) Regulation 2024*).
- 11.4. However, cl.16(5) provides that the Tribunal, may, in the interests of justice, for the purposes of determining an application for release or a grant of leave disclose the information in the VIS to:
 - 11.4.1. the legal representative, or
 - 11.4.2. if the forensic patient does not have a legal representative—an Australian lawyer appointed by the Tribunal as the forensic patient's legal representative for the purposes of the application.
- 11.5. If a VIS is to be disclosed in accordance with cl.16(5) of the *Crimes (Sentencing Procedure) Regulation 2024*, as described at paragraph 11.2, the Tribunal may:
 - 11.5.1. direct that the legal representative must not disclose the information referred to in subsection (5) to the forensic patient, and

11.5.2. if the Tribunal makes a direction under paragraph 11.5.1 the Tribunal may consent to the legal representative disclosing general information about the statement to the forensic patient.

12. After the review hearing

12.1. The Tribunal prepares reasons for its decision which are provided to the forensic patient and treating team.

12.2. Where there are identified registered victims, and the application is for leave or release (conditional or unconditional) the Tribunal will also prepare a separate “Outline of Reasons for Decision for Victims” which will be provided to the Commissioner of Victims Rights/Victim of Crimes Commissioner for forwarding to the registered victim in accordance with s157 of the MHCIFPA and cl 25 of the MHCIFP Regulation. These reasons will include a summary of the basis for the Tribunal’s decision, the orders made and the period of time before the next review.

13. Assistance for victims

13.1. Victims are encouraged to seek the advice of a service such as the SVSS in understanding their rights and obligations under the legislation and this Practice Direction.

13.2. Where there is any concern or question arising from the Tribunal’s review victims should direct their enquiry in the first instance to their representative if they have one.

Judge Carolyn Huntsman
President

Dated: June 2026

* Formerly called “Practice Direction 4 of 2023”

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