

## Specialist Victims Support Service

### Fact sheet: Role of the Mental Health Review Tribunal regarding forensic patients

This fact sheet will help you understand more about the role of the Mental Health Review Tribunal (**the Tribunal**) regarding forensic patients, including the:

- Tribunal’s role in making decisions about forensic patients,
- orders that the Tribunal can make, and
- information that the Tribunal can base its decisions on.

► **Note:** “Victim” includes family victim. Although we will be referring to you as a victim in this fact sheet, we (the Specialist Victims Support Service) will ask you for your preferred term (for example, client or survivor), which we will use in future.

### What is the Tribunal?

The Tribunal is a specialist medical and legal body that makes decisions about the care and treatment of people with a mental illness, mental condition and/or cognitive impairment. It is independent of other health agencies, including hospitals and doctors.



The Tribunal has a wide range of powers that allow it to conduct mental health inquiries, and make and review orders about people with a mental illness, mental condition and/or cognitive impairment. These can include civil patients, correctional patients and forensic patients. This fact sheet will focus on the Forensic Division of the Tribunal in relation to [forensic patients](#).

A person is a **forensic patient** if a court has found:

- **act proven but not criminally responsible** OR
- **unfit to be tried for the offence** and they have been **detained** (at a fitness inquiry), OR
- **unfit to be tried for the offence** and a **limiting term** has been imposed after a special hearing.

► You can find more information in the [Mental Health Review Tribunal hearings for forensic patients](#) fact sheet.

### Who makes up the 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 expert panel, which must include:

- the President or a Deputy President (who is a lawyer and who chairs the hearing),
- a psychiatrist, and
- another member with appropriate qualifications (such as a psychologist).

All Tribunal members have extensive experience in mental health. Some members also have personal experience with a mental illness or caring for a person with a mental illness.

Psychiatrist

President/Deputy President

Another member with appropriate qualifications

## What is the Tribunal's role in making decisions about forensic patients?

The Forensic Division of the Tribunal is responsible for making decisions about forensic patients. It is required to **conduct regular reviews** of forensic patients and **make orders** about whether (and where) a forensic patient should be detained. It does this by holding **hearings**.

The Tribunal will continue to review a forensic patient until:

- it makes an order to **unconditionally release** the forensic patient, or
- the forensic patient's **limiting term has expired** (if a limiting term was imposed) and no other orders have been made.

► **Limiting term:** the court's estimate of the sentence that would have been imposed in an ordinary criminal trial.

## What orders can the Tribunal make in relation to a forensic patient?

The Tribunal can make orders about:

<b>Detention</b>	<ul style="list-style-type: none"><li>• Whether or not the forensic patient is detained</li><li>• Where the forensic patient is detained (for example, in a correctional centre, mental health facility or other place)</li><li>• The level of security the forensic patient is detained under (for example, high secure, medium secure and low secure)</li><li>• When it is appropriate to transfer a forensic patient from one place to another (for example, from a high security facility to a medium security facility)</li></ul>
<b>Leave</b>	<ul style="list-style-type: none"><li>• Whether the forensic patient is allowed to leave the facility where they are being detained</li><li>• How long they are allowed to leave the facility for (for example, for the day only or overnight)</li><li>• The level of supervision required if the forensic patient leaves the facility</li><li>• The conditions that should be attached to a grant of leave, if any (for example, conditions that restrict where the forensic patient is allowed to go)</li></ul>
<b>Release</b>	<ul style="list-style-type: none"><li>• Whether the forensic patient is well enough to live in the community (<b>release</b>)</li><li>• The conditions that should be attached to the forensic patient's leave, if any (for example, conditions that restrict who the forensic patient is allowed to contact)</li><li>• Whether the forensic patient should be detained again if they breach the conditions of their release</li></ul>
<b>Care and treatment</b>	<ul style="list-style-type: none"><li>• The kind of care or treatment the forensic patient should receive (for example, psychological treatment or medication)</li></ul>

### ► Example:

John was charged with physically assaulting Jane. The Supreme Court found that John was **unfit to stand trial** for the offence because he has schizophrenia and he could not understand the nature of the charge against him during the trial. On the limited evidence available at a special hearing, the court found that John committed the offence and imposed a **limiting term of 2 years**. This is how John became a **forensic patient**.

### Orders relating to John's detention, care and treatment

After the Tribunal conducted its first hearing, it made an order for John to be detained at the Bunya Unit of Cumberland Hospital, which is a **medium security mental health facility**. The Tribunal made this order so that John could receive psychological treatment and medication for his schizophrenia. John's treating team will decide how he receives this care and treatment from day to day.

### Orders relating to John's leave

John's treating team made an application for **supervised day leave**, which the Tribunal considered at John's second review hearing. The Tribunal granted John supervised day leave because it was satisfied that this would not put John or the community (including Jane) in serious danger. However, Jane made an application to the Tribunal for a **place restriction condition** to stop John from visiting Parramatta, where Jane works. The Tribunal imposed this condition on its order granting John supervised day leave.

## What information does the Tribunal base its decisions on?

The Tribunal takes into account a range of factors, including the forensic patient's mental state, their future plans and whether there is any risk to the forensic patient's safety or to public safety. This information can come from:

### Forensic patient's Notice of Intent

A **Notice of Intent** is a document that tells the Tribunal what kinds of orders the forensic patient would like considered at the hearing. The forensic patient, their lawyer, their carer or the treating team can provide a Notice of Intent to the Tribunal six weeks before a hearing. In most cases, the treating team will complete a Notice of Intent.

The Tribunal will use the Notice of Intent to inform you about the orders that it will consider at the hearing. Where the Tribunal is considering leave or release, you can provide the Tribunal with any information that you would like it to consider when making a decision.

### Reports from the forensic patient's treating team

These will address the forensic patient's background, their progress and current mental state, and available treatment options. They could include reports from people like the forensic patient's psychiatrist, psychologist and case manager.

### Submissions from victims (including Victim Impact Statements)

If you are a victim/survivor of a forensic patient, you can make a submission to the Tribunal if the Tribunal is considering granting leave or release to the forensic patient. You can make a submission about:

- the forensic patient's behaviour, and the impact of the behaviour on the victim and victim's family,
- the risk posed by the forensic patient to the victim,
- the impact on the victim and victim's family if leave or release is granted, or
- the conditions that should be imposed on a grant of leave or release of a forensic patient, including non-association and place restriction conditions.

► For information about how you can make a submission, you can contact our team at *Specialist Victims Support Service*.

### Reports from independent psychiatrists or psychologists (if the decision is about release)

The Tribunal must have a report from a forensic psychiatrist or psychologist that is not in the forensic patient's treating team if it is making an order for the release of a forensic patient, either with or without conditions.

The Tribunal will consider any victim submissions and weigh these up against other evidence presented before it makes its decision. The Tribunal must consider the personal circumstances of the forensic patient, the circumstances of the offence and any other information on the forensic patient's file. The Tribunal must also provide you with a summary of the key reasons for its decision.

## What can I do if I disagree with the Tribunal's decision?

As a victim, you can appeal to the Supreme Court if you have requested for a **non-association** or **place restriction condition** to be imposed on a forensic patient's leave or release and you disagree with a leave or release decision that the Tribunal has made. You must make an appeal within **28 days** of the Tribunal's decision. If the Court disagrees with the Tribunal's decision, it has the power to make an order that it thinks the Tribunal should have made. It can also send the matter back to the Tribunal and order another hearing.

**Please feel welcome to contact our team at the Specialist Victims Support Service if you have any questions:**

Email: [svss@dcj.nsw.gov.au](mailto:svss@dcj.nsw.gov.au)

Phone: Victims Access Line on 1800 633 063  
Aboriginal Contact Line on 1800 019 123

Website: [www.victimsservices.justice.nsw.gov.au](http://www.victimsservices.justice.nsw.gov.au)

(REV 03/2021)