

Current legislation and practice	Review Recommendation	Government Response
	Re-balancing the process for determining leave and release by expanding victim input	
	Bringing the legislative framework into balance	
<p>Section 40 of the MHFP Act (the Objects of the Act) does not contain any provisions in relation to victims.</p>	<p>1. Amend section 40 of the <i>Mental Health (Forensic Provisions) Act 1990</i> (NSW) (MHFP Act) to include an object to acknowledge the harm that has been done to victims, and an object to specifically protect the safety of victims.</p>	<p><u>Supported in principle</u> The MHFP Act currently contains limited provisions dealing with the participation of victims in Mental Health Review Tribunal (Tribunal) proceedings.</p> <p>The Government supports amendment to the object of the MHFP Act to acknowledge the harm done to victims, and to protect the safety of victims.</p> <p>It is appropriate to bring the legislative framework into a more appropriate balance, and to ensure victims know that they and their safety are acknowledged and recognised in the MHFP Act.</p>
<p>There is no legislative schedule or principles relating to the particular rights of victims in forensic setting.</p> <p>However, the Charter of Victims Rights under the <i>Victims Rights and Support Act 2013</i> applies to victims more broadly (including victims of forensic patients).</p>	<p>2. Similar to section 68 of the <i>Mental Health Act 2007</i> (NSW) (MH Act), which provides principles for the care and treatment of people with a mental illness, a Charter should be developed as a Schedule to the MHFP Act to provide a statement of principles for the participation of victims of a patient in the Tribunal's review of patients' cases.</p> <p>This should include:</p> <p>3. It is the intention that the following principles are, so far as practicable, to be given effect with respect to the participation by any victim of a patient in the Tribunal's review of any patient's case:</p> <p>3.1. that the review may touch on painful or tragic events in the life of any victim of the patient should be</p>	<p><u>Supported in principle</u> The Review found that in the process of applying the leave and release test, the system is weighted too heavily towards the interests of patients, without due consideration for the safety and interests of victims.</p> <p>The Government supports this recommendation, and the development of a Charter to provide a statement of principles for the participation of victims in Tribunal proceedings.</p> <p>The proposed Charter should relate to the general Charter of Victims' Rights under</p>

Current legislation and practice	Review Recommendation	Government Response
	<p>recognised, and that the physical, psychological and emotional harm caused to the victim by the unlawful act be recognised with compassion</p> <p>3.2. that any victim of the patient may continue to experience grief and distress as a result of an event that is the subject of the review should be recognised with compassion, along with the possibility of exacerbation of that grief and distress by regular reviews and the variability of the forensic patient's pathway</p> <p>3.3. the benefits of counselling, advice on the nature of proceedings under the MHFP Act, and other support services, to the recovery of the victim from the harm caused by the unlawful act, must be recognised</p> <p>3.4. the benefits to the victim of being advised in a timely way of Tribunal proceedings must be recognised</p> <p>3.5. the benefits to the victim of being advised in a timely way of any proposal before the Tribunal to allow leave or release must be recognised</p> <p>3.6. the benefits to the victim of being advised in a timely way of any decision to allow a patient leave or release must be recognised</p> <p>3.7. evidence and submissions from any victim of a patient should be listened to and considered respectfully, acknowledging the benefits to the victim, when appropriate, of being given the opportunity to further express the victim's views on the impact of the unlawful act. The Tribunal retains discretion as to how this principle is exercised (noting the need to balance consideration between the interests of the victim and</p>	<p>Division 2 of the <i>Victims Rights and Support Act 2013</i> (NSW). Victims in the forensic setting should continue to also be considered victims under this general Charter.</p>

Current legislation and practice	Review Recommendation	Government Response
	the patient).	
Court proceedings — allowing victim impact statements		
<p>If the defendant is found NGMI, or found unfit to be tried and not acquitted of the offence at a special hearing, there is no ability under existing legislation to make a victim impact statement.</p>	<p>4. Legislative amendment should provide opportunity for victim impact statements in special verdict situations (findings of not guilty by reason of mental illness (NGMI) and unfit and not acquitted (UNA)) after a special hearing has determined, on the limited evidence, that the person committed the offence (sections 22 and 23, MHFP Act). The court must acknowledge the victim impact statement and, when appropriate, take into account its contents in determining conditions in relation to any release decision.</p> <p>5. The court has the discretion to prohibit the disclosure of the victim impact statement if the victim requests that it not be disclosed. The court must provide a copy of the victim impact statement by forwarding it to the Tribunal.</p>	<p><u>Supported in principle</u> This recommendation is supported in principle, subject to further consultation. Victims should be able to make a VIS to the court after someone is found UNA or NGMI and before the court makes a decision about a limiting term (for people found UNA) or interim orders (consistent with Law Reform Commission Report 138).</p> <p>The proposal that courts should have discretion to prohibit disclosure will be subject to further consultation, to be led by the Department of Justice.</p>
<p>As above, there is no ability under existing legislation to make a victim impact statement where the defendant is found NGMI or UNA.</p> <p>The Tribunal currently allows written submissions from victims for non-association or place restriction where leave or release is requested.</p>	<p>6. The legislation or regulations should provide for the delivery of each victim impact statement to the Tribunal and for it to be kept on the relevant file. The Tribunal is required to acknowledge the victim impact statement at each review of the patient's order and, when appropriate, consider its contents if relevant to any leave or release application. The same discretion in relation to confidentiality provisions should apply to the Tribunal as to the court. Once the victim impact statement is given to the Tribunal by the court, another victim impact statement is not required. However, an up-to-date submission may be made by the victim to the Tribunal at any time if the person wishes to do so (modelled on section 164 of the <i>Mental Health Act 2016</i> (Qld)).</p> <p>7. Practice notes or guidelines should make it clear that there is to be no cross examination of a victim by the patient or</p>	<p><u>Supported in principle</u> The Government supports giving greater recognition of victims as part of the Tribunal process.</p> <p>The Government supports legislative changes to strengthen the voice given to victims and will work with Tribunal to improve Tribunal procedures.</p>

Current legislation and practice	Review Recommendation	Government Response
	<p>their representative in relation to the victim impact statement. This is to extend to any part of a victim submission that addresses the issue of geographical restriction, non-association order, or in that context, addresses the harm experienced by the victim. (It is acknowledged that, in considering the victim impact statement, the Tribunal may wish to clarify certain matters by asking the victim questions. However, consistently with the non-adversarial nature of Tribunal proceedings, this should not amount to cross examination.)</p> <p>8. Regulations should be made or guidelines issued to provide for the content of any victim impact statement. They should also deal with other matters of detail necessary for the implementation of this recommendation.</p>	
<p>Index event is defined in the NSW Health Forensic Mental Health Services Policy Directive (PD2012_50).</p> <p>The Tribunal refers to the offence (or alleged offence) as an 'index event' or 'index offence.'</p>	<p>Updating language</p> <p>9. That NSW Health policy and Tribunal guidelines and practice be amended to cease using the language 'index event' to refer to the offence, or alleged offence, giving rise to the patient's current detention or conditional release. 'Unlawful act' should be used to refer to the act or omissions, or alleged act or omissions of the person constituting an offence with which the person is charged.</p> <p>10. That the intent and language of the forensic guidelines and related practice directives, policies, and other documents be revised in line with the above legislative and language changes, providing an enhanced role for victims in Tribunal processes, and more sympathetic and inclusive language.</p>	<p><u>Supported in principle</u></p> <p>The NSW Government supports the finding of the review that the term 'index event' is considered insensitive to victims.</p> <p>The Government will undertake further consultation to review this terminology and determine a sensitive and appropriate expression to describe the offence (or alleged offence).</p>

Current legislation and practice	Review Recommendation	Government Response
Enhancing victims' ability to make submissions		
<p>As above, there is no ability under existing legislation to make a victim impact statement.</p> <p>The Tribunal currently allows written submissions from victims for non-association or place restriction where leave or release is requested.</p>	<p>11. In addition to victim impact statements, victims are also to be given the right to make broad submissions on Tribunal decisions on leave and release. This right is to be set out in legislation, and the legislation should provide the Tribunal with the discretion not to disclose the victim's submission, should the victim request this and the Tribunal consider it a reasonable request.</p> <p>12. Practice notices, guidelines or regulations should set out the scope of submissions, and should set out how victims may make submissions. This should include both written and oral submissions, the victim's right to have a representative (non-legal) appear on the victim's behalf, and the matters above which may be discussed at Tribunal hearings, including victim's opportunity to ask questions when appropriate, and to give an oral statement.</p> <p>13. Submissions from victims are to be allowed in relation to:</p> <p>13.1. the impact of the unlawful act on the victim</p> <p>13.2. views of the victim about the risk the patient poses to the victim, any other person or the community, and in this regard any relevant clinical history known to the victim</p> <p>13.3. the existing non-association and place-restriction conditions should continue to apply.</p>	<p><u>Supported in principle</u> The Government supports greater legislative recognition of victims as part of the Tribunal process.</p> <p>Further consultation will be led by Department of Justice to ensure alignment with the principles of procedural fairness.</p>
Proposed changes to policy and practice		
<p>Section 151(3) of the MH Act states that proceedings of the Tribunal are to be open</p>	<p>Improving the accessibility of venues and hearings</p> <p>14. In consultation with Corrective Services NSW, NSW Health and Victims Services, the Tribunal to review access to</p>	<p><u>Supported in principle</u> The Government supports improving access</p>

Current legislation and practice	Review Recommendation	Government Response
to the public. However the review found significant limitations to this in practice.	<p>hearings to ensure that the legislative intent of open hearings is actively supported, and that hearings are as accessible as possible to registered victims, their representatives and members of the public, should they wish to attend.</p> <p>15. This should include a review of technological options that would facilitate improved teleconferencing or videoconferencing, and give consideration to provisions to enable victims to attend in person at the facility should they wish, including provisions to ensure the security of victims.</p> <p>16. The Tribunal Forensic Guidelines should be revised to align with this, and actively support participation by victims. These improved facilities should be adequately resourced.</p> <p>17. Once these improvements have been made, communications should be provided to registered victims and other stakeholders to inform them of the changes.</p>	<p>of victims to Tribunal hearings.</p> <p>The Tribunal will retain discretion to close hearings where appropriate, and Corrective Services NSW retains authority to approve entry to correctional centres.</p> <p>The focus on accessibility will be on improving video and teleconference facilities.</p>
The process for issuing hearing notices is outlined in the NSW Health Forensic Mental Health Services Policy Directive (PD2012_50).	<p>Issuing hearing notices</p> <p>18. The Tribunal, in consultation with NSW Health, should review the process for issuing the Notices of Intent to allow advice to be provided to registered victims in a more timely fashion than it is currently. This process should be revised in consultation with NSW Health, and should also ensure that sufficient time is given for each relevant Minister to consider the case and prepare submissions, thus allowing sufficient response time for clinicians. (See Forensic Guidelines, page 7.)</p>	<p><u>Supported in principle</u></p> <p>The Government supports victims and Ministers being advised of hearings in a timely fashion.</p> <p>NSW Health will consult with the Tribunal in relation to implementation of this recommendation, noting that this should not compromise the currency of the information before the Tribunal.</p>
The Forensic Guidelines detail the circumstances regarding closed hearings.	<p>Closing hearings</p> <p>19. That the forensic guidelines and related procedures and communications:</p> <p>19.1. be updated to reflect the circumstances in which a</p>	<p><u>Supported in principle</u></p> <p>The Government supports the need for clear guidance regarding the circumstances in which a hearing may be closed.</p>

Current legislation and practice	Review Recommendation	Government Response
	<p>hearing may be closed or the victims may be excluded from the hearing (or part of the hearing)</p> <p>19.2. state clearly and sympathetically the circumstances in which victims may be asked to retire, and explanations given for the closed hearing.</p>	<p>NSW Health will consult with the Tribunal in relation to implementation of this recommendation.</p>
<p>Section 75 of the MHFP Act outlines the conditions that may be imposed by the Tribunal on release or leave of absence. There is no legislation regarding the Tribunal's potential use of GPS technology.</p>	<p>Supervision of patients on leave</p> <p>20. NSW Health to amend the Forensic Mental Health Services Policy to recognise advances in technology and the readily available non-obtrusive technological solutions, including potential for the use of mobile phone apps, which enable supervision of patients via GPS.</p> <p>21. That additional GPS mechanisms for supervising patients, and other technological options as may be appropriate, be considered by treating teams and the Tribunal for use in developing the risk-management plan for supervising patients on leave or conditional release; and that the Tribunal have the power and discretion to direct the use of GPS monitoring through mobile apps. These options are intended to enhance community and victim confidence in the supervision of patients on leave.</p>	<p><u>Supported in principle</u></p> <p>The Government supports the appropriate use of technology, including mobile phone applications and GPS, as additional monitoring options of forensic patients who are on leave or conditional release.</p> <p>NSW Health will amend its policies in this regard. Further, the Government will pursue any necessary legislative amendments to ensure that GPS monitoring of patients on leave or conditional release in the community can occur.</p>
Enhancing victims' support and engagement through Tribunal process		
<p>No specialist support services for victims in the forensic setting.</p>	<p>22. Establishment of a specialist Victim Support Service (modelled generally on the Queensland Health Victim Support Service). This should provide holistic wrap-around services including:</p> <p>22.1. early intervention — to identify potential victims of forensic patients as early as possible</p> <p>22.2. crisis referral — to provide triage and referral to crisis support</p>	<p><u>Supported</u></p> <p>A Victim Support Service is supported to address the current gap in service provision for victims of forensic patients.</p> <p>It will ensure that the services available to victims of forensic patients are more comparable to the level of services and support available to victims of crime.</p>

Current legislation and practice	Review Recommendation	Government Response
	<p>22.3. case management and counselling — case management, therapeutic and trauma informed treatment, care and support, and counselling for victims (when needed). This may include intensive case management to address the multiple needs of the victims (not limited to their trauma) such as mental illness.</p> <p>22.4. communication and education — advice on the rights and entitlements of victims, educational information to victims about the forensic mental health system and Tribunal processes; a tailored approach to communication, including notification of hearings and decisions</p> <p>22.5. representation and advocacy — advice and support in preparing victim impact statements, support for victims to attend and participate in Tribunal hearings (to act as a mediator between the victim and the Tribunal, and to assist in preparing written or oral submissions) and representation at hearings.</p> <p>23. For this purpose, to enhance the existing victim support under the Commissioner of Victims Rights, by adding a specialist team to focus on the needs of the victims in the forensic patient setting.</p> <p>24. Referral pathways should be established with relevant agencies (NSW Police Force, Office of the Director of Public Prosecutions, and staff at the District and Supreme courts) to ensure that these victims are identified as early as possible and that best support is provided through the process.</p>	
The Tribunal maintains a	25. Victims Services and the Tribunal should review all existing	<u>Supported</u>

Current legislation and practice	Review Recommendation	Government Response
<p>Victim Register, and registered victims may elect to be notified about Tribunal hearings and determinations.</p> <p>The Review found that existing communication with forensic victims was, at times, insensitive and inadequate.</p>	<p>communication materials and mechanisms with registered victims. The Tribunal and Victims Services should agree on appropriate communication channels between Victims Services, the Tribunal and victims. This should include:</p> <p>25.1. development of a comprehensive resource for registered victims that provides a plain English overview of the forensic mental health system and mechanisms for victim engagement, and provides advice on victim rights and how to access all relevant Victims Services available</p> <p>25.2. review of the process of communication with victims, with communication about hearing dates and Tribunal decisions to be from Victims Services to the victim</p> <p>25.3. review content of Tribunal decisions, to consider the inclusion of a brief explanation of the reasons for a decision that increases a patient's access to the community. This would include a plain English explanation of the Tribunal decisions and a summary of the evidence that informed that decision, instead of simply advising of the outcome of the determination</p> <p>25.4. review of all standard correspondence (e.g. notice of hearings) to ensure that it provides victims with sufficient information, and that information is communicated clearly and compassionately.</p> <p>26. The Forensic Patient Victims Register should be reviewed, in consultation with victim advocacy groups, to determine whether the options for communication are appropriate, and whether a more tailored approach to individual victim</p>	<p>This recommendation is supported to enhance communication with victims and establish operational procedures between the proposed new specialist victim support service, the Tribunal and victims.</p> <p>The transfer of the Victim Register from the Tribunal to the proposed new specialist service will streamline communications and see that there is one point of contact for victims seeking information and support.</p>

Current legislation and practice	Review Recommendation	Government Response
	<p>needs is possible.</p> <p>27. The management of the Victims Register should be transferred to Victims Services.</p>	
<p>No legislation regarding information sharing, as the specialist victim support service does not exist.</p>	<p>28. Provisions should be made to enable information sharing between Victims Services and the Tribunal to support effective operation of the Service. This sharing is to have due regard to the confidentiality of sensitive information about forensic patients.</p> <p>29. This information should include the timing and outcome of Tribunal reviews, information about appeals, and the nature of patient leave or release if it is relevant to the safety and welfare of the person. The amended Regulations should allow for this information sharing.</p>	<p><u>Supported</u> This recommendation establishes important information sharing and operational procedures between the new specialist victim support unit and the Tribunal.</p>
Retaining provisions relating to the publication of names		
<p>Section 162 of the MH Act sets out the provisions for the publication of names.</p>	<p>30. NSW Health and Victims Services should provide communication and education to victims, patients and the community in relation to the requirements and operation of section 162 of the MH Act.</p>	<p><u>Supported</u> This recommendation supports stakeholder and community awareness of these provisions.</p>