

Justice Health NSW Procedure

Mental Health Tribunal Reports and Hearings

Issue Date: May 2025



Mental Health Tribunal Reports and Hearings

Procedure Number 6.097

Procedure Function Continuum of Care

Issue Date May 2025

Next Review Date May 2029

Risk Rating Medium

Summary Procedure that directs the key points on how Mental Health Review Tribunals are conducted in the Forensic Hospital.

Responsible Officer Service Director Forensic Hospital

Applies to

- Administration Centres
- Community Sites and programs
- Health Centres - Adult Correctional Centres or Police Cells
- Health Centres - Youth Justice Centres
- Long Bay Hospital
- Forensic Hospital

CM Reference PROJH/6097

Change summary Updated hyperlinks and flow of document.

Authorised by Forensic Hospital Policies, Procedures and Guidelines Committee

Revision History

#	Issue Date	Number and Name	Change Summary
1	August 2021	DG57176/22	-
2	May 2025	DG27008/25	DG27005/25

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Printed copies of this document, or parts thereof, must not be relied on as a current reference document.
Always refer to the electronic copy for the latest version.

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2. Preface

The [Mental Health Act 2007](#) and the [Mental Health and Cognitive Impairment Forensic Provisions Act 2020](#) make provisions for the external review of patients through the Mental Health Review Tribunal (MHRT). The MHRT has a wide range of powers that enable it to make and review orders, make decisions and to hear appeals about the treatment and care of people with a mental illness. Each MHRT panel consists of three members: a lawyer, who chairs the hearing, a psychiatrist, and another suitably qualified member. All MHRT members have extensive experience in mental health, and some have personal experience with mental illness or caring for a person with a mental illness.

The MHRT reviews the cases of all adult and adolescent patients in the Forensic Hospital who have been either:

1. Found Act Proven but not criminally responsible or found unfit to be tried (referred to as Forensic Patients);
2. Transferred from a correctional or detention centre due to mental illness (referred to as correctional patients), or
3. Transferred from another declared mental health facility or classified as an Involuntary Patient by the Mental Health Review Tribunal (MHRT) (also referred to as civil patients)

Patients admitted to the Forensic Hospital are entitled to legal representation free of charge, provided by the [Mental Health Advocacy Service](#), a branch of the Legal Aid Commission. Alternatively, an admitted patient has the right to engage the services of a private lawyer.

The Multi-disciplinary Team (MDT) provides a written report to the MHRT prior to each hearing. Medical representatives from the patient's treating team, and other treating team members including allied health and nursing staff must be present at the MHRT review to provide additional information as required by the MHRT.

MHRT hearings will take place in one of the MHRT conference areas which are located within each unit and are to take place as "soon as practicable" after admission. Subsequent hearings must occur within prescribed timeframes.

All patients detained in the Forensic Hospital are reviewed by the MHRT at least every 6 months and in appropriate cases every 12 months. The exception to this rule are involuntary patients (civil patients) who are reviewed 3 monthly for the first 12 months following admission, then 6 monthly thereafter for the remainder of their admission. Requests can be made to the MHRT to reduce or increase the time period between reviews. The MHRT can also reduce or increase the time period between reviews as they deem appropriate.

Following an MHRT hearing, the MHRT make decisions regarding the Forensic/Civil/Correctional patients continued detention, treatment, leave, transfer or release which may be conditional or unconditional.

It is important for the treating team to be aware of the legal standing of the patient. The patient may be on remand, awaiting sentence, subject to a sentence/s or subject to a sentence and a Forensic Patient finding. Where a correctional patient's sentence is due to expire within 6 months of the MHRT review, the MHRT may classify the patient as an Involuntary Patient. Following that determination, the MHRT could, at the same hearing, look at an application for a Community Treatment Order (CTO).

Please refer to the [Mental Health Review Tribunal website](#) for more information on the roles and functions of the MHRT for both Civil and Forensic Hearings.

3. Procedure Content

3.1 Mental Health Review Tribunal (MHRT) Hearing Dates

1. Following review, the MHRT will provide a determination. Within the determination is the tentative date for the patient's next hearing.
2. The FH MHRT Administrator must update the FH MHRT Dates spreadsheet located in the [G:Drive](#). MDT members can utilise this spreadsheet to access tentative and confirmed MHRT dates for their patients.
3. **8 weeks** prior to the hearing date, the MHRT will send a confirmed *MHRT Hearings letter* listing the patients they wish to review with confirmed dates and times to the FH MHRT Administrator via [REDACTED]
4. Once received, the FH MHRT Administrator must:
 - a) Update the FH MHRT Dates spreadsheet located in the [G:Drive](#).
 - b) Email the confirmed *MHRT Hearings letter* to the relevant Nurse Unit Manager (NUM), Consultant Psychiatrist, Registrar, Social Worker (SW) and Unit Nursing inboxes via [REDACTED].
 - c) Send calendar invites to the relevant NUM, Consultant Psychiatrist, Registrar, SW and Unit Nursing inboxes via [REDACTED].
 - d) If required, will book an interpreter for the patient and/or visitors (if attending hearings), as per [Policy 1.230](#) Health Care Interpreter Services.

3.2 Notice of Intent (NOI) Prior to MHRT Hearing

1. **8 weeks** prior to the hearing date, the MHRT will send a [Notice of Intent \(NOI\)](#) form to the FH MHRT Administrator via [REDACTED]
2. The FH MHRT Administrator must forward the [NOI](#) to the treating registrar for completion.
3. The registrar must return the [NOI](#) to the FH MHRT Administrator via [REDACTED] at least **6 weeks** prior to the hearing date. This ensures the matter can be listed in accordance with MHRT requirements.
4. Once received, the FH MHRT Administrator must:
 - a) Email completed [NOI](#) forms to [REDACTED]
 - b) Upload completed [NOI](#) forms to Content Manager (CM) and JHeHS.

3.3 Patient MHRT Notice of Hearing (NOH)

1. **5 weeks** prior to the hearing date, the MHRT will send a *Notice of Hearing* (NOH) addressed to the patient to the FH MHRT Administrator via [REDACTED]
2. The FH MHRT Administrator must forward the NOH to the appropriate unit NUM and Unit Nursing inbox.
3. The NUM or delegate must print a copy of the NOH and hand it to the appropriate patient informing them of their upcoming MHRT hearing.
4. The FH MHRT Administrator must upload NOH to CM and JHeHS.

3.4 Designated Carer/Principal Care Provider Notification

1. Civil Patients:

- a) The authorised Medical Officer must complete a [Section 78\(1\)\(h\) Notice to Designated Carer and Principal Care Provider of Matter Before the Mental Health Review Tribunal](#) form as soon as practical and forward to the SW.
- b) The SW must upload completed [Section 78\(1\)\(h\)](#) to JHeHS and forward a copy to the patients Designated Carer/Principal Care Provider informing them of the upcoming MHRT hearing as soon as practical.
- c) The Designated Carer/Principal Care Provider should be invited to attend the MHRT hearing either in person or via teleconference. This must be documented through the patient's health record.

2. Forensic and Correctional Patients:

- a) The relevant MDTs SW should notify the patients Designated Carer/Principal Care Provider of the upcoming MHRT hearing as soon as practical. They should be invited to attend the MHRT hearing either in person or via teleconference. This must be documented through the patient's health record.
3. If the patients Designated Carer/Principal Care Provider wish to attend the MHRT hearing, a visit should be organised prior to and after the MHRT hearing as per [Procedure 9.025](#) Visits and Visitors Approval.

3.5 In-Depth Case Review

1. The MDT should conduct an In-Depth Case Review **6 weeks** prior to the patients hearing date as per [Policy 1.078](#) Care Coordination, Risk Assessment, Management, Planning and Review.
2. The In-Depth Case Review should be conducted in line with [Procedure 6.100](#) Clinical Risk Assessment and Management (CRAM) – Framework and Documentation.

3.6 Mental Health Review Tribunal (MHRT) Reports

1. The In-Depth Case Review process forms the basis of the MHRT report. A template for completion of an MHRT report can be found in [PD2012 050](#) Forensic Mental Health Services (Appendix 6, page 73-79).
2. It is the responsibility of the patient's treating Consultant Psychiatrist to coordinate the timely preparation of the MHRT report on behalf of the treating team.
3. The MHRT report must be approved and signed by the patient's treating Consultant Psychiatrist.
4. The registrar must submit the approved MHRT report to the FH MHRT Administrator via [REDACTED] **2 weeks** prior to the hearing date.
5. The FH MHRT Administrator must forward this report to the MHRT.
6. The FH MHRT Administrator must upload completed MHRT reports into CM and JHeHS.
7. If clinically appropriate, the patient's treating Consultant Psychiatrist or delegate will meet/contact the patient and their Designated Carer/Principal Care Provider to discuss the content of the MHRT report prior to the MHRT hearing.

3.7 Mental Health Review Tribunal (MHRT) Hearings

1. The FH MHRT Administrator must book the relevant MHRT rooms in advance and organise MHRT panel members and legal aid access and other material (i.e., laptops) as required.
2. The MHRT Forensic Officer will set up the room as per [appendix 6.2](#).
3. MHRT panel members and legal aid are to be escorted and supported by a designated staff member identified by the FH MHRT Administrator.
4. The allocated nurse must facilitate a 1:1 with the patient prior to the MHRT hearing in order to provide support to the patient and assist with the identification of coping strategies.
5. The MHRT Forensic Officer will inform the unit and treating team when the MHRT is ready for the patient to be taken to the hearing.
6. The allocated nurse will escort the patient to the MHRT corridor as per the patient's SCALE and current identified risks.
7. The patient will be permitted to speak with their legal aid/lawyer prior to and after entering the MHRT hearing. This usually takes place in a visit room next to the MHRT room.
8. The patient and/or their visitors will be offered a debrief following the MHRT hearing by a member of the MDT. This must be clearly documented in the patient's health record.

3.8 Post Mental Health Review Tribunal (MHRT) Hearings

1. Determinations and orders following MHRT hearings will be sent from the MHRT to the relevant MDTs, Forensic Mental Health Systems Manager Officer (FMHSM) and FH MHRT Administrator.
2. The FMHSM must notify the Administration and Data Coordinator (ADC) who will update the legal status in PIRC if required.
3. The FMHSM must upload determinations and orders into CM and JHeHS.

4. Definitions

Must

Indicates a mandatory action to be complied with.

Should

Indicates a recommended action to be complied with unless there are sound reasons for taking a different course of action.

4.1 Patient Legal Status Definitions

“Involuntary Patient” (Civil patient) as defined by [section 4 of the MH Act](#):

- a) A person who is ordered to be detained as an involuntary patient after a mental health inquiry or otherwise by the Tribunal and is not a correctional or forensic patient.

“Forensic patient” as defined by [section 72 of the MHCIFP Act](#):

- a) A person who is found unfit to be tried for an offence and who is detained in a mental health facility, correctional centre, detention centre or other place,
- b) A person for whom a limiting term has been nominated after a special hearing (including a person who is subsequently subject to an extension order or an interim extension order) and who is detained in a mental health facility, correctional centre, detention centre or other place or who is released from custody subject to conditions under an order made by the Tribunal,
- c) A person who is the subject of a special verdict of act proven but not criminally responsible and who is detained in a mental health facility, correctional centre, detention centre or other place or who is released from custody subject to conditions under an order made by a court or the Tribunal,
- d) A person who is a member of a class of persons prescribed by the regulations for the purposes of this section.

To avoid doubt, a person is not a forensic patient if the person has been found unfit to be tried for an offence and has been released on bail.

“Correctional patient” as defined by [section 73 of the MHCIFP Act](#):

- a) The person has been transferred from a correctional centre or detention centre to a mental health facility while:
 - i serving a sentence of imprisonment, or
 - ii on remand, or
 - iii subject to a high-risk offender detention order, and
- b) The person is not a forensic patient and has not ceased to be a correctional patient under [section 104 of the MHCIFP Act](#) or been classified as an involuntary patient under this Part.

5. Related documents

Legislations	<u>Mental Health Review Tribunal</u> <u>Mental Health Act 2007</u> <u>Mental Health and Cognitive Impairment Forensic Provisions Act 2020</u>
Justice Health NSW Policies, Guidelines and Procedures	<u>Policy 1.087</u> Care Coordination, Risk Assessment, Planning and Review <u>Policy 1.230</u> Health Care Interpreter Services <u>Procedure 6.100</u> Clinical Risk Assessment and Management (CRAM) – Framework and Documentation <u>Procedure 9.025</u> Visits and Visitors Approval
Justice Health NSW Forms	
NSW Health Policy Directives and Guidelines	<u>PD2012_050</u> Forensic Mental Health Services
Other documents and resources	

6. Appendix

6.1 MHRT Process Flow Chart



6.2 MHRT Hearing Room Layout

