

# Practice Direction

## Forensic No.6

### Review of Correctional Patients



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

#### 1. Purpose

- 1.1. This Practice Direction sets out the procedures and timeframes which apply to review hearings held under the *Mental Health and Cognitive Impairment Forensic Provisions Act 2020* (MHCIFPA) in relation to correctional patients.
- 1.2. This Practice Direction does not prevent the Tribunal from deciding that a departure from these procedures is appropriate in the individual circumstances of a particular case.
- 1.3. This Practice Direction should be read in conjunction with the Ministry of Health's Forensic Mental Health Services Policy Direction PD2025\_050.

NOTE: In line with NSW Government policy, the Tribunal may be closed over the Christmas/New Year period. The timeframes set out in this Practice Direction may be adjusted by the Tribunal registry to accommodate the Tribunal's closure.

#### 2. Review of a person awaiting transfer to a mental health facility

- 2.1. The Tribunal Registry is to be advised by the Justice Health and Forensic Mental Health Network when an order to transfer a person from a correctional/detention centre to a mental health facility has been made or revoked (s86). The Tribunal will schedule a limited review under s89 of the MHCIFPA, within 14 days of the transfer order to ascertain if the person has been transferred (s89(1) of the MHCIFPA and cl 7 of the *Mental Health and Cognitive Impairment Forensic Provisions Regulation 2021* (the MHCIFP Regulation).

#### 3. Timing of s89 limited reviews

- 3.1. At the first review under s89 (that is within the first 14 days), the Justice Health and Forensic Mental Health Network must provide the Tribunal with a copy of the two certificates issued under s86(2) of the MHCIFPA.
- 3.2. At any review under s89 of the MHCIFPA:
  - 3.2.1. The Justice Health and Forensic Mental Health Network must provide a report from a psychiatrist outlining the patient's current mental state and whether there is an ongoing need for transfer.
  - 3.2.2. A letter from the Commissioner of Corrective Services is required as to the reason for the delay in the transfer.
- 3.3. If the first review is for some reason listed outside the statutorily required 14 day period the same requirements set out in paragraphs 3.1 and 3.2 apply.
- 3.4. The Tribunal will list a further review under s89, within one month of the first review, if the person remains subject to a s86 order and has not been transferred.

- 3.5. Thereafter the Tribunal will conduct monthly reviews if the person has not been transferred.
- 3.6. Where a review under s89 is listed, the Justice Health and Forensic Mental Health Network must arrange for the person concerned to access advice or representation from Legal Aid NSW, or their own lawyer, if they wish to do so.
- 3.7. The Tribunal will advise the patient's lawyer, Justice Health and Forensic Mental Health Network, and Corrective Service NSW of the hearing date for a review under s89.
- 3.8. A s89 review hearing may be conducted by a single Presidential member: cl 7 of the MHCIFP Regulation.
- 3.9. Following the hearing, a copy of the Tribunal's decision will be provided as soon as practicable to the patient's lawyer (if applicable), the Justice Health and Forensic Mental Health Network, and Corrective Services NSW.
- 3.10. If the affected person is not represented, the treating team should ensure that the affected person is advised of the Tribunal's determination.

#### **4. Reviews after transfer to a mental health facility**

Sections 90 and 91 of the MHCIFPA provide that a correctional patient must be reviewed by the Tribunal as soon as practicable after transfer and at intervals of six months during the period that the person is a correctional patient. Reviews are also required as soon as practicable after a request for review is made by the Secretary, various Ministers or the Attorney General (s91(c)); or upon request of the medical superintendent (s91(d)).

- 4.1. The Tribunal will list a review of a correctional patient as soon as practicable and/or within three weeks following assessment under s87(2) that the person is to remain in a mental health facility.
- 4.2. The Tribunal will list a review of a correctional patient as soon as practicable after being requested to do so by the Minister for Health, the Attorney General and Minister for the Prevention of Domestic Violence, the Minister for Counter Terrorism and Corrections or the Secretary of NSW Health (as specified in s91(c) of the MHCIFPA) or the medical superintendent of the mental health facility in which a patient is detained.
- 4.3. The Tribunal will notify Legal Aid NSW and the Justice Health and Forensic Mental Health Network, and any other participants, of the hearing date no later than two weeks prior to the hearing.
- 4.4. Any reports or other material must be provided to the Tribunal no later than close of business three business days before the hearing.
- 4.5. In any particular matter, the Tribunal may make specific directions about the provision of reports or other material.
- 4.6. Following a hearing, the Tribunal's orders and reasons will be provided within three weeks of a Tribunal hearing. The reasons and orders may be distributed separately.
- 4.7. Orders and reasons for all review hearings will be provided to the correctional patient's lawyer and treating team.

4.8. If a hearing has been requested by the Minister for Health, the Attorney General and Minister for the Prevention of Domestic Violence, the Minister for Counter Terrorism and Corrections or the Secretary of NSW Health or the medical superintendent of the mental health facility, then a copy of the Tribunal's decision will also be provided to the person requesting the hearing.

**5. Advising carers of hearings under sections 90 and 91**

5.1. The MHCIFPA does not apply the carer notification provisions of ss76 or 78 of the *Mental Health Act 2007* (MHA) to correctional patients (see s71 of the MHCIFPA) however it is good practice for the Authorised Medical Officer or delegate to take all reasonably practicable steps to notify designated carers and principal care providers if a correctional patient has a matter before the Tribunal. The MHCIFPA does however apply s73 of the MHA to correctional patients so that information about medication is given to carers of a correctional patient detained in a mental health facility on request: s71 of the MHCIFPA and s73 of the MHA.

**6. Appeal against a decision of the Secretary to refuse to grant leave to correctional/forensic patient**

6.1. If the Secretary has refused to grant leave to a correctional patient under s96 of the MHCIFPA, a correctional patient may make an oral or written appeal. An appeal may be made by the correctional patient personally, or through their lawyer.

6.2. The MHCIFPA states that the appeal is to be made in accordance with the MHCIFP Regulation (s97(2)).

6.3. An appeal in writing under s97 of the MHCIFPA is to be made by giving a notice of appeal, in the form approved by the Secretary, to the medical superintendent of the mental health facility in which the correctional patient making the appeal is being detained (s97(2) of the MHCIFPA and cl 8 of the MHCIFP Regulation). In practice where the correctional patient indicates the wish to appeal this is to be facilitated by the mental health facility.

6.4. The medical superintendent must forward the written notice of appeal received from the correctional patient or their lawyer to the Tribunal within 2 business days after the appeal is made and must notify the Secretary of the appeal within that period (cl 8(2) of the MHCIFP Regulation).

6.5. An oral appeal under s97 of the MHCIFPA is to be made by telling the medical superintendent of the wish to make an appeal (cl 8 of the MHCIFP Regulation).

6.6. The medical superintendent must provide a written notice of an oral appeal (refer paragraph 6.5 of this Practice Direction) to the Tribunal within 2 business days after the appeal is made and must notify the Secretary of the appeal within that period.

6.7. A copy of the written notice of appeal (as referred to in paragraphs 6.4 and 6.6 of this Practice Direction) is to be given to the correctional patient making the appeal and a copy is to be kept by the medical superintendent as a record of the appeal (cl 8(5) of the MHCIFP Regulation).

6.8. The Secretary must provide the Tribunal with a report about the patient including reasons for the leave decision (s97(4) of the MHCIPFA). The Tribunal requires such report within two business days of receiving the notice of the appeal as set out in paragraphs 6.4 and 6.6 of this Practice Direction.

6.9. The appeal will be listed for Tribunal hearing as urgently as possible. The Secretary and the correctional patient may both be legally represented if they wish.

## 7. Adjournments

7.1. A Tribunal panel may adjourn a review hearing for such reasons as it thinks fit: s155 of the MHA.

7.2. The Tribunal, constituted by the President or Deputy President, may also adjourn a Tribunal review: cl 5 of the MHCIFP Regulation.

7.3. An adjournment application may be listed at the request of the correctional patient, their treating team or the Tribunal's own motion.

7.4. An adjournment hearing may be conducted on the papers, without the need for attendance of any participants.

Magistrate Carolyn Huntsman  
**President**

Dated November 2025

<b>Version:</b>	<b>President:</b>	<b>Review Date:</b>
1. Practice Direction: Forensic Community Treatment Orders and reviews of correctional patients	Lakatos J	December 2021
2. Practice Direction: Forensic No.6 – Review of Correctional Patients Reviewed, renamed and reformatted	Magistrate Huntsman	March 2025
3. Updated Forensic Mental Health Policy Direction PD2025_050	Magistrate Huntsman	November 2025
4. Next scheduled review		June 2026