

Practice Direction

Notification to the Minister for Health and the Attorney General under s. 76A(2) *Mental Health (Forensic Provisions) Act 1990*



Mental Health
Review Tribunal

Purpose

Section 76A(2) of the *Mental Health (Forensic Provisions) Act 1990* (“the MHFPA”) gives the Minister for Health and the Attorney General the right to make submissions or appear before the Tribunal. Those rights relate to the possible grant of leave or release for a forensic patient, the review of a forensic patient under s. 68(2) or a recommendation to revoke an extension order in respect of the extension of a person’s status as a forensic patient.

To ensure that the Minister and the Attorney General have an opportunity to exercise their rights under s. 76A(2), the Tribunal has developed a practice of asking the patient and the treating team to advise the Tribunal in advance if they will be asking the Tribunal to consider a grant of leave or release. The Tribunal then provides the Minister and the Attorney General with advance written notice of that request. The arrangements for notifying the Minister and the Attorney General have been discussed with agency representatives.

The Practice Direction supersedes the one issued by the same name on 12 September 2016.

Procedures in relation to the notification of the Minister for (Mental) Health and the Attorney General

1. The Minister for Health has advised that the Minister for Mental Health will exercise statutory responsibility under the *Mental Health (Forensic Provisions) Act 1990* (“the Act”).
2. The Minister for Mental Health and the Attorney General have designated officers to whom the notification letters are addressed.
3. Ordinarily, the Tribunal will provide the Minister for Mental Health and the Attorney General with written notice of requests for the Tribunal to consider leave or release three weeks prior to the hearing date.
4. Review hearings under s. 68(2) are generally listed within a very short timeframe. The Tribunal will endeavour to provide the Minister for Mental Health and the Attorney General with at least 2 business days notice of a

hearing under s. 68(2). However, a copy of the s. 68 order, the reasons for issuing that order and the Tribunal's most recent reasons for decision will be provided to the Minister for Mental Health and the Attorney General's staff within one business day of the s.68 order being issued, to allow the Ministers as much notice of the patient's background as possible.

5. Arrangements for notification of the Minister for Mental Health and the Attorney General, their participation in hearings and subsequent advice of the outcome of the hearings will be undertaken in accordance with the procedures outlined in Schedule A.
6. Where the Tribunal has foreshadowed imposing certain conditions on leave or release, and it becomes necessary to make minor changes to those orders for practical or other reasons that the Tribunal considers appropriate, the Tribunal will make those minor changes without further notification to the Minister or Attorney General.
7. In exceptional circumstances, the Tribunal may alter the arrangements set out in Schedule A, after consultation with representatives of the Minister and the Attorney General.

Initially issued on 9 April 2015. Amended on 20 January 2016, 12 September 2016, 14 November 2016 and 6 February 2017.

**His Honour Judge Richard Cogswell SC
President**

Schedule A

Escorted Leave

Pre-hearing notification	<ol style="list-style-type: none">1. The Attorney General does not require notice that the Tribunal proposes to consider granting escorted leave.2. The Minister for Mental Health does require notice that the Tribunal proposes to consider granting escorted leave, if the Tribunal receives notice of that application in advance of the hearing.3. If the Tribunal is asked to consider escorted leave during a hearing and the Tribunal considers it has sufficient information to proceed to hear the application, the Minister for Mental Health does not object to the hearing proceeding, despite being given no notice of the application.
Process for appearance by Ministers	<ol style="list-style-type: none">1. The Minister for Mental Health will advise the Tribunal as soon as practicable after receiving notice of a hearing, if the Minister wishes to participate at the hearing either through written submissions or through a representative. If the Minister appears at the hearing, the Tribunal would expect that there would usually be no further opportunity for written submissions by the Minister after the conclusion of the Tribunal's hearing unless the Tribunal determines otherwise.
Post-hearing notification	<ol style="list-style-type: none">1. The Tribunal's order for escorted leave will be issued by the Tribunal as soon as practicable after the completion of the hearing. The order will be distributed without necessarily being accompanied by the Tribunal's reasons for decision. The leave has effect from the date the order is issued.2. The Tribunal will provide the Attorney General and the Minister for Mental Health with a copy of the Tribunal's reasons for decision as soon as they are available.

Supervised and unsupervised leave

Pre-hearing notification	<ol style="list-style-type: none">1. The Attorney General and the Minister for Mental Health both require notice that the Tribunal proposes to consider granting supervised or unsupervised leave.2. On receipt of a request to consider leave of this kind at a hearing, both Ministers will be advised by letter of:<ol style="list-style-type: none">a. The nature of the leave that the Tribunal has been asked to consider;b. If the request has been made by treating team or
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	<p>patient or on the motion of the Tribunal;</p> <p>c. The date of the Tribunal's last order;</p> <p>d. Whether or not there are any registered victims.</p> <p>3. If the request to consider leave relates to a patient who is subject to a limiting term, the notification letter will attach the Tribunal's most recent order and reasons for decision.</p>
Process for appearance by Ministers	<p>1. The Attorney General and the Minister for Mental Health will advise the Tribunal as soon as practicable after receiving notice of a hearing, if either Minister wishes to participate at the hearing either through written submissions or through a representative. If either Minister appears at the hearing, the Tribunal would expect that there would usually be no further opportunity for written submissions by either Minister after the conclusion of the Tribunal's hearing, unless the Tribunal determines otherwise.</p>
Post-hearing notification	<p>1. After the hearing, the Tribunal will provide the Attorney General and the Minister for Mental Health with a copy of any order made together with the Tribunal's reasons for decision.</p> <p>2. The leave has effect from the date the order is issued.</p>

Conditional Release

Pre-hearing notification	<p>1. The Attorney General and the Minister for Mental Health both require notice that the Tribunal proposes to consider granting conditional release.</p> <p>2. On receipt of a request to consider conditional release, both Ministers will be advised by letter of:</p> <p>a. The request to consider conditional release;</p> <p>b. If the request has been made by treating team or patient or on the motion of the Tribunal;</p> <p>c. Whether or not there are any registered victims.</p> <p>The notification letter will attach the Tribunal's most recent order and reasons for decision</p>
Process for appearance by Ministers	<p>1. The Attorney General and the Minister for Mental Health will advise the Tribunal as soon as practicable after receiving notice of a hearing, if either Minister wishes to participate at the hearing, either through written submissions filed before the hearing or through a representative appearing at the hearing.</p> <p>2. Submissions may be made as to the merits of the</p>

	<p>proposed release and/or any conditions that may be imposed. If either Minister appears at the hearing, there would usually be no further opportunity for written submissions by either Minister after the conclusion of the Tribunal's hearing, unless the Tribunal determines otherwise.</p>
Post-hearing notification	<ol style="list-style-type: none"> 1. The Tribunal will provide the Attorney General and the Minister for Mental Health with a copy of any final order made and the Tribunal's reasons for decision. 2. A conditional release has effect from the date the order is issued.

Unconditional Release

Pre-hearing notification	<ol style="list-style-type: none"> 1. The Attorney General and the Minister for Mental Health both require notice that the Tribunal proposes to consider granting unconditional release. 2. On receipt of a request to consider unconditional release, both Ministers will be advised by letter of: <ol style="list-style-type: none"> a. The request to consider an unconditional release; b. If the request has been made by treating team or patient or on the motion of the Tribunal; c. Whether or not there are any registered victims. The notification letter will attach the Tribunal's most recent order and reasons for decision.
Process for appearance by Ministers	<ol style="list-style-type: none"> 1. The Attorney General and the Minister for Mental Health will advise the Tribunal as soon as practicable after receiving notice of a hearing, if either Minister wishes to participate at the hearing either through written submissions filed before the hearing or through a representative appearing at the hearing. 2. Submissions may be made as to the merits of the proposed release. If either Minister appears at the hearing, there would usually be no further opportunity for written submissions by either Minister after the conclusion of the Tribunal's hearing, unless the Tribunal determines otherwise.
Post-hearing notification	<ol style="list-style-type: none"> 1. The Tribunal will provide the Attorney General and the Minister for Mental Health with a copy of any final order made and the Tribunal's reasons for decision.

	2. Any order for unconditional release has effect from the date the order is issued.
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Hearings conducted under s. 68(2) of the Act

Pre-hearing notification	<ol style="list-style-type: none"> 1. The Attorney General and the Minister for Mental Health both require notice of a review to be conducted under s. 68(2) of the Act. 2. When an order is issued under s. 68, the Tribunal will advise the Attorney General and the Minister for Mental Health by email and attach: <ol style="list-style-type: none"> a. the s. 68 order, b. the Tribunal’s reasons for issuing the s. 68 order c. the Tribunal’s reasons from the most recent review hearing. <p>This notification will be sent the next business day after the order is issued.</p> 3. The Attorney General and the Minister for Mental Health will be advised by email of the hearing date for the s. 68(2) review as soon as it is listed.
Process for appearance by Ministers	<ol style="list-style-type: none"> 1. The Attorney General and the Minister for Mental Health will advise the Tribunal as soon as practicable after receiving notice of a hearing, if either Minister wishes to participate at the hearing either through written submissions filed before the hearing or through a representative appearing at the hearing. If either Minister appears at the hearing, the Tribunal would expect that there would usually be no further opportunity for written submissions by either Minister after the conclusion of the Tribunal’s hearing, unless the Tribunal determines otherwise.
Post-hearing notification	<ol style="list-style-type: none"> 1. After the hearing, the Tribunal will provide the Attorney General and the Minister for Mental Health with a copy of any order made together with the Tribunal’s reasons for decision. 2. The leave has effect from the date the order is issued.