

# Practice Direction:



## Publication of Names (*s162 Mental Health Act 2007*)

### Purpose

Section 162 of the *Mental Health Act 2007* ("MHA") prohibits, except with the consent of the Tribunal, the publication or broadcast of the name, picture or any other information which identifies a person:

- to whom a matter before the Tribunal relates
- who appears as a witness before the Tribunal, or
- who is mentioned or otherwise involved in any proceedings before the Tribunal.

This applies whether before or after the hearing is completed.

This is a protective provision which recognises that Tribunal hearings often canvass highly personal information about an individual's circumstances and their mental and physical wellbeing. In addition, people living with mental illness may experience stigmatisation or disadvantage in their work or social life if their mental illness becomes generally known.

A person cannot consent to the publication of their own name or identifying information under s. 162. Only the Tribunal can consent to a publication. However a person's attitude towards the proposed publication and their capacity to give consent are both important things the Tribunal will need to consider. Although an individual's consent does not automatically lead to consent being granted by the Tribunal under s. 162, it is unlikely that the Tribunal would give consent, if a person did not agree to the publication.

The restriction on publication only applies where a person is identified in relation to proceedings under the MHA or *Mental Health (Forensic Provisions) Act 1990* and includes proceedings before the Tribunal. It does not limit a person from identifying themselves as someone who lives with a mental illness, has been hospitalised and/or been found not guilty by reason of mental illness by a Court.

Independent legal advice should be obtained about how the restrictions under s. 162 relate to a particular proposed publication or broadcast.

This practice direction sets out the way in which an application can be made to the Tribunal for consent to publish or broadcast information about a person under s. 162.

### Practice Direction

1. A person who wishes to seek the Tribunal's consent under s. 162 ("the applicant") can make the application by writing to the Registrar of the Tribunal. The application should set out:

- a. The name(s) of the people to be identified in any publication or broadcast, if known.
  - b. The way in which the person participated in the Tribunal's proceedings (as a patient, witness or family member).
  - c. If the person was a witness or someone otherwise involved in the proceedings, then the name of the person that the proceedings related to, if known.
  - d. An outline of the proposed publication or broadcast – including the format (tv, radio, print, internet) and general content.
  - e. If known, whether the people to be identified agree to the publication of their identity. If known, the applicant should provide the contact details for any of the people who are to be identified.
  - f. If the person to be identified is or was a patient or a person the subject of a Tribunal order, the Tribunal may request a recent psychiatric or psychological report dealing with the person's current mental state and their capacity to consent to being identified in a publication or broadcast.
2. The Tribunal will need to conduct a hearing to consider the application. The applicant and any legal representative will need to attend the hearing.
  3. Anyone whom the applicant proposes to identify will be informed of the hearing date by the Tribunal and invited to attend the hearing.
  4. Ordinarily, the Tribunal will sit as a panel of three members to hear an application under s. 162 of the MHA. The Tribunal will be constituted by a panel of three members, including the President or a Deputy President unless the President otherwise determines.
  5. The Tribunal will issue reasons for its decision.
  6. Any questions about this Practice Direction should be made to the Registrar of the Tribunal by:
    - a. Calling 9816 5955.
    - b. Emailing to [mhrt@doh.health.nsw.gov.au](mailto:mhrt@doh.health.nsw.gov.au)
    - c. Writing to: The Registrar, Mental Health Review Tribunal, PO Box 2019, Boronia Park NSW 2111.

**Professor Dan Howard SC**  
**President, Mental Health Review Tribunal**

**15 November 2013**