

Practice Direction

Procedures for Tribunal Forensic hearings



Mental Health
Review Tribunal

This Practice Direction is issued under to s 160(3) of the *Mental Health Act 2007* and will apply to hearings listed after 4 February 2019.

Purpose

This Practice Direction deals with the procedures and timeframes which apply to review hearings held under the *Mental Health (Forensic Provisions) Act 1990* (“the MHFPA”).

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.

This Practice Direction should be read in conjunction with the Tribunal’s Forensic Guidelines and the Ministry of Health’s Forensic Mental Health Services Policy Direction 2012_50.

This Practice Direction supersedes the following Practice Directions:

- Provision of material to the Tribunal prior to forensic review hearings dated 12 March 2013;
- Notification to the Minister for Health and the Attorney General updated on 6 February 2017;
- The previous version of this Practice Direction dated August 2018.

Notification of issues to be discussed in regular review hearings

1. The Tribunal must be notified of any requests for leave or release before the Tribunal hearing. The Tribunal is notified through completion of a Notice of Intent.
2. The treating team will be advised of a forensic patient’s next review date **8 weeks** before a hearing. A blank copy of the Notice of Intent for each forensic patient will also be emailed to the treating team responsible for the forensic patient’s care **8 weeks** before the hearing date.
3. A blank copy of the Notice of Intent is also available on the Tribunal’s website.

4. The Notice of Intent must be returned to the Tribunal at least **6 weeks** before the hearing date, but may be returned at any time earlier.
5. The forensic patient, the patient's carer or the patient's lawyer may also complete and return a Notice of Intent to the Tribunal, outlining a leave or release application that they want to have considered at the next hearing.
6. If the Notice of Intent is returned to the Tribunal later than 6 weeks before the hearing date, the Tribunal hearing will usually proceed on the basis that no change is sought to the Tribunal's existing orders.

Notification of hearings to registered victims

7. If there are victims registered through the Specialist Victims Register, the Tribunal will send a hearing notice to the Specialist Victims Support Service (SVSS) at the Department of Justice **5 weeks** before the hearing. The notice will advise the matters to be considered, as foreshadowed in the Notice of Intent.

Notification of hearings to Ministers

8. The Minister for Mental Health and the Attorney General will be notified of any review hearings where leave or release are to be considered **5 weeks** before the hearing date.

Notification of urgent hearings, including hearings listed under s 68(2) MHFPA

9. If a forensic patient's circumstances require an urgent review, but the Minister for Mental Health, the Attorney General or registered victims have statutory rights of appearance under ss 76 or 76A(2), the Tribunal will provide at least **2 business days'** notice of any review hearing.

Provision of reports

10. Any reports or other material must be provided to the Tribunal no later than **2 weeks** before the hearing.
11. In any particular matter, the Tribunal may make specific directions about the provision of reports or other material.

Written submissions before the hearing – patient, Minister for Mental Health or Attorney General

12. If the forensic patient, the Minister for Mental Health or Attorney General wish to make written submissions to the Tribunal in a particular matter, they must file those submissions **one week** before the hearing.
13. Any written submissions in reply are to be filed **2 business days** before the hearing.

Written submissions before the hearing - Victims

14. A victim may make a submission to support a request for place restrictions or non-association conditions, or about any of the matters set out in clause 7A of the *Mental Health (Forensic Provisions) Regulations 2017*. If a victim wishes to provide the Tribunal with a written submission, the submission must be filed **one week** before the hearing.
15. Victims may also make oral submissions to the Tribunal at the hearing.
16. A victim may request that the Tribunal not disclose part or all of their written submission to the forensic patient and/or the forensic patient's lawyer.
17. If a victim's submission contains information that they do not wish to be disclosed to the forensic patient or the forensic patient's lawyer, the victim must provide the Tribunal with two different copies of their submission:
 - a. The full submission for the Tribunal to read; and
 - b. An edited copy of their submission that the victim agrees may be disclosed to the forensic patient and/or the forensic patient's lawyer.
18. The Tribunal will hold a preliminary hearing to decide issues relating to the disclosure of a victim's submission if:
 - a. The victim objects to part or all of their submission being disclosed to the forensic patient and the forensic patient asks for disclosure of the submission;
 - b. The victim objects to part or all of their submission being disclosed to the forensic patient's lawyer and the forensic patient, through their lawyer, asks for greater disclosure of the submission; or

- c. The Tribunal considers that it is not in the interests of justice to agree to victim's request.

19. If, following a hearing, the Tribunal decides that more of the submission should be provided to the patient or their lawyer, the Tribunal will give the victim an opportunity to withdraw the submission, or make other amendments to the submission.

Providing the victim's submission to a person treating the patient

20. The Tribunal may disclose all, part or a summary of the victim's submission to a person or persons who are treating the forensic patient. Before disclosing any part of the submission (or a summary) to a member of the treating team, the Tribunal will:
- a. Ask the victim, through the SVSS, if the victim objects to the information being disclosed;
 - b. Consider the victim's view in deciding whether to disclose the submission; and
 - c. Seek any treating team member's agreement not to disclose the information to the forensic patient.

Notification of outcome of hearings

21. Following a hearing, the Tribunal's orders and reasons for decision will be distributed in accordance with clause 23. The reasons and orders will be provided within **6 weeks** of a Tribunal hearing.
22. In the case of escorted leave, the order will be sent out in advance of the reasons. Any order can and should be implemented as soon as it is received.
23. Reasons for all review hearings will be provided to the forensic patient's lawyers and the treating team. Justice Health and Corrective Services NSW will be sent a copy of the reasons if they are responsible for the patient's care.
24. In reviews where leave or release were considered, or the hearing was conducted under s 68(2), the Minister for Mental Health and the Attorney General and their legal representatives will also be provided with a copy of the Tribunal's order and reasons.
25. If leave or release is considered at a review where victims are registered through the Specialist Victims Register, the Tribunal will prepare particulars of its reasons for decision for the victim(s). These reasons will be provided to the SVSS.

26. If the Tribunal makes an order for conditional or unconditional release, the Minister for Police will be provided with a copy of the order for release.

Hearings under section 68(2) to review persons apprehended under a breach order

27. At any review under s 68(2), the Tribunal may decide to confirm conditional release, grant leave, detain the person and/or revoke their conditional release. These orders may be made even if not specifically foreshadowed in the Notice of Intent.
28. A report of the kind referred to in s 74(d) MHFPA is not required for the Tribunal to confirm a forensic patient's release under s 68(2).
29. At a hearing under s 68(2) MHFPA, a forensic patient's release can be confirmed, even if the presiding presidential member is not a current or former judicial officer.

Dated: 30 January 2019

**His Honour Judge Richard Cogswell SC
President**