

# Practice Direction:



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

### **Overview**

Section 162 of the *Mental Health Act 2007* protects the privacy of people involved in Tribunal hearings. It does not allow anyone (including the media) to publish or broadcast any names, pictures or any information which would identify a person in a Tribunal hearing. The only exception is if the Tribunal gives consent.

The people protected by this legislation include the patient, the patient's family, any victim or their family and any witnesses, carers or health practitioners. There is no time limit to this protection. It protects all the people involved before, during and after the Tribunal hearing.

### **Purpose**

Section 162 ensures that all participants in Tribunal hearings can talk freely without concern that their identity or details may be published. This in turn encourages involvement in the hearing and open sharing of information. Tribunal hearings often discuss in detail a person's personal and health information. Victims and the harm suffered may also be discussed.

In addition, if all the information is made public, a person who lives with a mental illness may experience humiliation or disadvantage in their work or social life. If details about a patient's leave or release plans were to become public knowledge, then it may affect the person's ability to safely re-join the community.

### **Publication and consent**

This protection is only given to people involved in Tribunal hearings which take place under the *Mental Health Act 2007* or the *Mental Health (Forensic Provisions) Act 1990*. It does not limit a person from identifying themselves as someone who lives with a mental illness, whether they have been hospitalised or been found not guilty by reason of mental illness.

A person cannot consent to themselves (or others) being publicly identified under section 162. Only the Tribunal can consent to publication. However, the Tribunal will take into account the person's attitude towards the proposed publication and their capacity to give consent. It is less likely that the Tribunal would give consent if the person does not agree to the publication.

While publication of the identities of Tribunal participants is restricted, Tribunal hearings are generally open to the public (unless the Tribunal considers it necessary that a hearing should be conducted wholly or partly in private). This means people can sit in on Tribunal hearings, but they cannot afterwards identify the participants in the hearing.

## **How to apply for the Tribunal's consent to publish under section 162**

Independent legal advice should be obtained about how section 162 relates to a particular proposed publication or broadcast.

1. To apply for the Tribunal's consent, a person must apply in writing to the Registrar of the Tribunal. The application should set out:
  - a. The name(s) of people to be identified in any publication or broadcast, if known.
  - b. The way in which the person participated in the Tribunal's proceedings (e.g. 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 subject to 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 by the Tribunal of the hearing date and invited to attend the hearing.
4. Ordinarily, the Tribunal will sit as a panel of three members to hear an application under section 162. The panel will include the President or a Deputy President unless the President otherwise determines.
5. The Tribunal will issue reasons for its decision.

Questions about this Practice Direction should be directed to the Registrar of the Tribunal on 9816 5955, to [mhrt-mhrt@health.nsw.gov.au](mailto:mhrt-mhrt@health.nsw.gov.au) or in writing to: The Registrar, Mental Health Review Tribunal, PO Box 2019, Boronia Park NSW 2111.

**His Honour Judge Richard Cogswell SC**  
**President, Mental Health Review Tribunal**

**29 August 2018**