

Practice Direction

Forensic No.1

Procedures and time frames:

Forensic Patients



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

1. Purpose

- 1.1 This Practice Direction deals with the procedures and time frames which apply to review hearings held under the *Mental Health and Cognitive Impairment Forensic Provisions Act 2020* (the MHCIFPA).
- 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 The Tribunal closes for a short period around Christmas and New Year. The time frames set out in this Practice Direction may be adjusted by the Tribunal registry to accommodate the Tribunal's closure.

2. Fitness reviews by the Tribunal

The Community Forensic Mental Health Service may assess defendants that are on bail and have a diagnosis of major mental illness in order to provide a report to the Tribunal. Where a person has been found unfit by the court and detained, clinicians at the corrections or detention facility will ordinarily provide a report to the Tribunal for a fitness review. There is currently no agency responsible to provide a report to the Tribunal for defendants with a cognitive impairment.

- 2.1 Clinicians should address the question of fitness in their report for:
 - 2.1.1 Defendants referred to the Tribunal by the court following a fitness inquiry;
 - 2.1.2 forensic patients found unfit and remanded in custody;
 - 2.1.3 forensic patients subject to a limiting term; and
 - 2.1.4 forensic patients subject to an interim or final extension order.
- 2.2 Reports submitted to the Tribunal regarding the defendant's fitness to stand trial must be provided to the Tribunal no later than **2 weeks** before the hearing.
- 2.3 At the conclusion of a fitness review under s78(b), or if a forensic patient is found fit pursuant to s80 following any other review, the Tribunal will notify the Court, the Director of Public Prosecutions and the patient's lawyer of the outcome of the hearing: s80(2).
- 2.4 Fitness does not need to be considered if a person has received a special verdict of act proven but not criminally responsible following a special hearing: see s61(1) of the MHCIFPA, see also Ephram (No 2) [\[2014\]NSWMHRT2](#) decided under the former legislation. For a more recent decision on fitness generally see Clarke [\[2024\]NSWMHRT3](#).
- 2.5 If the patient's lawyer or treating team considers that a forensic patient has become fit, they should contact the Tribunal registry and request a prompt review for the forensic patient.

3. First Tribunal review after conclusion of the Court proceedings

3.1 The Tribunal will list a review as soon as practicable after receiving the referral from the Court.

4. Subsequent Tribunal reviews

4.1 Tribunal reviews will usually be listed at 6 month intervals, but may be listed at any time, s79.

4.2 At a review, the Tribunal may grant an application to extend the review time frame for up to 12 months if the criteria in s77 of the MHCIFPA are met. An extension of the standard review period can be requested on the Notice of Intent (see para 6.1 below).

4.3 The Tribunal will list a review of the forensic patient as soon as practicable after being requested to do so by the Minister for Health, the Minister for Mental Health, the Attorney General, the Minister for Counter Terrorism and Corrections, the Secretary of NSW Health or delegate (“the Secretary”) or the medical superintendent of the mental health facility in which a patient is detained.

5. Adjournments

Section 155 of the MHA allows the Tribunal to adjourn a review hearing for such reasons as it thinks fit. Section 5 of the *Mental Health and Cognitive Impairment Forensic Provisions Regulation 2021* (MHCIFP Regulation) sets out that the President or Deputy President sitting alone may also adjourn a Tribunal review for reasons that they think fit.

5.1 An adjournment application may be sought by the forensic patient or the treating team by sending an email to MHRT-Forensic@health.nsw.gov.au. An adjournment may also be listed on the Tribunal’s own motion.

5.2 An adjournment application may be determined on the papers, without the need for attendance of any participants, or may be listed for hearing.

6. Requests for the Tribunal to consider a change of order

6.1 The Tribunal must be advised before the hearing of what is sought at the review hearing including any proposed change to the forensic patient’s order. The Tribunal is notified through submission of a Notice of Intent. Where an order is sought in the same terms as current order, this should be set out in the Notice of Intent. Where there is a change sought specific details are required. The Notice of Intent is available on the Tribunal’s website: [Notice of Intent](#).

6.2 The Notice of Intent can be completed by the forensic patient (or their lawyer), a member of the treating team, the patient’s designated carer or principal care provider.

6.3 The treating team and the forensic patient’s lawyer will be advised of a forensic patient’s review **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.

6.4 The Notice of Intent by any party including treating team and forensic patient must be returned to the Tribunal at least **6 weeks** before the hearing date, but may be returned at any time earlier.

6.5 If the Notice of Intent seeks release, the person submitting the Notice of Intent must confirm that the report required under s84(1)(b) of the MHCIFPA will be available at least **2 weeks** prior to the hearing. Unavailability of such report at least **2 weeks** prior may lead to a adjournment of the review.

6.6 If the Notice of Intent is not returned, or is returned to the Tribunal later than 6 weeks before the hearing date, the Tribunal hearing will proceed on the basis that the orders being sought at the upcoming review will seek no substantial change. The President (or Deputy President) of the Tribunal may allow a late request for leave or release to be considered by the Tribunal where an application is made for the Notice of Intent to be considered notwithstanding its late filing.

7. Notification of hearings to Ministers

Section 147 of the MHCIFPA gives the Minister for Health, the Minister for Mental Health, and the Attorney General a right to appear and make submissions at any review where leave, release or a review following apprehension under s109 are being considered.

7.1 In any such review, the Ministers will be notified of the hearing and the matters to be considered **5 weeks** before the hearing date, or as set out in *Practice Direction Forensic No.3 – Notification to the Minister for Health and the Attorney General* [PDForensicNo.3](#).

8. Notification of urgent hearings, including hearings listed under s 109(4) of the MHCIFPA

8.1 If a forensic patient's circumstances require an urgent review and the Minister for Health, the Minister for Mental Health, the Attorney General or registered victims have statutory rights of submission and/or appearance, the Tribunal will provide at least two business days' notice of any review hearing – see *Practice Direction Forensic No.3 – Notification to the Minister for Health and the Attorney General* [PDForensicNo.3](#).

9. Provision of reports

9.1 Any reports or other evidentiary material must be provided to the Tribunal no later than **2 weeks** before the hearing except as otherwise provided for in this Practice Direction.

9.2 In any particular matter, the Tribunal may make specific directions about the provision of reports or other material.

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

10.1 If the forensic patient, the Minister for Health, 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 at least **1 week** before the hearing and provide a copy to other parties.

10.2 The Tribunal will provide any submissions received to the participants listed in the clause above, if not already served.

10.3 Any written submissions in reply from any participant/party are to be filed at least **2 business days** before the hearing

11. Appeal against a decision of the Secretary to refuse to grant leave

11.1 If the Secretary has refused to grant leave to a forensic patient under s96 of the MHCIFPA, a forensic patient may make an appeal. The process of appeal/Tribunal hearing of appeal for a forensic patient will be dealt with under the same process for the appeal by correctional patient, see *Practice Direction Forensic No.6 – Review of Correctional Patients* at paragraph 7.

12. Notification of decisions

12.1 Following a hearing, the Tribunal's orders and reasons will be provided within 6 weeks of a Tribunal hearing. In most cases the reasons and orders will be distributed separately, and the Tribunal will provide the order within 3 days of the hearing.

12.2 Orders and reasons for all review hearings will be provided to the forensic patient’s lawyers and the treating team. The Justice Health and Forensic Mental Health Network and Corrective Services NSW will be sent a copy of the order and reasons if they are responsible for the patient’s care.

12.3 In reviews where leave or release were considered, or the hearing was conducted under s109(4), the Minister for Health, the Minister for Mental Health, and the Attorney General, or their legal representatives will be provided with a copy of the Tribunal’s order and reasons.

12.4 If the Tribunal makes an order for conditional or unconditional release, the Minister for Police and Emergency Services will also be provided with a copy of the order for release.

12.5 Notifications to victims of Tribunal hearings and decisions are made by the Commissioner for Victims Services/Specialist Victims Support Service. Arrangements for participation by Victims including making of submissions in Tribunal hearings, are detailed in the *Practice Direction Forensic No.4 – The Participation of Victims in Tribunal Reviews*: [PDForensicNo.4; InfoSheetVictims2024](#)

13. Hearings under section 109(4) to review persons apprehended under a breach order

13.1 At any review under s109(4) of the MHCIFPA, the Tribunal may decide to confirm conditional release, grant leave, detain the person and/or revoke their conditional release or may make a temporary detention order pending further consideration of whether to revoke or confirm conditional release (s109(4)(a)).

13.2 A report of the kind referred to in s84(b) of the MHCIFPA is not required for the Tribunal to confirm a forensic patient’s release under s109(4).

13.3 Despite cl 13.2, the Tribunal may request a report of this kind.

13.4 At a hearing under s109(4) of the MHCIFPA, a forensic patient’s release can only be confirmed, and leave of absence (other than leave escorted by staff of the facility) can only be confirmed where the presidential member is a current or former judicial officer.

Magistrate Carolyn Huntsman
President

Dated: July 2025

* Formerly called “Practice Direction No.2 of 2024”

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