

Practice Direction

Forensic No.2 Procedures for Limiting Term and Extension Orders



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 timeframes which apply specifically to forensic patients where a limiting term has been nominated, or who are subject to interim or final extensions of their forensic patient status under the *Mental Health and Cognitive Impairment Forensic Provisions Act 2020* (the MHCIFPA).
- 1.2 Section 102 of the Act provides that any unlawful absence from a mental health facility or other place of detention is not to be counted as part of the limiting term; this Practice Direction explain how this applied.
- 1.3 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. The Tribunal closes for a short period around Christmas and New Year. The timeframes set out in this Practice Direction may be adjusted by the Tribunal registry to accommodate the Tribunal's closure.

2. Calculation of limiting term where forensic patient unlawfully absent

- 2.1 When a forensic patient who is subject to a limiting term has been apprehended and detained after an order is issued under s109, the Tribunal will list a review as soon as practicable.
- 2.2 At that review hearing, the Tribunal will determine the period of the forensic patient's unlawful absence from a mental health facility or other place.
- 2.3 The length of an unlawful absence will be calculated as follows:
 - 2.3.1 The first date of the patient's absence is the day after the date on which the s109 order was issued. The date on which the order under s109 was issued is not included in calculating the length of the forensic patient's absence.
 - 2.3.2 The last date of the patient's absence is the date of the patient's return to a place of detention.
 - 2.3.3 The date of the patient's return is the date on which the patient is detained in a mental health facility, correctional centre or other place, even if that place is different to the place named in the s109 order.

For example: if an order is issued on 2 September and the patient is detained at a mental health facility on 9 September, the patient's unlawful absence is 7 days- that is, from 3 September to 9 September inclusive.

- 2.4 The forensic patient's lawyer, the Minister for Health, the Minister for Mental Health, and the Attorney General may make written submissions on the issue of the calculation of the unlawful absence. Those submissions should be filed no later than two days prior to the Tribunal hearing.
- 2.5 After determination of the unlawful absence the Tribunal will advise the forensic patient, their legal representative, and Specialist Victims Support Service (SVSS) (if applicable) of the new expiry date of the forensic patient's limiting term.
- 2.6 The Tribunal will also notify the following people of the new expiry date:
 - 2.6.1 If the forensic patient is in custody – the Commissioner of Corrective Services;
 - 2.6.2 If the forensic patient is detained in a mental health facility – the medical superintendent of that facility;
 - 2.6.3 If the forensic patient is within 6 months from the end of their limiting term - the Minister for Mental Health and the Attorney General; and
 - 2.6.4 The Justice Health and Forensic Mental Health Network, if they are involved with the patient's care; or
 - 2.6.5 The lead agency for forensic patients with cognitive impairment.

3. **Notification of Ministers of the date of the end of limiting terms**

Section 158 of the MHCIFPA requires the Tribunal to notify the Ministers administering the Act of the date on which the limiting term or extension order is due to expire.

- 3.1 The Tribunal will advise the Minister for Health, the Minister for Mental Health, and the Attorney General of the date on which a limiting term or extension order is due to expire at least 6 months before the expiration of a forensic patient's term or order.
- 3.2 If a limiting term or extension order of less than 6 months is set by the court, the Tribunal will advise the Minister for Health and the Attorney General of the expiry date as soon as practicable after the Tribunal is advised of the court's order.
- 3.3 The notification will be sent by email to MOH-ForensicRegulatory@health.nsw.gov.au and OGC_FP@justice.nsw.gov.au or another email nominated by the Ministry for Health or the Department of Communities and Justice.

4. **Seeking advice from Ministers about any application for an extension order**

Section 106(2) of the MHCIFPA allows the Tribunal to ask a Minister to provide advice about whether the Minister proposes to make an application under Part 6 of the Act.

- 4.1 The Tribunal may seek the advice of the Minister for Health, the Minister for Mental Health, and/or the Attorney General by sending an email to MOH-ForensicRegulatory@health.nsw.gov.au and/or OGC_FP@justice.nsw.gov.au on whether the Minister intends to seek an extension order in relation to a particular forensic patient.
- 4.2 The Tribunal may seek that advice:
 - 4.2.1 on its own motion;

4.2.2 at the request of the forensic patient or the forensic patient’s lawyer; and

4.2.3 at the request of the forensic patient’s treating team or case manager.

4.3 The Minister is to notify the Tribunal of the decision to apply or not apply for an extension order, as soon as practicable. This can be done by sending an email to:

MHRT-Forensic@health.nsw.gov.au.

5. Listing a matter for the conditional release of a forensic patient subject to a limiting term

Section 84(1)(c) of the MHCIFPA requires the Tribunal to consider whether a forensic patient subject to a limiting term has spent sufficient time in custody when considering whether to order the conditional or unconditional release of a forensic patient. This is in addition to the consideration of the other requirements set out in s84 of the MHCIFPA.

5.1 Generally the Tribunal will consider whether the forensic patient has spent sufficient time in custody as part of the request that the Tribunal make an order for conditional release.

An Official Report published on the Tribunal website provides useful examination of applicable legal principles [Official Report: \[2025\]NSWMHRT2](#)

Magistrate Carolyn Huntsman

President

Dated: March 2025

* Formerly called “Practice Direction 1 of 2024”

Version:	President:	Date:
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3. Forensic No.2: Procedures for Limiting Term and Extension Orders Reviewed, renamed and reformatted	Magistrate Huntsman	March 2025
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