

# Practice Direction

## General No.1 Procedural Matters



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

### 1. Purpose

1.1 This Practice Direction deals with:

- 1.1.1 the composition of the Tribunal;
- 1.1.2 procedure at hearings; and
- 1.1.3 reasons for decisions in Civil matters

1.2 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. Composition of the Tribunal in Civil Matters

2.1 The Tribunal will be constituted by a three member panel comprising a legal member, and two other members as constituted by the President (s150 MHA). Those members can be a psychiatrist and/or other suitably qualified member. A three member panel may exercise any of the functions of the Tribunal under the *Mental Health Act 2007* (MHA).

2.2 The Tribunal may be constituted by a single lawyer member nominated by the President, who is the President, a Deputy President, or qualified to be appointed as a Deputy President, for the purpose of determining the following matters:

- 2.2.1 Mental Health Inquiries under s34 of the MHA.
- 2.2.2 Adjournment of Mental Health Inquiries under s36 of the MHA.
- 2.2.3 Appeals (and adjournments thereof) under s44 of the MHA from the Authorised Medical Officer's refusal to discharge in respect of a person detained at a mental health facility (other than an involuntary patient).
- 2.2.4 Any of the matters referred to in paragraph 1.3 of this Practice Direction below.

2.3 The Tribunal may be constituted by a single lawyer member, nominated by the President, to determine the following matters:

- 2.3.1 Adjourning applications before the Tribunal where the matter is not a mental health inquiry or an appeal under s44 of the MHA and where the hearing of the substance of the application has not yet been commenced by a properly constituted panel.
- 2.3.2 Orders under s151 of the MHA that:
  - 2.3.2.1 the hearing be conducted wholly or partly in private;

- 2.3.2.2 restrict the publication or broadcasting of any report before the Tribunal;
- 2.3.2.3 prohibit or restrict the publication of evidence, or of matters contained in documents lodged with or received in evidence before the Tribunal; and
- 2.3.2.4 prohibit or restrict the disclosure to some or all of the parties to the proceedings of evidence given before the Tribunal of the contents of documents lodged with the Tribunal or received in evidence.
- 2.3.3 Granting approval for a patient to be represented by a person of their choice in accordance with s154 of the MHA.
- 2.3.4 Orders or directions in relation to the inspection of medical records under s156 of the MHA.
- 2.3.5 The issuing of a summons under s157 of the MHA.
- 2.3.6 Orders under s162 of the MHA for consent or refusal of consent to the publication or broadcast of the name of a person having a matter or appearing as a witness in a matter before the Tribunal.
- 2.3.7 Determination of questions of law and/or procedure appropriate to be resolved prior to the commencement of a review or Tribunal hearing e.g. questions of standing; directions as to the conduct of proceedings.
- 2.3.8 Any other matter not required by the MHA or the *Mental Health Regulation 2025* (MH Regulation) to be to be dealt with by a three member panel or by a single member panel where that member is the President, a Deputy President or a person who is qualified to be appointed as a Deputy President.

### **3. Composition of the Tribunal in Forensic Matters**

- 3.1 The functions of the Tribunal under the *Mental Health and Cognitive Impairment Forensic Provisions Act 2020* (MHCIFPA), are to be exercised by the Forensic Division of the Tribunal which is to be constituted by a three member panel comprising the President or a Deputy President, and a member who is a psychiatrist, a registered psychologist or other suitable expert in relation to a mental condition, and an other suitably qualified member (s148 MHCIFPA). The Tribunal must not order the release of a forensic patient, or grant leave of absence to a detained forensic patient, unless the panel includes a President or Deputy President who is the holder or former holder of a judicial office.
- 3.2 In relation to a limited review of a person awaiting transfer to a mental health facility pursuant to s89 MHCIFPA, and in relation to a determination for approval of a change of name of a forensic patient under the Births, Deaths and Marriages Registration Act 1995 (BDMA), the Tribunal is to be constituted by a President or Deputy President. Note: under BDMA there is an appeal to the Forensic Division of the Tribunal (a three member panel) from the single Presidential member decision.

### **4. Procedure of Hearings**

- 4.1 Chairperson:
  - 4.1.1 At any hearing of the Tribunal the President, Deputy President or the lawyer member

is to chair the hearing.

4.2 Majority decisions:

4.2.1 Except as provided in 4.3.1, questions arising at a hearing are to be determined by a majority decision of the members. Refer also to the *Practice Direction General No.2 Dissenting Opinions*.

4.3 Decisions about law and procedure:

4.3.1 Any questions of law or procedure, which arise at a hearing, are to be determined by the chairperson of the hearing.

4.4 Conduct of hearings:

4.4.1 Tribunal hearings are to be conducted with as little formality and technicality and with as much expedition as the nature of the case will permit. Proceedings are generally open to the public, subject to any order the Tribunal may make to the contrary pursuant to s151(4) of the MHA. Hearing procedures are flexible, and will vary depending on the nature of the particular case.

**5. Reasons for Decision in Civil Matters**

5.1 The Chairperson of the panel at the hearing will usually inform those present at the hearing of the decision and may give reasons for a decision or a determination of the Tribunal orally.

5.2 Short form reasons will be recorded on the Order Form provided for the particular matter. At a mental health inquiry the reasons are recorded on the Order and may also be given orally. Oral reasons must be recorded. (cl 21 of the MH Regulation).

5.3 Written reasons in longer form may be sought by letter of request to the Registrar in all matters but Mental Health Inquiries (cl 21 MH Regulation). Such requests should include reasons to explain why written reasons in longer form are being requested.

5.4 A request for reasons made to the Registrar will be considered on its merits.

5.5 Written reasons in longer form will usually be provided on request to a person who wishes to appeal against a determination of the Tribunal. However, the Tribunal may ask the affected person or their legal representative to first review an audio recording of the hearing before agreeing to provide reasons in order to ensure that there is a need for written reasons to be provided. Refer to the Tribunal Practice Direction on Access to Audio Recordings.

5.6 The President or the Registrar may direct that written reasons are prepared in certain matters.

**6. Preparation of Reasons**

6.1 The Chairperson of the panel of the Tribunal which determined the matter is responsible for the preparation of any longer form written reasons for decision. Such reasons for decision should be comprehensive and clear to enable parties to exercise their right of appeal and should address the evidence, findings of fact and the basis for the decision.

6.2 Where a request for reasons is made the Chairperson will be notified of the request and should provide the written reasons within reasonable time, and in the ordinary case within 28 days. In complex or urgent cases the President may direct that the reasons should be provided as soon as practicable. In all cases it is necessary for longer form reasons to be provided within a

reasonable period.

6.3 The longer form reasons for decision will usually be signed by the Chairperson (the legal member) on behalf of the panel.

6.4 In cases where reasons are requested and there is a dissenting view, reasons may be required from the dissenting member.

## 7. Reasons in Forensic Division Matters

7.1 While not required by legislation it is the Tribunal's practice to provide written Reasons for Decision in all Forensic Division matters. Except where a decision is Reserved, a written order will issue after the hearing and written Reasons for Decision will also issue within a reasonable time frame. The Tribunal may also indicate the decision orally at the end of the hearing.

Magistrate Carolyn Huntsman  
**President**

Dated: November 2025

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