

# Practice Direction

## No.1 of 2024 – Procedures for Limiting Term and Extension Orders



Mental Health  
Review Tribunal

This Practice Direction is issued pursuant to s 160(3) of the *Mental Health Act 2007*.

NOTE: 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.

### 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 Act").

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.

### 2. Calculation of limiting term where forensic patient unlawfully absent

*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.*

2.1 When a forensic patient who is subject to a limiting term has been apprehended and detained after an order is issued under s 109, 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 s 109 order was issued. The date on which the order under s 109 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 Act 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](mailto:MOH-ForensicRegulatory@health.nsw.gov.au) and [OGC\\_FP@justice.nsw.gov.au](mailto: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 Act 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](mailto:MOH-ForensicRegulatory@health.nsw.gov.au) and/or [OGC\\_FP@justice.nsw.gov.au](mailto: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;

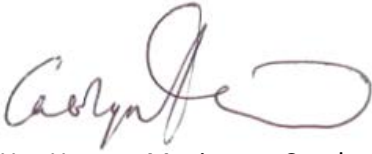
4.2.2 at the request of the forensic patient or the forensic patient's lawyer; and

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](mailto: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 Act requires the Tribunal to consider whether a forensic patient subject to a limiting term has spent sufficient time in custody.*
- 5.1 The Tribunal may determine to deal with an application for conditional release for a forensic patient who is subject to a limiting term in two parts:
- 5.1.1 At the first review hearing, the Tribunal may consider whether a forensic patient has served sufficient time in custody.
- 5.1.2 If the Tribunal determines that the forensic patient has served sufficient time in custody the Tribunal will consider the conditional release application at a second review hearing.
- 5.2 The forensic patient's lawyer and/or treating team may ask the Tribunal to consider an application for release in two parts as set out at Par 5.1. The Tribunal may also determine on its own motion to consider the application in two parts.
6. **Funding reports for the purposes of considering a release application**  
*Section 84(1)(b) of the Act requires the Tribunal to have an independent report when considering an application for release for a forensic patient. The Community Forensic Mental Health Service undertakes these assessments for forensic patients with a mental health impairment. At the time of this Practice Direction it is unclear as to which, if any, NSW agency is funded to provide these reports for forensic patients who do not have a mental health impairment, but instead have a cognitive impairment. In limited circumstances, the Tribunal may fund these reports to ensure that forensic patients without a mental illness are able to apply for release.*
- 6.1 A written request for funding of an independent risk assessment should be submitted to the President of the Tribunal in respect of a forensic patient who has a cognitive impairment by their representative or treating team. The request should include the plans for release, the views of the patient and the treating team. This should be emailed to [MHRT-Forensic@health.nsw.gov.au](mailto:MHRT-Forensic@health.nsw.gov.au).
- 6.2 The President or the President's delegate will determine if it is appropriate for an independent report to be commissioned.
- 6.3 The President's decision will be communicated in writing to the patient's representative and/or treating team.
- 6.4 If a report is approved, the Tribunal will nominate a preferred assessor to conduct the assessment and prepare the report.
- 6.5 Following receipt of the approved assessor's report/s, the Tribunal will provide a copy to other persons involved in the care, treatment and management of the forensic patient. A copy of the report/s will also be provided to the legal representative of the patient.
- 6.6 If the question of whether the patient has served "sufficient time in custody" is considered separately prior to a release application, a report will not be commissioned by the Tribunal until after it has made a decision with respect to the sufficient time in custody question.

6.7 The Registrar of the Tribunal will maintain a list of suitably qualified persons for appointment as an approved assessor.

6.8 A forensic patient may also obtain and pay for their own report.



Her Honour Magistrate Carolyn Huntsman  
**President**

Dated: 12 April 2024

<b>Version:</b>	<b>President:</b>	<b>Review Date:</b>
1. Practice Direction Procedure for Limiting Term and Extension Orders	Lakatos J	April 2024
2. Practice Direction 1 of 2024 Procedure for Limiting Term and Extension Orders	Magistrate Huntsman	April 2026