

# Practice Direction



Mental Health  
Review Tribunal

## Detaining forensic patients under the *Mental Health Act 2007*

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

### **Purpose**

The purpose of this Practice Direction is to set out the Tribunal's processes for dealing with hearings under the *Mental Health Act 2007* (MHA) which concern a forensic patient.

The Tribunal expects that this process will only be applicable to forensic patients who have been granted conditional release and have become mentally unwell. If a patient becomes mentally unwell whilst on leave from a mental health facility, the Medical Superintendent has the discretion to revoke that leave, returning the patient to the close supervision of a hospital environment.

This Practice Direction supersedes previous Practice Directions of the Tribunal relating to detaining forensic patients under the MHA.

This Practice Direction should be read in conjunction with the Ministry of Health's Forensic Mental Health Services Policy Direction PD2012\_050. This policy is based on the *Mental Health (Forensic Provisions) Act 1990*, and continues to apply where there is an equivalent provision under the *Mental Health and Cognitive Impairment Forensic Provisions Act 2020* (MHCIFPA).

### **Involuntary admission of forensic patient**

*A forensic patient who has been granted conditional release may be detained as an involuntary patient under the MHA: s 120 of the MHCIFPA. The patient must meet the criteria for involuntary detention under the MHA and the procedures in the MHA should be followed. If a certificate is issued under s 19 of the MHA (a "Schedule") the police may also apprehend the patient.*

*Admission as an involuntary patient allows the patient to immediately access leave (subject to the Medical Superintendent's discretion). The patient may also be discharged at the discretion of the Medical Superintendent.*

1. An authorised medical officer (AMO) must advise the Tribunal as soon as practicable if a forensic patient is detained under the MHA, (see section 28A of the MHA). The AMO or delegate should contact the Tribunal on (02) 9816 5955 and ask to speak to a Senior Forensic Officer.

### **Mental Health Inquiry**

2. A forensic patient who is detained under the MHA must be presented for a mental health inquiry as soon as practicable after admission under s 27 of the MHA.
3. The mental health inquiry should be arranged with the Tribunal's registry in the usual way, but including a note that the patient is a forensic patient.

### **Review of the patient under s 37 MHA**

4. If the facility wishes to extend the forensic patient's involuntary stay beyond the period set by the initial involuntary order, the patient should be brought before the Tribunal for further review under s 37 of the MHA.

### **Case management by the Tribunal's Forensic Division**

5. The staff of the Tribunal's Forensic Division should be kept regularly updated of the forensic patient's progress whilst involuntarily detained. This can be done by contacting the Tribunal on (02) 9816 5955 and asking to speak to a Senior Forensic Officer or emailing the Tribunal at [MHRT-Forensic@health.nsw.gov.au](mailto:MHRT-Forensic@health.nsw.gov.au).
6. The AMO or delegate should advise the Tribunal (by speaking with a Senior Forensic Officer) if it is the AMO's intention to discharge the forensic patient.
7. The AMO must advise the Tribunal as soon as practicable after discharge of a forensic patient (see section 43A of the MHA).

### **Section 109 order**

*At any time during a forensic patient's detention under the MHA, the President of the Tribunal may decide to issue an order under s 109 of the MHCIFPA for the patient's detention.*

*If an order is issued under s 109 MHCIFPA, the AMO should consider whether there remains a need for the patient to be detained under the MHA. If the AMO decides that it is appropriate to discharge a patient from the MHA regime, the patient will nonetheless remain in the facility until the Tribunal determines that the patient should be discharged under the MHCIFPA.*

**Dated: 30 March 2021**

**His Honour Judge P I Lakatos SC**

**President**