

Practice Direction

General No.7

Issuing a summons under s157 of the *Mental Health Act 2007* and compliance



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

1. Purpose

- 1.1 The purpose of this Practice Direction is to set out the process of issuing a summons for a person to attend to give evidence and/or produce documents for use in the Tribunal. A summons is issued under s157 of the *Mental Health Act 2007* (MHA).
- 1.2 A summons can be issued by a President or Deputy President or by the Registrar of the Tribunal (under delegation of the President).
- 1.3 Nothing in this Practice Direction prevents the Tribunal from giving any directions for the issue, service or compliance with a summons.

2. Who can apply for the issue of a summons?

- 2.1 A person having any matter before the Tribunal can apply for the issue of a summons (s157(1)). A "person having any matter" before the Tribunal includes:
 - 2.1.1 The person who is the subject of the Tribunal hearing.
 - 2.1.2 Staff at the hospital or a community mental health team who are involved in treating the person.
 - 2.1.3 A party to the proceedings.
 - 2.1.4 A lawyer applying on behalf of one of these people.
- 2.2 The Tribunal may of its own motion issue a summons/direct the Registrar to issue a summons.

3. How to apply for a summons to be issued

- 3.1 To apply for the issue of a summons, a person having a matter before the Tribunal must:
 - 3.1.1 complete an Application for Summons form (a copy of this form can be downloaded from the Tribunal's website at [MHRT Website](#)); and
 - 3.1.2 lodge the completed Application for Summons together with any required documents with the Tribunal.

4. The Registrar may refuse to issue a summons

- 4.1 The Registrar may refuse to issue a summons if satisfied that:
 - 4.1.1 the issue of the summons would be an abuse of process, or
 - 4.1.2 the issue of the summons would be oppressive on the person named, or

4.1.3 if the summons is to attend to give evidence, the summons is returnable on a date on which the Tribunal has not scheduled a hearing in the particular matter.

4.2 If the Registrar decides not to issue the summons, the Registrar will notify the party applying for the summons of that decision.

5. Steps for Issue of Summons

5.1 The applicant for the summons will provide the completed summons application to the Tribunal.

5.2 On receipt of the application for the summons, the Registrar, President or Deputy President is to:

5.2.1 issue the summons for service (the summons is to be issued in the prescribed form – cl 20 and Form 6 of the *Mental Health Regulation 2025* (MH Regulation)); and

5.2.2 provide the summons to the party who applied for the summons to allow that person to serve the summons.

5.3 The person who has applied for the summons is responsible for arranging service of the summons and providing conduct money (refer to paragraph 8 of this Practice Direction).

NOTE: The minimum date for service of the summons, on the person named in the summons, is usually 5 working days before the date for compliance with the summons. The date of issue, the date of return, Saturdays, Sundays and public holidays are NOT counted as part of the 5 days. However, to avoid objections due to insufficient time to comply, the summons should be served as soon as possible after issue.

6. Requirement to serve the summons and to notify Tribunal of service

6.1 There is a requirement to serve the summons, with adequate time to allow compliance - and once served the applicant for the summons must notify the Tribunal in writing of the date of service and how the summons was served.

6.2 The summons may be served by the methods in s192 MHA (set out below); or the summons may be served in another way as directed by the Registrar.

6.3 Where a summons is issued at the direction of the Tribunal, the summons is to be served by or on behalf of the Registrar.

7. Section 192 of the MHA provides for service

7.1 Section 192 of the MHA provides for ways to serve the summons.

7.2 NOTE: where the summons is served by post, allow for the '7 working day postal rule' – see the *Interpretation Act 1987* NSW (s76). This provides that where the summons is served by post it is deemed to be received 7 working days after postal (do not include Saturdays, Sundays, public holidays or bank holidays). Section 192 of the MHA states:

192 Service of documents

(1) A document that is authorised or required by this Act or the regulations to be given to or served on any person may be served by—

(a) in the case of a natural person—

(i) delivering it to the person personally, or

- (ii) *sending it by post to the address specified by the person for the giving or service of documents or, if no such address is specified, the residential or business address of the person last known to the person giving or serving the document, or*
- (iii) *sending it by facsimile transmission to the facsimile number of the person, or*
- (iv) *email to an email address specified by the person for the service of documents of that kind, or*
- (v) *any other method authorised by the regulations for the service of documents of that kind, or*
- (b) *in the case of a body corporate—*
 - (i) *leaving it with a person apparently of or above the age of 16 years at, or by sending it by post to, the head office, a registered office or a principal office of the body corporate or to an address specified by the body corporate for the giving or service of documents, or*
 - (ii) *sending it by facsimile transmission to the facsimile number of the body corporate, or*
 - (iii) *sending it to an email address specified by the body corporate for the service of documents of that kind, or*
 - (iv) *any other method authorised by the regulations for the service of documents of that kind.*
- (2) *Nothing in this section affects the operation of any provision of a law or of the rules of a court authorising a document to be served on a person in any other manner.*

8. Requirement for applicant for summons to provide conduct money at time of service

8.1 Section 157(4) of the MHA provides that the person who is served the summons is entitled to receive the amounts payable for compliance with a subpoena (summons) under the *Uniform Civil Procedure Rules 2005*.

NOTE: The Definition of conduct money in relation to a subpoena under the *Uniform Civil Procedure Rules 2005 (UCPR)* - “conduct money means a sum of money or its equivalent, such as prepaid travel, that is sufficient to meet the reasonable expenses of an addressee attending court as required by a subpoena and returning after attending”. “Example: items equivalent to a sum of money include cash, cheque, bank cheque and funds transferred by electronic means, including electronic funds transfer or other digital payment systems. Prepaid travel may include petrol vouchers.”

8.2 In deciding the amount of conduct money regard should also be had to s157(5) of the MHA as set out in paragraph 9 of this Practice Direction which provides for payment, at the time of service of summons, for out of pocket expenses in attending or complying.

8.3 In terms of potential expenses that may be incurred, regard should be had to paragraph 11 of this Practice Direction as to liability to pay reasonable loss or expense incurred by the person served in complying with the summons.

9. Obligation of person served to comply with summons and of applicant for summons to meet expenses (s157(5) MHA)

9.1 Section 157(5) provides that person to whom a summons is addressed:

9.1.1 who is served with a summons addressed to the person under this section, and

9.1.2 to whom, at the time of service, is tendered an amount that is sufficient to cover the person’s travelling and other out-of-pocket expenses in attending the meeting of the

Tribunal specified in the summons and producing anything required by the summons to be produced, must not, without cause, fail or refuse to obey the summons.

- 9.1.3 Note that 'out of pocket expenses are to be paid (s157(5)) to the person required to comply. The reasonable costs or expense in complying with a summons may also be recoverable from the applicant for the summons (see paragraph 11 of this Practice Direction).

10. The summons should be clearly addressed to a named person

- 10.1 The person required to comply with the summons should be correctly named, for example:

- 10.1.1 If an individual, use the individual's full name.
- 10.1.2 If a corporation, state the corporation's full name (including for example "Pty Ltd" if applicable) followed by the words "by its proper officer".
- 10.1.3 If the holder of a governmental office or position, use the official description of the office or post held (eg Commissioner of Police).
- 10.1.4 If a government department or agency, state the department's or agency's name followed by the words "by its proper officer".

11. Allowances and expenses of complying with the summons

- 11.1 In addition to conduct money set out at paragraph 8 of this Practice Direction, a person who applied for a summons to be issued may be liable to pay any reasonable loss or expense incurred in complying with the summons (rule 33.11 *UCPR* and s157(4) MHA). This is separate to any amount to be paid in witness expenses.
- 11.2 The general position is that the amount to be paid for reasonable loss or expense is an amount as agreed between the person named in the summons and the party who applied for the summons or, if they cannot agree, as determined by the Tribunal.

12. Where the summons is to produce documents

- 12.1 The person named in a summons to produce a document can comply by producing a photocopy or a copy in any electronic form, unless the summons expressly requires that an original document is to be produced.
- 12.2 Documents produced to the Tribunal in answer to a summons should be in a sealed envelope or a binder or folder (depending on the bulk of the items) with a copy of the summons attached.
- 12.3 If original documents are produced (rather than a copy or an electronic version), these will be returned to the person who provided them once the relevant Tribunal proceedings are finalised.

13. Objecting to a summons

- 13.1 If the person named in the summons objects to complying with the summons or if another person affected by the summons objects to the summons being complied with, they should try to resolve the objection with the party who applied for the summons before the time for compliance.

13.2 Objections that cannot be resolved will be referred to the President or a Deputy President for decision.

14. Access of parties to material produced on summons

14.1 The access will be provide in the manner directed by the Registrar.

15. Restriction of use of summonsed documents

15.1 Documents obtained under a summons must only be used for purposes directly connected with the proceedings. Using the documents for any other purpose or publishing their contents for any other purpose, may constitute contempt of the Tribunal and be punishable by fine or other orders. Refer also to the prohibition on publication/broadcast of names in s162 MHA, and the non-disclosure provisions of s189 of the MHA.

16. The summonsed material will be placed before the Tribunal

16.1 The documents produced in answer to a summons will be held in the Registry and placed with the Tribunal file for the proceedings to which they relate.

Magistrate Carolyn Huntsman
President

Dated: November 2025

Version:	President:	Date:
1. Practice Direction Access to Transcripts and Audio Recordings of Proceedings	Cogswell J	November 2017
2. Practice Direction: General No.7 Issuing Summons under s157 of the MHA Reviewed, renamed and reformatted	Magistrate Huntsman	March 2025
3. Updated Mental Health Regulation 2025	Magistrate Huntsman	November 2025
4. Next scheduled review		June 2026