



Detaining Forensic Patients under the Mental Health Act 2007

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

1. Purpose

- 1.1. Under the *Mental Health Act 2007* (MHA) hearings may be required where a forensic patient on an order for conditional release has deteriorated in mental health and has been admitted to hospital under the MHA. The purpose of this Practice Direction is to set out applicable procedures.
- 1.2. This Practice Direction supersedes previous Practice Directions of the Tribunal relating to detaining forensic patients under the MHA.
- 1.3. This Practice Direction should be read in conjunction with the Ministry of Health's Forensic Mental Health Services Policy Direction PD2025_050.

2. Background: Forensic Patients in the Community

- 2.1. Given that forensic patients on conditional release orders are in the community under supervision of clinicians, the primary obligations of clinicians include informing the Tribunal of any deterioration in the mental health of a forensic patient in the community. Another obligation is to act quickly to assess and detain for treatment where required.
- 2.2. If a patient becomes mentally unwell whilst on leave of absence 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. Where the patient on leave is a forensic patient, given applicable risk issues and noting the forensic order is one for detention, clinicians must immediately inform the Tribunal of any such deterioration of a forensic patient on leave and must also act to return the patient to the facility (the medical superintendent can order apprehension under s110 of *Mental Health and Cognitive Impairment Forensic Provisions Act 2020* (MHCIFPA)).
- 2.3. The Tribunal independently of any MHA proceedings or actions of a medical superintendent may decide to issue an apprehension and detention order under s109 of MHCIFPA for the apprehension and detention of any forensic patient experiencing mental health deterioration while in the community. If the Tribunal has issued a s109 order then no leave can be given without a Tribunal order nor can the forensic patient be discharged while subject to a s109 apprehension and detention order, regardless of MHA status.

3. Involuntary Admission of Forensic Patient under MHA

- 3.1. A forensic patient who has been granted conditional release may be detained as an involuntary patient under the MHA: s120 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 s19 of the MHA (a “Schedule”) the police may also apprehend the patient.
- 3.2. Admission as an involuntary patient allows the forensic patient to access leave (subject to the Medical Superintendent's discretion). The patient may also be discharged at the discretion of the Medical Superintendent. The supervision of the Tribunal in relation to care, treatment and control of the forensic patient under MHCIFPA and oversight of the forensic order continues to apply. For this reason the ongoing provision of information to the Tribunal is crucial. (See also paragraph 4 of this Practice Direction)

4. Legal Obligation to inform Tribunal

- 4.1. An authorised medical officer (AMO) must advise the Tribunal if a forensic patient is detained under the MHA, as soon as practicable after becoming aware of the forensic status, see s28A of the MHA. The AMO or delegate should advise the Tribunal by email MHRT-Forensic@health.nsw.gov.au. The Tribunal will acknowledge receipt of the email advice – if such acknowledgment has not been received the AMO or delegate must follow up with Tribunal.
- 4.2. The AMO or delegate must also inform the Tribunal of any discharge of the forensic patient (s43A of the MHA). Where there is an intention to discharge the forensic patient the Tribunal must be contacted by the AMO or delegate by email MHRT-Forensic@health.nsw.gov.au.

5. MHA Processes Apply to Forensic Patient admitted under MHA

- 5.1. Mental Health Inquiry
 - 5.1.1. A forensic patient who is detained under the MHA must be presented for a mental health inquiry as soon as practicable after admission under s27 of the MHA.
 - 5.1.2. The mental health inquiry should be arranged with the Tribunal's registry in the usual way, but the AMO or delegate must provide clear advice when scheduling the inquiry that the patient is a forensic patient.
- 5.2. Review of the Patient under s37 MHA
 - 5.2.1. If the facility wishes to extend the forensic patient's involuntary stay beyond the period set by the initial involuntary order made at the Inquiry, the patient should be brought before the Tribunal for further review under s37 of the MHA. When scheduling the s37 review clear advice must be given to Tribunal that the involuntary patient is a forensic patient.

5.3. Case Management by the Tribunal's Forensic Division

5.3.1. Given the Tribunal's statutory responsibility for the care, treatment and detention or release of forensic patients, the AMO or delegate must regularly update staff of the Tribunal's Forensic Division of the forensic patient's progress whilst involuntarily detained under the MHA. This can be done by emailing the Tribunal at MHRT-Forensic@health.nsw.gov.au.

5.3.2. The AMO or delegate must advise the Tribunal by email at MHRT-Forensic@health.nsw.gov.au if it is the AMO's intention to discharge the forensic patient.

5.3.3. The AMO is legally obliged to advise the Tribunal as soon as practicable of the discharge of a forensic patient (see s43A of the MHA).

6. Section 109 order

6.1. As noted above the Tribunal may issue a s109 order to apprehend and detain a forensic patient. Where a forensic patient has been detained under the MHA, the President of the Tribunal may also issue an order under s109 of the MHCIFPA for the forensic patient's detention. Where an order is issued under s109 MHCIFPA, and the AMO considers that it is appropriate to discharge a forensic patient from the MHA regime, the forensic patient continues to be detained in the facility by the s109 order and cannot be discharged by the AMO. Only the Tribunal can allow the forensic patient to leave the facility – by making an order reinstating conditional release in the community, or by some other Tribunal order under the MHCIFPA.

Judge Carolyn Huntsman
President

Dated: June 2026

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2. Practice Direction: Forensic No.8 – Detaining forensic patients under the MHA Reviewed, renamed, reformatted	Judge Huntsman	March 2025
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