

Practice Direction

PROCEDURAL MATTERS



This Practice Direction is issued under s 160(3) of the *Mental Health Act 2007* and will apply to hearings listed from 27 March 2021.

Purpose

This Practice Direction deals with:

- the composition of the Tribunal
- procedure at hearings
- reasons for decisions in Civil matters

This Practice Direction supersedes previous Practice Directions relating to Procedural Matters of the Tribunal.

1. Composition of the Tribunal in Civil Matters

- 1.1. In most matters, the Tribunal will be constituted by a three member panel comprising a legal member, a psychiatrist member and an other suitably qualified member. A three member panel may exercise any of the functions of the Tribunal under the *Mental Health Act 2007* (MHA).
- 1.2. 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:
 - 1.2.1. Mental Health Inquiries under s 34 MHA
 - 1.2.2. Adjournment of Mental Health Inquiries under s 36 MHA
 - 1.2.3. Appeals (and adjournments thereof) under s 44 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)
 - 1.2.4. Any of the matters referred to in paragraph 1.3. below.
- 1.3. The Tribunal may be constituted by a single lawyer member, nominated by the President, to determine the following matters:

- 1.3.1. adjourning applications before the Tribunal where the matter is not a mental health inquiry or an appeal under s 44 MHA and where the hearing of the substance of the application has not yet been commenced by a properly constituted panel.
- 1.3.2. orders under s 151 of the MHA 2007 that:
 - the hearing be conducted wholly or partly in private;
 - restrict the publication or broadcasting of any report before the Tribunal;
 - prohibit or restrict the publication of evidence, or of matters contained in documents lodged with or received in evidence before the Tribunal;
 - 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.
- 1.3.3. granting approval for a patient to be represented by a person of their choice in accordance with s 154 of the MHA 2007
- 1.3.4. orders or directions in relation to the inspection of medical records under s 156 of the MHA 2007
- 1.3.5. the issuing of a summons under s 157 of the MHA 2007
- 1.3.6. orders under s 162 of the MHA 2007 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
- 1.3.7. 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
- 1.3.8. any other matter not required by the MHA or the Mental Health Regulations 2013 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.

2. Composition of the Tribunal in Forensic Matters

- 2.1. 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 a legal member who is either the President or a Deputy President, 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. The Tribunal must not order the release of a forensic patient unless the panel includes a President or Deputy President who is the holder or former holder of a judicial office.
- 2.2. In relation to a limited review of a person awaiting transfer to a mental health facility pursuant to s 89 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*, the Tribunal is to be constituted by a President or Deputy President.

3. Procedure at Hearings

3.1. Chairperson

At any hearing of the Tribunal the President, Deputy President or the lawyer member is to chair the hearing.

3.2. Majority decisions

Except as provided in 3.3, questions arising at a hearing are to be determined by a majority of votes of the members.

3.3. Decisions about law and procedure

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

3.4. Conduct of hearings

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 s 151(4) MHA. Hearing procedures are flexible, and will vary depending on the nature of the particular case.

4. Reasons for Decision in Civil matters

- 4.1. The Chairperson of the panel at the hearing will usually announce the result of a hearing at the hearing and may give reasons for a decision or a determination of the Tribunal orally.
- 4.2. Short form reasons will be recorded on the Determination Form provided for the particular matter. At a mental health inquiry the reasons recorded on the Determination Form are final and cannot be added to or expanded at a later date (see clause 18 of the *Mental Health Regulation 2019*).
- 4.3. In all other matters, written reasons in longer form may be sought by letter of request to the Registrar. Such requests should include reasons to explain why written reasons in longer form are being requested.
- 4.4. A request for reasons made to the Registrar will be considered on its merits.
- 4.5. 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 Transcripts and Audio Recordings of Proceedings.
- 4.6. The President or the Registrar may direct that written reasons are prepared in certain matters.

5. Preparation of reasons

- 5.1. 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.
- 5.2. Where a request for reasons is made the Chairperson will be notified of the request and should provide the written reasons within 14 days of the notification. 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.

- 5.3. The longer form reasons for decision will usually be signed by the Chairperson (the legal member) on behalf of the panel.
- 5.4. In cases where reasons are requested and there is a dissenting view, reasons may be required from the dissenting member.

Dated: 25 March 2021

His Honour Judge P I Lakatos SC

President