

PRACTICE DIRECTION NUMBER 1 OF 2017

MENTAL HEALTH REVIEW TRIBUNAL

PROVISION OF RELEVANT MATERIAL PRIOR TO HEARING

1. The purpose of this practice direction is to ensure that relevant material is provided to the Mental Health Review Tribunal (Tribunal) and the parties within the prescribed time frames under the *Mental Health Act 2016* (the Act).
2. Under the Act, the Tribunal must act quickly, and with as little formality as possible, but must also ensure that, when hearing a matter, it has before it all relevant material to enable it to decide a proceeding fairly and according to the substantial merits of the case.
3. Parties require practitioner reports and other relevant material in advance of any hearing in order for them and their representatives to properly prepare for the hearing.
4. In relation to a review by the Tribunal of any of the types of hearing in Table 1 below, s 723(3) of the Act requires a treating practitioner to provide a report to the Tribunal and to the person the subject of the review at least seven days before the hearing of the review.
5. In relation to review by the Tribunal of any of the types of hearing in Table 1 below, s 738 of the Act provides that if a party to a proceeding intends to rely upon a document in the hearing of the proceeding, the party must give a copy of the document to each other party at least three days before the hearing.

Table 1		
Type of hearing	Treating Psychiatrist's Report¹	Other documents relied on at the hearing by a party²
1. Treatment authority	At least 7 days before the hearing	At least 3 days before the hearing
2. Forensic order	At least 7 days before the hearing	At least 3 days before the hearing
3. Treatment support order	At least 7 days before the hearing	At least 3 days before the hearing
4. Fitness for trial	At least 7 days before the hearing	At least 3 days before the hearing
5. Detention of a minor in a high security unit	At least 7 days before the hearing	At least 3 days before the hearing

¹ Under s 723(4) the treating practitioner is not required to provide a copy of the report to the person the subject of the review if the treating practitioner intends to apply to the Tribunal for a confidentiality order.

² Under s 738(3) of the Act 'document' does not include a victim impact statement.

6. In relation to a review by the Tribunal of any of the types of hearing in Table 2 below, s 738 of the Act provides that if a party to a proceeding intends to rely upon a document in the hearing of the proceeding, the party must give a copy of the document to each other party at least three days before the hearing.

Table 2		
Type of hearing		Documents relied on at the hearing by a party³
Examination authority application	-	At least 3 days before the hearing
Electroconvulsive therapy application	-	At least 3 days before the hearing

7. The term 'at least 7 days' means seven clear days.⁴ To assist in determining when the material needs to be provided by before the hearing date, follow these steps:
- i) Excluding the hearing date, count 8 days backwards;
 - ii) Include Saturday, Sunday and public holidays;
 - iii) If the eighth day falls on a business day, the material needs to be provided to the Tribunal on that day at the latest;
 - iv) However, if the eighth day falls on a Saturday, Sunday and/or a public holiday, keep working backwards until you reach a business day. That business day is when the material should be provided to the Tribunal at the latest.
 - v) The same principles apply if the material needs to be provided 'at least 3 days' before the hearing.
8. The Tribunal has the power to control its procedures. If the relevant material is not provided within the prescribed times the Tribunal will determine how to proceed, taking into account all the circumstances, in order to ensure the proceeding is conducted fairly and efficiently.
9. Failure by a treating practitioner to provide a report within the required timeframe may result in an adjournment of the hearing.
10. Failure by a party to disclose a relevant document upon which the party intends to rely may result in an adjournment of the hearing.



Ms Annette McMullan

President

10 May 2017

³ Under s 738(3) of the Act 'document' does not include a victim impact statement.

⁴ Refer to the *Acts Interpretation Act 1954* s 38