

## Legal restrictions on media reporting of mental health proceedings

Jurisdiction	Key legislation	Forum for initial designation and detention (forensic) + open or closed	Forum for initial designation and detention (involuntary) + open or closed	Key review body (forensic) + open or closed	Key review body (involuntary) + open or closed	Other/comments
<b>New South Wales</b>						
<b>New South Wales</b>	Mental Health Act 2007 <a href="#">Mental Health (Forensic Provisions) Act 1990 No 10</a>	Magistrates can order detention and assessment at mental health facility: MH(FP)Act s. 33. s. 162 Mental Health Act bans ID of anyone involved in either tribunal or forensic proceedings, with that provision also applying to court proceedings under MH(FP) Act. Court Suppression and Non-Publication Orders Act 2010 s. 8 allows suppression orders if public interest in open justice outweighed.	Authorised medical officer of a mental health facility, or numerous other officers and avenues: MHA s. 18. Mental Health Review Tribunal proceedings to be held in public (MHAct s. 151(3) ) unless it orders otherwise or issues orders restricting openness. s. 162 Mental Health Act bans ID of anyone involved in either tribunal or forensic proceedings, with that provision also applying to court proceedings under MH(FP) Act.	Mental Health Review Tribunal inquiry ss 34-35. MH (FP) Act s. 46 allows for 6 monthly or less reviews by Tribunal of forensic patients. MH (FP) Act s. 77A allows for appeals from Tribunal to Supreme Ct. Mental Health Review Tribunal proceedings to be held in public (MHAct s. 151(3) ) unless it orders otherwise or issues orders restricting openness. s. 162 Mental Health Act bans ID of anyone involved in either tribunal or forensic proceedings,	Mental Health Review Tribunal inquiry ss 34-35. Appeals from Tribunal ruling to Supreme Ct: s. 163. Mental Health Review Tribunal proceedings to be held in public (MHAct s. 151(3) ) unless it orders otherwise or issues orders restricting openness. s. 162 Mental Health Act bans ID of anyone involved in either tribunal or forensic proceedings, with that provision	In summary, tribunal and court processes generally OPEN, but ID of participants not allowed. (Similar to juvenile offence reportage in most jurisdictions.)  Mental Health (Forensic Provisions) Act 1990 formerly Mental Health (Criminal Procedure) Act. s.32 Mental Health (Criminal Procedure) Act discussed at <a href="http://www.legalaid.nsw.gov.au/data/portals/00000005/public/82906001186536981048.pdf">http://www.legalaid.nsw.gov.au/data/portals/00000005/public/82906001186536981048.pdf</a> .

				with that provision also applying to court proceedings under MH(FP) Act. Court Suppression and Non-Publication Orders Act 2010 s. 8 allows suppression orders if public interest in open justice outweighed.	also applying to court proceedings under MH(FP) Act.	
<b>Queensland</b>						
<b>Queensland</b>	Mental Health Act 2000	Court reference for assessment then to <a href="#">Mental Health Court</a> (ss. 58-63) Publication prohibited prior to end of trial for those sent to trial, and for 28 days after decision not to send to trial or appeal: s. 524 Young people cannot be identified: s. 526.	Authorised mental health service after referral from doctors and psychiatrists: ss. 44-46.	Mental Health Review Tribunal. Closed, except with permission (but not for young people): s.460 Court of Appeal ultimate review. No publication of Tribunal proceedings or of appeals to Mental Hlth Crt or Crt of Appeal: s. 524. But with leave if no identification of parties or witnesses: s. 525.	Mental Health Review Tribunal Closed, except with permission: s.460 then to <a href="#">Mental Health Court</a> No publication of Tribunal proceedings or of appeals to Mental Hlth Crt or Crt of Appeal: s. 524. But with leave if no identification of parties or witnesses: s. 525.	NOTE: No publication without permission of Mental Hlth Crt inquiries into unlawful detention of patients under s. 525(1)c. See Andrew Caple doctoral proposal looking at open justice and Qld system at: <a href="http://www.gcjc.com.au/research/download/6/research/mental-health-review-tribunal-1/open-justice-and-privacy-in-qlds-forensic-mental-health-system.pdf">http://www.gcjc.com.au/research/download/6/research/mental-health-review-tribunal-1/open-justice-and-privacy-in-qlds-forensic-mental-health-system.pdf</a> And this is related in

						<p>part to Queensland Law Reform Commission's attention to confidentiality in the guardianship system since 2006, culminating in its R67 (2010) Review of Guardianship Laws at <a href="http://www qlrc.qld.gov.au/Publications.htm">http://www qlrc.qld.gov.au/Publications.htm</a></p> <p>Open justice discussed at <a href="http://www qlrc.qld.gov.au/reports/r67_vol_4.pdf">http://www qlrc.qld.gov.au/reports/r67_vol_4.pdf</a> pp. 78-84</p> <p>For a discussion of the principle of open justice and the requirements of procedural fairness in the guardianship system: Queensland Law Reform Commission, <i>Public Justice, Private Lives: A New Approach to Confidentiality in the Guardianship System</i>, Report No 62 (2007) vol 1, [3.23]–[3.57]. at <a href="http://www qlrc.qld">http://www qlrc.qld</a>.</p>
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						<p>gov.au/reports/R62 Vol1.pdf</p> <p>In summary, reports identifying accused reportable with identification in most cases after 28 days after Mental Health Court decision OR trial.</p>
<b>Tasmania</b>						
<b>Tasmania</b>	<p>Mental Health Act 1996</p> <p><b>Criminal Justice (Mental Impairment) Act 1999</b></p>	<p>CJ (MI) Act: Court to conduct investigations (s.12) and special hearings (s. 15)</p> <p>Mental Health Act ss. 85 and 90: confidentiality provisions for both forensic and other patients.</p>	<p>Mental Health Act s. 16: assessment centre for initial examination and diagnosis.</p> <p>Mental Health Act s. 64: Mental Health Tribunal proceedings to be closed.</p> <p>Mental Health Act ss. 85 and 90: confidentiality provisions for both forensic and other patients.</p>	<p>CJ (MI) Act: Forensic Tribunal reviews orders every 12 months (s. 37). Appeals to Court of Criminal Appeal (s. 36).</p> <p>Mental Health Act s. 74K: Forensic Tribunal proceedings to be closed unless it orders otherwise.</p> <p>Mental Health Act ss. 85 and 90: confidentiality provisions for both forensic and other patients.</p>	<p>Mental Health Act s. 64: Mental Health Tribunal proceedings to be closed.</p> <p>Mental Health Act ss. : review provisions ss. 51-52</p> <p>Mental Health Act ss. 85 and 90: confidentiality provisions for both forensic and other patients. Appeal to Supreme Court.</p>	<p>All Mental Health proceedings closed unless special permission.</p>
<b>Victoria</b>						
<b>Victoria</b>	<p>Mental Health Act 1986, Sentencing Act 1991, Crimes (Mental</p>	<p>Court – under Sentencing Act 1991, Crimes (Mental</p>	<p>Medical practitioner / authorised psychiatrist: Mental</p>	<p>Forensic Leave Panel and court: Crimes (Mental Impairment</p>	<p>Mental Health Review Board: Mental Hlth Act s.</p>	<p>Change of govt ... monitor progress of reform legislation.</p>

	Impairment and Unfitness to be Tried) Act 1997; but <b>reforms</b> in draft Mental Health Bill 2010	Impairment and Unfitness to be Tried) Act 1997. S. 75 Court can suppress publication of evidence or identity if in 'public interest' to do so. ( <b>Reform</b> proposes reforms of terminology and some criteria under both laws (clauses 98-104,112-5; 351-3),.	Health Act Pt 3.	and Unfitness to be Tried) Act s. 59. Forensic patient leave applications to be held in closed court: s. 71 and secrecy provisions at s. 62.	22. Closed proceedings s. 33, no publication s.34, with both allowing permission on application. ( <b>reform</b> proposes Mental Health Tribunal and that proceedings be closed unless permission given cl.16 and that Tribunal has powers to issue suppression orders cl.32.) ( <b>reform</b> proposes appeals to Victorian Civil and Administrative Tribunal)	New closing date for submissions 28/2/11. See <a href="http://www.health.vic.gov.au/mentalhealth/mhactreview/">http://www.health.vic.gov.au/mentalhealth/mhactreview/</a>
<b>Western Australia</b>						
<b>Western Australia</b>	Mental Health Act 1996 Criminal Law (Mentally Impaired Accused) Act 1996	Judicial officer has wide parameters to decide question of mental fitness: CL (MIA) Act s. 12. No indication of closed or open court for this process, therefore judicial discretion under S171 of the Criminal	Psychiatrist can order detention in authorised hospital or community treatment order. MHA, s. 43. Everyone involved bound by confidentiality re personal information: MHA, s. 206, but allowable	Mentally Impaired Accused Review Board . CL (MIA) Act Part 6. Reports and recommends to Attorney-General. No record of closed or open proceedings or identification restrictions, although annual reports do	Review by Mental Health Review Board. Appeals to State Administrative Tribunal (MHA s. 148A) and then to Supreme Court (MHA s. 149). All identification material in	MHRB and involuntary treatment process explained at <a href="http://www.mhrbw.a.org.au/">http://www.mhrbw.a.org.au/</a> and referenced to Mental Health Act 1996 sections. Involuntary processes effectively

		<p>Procedure Act which provides for an open court as a default.</p>	<p>with consent of person to whom information relates.</p>	<p>not identify individuals and Prisoners Review Board website does identify prisoners on its website and S171 of the Criminal Procedure Act which provides for an open court as a default. Judicial appeal judgments on mental impairment cases vary in ID on austlii. See THE STATE OF WESTERN AUSTRALIA -v- AJ <a href="#">[2008] WASC 215</a> and THE STATE OF WESTERN AUSTRALIA -v- WRIGHT <a href="#">[2007] WASC 80</a> , one identifying a mentally ill accused, and one not.</p>	<p>Mental Hlth Review Bd hearings proceedings suppressed: MHA Schedule 2, cl13; and further powers to suppress other evidence. Mental Hlth Review Bd hearings closed unless it orders open: MHA Schedule 2, cl12. State Admin Tribunal hearings closed unless it orders open: MHA Schedule 2a, cl2. All identification material in State Admin Tribunal hearings proceedings suppressed: MHA Schedule 2a, cl3; and further powers to suppress other evidence.</p>	<p>unreportable without patient, board or tribunal permissions.</p>
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South Australia						
<b>South Australia</b>	Mental Health Act 2009 Criminal Law Consolidation Act 1935	Criminal Law Consolidation Act 1935: 269B Investigation into mental competence of accused to be conducted before the jury unless defendant nominates judge alone. s. 269G and K: psychiatric reports may be required. Courts to pay heed to open justice under Evidence Act s. 69A (2) before making suppression orders.	Level 1, 2 and 3 detention and treatment orders by doctor MHA, s. 21, psychiatrist MHA s. 25 and Board MHA s.29. MHA s106: No disclosure of personal information. MHA s. 107: No reports of any proceedings under Act. Reports and ID with permission of Board.	Criminal Law Consolidation Act 1935: 269Y. Appeal to appropriate appellate court. Supreme Court judgments on Austlii identify defendant, implying no suppression orders on ID. Courts to pay heed to open justice under Evidence Act s. 69A (2) before making suppression orders.	MHA s106: No disclosure of personal information. MHA s. 107: No reports of any proceedings under Act. Reports and ID with permission of Board.	Criminal processes open, subject to suppression orders, Mental Health Act processes generally closed.
Northern Territory						
<b>Northern Territory</b>	Mental Health & Related Services Act 1998; Criminal Code Act.	Defence of mental impairment under s. 43C Criminal Code Act. S43F: not to impact committal proceeding, but consideration deferred until trial. 43G: Court may require psychiatric assessment. No mention of closed court. Open implied since it is considered during trial.	Mental Health and Related Services Act 1998, Part 6 deals with involuntary admissions and processes. S. 32 initial assessment by doctor, psychiatrist or 'designated mental health practitioner', then examined at 'approved treatment facility': s. 38. s.139 Secrecy provision makes it an	Criminal Code Act s. 432B – same rights of appeal as a criminal sentence, with appeal to Court of Criminal Appeal. Open justice principles would apply.	Mental Health and Related Services Act 1998, s. 123: Mental Health Review Tribunal reviews involuntary admissions. s.135: Hearing closed unless Tribunal directs otherwise, with patient's consent. s. 138: No ID without consent of Tribunal and	Open justice principles for criminal / forensic mental impairment cases but no ID on involuntary patients unless Supreme Court appeal against Tribunal decision.

			<p>offence for anyone involved to release information.</p>		<p>patient or rep.s.139: Secrecy provision makes it an offence for anyone involved to release information.  s.141: Tribunal cannot ID patient in reports on its reasons for decisions. See, for example, <i>Schakelaar v CP</i> [2009] NTMC 028 at <a href="http://www.austlii.edu.au/cgi-bin/sinodisp/au/cases/nt/NTMC/2009/28.html">http://www.austlii.edu.au/cgi-bin/sinodisp/au/cases/nt/NTMC/2009/28.html</a>  s. 142: Right of appeal to Supreme Court. Supreme Court appeals decisions name parties and their conditions. See: <i>Dudgeon v The Mental Health Review Tribunal</i> [2001] NTSC 19 at <a href="http://www.austlii.edu.au/cgi-">http://www.austlii.edu.au/cgi-</a></p>	
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Australian Capital Territory						
<b>Australian Capital Territory</b>	Mental Health (Treatment & Care) Act 1994; Crimes Act 1900.	ACT Magistrates Court and Supreme Court Part 13: Unfitness to Plead and mental impairment. Courts can make orders and refer to ACT Civil and Administrative Tribunal which has powers of review under MH (T&C) Act Part 8. S.86 hearings to be held in private unless person requests public hearing.	MH (T&C) Act Part 4: allows ACT Civil and Administrative Tribunal to make mental health orders. S.86 hearings to be held in private unless person requests public hearing.	under MH (T&C) Act s. 141 Appeals from ACAT to Supreme Court.  Supreme Court proceedings open and reported. See R v REINHOLD STEURER [2009] ACTSC 150 (10 November 2009) at <a href="http://www.austlii.edu.au/cgi-bin/sinodisp/au/cases/act/ACTSC/2009/150.html">http://www.austlii.edu.au/cgi-bin/sinodisp/au/cases/act/ACTSC/2009/150.html</a>  But suppression orders may be issued, as in attempted murder case then subsequent treatment order of R v PJ [2007] ACTSC 73 (23 August 2007) at <a href="http://www.austlii.edu.au/cgi-bin/sinodisp/au/cases/act/ACTSC/2007/73">http://www.austlii.edu.au/cgi-bin/sinodisp/au/cases/act/ACTSC/2007/73</a>	under MH (T&C) Act s. 141 Appeals from ACAT to Supreme Court. Non-identification in reports, as with JR v MENTAL HEALTH ACT [2006] ACTSC 10 (2 February 2006) <a href="http://www.austlii.edu.au/cgi-bin/sinodisp/au/cases/act/ACTSC/2006/10.html">http://www.austlii.edu.au/cgi-bin/sinodisp/au/cases/act/ACTSC/2006/10.html</a>	ACAT has both forensic and involuntary treatment review powers.

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<b>Commonwealth (Federal law)</b>						
<b>Commonwealth (Federal law)</b>	Crimes Act 1914, Division 9.	Relevant State or Territory court, charged with federal offence.		DPP, court and /or Attorney-General (ss. 20BS-BY) Appeals to relevant State or Territory appeal court applying federal law.		Generally state and territory courts apply Commonwealth law in Crimes Act matters, but involuntary treatment orders are State matters.
<b>New Zealand</b>						
<b>New Zealand</b>	<a href="#">Mental Health (Compulsory Assessment &amp; Treatment) Act 1992</a> <a href="#">Crimes Act 1961</a> <a href="#">Criminal Procedure (Mentally Impaired Persons) Act 2003</a> Family Courts Act 1980	Crimes Act s. 23 'insanity' provisions. <a href="#">Criminal Procedure (Mentally Impaired Persons) Act 2003</a> s. 7 and s. 20 determine unfitness to stand trial and finding of insanity.	<a href="#">Mental Health (Compulsory Assessment &amp; Treatment) Act 1992</a> (www.legislation.govt.nz) The Mental Health (Compulsory Assessment and Treatment) Act 1992 (the Act) provides for the compulsory assessment and treatment of	<a href="#">Criminal Procedure (Mentally Impaired Persons) Act 2003</a> s. 16. Court appeals process applies as to conviction.	<a href="#">Mental Health (Compulsory Assessment &amp; Treatment) Act 1992</a> s. 79 Review Tribunal has power to review compulsory treatment orders. S. 24: Proceedings for compulsory order not open to public.	NZ different in that forensic and involuntary processes are quite separate and dealt with under separate legislation, but judges are central to both processes.

			<p>people who are considered to be 'mentally disordered' within the meaning of the Act. S. 17 applications heard by Family Court judge or, if not possible, by District Ct judge. S. 18 District Ct judge to conduct initial examination of patient, referring to clinician. S. 24: Compulsory treatment proceedings not open to public. Schedule 1, cl 8 (1): No reports of Tribunal without leave. ID material also limited under s. 11B Family Courts Act.</p>		<p>Schedule 1, cl 8 (1): No reports of Tribunal without leave. (also s. 116)</p>	
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**Information contained in this document was accurate as of 2011**