



Mental Health  
Review Tribunal

# Practice Direction:

## Access to medical records by representatives of persons who have a matter before the Mental Health Review Tribunal

### Purpose

The purpose of this Practice Direction is to specify the procedure to be followed by mental health facilities when a request is made by representatives to:

- access the medical records (including digital e-records such as eMR) of persons who have a matter before the Mental Health Review Tribunal.
- photocopy or print medical records (including digital e-records such as eMR).

### Background

Section 156 of the *Mental Health Act 2007* ('the Act') entitles a patient or person having any matter before the Tribunal or their representative to 'inspect or otherwise have access to' any medical records relating to the patient or person, unless the Tribunal otherwise determines. This includes the right to copy or print the relevant material.

Procedural fairness requires that a representative should have access to all evidence which the Tribunal may consider when adjudicating a matter.

Accordingly, representatives are entitled to have timely, free and full access to medical files and records relating to the person. They need time to properly consider the material and to take instructions. This means they should be allowed access to such medical records, including reports and other documents. It also includes the right to take copies away from the mental health facility as well as access to and copies of e-records via computer terminals at facilities where eMR or other digital e-records are used.

All mental health facilities are required to comply with this Practice Direction pursuant to s156 and s160(3) of the Act.

## Access

1. Section 156 of the Act requires that complete access (including photocopy access) to medical records (including digital e-records) be available to representatives of persons having a matter before the Tribunal.
2. Access to medical records of persons having a matter before the Tribunal under the Act is not affected by the *Health Records and Information Privacy Act 2002* and representatives should not be required to sign documents referring to the that Act before access is granted.
3. Procedural fairness requires that the representative be provided with a copy of the same material provided to the Tribunal and be able to retain the material when authorised by the person with a matter before the Tribunal.
4. To ensure fairness and meaningful representation to persons with a matter before the Tribunal, the representative's access may go beyond the documents provided by the facility to the Tribunal which are limited, for reasons of practicality. For facilities with digital records, this will require that the representative have access:
  - on instruction days, to the reports listed below and to a computer terminal linked to a printer/photocopier; and,
  - on hearing days, to a computer terminal or other device from which relevant documents can be emailed or faxed to the Tribunal (in audio visual hearings) if they were not included in the documents provided to the Tribunal by the facility.
5. The representative and Tribunal are to be provided with the following documents, in all cases:
  - all admission documents;
  - copy of Statement of Rights, signed and dated by clients where possible or, if refused, annotated copy recording same and notation/s documenting later service;
  - Nomination of Designated Carer form/s (including any exclusions) and, if nomination is refused, documentation of any determination by an authorised medical officer or Director of Community Treatment in relation to their appointment of a Principal Care Provider; evidence of further attempts to have the person nominate any Designated Carer/s;
  - Assessment Form/s completed at the time of admission. If a person is transferred from another facility there may be more than one such form;
  - documentation of any reviews carried out by a Consultant and/or Registrar or other members of the treating team;
  - documentation by the Consultant and/or Registrar of their final review prior to the Tribunal hearing, including any plan which specifies the order to be sought at the hearing;

- progress notes as specified by the Tribunal, supplemented by notes selected for relevance by the representative;
  - any doctor's report;
  - any social work or allied health report, when available;
  - any other documents specifically requested by the Tribunal in relation to the matter.
6. In accordance with s.156 of the Act, in circumstances where a medical practitioner considers that it may be harmful for the representative to communicate specified information contained in the medical record to their client or any other person he or she may:
- warn the representative that it may be harmful to communicate to the person specified information and the representative is to have full and proper regard to the warning and is not obliged to disclose the information to the person, and / or
  - request that the Tribunal make an order or direction prohibiting the release of that material to the person pursuant to s156(3) of the Act.

**His Honour Judge Richard Cogswell SC**  
**President**  
**30 September 2016**