

# Practice Direction



Mental Health  
Review Tribunal

## ELECTRO CONVULSIVE THERAPY (ECT) DETERMINATIONS

### Purpose

This Practice Direction sets out the Tribunal's practice in relation to certain applications for the administration of Electro Convulsive Therapy (ECT).

The Tribunal has the jurisdiction to consider whether ECT should be administered to an involuntary patient (which includes a person detained in a mental health facility, a forensic patient and a correctional patient). This decision is made at an ECT Administration Inquiry, held under Part 2, Division 3 of the *Mental Health Act 2007* (s 96(2)) (the Act).

The Tribunal also has the jurisdiction to consider whether a person other than an involuntary patient is capable of consenting to the administration of ECT. This decision is made at an ECT Consent Inquiry (s 96(1)) of the Act.

The process of applying for an ECT inquiry is set out in the Tribunal's Civil Hearing Kit at Section 6.

The Ministry of Health's [Policy Directive and 'Guidelines: ECT Minimum Standards of Practice in NSW'](#) describe the minimum standards for the use of ECT in NSW and apply to all facets of care, including the indications for treatment, potential risks and strategies to minimise them, issues of consent, facilities, anaesthesia, application of the procedure, and the required quality improvement framework.

### Urgent ECT applications prior to a Mental Health Inquiry

1. Where a person detained in a mental health facility is brought before the Tribunal for an ECT Inquiry, but has not yet been presented to a Mental Health Inquiry the Tribunal should, where practicable, hold both the ECT Inquiry and the Mental Health Inquiry at the same time.
2. There may be occasions where it is impracticable to proceed with the Mental Health Inquiry. For example, there may be insufficient time available to allow the Tribunal to properly hear both matters, or a legal representative may not be available as required for the Mental Health Inquiry. In such cases, the Tribunal panel will begin hearing the Mental Health Inquiry, canvass the issues as to why it is impracticable to proceed, and, if appropriate, may decide to adjourn the Mental Health Inquiry for up to 14 days.
3. The Tribunal may proceed with the ECT application even if the Mental Health Inquiry is adjourned.

## **Maintenance ECT applications**

4. The Tribunal is sometimes asked to consider applications for ECT to be administered on a 'maintenance' basis for persons who, because of their continuing condition and likelihood of deteriorating without maintenance ECT remain classified as involuntary patients.
5. In such cases it may be necessary and appropriate for the person to be detained as an involuntary patient, but on leave from the mental health facility other than when presenting for the administration of the maintenance ECT. Such involuntary patients will need to be reviewed by the Tribunal in accordance with the requirements of the Act.
6. Where the evidence at an involuntary patient review establishes that a person is a mentally ill person, an involuntary patient order pursuant to section 38 may be made, provided that no care other than care in a mental health facility is appropriate and reasonably available. Where there is evidence that maintenance ECT is an effective treatment which enables the subject person to have leave from a mental health facility, in between treatments, and that any disruption to such treatment will very likely result in a significant deterioration or major relapse, the continuing condition component of the definition of mentally ill is made out, and an involuntary patient order may be appropriate even if the only time that the patient effectively spends in the mental health facility is for the purpose of the ECT treatment.
7. Such an interpretation promotes the objects and principles of care and treatment under the Act enabling persons to have access to the best possible care and treatment in the least restrictive environment, with interference to their rights, dignity and self-respect being kept to the minimum necessary in the circumstances.
8. Leave from a mental health facility may be approved by the authorised medical officer (AMO) under section 47 of the Act which provides that the AMO may allow a person to be absent from a mental health facility for the period, and on the conditions, that the AMO thinks fit, provided that the AMO is satisfied that, as far as is practicable, adequate measures have been taken to prevent the person concerned from causing harm to himself or herself or others. That could encompass granting leave, to allow a patient effectively to reside in the community, subject to returning for such maintenance ECT treatment as has been approved by the Tribunal.
9. Section 48 gives the AMO power to apprehend persons who are absent from the mental health facility.
10. The Act should be construed so that persons can access care and treatment in the least restrictive circumstances, which this approach supports. In some cases ECT is the only treatment which keeps such patients sufficiently well to enable them to have leave from the mental health facility, without which they would most likely have to be detained in a mental health facility.

## **Administration of ECT at a mental health facility that did not apply for the ECT determination**

11. It may sometimes be necessary, or desirable for a person to receive ECT at a different mental health facility from the facility which was originally given approval by the Tribunal to administer the ECT. The Tribunal's determination allowing a course of ECT for an involuntary patient may be used to administer ECT at a different mental health facility if the following steps are followed:

- a. The medical superintendent or an AMO of the new facility who is a psychiatrist must examine the patient and provide a written statement to the Tribunal that administering the ECT treatment is "a reasonable and proper treatment and is necessary or desirable for the safety or welfare of the patient" and a brief explanation as to why they believe this to be the case.
- b. If the Tribunal agrees with the proposal and the administration of ECT has not commenced at the facility which applied for the ECT determination, the treatment may proceed at the new facility in accordance with the number of approved treatments and the timeframe approved in the Tribunal's original determination.
- c. If the Tribunal agrees with the proposal and the administration of ECT has commenced at the original facility then the treatment may continue at the new facility for the balance of the number of approved treatments and remaining timeframe approved in the Tribunal's determination.
- d. For the purpose of considering the proposal to have the treatment administered at a different facility the Tribunal will be validly constituted by the President or Deputy President and the proposal may be considered 'on the papers' without the need for a formal hearing. A determination will be issued recording the decision of the Tribunal.
- e. In some cases the Tribunal may require a fresh application to be lodged and a further hearing held.

12. This Practice Direction replaces the ECT Practice Directions issued by the former President of the Tribunal on 13 August 2008 and by me on 8 July 2013.

Dan Howard SC  
President  
3 September 2014