Section 1

Involuntary Detention in a Mental Health Facility, Mental Health Inquiries and Reviews of Involuntary Patients
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Information to help you prepare for a mental health inquiry or a review of an involuntary patient by the Mental Health Review Tribunal

Background information

Note: Sections in brackets refer to the Mental Health Act 2007.

Detention in a mental health facility

The Mental Health Act 2007 provides for a number of ways for a person to be detained in a mental health facility:

- On a mental health certificate by a medical practitioner or accredited person (s19);
- After being brought to a facility by an ambulance officer (s20);
- After being apprehended by a police officer (s22);
- After an order for an examination and an examination or observation by a medical practitioner or accredited person (s23);
- On the order of a Magistrate or bail officer (s24);
- After a transfer from another health facility (s25);
- On a written request made to the authorised medical officer by a primary carer, relative or friend of the person (s26).

Medical examination requirements for ongoing detention (s27)

There are three, possibly four steps, that need to be taken after a person is taken to a mental health facility under the Mental Health Act 2007:

Step 1: examination by an ‘authorised medical officer’ (s27(a))

As soon as practicable (but no later than 12 hours) after arriving in hospital or after being detained if the person was a voluntary patient, he or she must be examined by an authorised medical officer. The authorised medical officer must complete a certificate (Form 1) and if of the opinion that the person is a mentally ill or a mentally disordered person, then a second assessment must take place.

If the authorised medical officer is not of the opinion that the person is either mentally ill or mentally disordered, they have to be discharged.

Step 2: second assessment (s27(b))

As soon as possible after the first examination and having been found by that officer to be mentally ill or mentally disordered, the person must be seen by a second medical practitioner. The second examiner must be a psychiatrist if the ‘authorised medical officer’ was not a psychiatrist.
The second examiner will also complete a certificate (Form 1) notifying the authorised medical officer if of the opinion that the person is either a mentally ill person or a mentally disordered person, or if not able to form such an opinion.

**Step 3: third assessment (s27(c))**
If the second examiner is not of the opinion that the person is a mentally ill person or a mentally disordered person, the person must be examined by a psychiatrist as soon as practicable after being notified of that opinion. The psychiatrist will also complete a certificate notifying the authorised medical officer if of the opinion that the person is either a mentally ill person or a mentally disordered person.

The person should be immediately discharged if the third examiner does not find that the person is a mentally ill person or a mentally disordered person.

**Step 4: mental health inquiry or discharge (s27(d))**
If a person is found to be either a mentally ill person in steps 1 and 2 or 3 they are known as an ‘assessable person’ and must be brought before the Tribunal for a Mental Health Inquiry as soon as practicable. This will usually take place within 2-3 weeks after the person is detained in the mental health facility to allow sufficient time for the person to be fully assessed and for an appropriate treatment or discharge plan to be developed.

**Step 5: mentally disordered persons (s27(e))**
If a person is found to be a mentally disordered person in steps 1 and 2 or 3 they may be detained in a mental health facility as a mentally disordered person for a continuous period of not more than 3 working days and should be reviewed by an authorised medical officer at least once every 24 hours.

**What is a Mental Health Inquiry**
A mental health inquiry examines the reasons put forward for a patient’s detention or release. Most mental health inquiries will be conducted by an experienced single legal member of the Mental Health Review Tribunal. However, the member may refer a matter to a full 3 member panel (including a psychiatrist and an other suitably qualified member) if considered appropriate in a particular case.

In preparation for a mental health inquiry an authorised medical officer must:
- Give the person an oral explanation and written statement of their legal rights and other entitlements (s74 and Schedule 3);
- Notify the assessable person of the proposed mental health inquiry and that the issue of their capacity to manage their financial affairs must be considered if an involuntary patient order is made (s76);
- Take all reasonable steps to notify the primary carer of the mental health inquiry (s76);
- Ensure that the person is as far as practicable dressed in street clothes (s34(2));
- Ensure that necessary arrangements are made for all appropriate medical witnesses to appear before the Tribunal and for all relevant medical evidence to be available and presented (s34(2));
- Have due regard to the possible effects of medication on the person and prescribe the minimum consistent with safe and effective care to ensure that adequate communication with the person’s representative at the inquiry is not impeded (s29).
What happens at a Mental Health Inquiry
At a mental health inquiry the Tribunal will determine whether on the balance of probabilities the assessable person is a mentally ill person. The Tribunal will have regard to:

- Reports and recommendations of the authorised medical officer and other medical practitioners who examined the person under s27 after the initial detention;
- Any other information before the Tribunal;
- The administration of any medication to the person and its effect on the person’s ability to communicate;
- Any relevant cultural factors relating to the person and to expert evidence as to its relevance to any question of mental illness.

At the beginning of the mental health inquiry the Tribunal must ask the assessable person:

- whether they have been given a written statement as to their legal rights; and
- whether they have been informed of the authorised medical officer’s duty in relation to notice and other entitlements.

At a mental health inquiry the Tribunal can decide that:

- The person is not a mentally ill person and should be immediately discharged;
- The person is not a mentally ill person and that discharge should be deferred for up to 14 days;
- The person is a mentally ill person and should be:
  - Discharged into the care of their primary carer;
  - Discharged on a community treatment order;
  - Detained in a mental health facility as an involuntary patient for a specified period of up to three months on an Involuntary Patient Order.

The Tribunal can only order that someone be made an involuntary patient if satisfied that no other care of a less restrictive kind, that is consistent with safe and effective care, is appropriate and reasonably available or that for any other reason it is not appropriate to make any other order. A person can only be discharged on a Community Treatment Order if the Tribunal makes the necessary order.

To decide if the person is a ‘mentally ill person’ the Tribunal must consider whether the person is:

- suffering from a mental illness (as defined by the Act); and
- at risk of serious harm to themselves or others.

The Tribunal will:

- take into account the person’s continuing condition, including any likely deterioration; and
- consider whether care of a less restrictive kind is appropriate and reasonably available to the person.

If the Tribunal determines at the inquiry to make an involuntary patient order, then the Tribunal must go on to consider whether or not the patient is able to manage his or her financial affairs (see Section 5 Applying for and Revoking Financial Management Orders).
What is Mental Illness?

A condition that seriously impairs, either temporarily or permanently, the mental functioning of a person and is characterised by the presence of any one or more of the following symptoms:

- Delusions
- Hallucinations
- Serious disorder of thought form
- Severe disturbance of mood
- Sustained or repeated irrational behaviour indicating the presence of one or more of the above

What is Serious Harm?

Serious harm is not defined in the Act. However, it is interpreted to include:

- Physical harm
- Financial harm
- Harm to reputation or relationships
- Neglect of self
- Neglect of others (including children)

The risk of harm must be both serious and related to the person’s mental illness.

What is Continuing Condition?

s14(2) MHA 2007

*In considering whether a person is a mentally ill person, the continuing condition of the person, including any likely deterioration in the person’s condition and the likely effects of any such deterioration, are to be taken into account.*
What is an Involuntary Patient Order?
This is a legal order that authorises the detention of a ‘mentally ill person’ in a mental health facility. The first Involuntary Patient Order is made by the Tribunal at a mental health inquiry (s35) and can be made for a period of up to three months.

How to arrange for a mental health inquiry or Tribunal review
The Tribunal has a roster for mental health inquiries or scheduled reviews at each mental health facility.

Mental health inquiries
Most mental health inquiries will occur by video conference with the Tribunal linking into the relevant mental health facility at a pre-arranged time to conduct inquiries for those assessable persons who are due for an inquiry at that time (i.e. assessable persons who have been detained for two weeks or more). Inquiries will be conducted at most facilities once a fortnight at pre-arranged times. However, there is scope for urgent inquiries to be organised in between the rostered days.

Staff at the mental health facility will need to fax through a list of persons requiring an inquiry at least five working days before the rostered inquiry day and confirm that an inquiry is appropriate. All relevant documentation should then be faxed to the Tribunal at least two working days before the rostered inquiry day.

Reviews of Involuntary Patients
If the mental health facility wishes to extend a person’s involuntary stay beyond the period set by the initial Involuntary Order, then the mental health facility must apply to the Tribunal for a further Involuntary Patient Order before the first order expires (s37).

If a further order is then made by the Tribunal, the patient continues to be detained as an Involuntary Patient until he or she is well and no longer qualifies as a ‘mentally ill person’. However, the Tribunal must review each Involuntary Patient at least every three months for the first 12 months the person is an involuntary patient and, thereafter at least once every six months or, if considered appropriate, at intervals of up to 12 months.

If an involuntary patient was subject to a community treatment order prior to their admission as an involuntary patient then that community treatment order has no effect during the admission, but the order continues to run, unless the Tribunal otherwise orders. Therefore, if the community treatment order period has not expired at the time the Tribunal decides to discharge them then the Tribunal could discharge the person subject to that community treatment order. Equally, the Tribunal could discharge the person and order that the community treatment order does not have effect or it could make a new Community Treatment Order. The Tribunal may defer the operation of an order for discharge for up to 14 days, if of the view that this is in the best interests of the patient. Applications to extend a person’s involuntary detention in a mental health facility will be heard by the Tribunal either in person at the facility on a rostered day or by video or telephone conference at a scheduled time.
As soon as you are aware that you need to apply to extend a patient’s involuntary detention you should start making the necessary arrangements. Most mental health facilities have a Tribunal Clerk, or an officer who is responsible for co-ordinating mental health inquiries and organising applications to the Tribunal. If there is no Tribunal clerk at your site, you will need to contact the Tribunal directly. To book a hearing for an individual patient you will need to fax an application form to the Tribunal (fax number 9817 4543). Application forms are available on the Tribunal’s website (www.mhrt.nsw.gov.au) or by phoning (02) 9816 5955.

Applications to extend a patient’s involuntary detention should be faxed to the Tribunal at least five working days before the requested date for the hearing. This allows Tribunal staff to ensure that a time is available for the hearing, and to arrange legal representation, if appropriate. Some mental health facilities prefer to liaise directly with the Mental Health Advocacy Service about legal representation.

If you are concerned that the Tribunal may decide not to extend the Involuntary Patient Order you should consider whether a Community Treatment Order would be an appropriate alternative. The Tribunal has power to discharge the patient subject to a Community Treatment Order but you would need to have a Treatment Plan ready for the Tribunal to consider and comply with the notice of hearing requirements.

If your application is urgent you should phone the Tribunal after faxing the application form and ask to speak to a Senior Registry Officer to confirm receipt of the fax.

**Adjournment of a mental health inquiry or a review**

The Tribunal has a specific adjournment power in relation to mental health inquiries (s36) and may adjourn a mental health inquiry for a period no longer than 14 days, if not satisfied that:

- the subject person has been informed of the authorised medical officer’s duty in relation to the giving of notice; or
- notice has been given or that all reasonably practicable things have been done to give notice.

The decision to adjourn a mental health inquiry may occur if:

- the Tribunal believes it is in the best interests of the subject person; and
- the Tribunal has considered the certificates given under the Act.

If the Tribunal adjourns a mental health inquiry the subject person is to continue to be detained in the mental health facility unless discharged or allowed to be absent on leave.

The Tribunal may adjourn its review of an involuntary patient to such times, dates and places and for such reasons as it thinks fit (s155). The purpose of adjourning proceedings is to ensure they are properly conducted. The Tribunal may adjourn proceedings if it is necessary to arrange for appropriate legal representation, or for an interpreter to assist the person or a family member or to allow for the production of important evidence.
As an adjournment may have significant consequences for a patient's liberty, the Tribunal does not regard administrative convenience as sufficient justification for an adjournment.

The authorised medical officer should ensure that involuntary patients are brought before the Tribunal well before the expiry or review date and with sufficient information to allow the matter to be finalised without the need for an adjournment.

**Expiry Dates**

Orders are made and time calculated on the basis that an order or period limited in duration expires at the end of the relevant period i.e. at midnight on the day before the corresponding day of the relevant period. For example, for an order of three months duration made on 5 January the order expires at midnight on 4 April and no later. If there is no corresponding date because the month in which the expiry date would naturally fall has no 31st, 30th or 29th, then the last date that is available in that month will be the expiry date. For example, an order made for 1 month on 31 January 2007 expires on 28 February 2007 (or on 29 February in a leap year).

Orders expressed in terms of days or weeks should be treated similarly and expire at midnight on the day before the corresponding day of the relevant period. For example, an order made for one week on Wednesday 31 January 2007, expires at midnight on Tuesday 6 February 2007. An order made for 10 days on Tuesday 6 March 2007 expires at midnight on Thursday 15 March 2007.

**What to do before a mental health inquiry or Tribunal review**

The authorised medical officer or appropriate clinician involved with the patient should:

- Give notice of the date of the mental health inquiry or hearing to the assessable person and their primary carer and explain the mental health inquiry or review process to the person;
- Inform any of the patient’s relatives and other key people of the inquiry or review and encourage them to attend (unless the patient objects). If family are unable to attend, facilitate alternative means for family and friends to participate e.g. by telephone;
- Organise legal representation;
- Make the mental health facility file available to the legal representative;
- Ensure that an appropriate level of security is arranged, if necessary;
- Organise an interpreter for the person or their family where necessary;
- Organise and prepare reports and documentation;
- Consider whether a CTO may be needed if the Tribunal does not agree to make an involuntary patient order. If you think it may be required then have a treatment plan available and ensure notice has been given to the patient;
- Have regard to the principles of care and treatment outlined in section 68 of the Act and in particular s68(h) which states that: *Every effort that is reasonably practicable should be made to involve persons with a mental illness or a mental disorder in the development of treatment plans for ongoing care.*
Reports and documents required
The Tribunal needs to see the following reports and documents before the mental health
inquiry or review:
• All forms (including schedules) and certificates that led to the person being detained in
the facility;
• All certificates and medical reports (Form1s) from the examinations of the person
when detained in the facility;
• Evidence that notice of the mental health inquiry or hearing has been given to the
person and where appropriate their primary carer;
• A completed application form (for hearings);
• Report from treating psychiatrist or delegate;
• Reports from other involved professionals, for example nursing report, social worker
report, occupational therapist report, psychological report;
• Copy of recent progress notes from the person’s mental health facility file including
details of any medication administered to the person;
• Reports that give a longitudinal view of the patient’s condition and response to
treatment, for example discharge summaries, previous assessments.

The reports must address the legal criteria on which the Tribunal will base its decision.
• Is the patient/person suffering from a mental illness as defined by the Act?
• Is there a risk of serious harm to themselves or others?
• Are they able to be cared for in a less restrictive environment?

Report style
Reports should:
• Be written in plain and simple English and avoid where possible the use of medical or
technical jargon;
• Provide, as appropriate, a full and frank description of the patient’s circumstances;
• Avoid comments that could be interpreted as judgemental;
• Address the specific legal issues that the Mental Health Act 2007 requires the
Tribunal to consider;
• Identify clearly the sources of the author’s information. These sources may be direct
personal observations of the author of the reports, or may be information obtained
from file notes or other professionals involved in the person’s care.

The reports should also give information about the person’s continuing condition,
including any likely deterioration. If the inquiry is not being held in person at the mental
health facility, all reports should be faxed to the Tribunal at least two working days before
the hearing date.

The Tribunal will refer to the reports during the hearing. For this reason, the authors of
reports should be available to come to the hearing to answer any questions arising from
the reports. Sometimes the Tribunal arranges for the authors of reports to talk with the
Tribunal by telephone or video conference.

The Tribunal may make reports available to the patient and his or her legal representative.
See note below.
What should the reports contain?

**Treating Psychiatrist Report**
- Basis for the opinion that the patient is suffering with a mental illness, including details of delusions, hallucinations, serious disorder of thought form, severe disturbance of mood, sustained or repeated irrational behaviour.
- Details as to why the patient requires inpatient treatment, addressing issues of serious harm to self or others and the patient’s continuing condition.
- Details as to how involuntary care will benefit the patient as the least restrictive alternative consistent with safe and effective care.
- Details of any past application for discharge by the patient, and the authorised medical officer’s reasons for refusing that discharge.
- Brief background of the patient’s history and events leading to current hospitalisation, including co-morbid conditions, for example substance abuse, intellectual disability or other relevant medical conditions.
- Details as to current treatment, medication and response to treatment.
- Progress in hospital, including current diagnosis, medication and response to medication.
- Plans for the patient’s long term treatment, management and care.
- Confirmation that the contents of the report have been discussed with the patient, including the patient’s viewpoint.
- Viewpoint of family and carers concerning ongoing hospitalisation.

**Nursing or Social Worker Report**
- Opinion as to whether patient requires involuntary treatment, addressing issues of serious harm to self or others and the patient’s continuing condition.
- If an involuntary patient order is sought at an inquiry a report about the person’s capacity to manage his or her financial affairs.
- Details of contact with the patient and observations in relation to symptoms of mental illness, patient’s demeanour, behaviour, attitude to medication and treatment and understanding of the illness.
- Brief background of the patient’s history and events leading to current hospitalisation, including co-morbid conditions, for example substance abuse, intellectual disability, other relevant medical conditions.

**Medical records**
The law allows patients and their representatives to inspect or have access to the patient’s medical records (s156). However, it is possible to ask the Tribunal to order that medical records not be disclosed for some good cause. This might happen, for example, if the treating medical practitioner believes that disclosure of the information may be harmful.

If you consider that there is a need for a preliminary hearing to discuss the disclosure of medical records, you should phone the Tribunal to arrange this well before the scheduled inquiry.
• Details as to how inpatient care will benefit the patient as the least restrictive alternative consistent with safe and effective care.
• Progress in hospital, including details as to current treatment, medication and response to treatment.
• Plans for the patient’s long term treatment, management and care.
• Confirmation that the contents of the report have been discussed with the patient, including the patient’s viewpoint.
• Contact with primary carers and their viewpoint concerning ongoing hospitalisation.

Other reports
Additional reports can be provided by health care professionals involved in the care of the patient, for example, psychologist, social worker or occupational therapist. These reports should include:
• Brief background of the person’s history and contact with the person;
• Information addressing the question of whether the person remains a ‘mentally ill person’ as defined in the Act (see page 1.4) and requires ongoing detention;
• Other information relevant to the author’s involvement with the person.

Who should attend the mental health inquiry or hearing
• The person concerned (wearing street clothes, if possible).
• The person’s primary carer, family, friends and support persons.
• Everyone who has prepared a written report for the Tribunal.
• The treating psychiatrist/doctor/registrar or medical officer.
• Other involved professionals, for example the primary nurse, social worker.

If family or friends are unable to attend they may still make their views known by writing to the Tribunal before the mental health inquiry or review. It might also be practicable for the Tribunal to hear their views by telephone or video.

What to do after the mental health inquiry or review
If the person is detained as an involuntary patient, the authorised medical officer or some other appropriate health care professional should explain to the patient:
• The nature and effect of the order and how long the order has been made for.
• That unless the patient is discharged the Tribunal will review the involuntary patient order prior to its expiry.
• His or her appeal rights to the Supreme Court.
• His or her right to request discharge under s42, and to pursue an appeal to the Tribunal against any refusal to discharge or failure to determine an application for discharge three days after it was made (s44).

You might find it helpful to refer the patient to the Mental Health Advocacy Service for further information (phone (02) 9745 4277).