MENTAL HEALTH REVIEW TRIBUNAL

MEMBER COMPETENCIES

All Tribunal members must be:

- Familiar with the Mental Health Act 2007 (NSW) and related legislation and able to apply it.
- Aware of the nature of mental illness and familiar with current issues in mental health policy and the provision of mental health services.
- Punctual and in attendance at the hearing venue at least 30 minutes prior to the first scheduled hearing to allow for pre-hearing organisation and discussion.
- Able to contribute to pre-hearing discussion by identifying the nature of the application before the Tribunal, the relevant sections of the legislation and the issues which need to be determined.
- Capable of participating fully and actively in the hearing process, with an appropriate level of informality.
- Capable of assessing complex information, often of a highly personal nature and reaching balanced and appropriate decisions, taking into account relevant cultural factors.
- Able to formulate questions so that relevant and useable evidence is elicited.
- Able to understand or acquire an understanding of the principles of natural justice and procedural fairness
- Able to work effectively as part of a multi-member, multi-disciplinary panel during the hearing and deliberation processes.
- Able to foster a co-operative and positive atmosphere for discussion so that all members can participate equally in the decision making process.
- Able to communicate with the person with the mental illness as well as professional witnesses and family members.
- Able to treat all people before the Tribunal with courtesy, tact and respect.
- Able to approach each case in an impartial and unbiased manner.
- Able to attend and contribute to member's training sessions as required.
- Able to use interpreters appropriately and effectively as required.
- Able to travel to Tribunal hearings both in Sydney and elsewhere.
- Able to sit at least once a month (or as required) and to sit at locations as required.
- Able to promote a co-operative and productive relationship with Tribunal staff and other part time members.

LAWYER MEMBERS

Lawyer members of the Tribunal must be:

- An Australian lawyer with a current practising certificate.
- Able to chair hearings with an appropriate level of informality/formality.
- Able to manage difficult interpersonal and conflictual situations in the context of the hearing process.
- Able to ensure that hearings proceed in an efficient and timely manner.
- Able to conduct hearings according to the requirements of natural justice and procedural fairness.
- Able to bring a knowledge of the Tribunal's jurisdiction and the relevant legislation to bear at hearings.
- Able to produce written Orders on the day of the hearing and, if required, Reasons for Decision which clearly and accurately convey the decision of the Tribunal.

PSYCHIATRIST MEMBERS

Psychiatrist members of the Tribunal must be:

- A registered medical practitioner with specialist registration in psychiatry and recognised qualifications as a psychiatrist (such as being a fellow of the Royal Australian and New Zealand College of Psychiatrists or equivalent).
- Able to bring knowledge of current clinical practice and related issues to bear at hearings.
- Able to use professional expertise to inform the questioning of witnesses and draw out relevant evidence.
- Able to advise other members of the panel hearing the matter about the relevance of information and evidence obtained during the hearing process.
- Able to assist those attending the hearing to understand matters relevant to the application before the Tribunal.
- Able to contribute to the crafting of the Tribunal's Order and Reasons for Decision if required.

OTHER SUITABLY QUALIFIED MEMBERS

- Other suitably qualified members of the Tribunal must be:
- Persons with suitable qualifications or experience such that they are appropriate for appointment to the tribunal.
- Able to bring their experience with people with mental illness to bear effectively:
    - in hearings;
    - during the deliberation stage; and
    - when crafting the Tribunal's Orders and Reasons for Decision if required.
- Able to use their experience to inform their questioning of witnesses and draw out relevant evidence.
- Able to advise other panel members about the relevance of information and evidence obtained during the hearing process.
- Able to assist those attending the hearing to understand matters relevant to the application before the Tribunal.

GENERAL INFORMATION

The Mental Health Review Tribunal is a specialist quasi-judicial body constituted under the Mental Health Act 2007.

Jurisdiction of the Tribunal

The Tribunal has some 47 heads of jurisdiction, considering the disposition and release of persons acquitted of crimes by reason of mental illness; determining matters concerning persons found unfit to be tried, and prisoners transferred to a mental health facility for treatment, reviewing the cases of detained (both civil and forensic) and voluntary psychiatric patients; hearing appeals against authorised medical officer's refusals to discharge; making, varying and revoking community treatment orders; determining applications for certain treatments including electro convulsive therapy and surgery; and making orders for financial management where a person is incapable of managing his or her own affairs.

Objectives

In performing its role the Tribunal seeks to pursue the objectives of the Mental Health Act, including delivery of the best and least restrictive possible kind of care to each patient in the least restrictive possible environment; and the requirements of the United Nations principles for the protection of persons with mental illness and the improvement of mental health care, including the requirement that "the treatment and care of every patient shall be based on an individually prescribed plan, discussed with the patient, reviewed regularly, revised as necessary and provided by qualified professional staff".

Activity

The number of patient reviews conducted by the Tribunal has increased considerably since the Tribunal's first full year of operation in 1991 when the Tribunal conducted 2,232 patient reviews. By way of comparison, in the reporting year ended 30 June 2019 the Tribunal conducted 18668 patient reviews and mental health inquiries.

The Tribunal has a regular schedule of approximately 90 panels per month to conduct reviews at major hospitals, health and correctional facilities. Hearings are also conducted at the Tribunal premises in Gladesville where panels conduct patient reviews in person or by way of telephone or video conference. Panels are also convened at short notice to deal with applications received from hospitals on an emergency basis, such as applications for electro convulsive therapy.

Tribunal Members

Apart from mental health inquires and some appeals which are conducted by a single legal member, each Tribunal panel is comprised by a lawyer member (who presides), a psychiatrist member and another suitably qualified member. All Tribunal Members have extensive experience in mental health, and some have a lived experience of mental illness or of caring for a person with mental illness.

The frequency of sittings for individual members on the Tribunal's monthly hearing schedule depends on their availability. Naturally, those part time members who are retired or semi retired can devote more time to sitting on Tribunal panels whereas other part time members with busy private or public work commitments may not be able to participate in more than one or two Tribunal panels per month.

Tribunal Organisational Structure

The Tribunal has a President, two full-time and nine part-time Deputy Presidents, a Registrar, 30 Registry staff and approximately 130 part time members. All panels reviewing forensic patients are presided over by the President or a Deputy President.

Part time Tribunal members do not receive a set salary but are paid on a sessional basis for a half-day or a full day, depending on the duration of a hearing day.

Remuneration for Deputy Presidents is published under the annual determination by SOORT for the Public Office Holders Group. Remuneration for other members is published under the NSW Government Boards and Committees Framework.

GUIDELINES FOR CONDUCTING HEARINGS

Preparation before the hearing

The Tribunal members will take all steps necessary prior to the hearing to ensure the hearing is conducted in a timely and efficient manner, while meeting all the requirements of the legislation and procedural fairness.

Preparation of the hearing room

Members will ensure the hearing is conducted in a quiet, tidy and private place with furniture that is arranged appropriately and with signs, including name plates, in place.

Members will ensure mobile phones are turned off prior to the commencement of the hearing.

Reading the documents and developing a plan

The hearing should not start until all Members have read the documents.

The members should develop a hearing plan

Only Tribunal members should be present while the hearing plan is discussed.

The discussion of the hearing plan should include:

- A concise summary of the key facts of the matter;
- The order sought;
- The legal requirements to be satisfied;
- The documents to be relied upon;
- Any particular issues arising from the documents that will require clarification during the hearing;
- The most pertinent recent information or developments;
- Any longstanding factors that are relevant to the current application; and
- Any gaps, inconsistencies or inadequacies in the information provided that would need to be addressed in the hearing.

Prior to the start of the hearing, members should agree to the order in which issues will be addressed and who will be primarily responsible for any particular line of questioning.

Prior to the start of the hearing, members should clarify who will be responsible for the necessary practical tasks, including:

- Communicating with parties regarding delays and the reasons for them;
- Asking parties to enter the hearing room;
- Completion of forms; and
- Setting up and running the hearing equipment.

Bias

Members should ensure any issues of bias or the perception of bias have been addressed and dealt with.

The independence of the Tribunal should be diligently maintained. Discussion of the person/evidence with witnesses or legal representatives before or after the hearing should be avoided.

Managing the time

The time available for the hearing should be clearly stated and taken into account when developing the hearing plan.

If extra time is needed, the parties to the next hearing should be notified and a new starting time allocated.

Identification of special needs

Any special needs should be identified prior to the hearing and steps taken to meet them. For example:

- Language interpreter;
- Hearing impairment;
- Security and safety;
- Particular family or professional dynamics, which could influence the hearing;
- Is the person too ill to participate? If so, how can their views be ascertained?

Opening of the hearing

A clear framework and structure for the proceedings should be communicated to help the parties understand the legal purpose and requirements of the hearing, and to help everyone to present information that is relevant.

Entrance of the parties

The presence of the parties should be acknowledged and respect shown at the moment of entry. This can be achieved in a number of ways eg. by all members standing or by a member escorting the person in and assisting with seating.

The person should be brought into the hearing room at the same time as the professional and other witnesses.

Clear beginning and introductions

There should be a clear start to the hearing. Members should avoid preliminary conversations with witnesses as this can lead to confusion about when the hearing commences.

All members should introduce themselves or be introduced and their professional backgrounds explained. The person about whom the application is made should be the central focus of the hearing and a special effort made to establish rapport.

Every person in the room should be asked to introduce themselves and explain why they are at the hearing. The Tribunal should ensure that all mobile phones are switched off.

Opening explanation

A clear and simple explanation should be made of the purpose and the process of the hearing, including:

- Who is seeking an order
- What the order is for
- The practical implications for the person
- The legal requirements to be satisfied; and
- The type of information the Tribunal members need to make their decision.

Plan for the proceedings

The lawyer or another member should briefly outline the plan for the hearing, identifying the issues to be addressed and if possible, the order in which they will be considered.

All parties should be reassured they will have the opportunity to put their views as each issue arises.

Sharing information

All written information and reports should be cited and if appropriate, disclosed to all parties.

Parties should be given time to read documents as required.

If the Tribunal is asked to determine that the person should not have access to a document, the Tribunal should conduct a preliminary hearing to consider this matter, involving the person's legal representative and treating doctor.