

## Mental Health Review Tribunal – A Brief Guide

### What is the Mental Health Review Tribunal?

The Mental Health Review Tribunal (MHRT) is an independent quasi-judicial body which operates under the provisions of the *Mental Health Act 2007* and the *Mental Health (Forensic Provisions) Act 1990*. The Tribunal has a wide range of powers to make decisions regarding the care and treatment of mentally ill persons in NSW.

This brochure gives a brief guide to the MHRT and has been updated to include changes arising from the introduction of the *Mental Health Act, 2007* which came into effect on 16 November 2007 (and was amended in 2010 and 2015) and the *Mental Health (Forensic Provisions) Act 1990* which came into effect on 1 March 2009.

### How does the Tribunal work?

The Tribunal travels to conduct hearings at inpatient and community mental health facilities throughout the Sydney metropolitan area and other large regional centres such as Newcastle, Goulburn and Orange. Hearings for people living outside these areas are conducted by videoconference or telephone.

Each Tribunal panel consists of three members: a lawyer member who chairs the hearing, a psychiatrist and another suitably qualified member. All Tribunal members have extensive experience in mental health. A number of the members of the Tribunal are mental health consumers and people with personal experience of mental illness.

The Tribunal also conducts mental health inquiries for people who have been detained in a mental health facility. Mental health inquiries are generally conducted by a single lawyer member of the Tribunal within 2-3 weeks after a person has been detained. Some mental health inquiries are conducted by video conference.

### What happens at the hearing?

The Tribunal has two main areas of jurisdiction – the civil jurisdiction which deals with people receiving treatment from general mental health facilities, and the forensic jurisdiction which deals with people involved with the criminal justice system as forensic or correctional patients.

In the civil jurisdiction, Tribunal panels make legally binding decisions about the detention and ongoing care and treatment of persons receiving services as inpatients of a mental health facility or whilst living in the community. Before the hearing, the applicant, such as a

doctor or case manager will send an application to the Tribunal. The Tribunal will then contact relevant parties to inform them of the hearing and the need to provide evidence.

On the day of the hearing the Tribunal panel will ask the client for their point of view about the order being sought. The client's designated carer(s), principal care provider and other family members will generally be able to tell the Tribunal how they feel about the proposed order. The treating doctor, social worker and case manager will also be asked to give evidence about the need for the client to be on a legal order. After taking into account the available evidence, circumstances of the client and the legal requirements set out in the Mental Health Act 2007, the Tribunal panel will make a decision about whether or not to make the order.

## **What type of orders can the Mental Health Review Tribunal make?**

### **Involuntary Patient Orders**

Involuntary patient orders are used to detain people with a mental illness in a mental health facility. If a person is detained for treatment in a mental health facility they may be brought before the Tribunal for a mental health inquiry, usually within 2 – 3 weeks. At a mental health inquiry the Tribunal can make an involuntary patient order for a period of no longer than three months.

If the facility wishes the patient to be detained longer than the period set at a mental health inquiry, an application must be made to the Tribunal before the order expires. The Tribunal considers evidence from the mental health facility staff, the patient and other relevant people to decide if the patient needs to stay in the mental health facility for further care and treatment. The Tribunal can make a further involuntary patient order. The Tribunal is required to review the case of each involuntary patient at least once every three months for the first 12 months of the patient's detention and then in most cases at least once every six months thereafter.

### **Appeals against an Authorised Medical Officer's refusal to discharge**

Involuntary patients may appeal to the Tribunal if the authorised medical officer of the mental health facility refuses their request to be discharged, or fails to make a decision about such a request within three working days.

### **Voluntary Patient reviews**

People who receive care and treatment in mental health facilities voluntarily are known as voluntary patients. The Tribunal is required to review voluntary patients every 12 months if they have been admitted as a voluntary or involuntary patient for a continuous period of 12 months. The Tribunal must consider whether the patient is benefiting from the care received at the mental health facility and is consenting to remaining as a patient.

## Community Treatment Orders

Community Treatment Orders (CTOs) can be made by the Tribunal for a person who is a patient in a mental health facility or is in the community or in prison provided certain criteria are met. Community Treatment Orders require the client to accept care and treatment from a community mental health facility whilst living in the community. If the client fails to do this he or she can be returned to a mental health facility for inpatient care. CTOs can be made for a maximum of 12 months, however there is no limit on the number of orders that can be made.

People who have been placed on a CTO can apply to the Tribunal to have the order varied or revoked in certain circumstances. If a CTO was made by a Magistrate at a Court then an appeal can be made to the Tribunal.

## Electroconvulsive treatment (ECT) and consent for surgery

When mental health facilities wish to administer ECT treatment to an involuntary patient or a person under the age of 16, they must apply to the Tribunal. The Tribunal then determines if the treatment is reasonable and proper, necessary and desirable for the patient.

Applications can also be made to the Tribunal to decide if a voluntary patient has the capacity to consent to ECT.

The Tribunal also has decision making powers about whether involuntary patients can have surgery or special medical treatment, such as sterilisation.

## Financial Management Orders

Under the NSW Trustee & Guardian Act 2009 the Tribunal can make a Financial Management Order for a person with a mental illness who is a patient in a mental health facility and is incapable of managing his or her financial affairs. If an order is made the Tribunal appoints the NSW Trustee to manage the patient's finances. Persons under Financial Management Orders made by the Tribunal or a Magistrate can apply to have their Financial Management Order revoked if they can show that they are able to manage their financial affairs or that it is in their best interests to have the order revoked.

## Forensic and Correctional Patient Reviews

The Forensic Division of the Tribunal operates under the Mental Health (Forensic Provisions) Act 1990. The term forensic patient refers to persons who have been accused of a crime but have been found not guilty on the grounds of mental illness and persons who have been found by a court to be unfit to undergo a criminal prosecution. A correctional patient is a person transferred from a prison to a mental health facility as a mentally ill person.

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The Tribunal reviews forensic and correctional patients at least once every six months and makes decisions about their care, treatment, detention or release (where appropriate). In the case of persons found unfit to be tried by the Court, the Tribunal also makes a determination as to the person's fitness to be tried, and informs the Court and the Director of Public Prosecutions of its opinion and determination.

## Appeals

Appeals against most decisions of the Tribunal must be made to the Supreme Court of NSW. Appeals against a decision to make a Financial Management Order can be made to either the Supreme Court or the NSW Civil and Administrative Appeals Tribunal (NCAT).

## Legal representation

Any person whose case is being reviewed by the Tribunal may have a lawyer represent them at the hearing. The Mental Health Advocacy Service provides free legal aid, which is available for some Tribunal matters. A person other than a lawyer can also represent the client if the Tribunal agrees.

## Interpreters

People who speak a language other than English or require a sign interpreter have the right to a free health care interpreter. Clients should let their social worker, doctor or caseworker know that they need an interpreter.

## Complaints

Complaints about treatment and care in mental health facilities can be directed to the medical superintendent or authorised medical officer of the mental health facility, the Official Visitors, the NSW Consumer Advisory Group or the Health Care Complaints Commission.

Complaints about the Tribunal should be put in writing and addressed to the Registrar of the Mental Health Review Tribunal.

## Need more information?

The Tribunal has produced a series of information sheets which explain the various orders it can make. These can be obtained from the Tribunal's website: [www.mhrt.nsw.gov.au](http://www.mhrt.nsw.gov.au)

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