

Practice Direction

Response to COVID-19 Pandemic



Mental Health
Review Tribunal

This Practice Direction is issued under s. 160(3) of the *Mental Health Act 2007* and will apply to hearings listed from 30 March 2020.

Purpose

This Practice Direction deals with changes to the Tribunal's hearing procedures under the *Mental Health Act 2007* (MHA) and the *Mental Health (Forensic Provisions) Act 1990* (MHFPA) introduced to respond to the circumstances of the COVID-19 pandemic.

This Practice Direction incorporates changes made by the *COVID-19 Legislation Amendment (Emergency Measures) Act 2020*.

If this Practice Direction is inconsistent with other Practice Directions issued by the Tribunal, then this Practice Direction will prevail.

NOTE: This Practice Direction has effect only for the period of time that it is necessary to enact the new procedures during the COVID-19 crisis, and in any event, for no longer than the "prescribed period" as defined in s. 202 of the MHA. That period is defined as 6 months from 25 March 2020, but may be extended by up to 12 months, by Regulation made under the *COVID-19 Legislation Amendment (Emergency Measures) Act 2020*.

If urgent or exceptional circumstances arise, the President may direct how that matter is to be dealt with.

Conduct of hearings

1. The Tribunal will not be attending mental health or correctional facilities to conduct hearings, unless there are exceptional circumstances and then only at the President's direction.
2. No face to face hearings will be conducted at the Tribunal's premises at Gladesville.
3. Every effort should be made for hearings to be conducted by audio visual link.

4. If circumstances arising from the COVID-19 pandemic make it necessary to do so, all hearings, including mental health inquiries conducted under the MHA, may be conducted by telephone: s. 202(2).
5. The Tribunal is also able to conduct hearings under the MHA in the absence of the patient if the statutory criteria for doing so under ss. 37(3A), 63(2A) and 96(5A) of the MHA are met.
6. In the Tribunal's Forensic Division, every effort should be made to include the forensic patient by audio video link or telephone. Where that is not possible, the hearing may proceed in the forensic patient's absence, if it is procedurally fair to do so.

Mental Health Inquiries

7. An assessable person must be brought before the Tribunal for a mental health inquiry as soon as practicable after admission: s. 27(d) MHA. During the COVID-19 pandemic, the Tribunal considers that a person should generally be brought before the Tribunal at the next rostered sitting of the Tribunal after 21 days have elapsed from the date of the person's admission. The Tribunal will continue to conduct mental health inquiries on a fortnightly roster, so that assessable persons are seen within 21 to 35 days after admission.
8. The authorised medical officer remains obliged to discharge an assessable person as soon as there is a less restrictive form of safe and effective care available: s. 12 MHA.
9. Assessable persons can be presented for an earlier mental health inquiry if:
 - a) they have lodged an appeal against an Authorised Medical Officer's refusal to discharge them; or
 - b) the intention of the treating team is to discharge the assessable person from a mental health facility on a Community Treatment Order
10. The Tribunal may adjourn a mental health inquiry for up to 28 days: s. 202(3) MHA.

Community Treatment Orders

11. A person who is subject to an existing community treatment order may have that order extended by a further 3 months, if the Tribunal receives an application from a person meeting the criteria in s. 51(2), requesting an extension.
12. As the Tribunal is extending an existing order, the Tribunal need not be satisfied that the criteria in s. 53 of the MHA continue to be met.

13. The Tribunal may consider an application for an extension order on the papers without hearing from either the subject person or their treating team.
14. The applicant should attempt to notify the subject person that they will be applying for an extension of the CTO, if that is reasonably practicable. The applicant is obliged to notify the subject person of any extension.
15. The extension of the order does not affect the right of the subject person or other applicants set out in s. 65(2) MHA to apply to the Tribunal for a revocation, variation or review of a CTO.

Reviews under ss. 37(1)(b) and (c) of the MHA

16. The Tribunal will not list reviews under ss. 37(1)(b) and (c) until further notice.
17. A review under ss. 37(1)(b) and (c) may be listed if it coincides with another application to the Tribunal such as an application for ECT or an appeal against a refusal to discharge.
18. The authorised medical officer remains obliged to discharge an involuntary patient as soon as there is a less restrictive form of safe and effective care available: s. 12 MHA.
19. Medical Superintendents should make every endeavour to ensure that patients who will not be reviewed in the statutory time frames will have access to a lawyer or other representative, if they wish.

Reviews of voluntary patients

20. The Tribunal will not list any reviews of voluntary patients under s. 9 MHA.
21. An authorised medical officer may discharge a voluntary patient at any time if of the opinion that the patient is not likely to benefit from further care or treatment as a voluntary patient s. 8(1) MHA.
22. A voluntary patient continues to be able to discharge themselves at any time under s. 8(2) MHA.

Appeals under s. 44 of the MHA

23. If a person appeals against a refusal to discharge them under s. 44 of the MHA, the Tribunal will continue to list that appeal as soon as practicable. Any such appeals should be forwarded to the Tribunal as soon as possible by the treating team.
24. The following reviews/hearings will continue to be heard as usual:
 - a. Reviews of involuntary patients under s. 37(1)(a) MHA – i.e. the first review following the making of an involuntary patient order at a mental health inquiry;

- b. Applications for community treatment orders for persons currently detained in a mental health facility or a person not currently subject to a community treatment order under s. 51(3) MHA;
- c. Reviews of detained persons following a breach of a community treatment orders under s. 63 MHA;
- d. Applications for variation or revocation of a community treatment order under s. 65 MHA;
- e. Appeals against a CTO made by a Magistrate under s. 67 MHA;
- f. Administration and Consent Inquiries for the administration of ECT under s. 96 MHA;
- g. Applications to perform surgical operation under s. 101 MHA; and
- h. Applications to carry out a special medical treatment under s. 103 MHA.

Reviews in the Forensic Division

25. All forensic hearings listed between Monday 30 March and 30 June 2020 will be adjourned by a single Presidential member for 6 months: cl 5A *Mental Health (Forensic Provisions) Regulation 2017* (MHFP Regs). The Tribunal will usually deal with the adjournment on the papers. The President may direct that this practice continue beyond 30 June 2020.
26. All forensic Community Treatment Order reviews listed between Monday 30 March and 30 June 2020 will be extended by a single Presidential member for 6 months: s. 61(4) and (5) MHFPA and cl. 5 MHFP Reg. The Tribunal will usually deal with the extension on the papers. The President may direct that this practice continue beyond 30 June 2020.
27. The forensic patient, their lawyer, the authorised medical officer of a facility where the forensic patient is detained or the case manager of a conditionally released forensic patient may request that the Tribunal review the case of any forensic patient. If a review is requested a Notice of Intent should be provided to the Tribunal.

28. The Tribunal will also continue to routinely list:

- a) hearings for the first review of a correctional patient under s. 59 MHFPA
- b) requests for a forensic Community Treatment Order made under s. 67 MHFPA
- c) referrals to the Tribunal under s. 16 MHFPA for assessment of fitness, where a decision can be made on fitness or the 12 month period for assessing fitness is close to expiring.

Dated: 27 March 2020

**His Honour Judge Paul Lakatos SC
President**