

FLOWCHART FOR s44 APPEAL PROCESS

STEP 1 - REQUEST DISCHARGE

A patient may apply to an authorised medical officer of a mental health facility to be discharged from the facility under s42 of the Mental Health Act. This can be done verbally or in writing (a verbal request should be clearly noted in the patient's file).
A designated carer or principal care provider may also apply for a patient to be discharged under s43. The AMO may only discharge the patient if the designated carer or principal care provider provides a written undertaking that the patient will be properly taken care of and the AMO is satisfied there are adequate measures in place to prevent the patient causing harm to himself or herself.

STEP 2 - DISCHARGE REFUSED OR NO DECISION IN 3 WORKING DAYS

The Authorised Medical Officer (AMO) must consider the application for discharge. If the request is declined, the AMO must explain to the patient the reasons for this, and note the decision on the patient's file.
The AMO has 3 working days to consider this application.

STEP 3 - APPEAL DECISION UNDER S44

If the AMO declines this request, or fails to make a determination within 3 working days, the patient or designated carer or principal care provider can appeal this decision to the Tribunal under s44. This appeal can be made verbally or in writing. If verbal, the request must be noted in the patient file and a copy provided to the Tribunal for evidence of this request. If in writing, a Form 3 or Form 4 must be completed and faxed to the Tribunal.

STEP 4 - TRIBUNAL HEARING

After these 3 steps have occurred a hearing with the Tribunal can be arranged. An application for hearing must be faxed to the MHRT Civil Team on: 9817 4543 along with written evidence of steps 1, 2 and 3 listed above (written request/completed forms/notations in progress notes). Once a hearing date and time is confirmed, the following documentation must be submitted to the Tribunal for the hearings: 1. Copy of current involuntary patient order or Form 1s if the person is not yet an involuntary patient; 2. Report from the AMO explaining why the request was refused or not determined; 3. Progress notes from the patient's file.

NOTE: A patient cannot decide to appeal until after the authorised medical officer has determined a request for discharge or failed to make a determination for 3 working days. The patient can contact the Mental Health Advocacy Service for legal advice and/or representation on: 9745 4277.