

**Authorised Version**  
**Mental Health Tribunal Rules 2014**  
**S.R. No. 89/2014**

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## **Authorised Version**

STATUTORY RULES 2014

S.R. No. 89/2014

### ***Mental Health Act 2014***

### **Mental Health Tribunal Rules 2014**

The Rules Committee established by section 207 of the **Mental Health Act 2014** makes the following Rules:

#### **PART 1—PRELIMINARY**

##### **1 Object**

The object of these Rules is to regulate the practice and procedure of the Mental Health Tribunal.

##### **2 Authorising provisions**

These Rules are made under section 207 of the **Mental Health Act 2014** and all other enabling powers.

##### **3 Commencement**

These Rules come into operation on 1 July 2014.

##### **4 Definitions**

In these Rules—

***register of proceedings*** means the register established under section 176 of the Act;

***the Act*** means the **Mental Health Act 2014**.

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## **PART 2—APPLICATIONS TO THE TRIBUNAL**

### **5 Form of applications**

For the purposes of section 186(a) of the Act, an application to the Tribunal must be in writing.

### **6 Information to be contained in an application**

For the purposes of section 186(b) of the Act, an application to the Tribunal must contain the following information—

- (a) the name of the person making the application;
- (b) the postal or email address of the person making the application;
- (c) if the person making the application does so on behalf of another person, the name and postal address or email of the person on whose behalf the application is made;
- (d) the name of the designated mental health service at which the person who is the subject of the application is receiving treatment under the Act, if applicable;
- (e) particulars of the application that are sufficient to identify the nature of the application.

### **7 Manner of lodging applications**

- (1) Subject to subrule (2), for the purposes of section 186(c) of the Act, an application to the Tribunal may be lodged with the Tribunal by post, facsimile or other electronic transmission.
- (2) An application to the Tribunal to perform electroconvulsive treatment under section 93 or 94 of the Act must be lodged by facsimile or other electronic transmission.

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- (3) An application to the Tribunal under the Act is lodged when it is received by the Tribunal.
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### **PART 3—PROCEEDINGS**

#### **8 Register of proceedings**

For the purposes of section 176 of the Act, the following details must be contained in the register of proceedings in respect of each proceeding commenced in the Tribunal—

- (a) the kind of hearing under the Act;
- (b) the name and state-wide Unit Record (UR) number of the person who is the subject of the proceeding;
- (c) the name of the designated mental health service where the person is treated at the time of the hearing, if applicable;
- (d) the date and place of the hearing;
- (e) the names and class of member of the Tribunal members constituting the Tribunal for that proceeding;
- (f) the application or a copy or electronic record of the application which commenced the proceeding;
- (g) the determination of the Tribunal;
- (h) any statement of reasons prepared under section 198 of the Act;
- (i) the Treatment Order or an order approving electroconvulsive treatment, if applicable;
- (j) if the proceeding relates to an application for approval to perform neurosurgery for mental illness, any clinical information about the person who is the subject of the application that has been submitted to the Tribunal in support of the psychiatrist's application for approval.

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**9 Application for joinder**

An application of a person to be a party to a proceeding under section 183(2) of the Act must—

- (a) be in writing; and
- (b) provide reasons why it is desirable that the person be joined as a party.

**10 Joinder of parties**

- (1) For the purposes of section 183(3) of the Act, a Tribunal member of the class of senior member may join a person as a party to a proceeding.
  - (2) An order to join a person as a party may be made on the papers.
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**PART 4—DOCUMENTS TO BE GIVEN TO THE TRIBUNAL**

**11 Filing and service of documents**

- (1) Unless otherwise provided by these Rules or the Act, if a document is required or permitted to be given to the Tribunal, it is taken to be given to the Tribunal when it is physically or electronically received by the Tribunal Registry at a time when the Tribunal registry is open for business.
- (2) If a document is received at a time when the Tribunal registry is not open for business, the document is taken to be received by the Tribunal on the next day on which the Tribunal registry is open for business.

**12 Clinical reports to be given to the Tribunal**

- (1) In any hearing of the Tribunal, a psychiatrist or authorised psychiatrist (as the case may be) must provide the Tribunal with a clinical report.
- (2) A clinical report given to the Tribunal must be in the form specified in any applicable Practice Note issued for the purposes of providing, making and giving clinical reports.

**13 Specified circumstances in which clinical reports are to be given to the Tribunal**

Without limiting rule 12, a psychiatrist or authorised psychiatrist (as the case may be) must provide the Tribunal with a clinical report in accordance with rule 14 to enable the Tribunal to conduct a hearing and determine—

- (a) whether to make a Treatment Order under section 55 of the Act in relation to a person who is subject to a Temporary Treatment Order; or

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- (b) an application by an authorised psychiatrist for a Treatment Order under section 54 of the Act in relation to a person who is currently subject to a Treatment Order; or
  - (c) whether to make a Treatment Order or revoke an Inpatient Treatment Order under section 55(1) of the Act in relation to a person who is made subject to an Inpatient Treatment Order that was varied to the Inpatient Treatment Order from a Community Treatment Order by an authorised psychiatrist; or
  - (d) an application to revoke a Temporary Treatment Order or Treatment Order under section 60 of the Act; or
  - (e) an application under section 66 of the Act; or
  - (f) an application under section 100 of the Act for neurosurgery for mental illness; or
  - (g) an application by or on behalf of a security patient under section 272 of the Act in relation to whether the criteria set out in section 94B(1)(c) of the **Sentencing Act 1991** currently apply to the patient; or
  - (h) under section 273(1)(a) or (b) of the Act whether the criteria set out in section 94B(1)(c) of the **Sentencing Act 1991** currently apply to a security patient who is subject to a Court Secure Treatment Order; or
  - (i) an application by or on behalf of a security patient under section 278(1) of the Act to revoke a Secure Treatment Order; or
  - (j) under section 279(1)(a) or (b) of the Act whether the criteria set out in section 276(1)(b) currently apply to a

- security patient who is subject to a Secure Treatment Order; or
- (k) an application by a security patient under section 284(1) of the Act for a review of an authorised psychiatrist's decision to not grant a leave of absence; or
  - (l) an application by a security patient under section 294(1) of the Act for a review of a direction to be taken to another designated mental health service; or
  - (m) an application by an authorised psychiatrist or the chief psychiatrist under section 321(1) or 323(1) for an interstate transfer of treatment order.

#### **14 Content of clinical reports referred to in rule 13**

A clinical report referred to in rule 13 must contain the following—

- (a) information on the relevant clinical and personal background of the person who is the subject of the proceeding;
- (b) if the psychiatrist or authorised psychiatrist is required to be satisfied as to certain matters under the Act, the reasons as to why the psychiatrist or authorised psychiatrist is so satisfied;
- (c) particulars of the treatment currently provided to the person who is the subject of the proceeding;
- (d) particulars of the treatment which the authorised psychiatrist proposes to provide to the person who is the subject of the proceeding;
- (e) any advance statement of the person who is the subject of the proceeding;

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- (f) any second psychiatric opinion with respect to the person who is the subject of the proceeding;
  - (g) the views and preferences of the person who is the subject of the proceeding;
  - (h) if required under the Act, the views and preferences of the following persons with respect to the person who is the subject of the proceeding—
    - (i) the nominated person;
    - (ii) a guardian;
    - (iii) a carer;
    - (iv) a parent, if the person is under the age of 16 years;
    - (v) the Secretary to the Department of Human Services.

**15 Clinical report in relation to application for electroconvulsive treatment**

A psychiatrist or authorised psychiatrist (as the case may be) must give to the Tribunal a clinical report in accordance with rule 16 to enable the Tribunal to hear and determine an application for the performance of a course of electroconvulsive treatment under Division 5 of Part 5 of the Act.

**16 Contents of clinical report in relation to application for electroconvulsive treatment**

A clinical report in relation to an application for electroconvulsive treatment must contain the following—

- (a) information on the relevant clinical and personal background of the person who is the subject of the proceeding;

- (b) the reasons why the psychiatrist or authorised psychiatrist is satisfied as to the matters that the psychiatrist or authorised psychiatrist is required to be satisfied under the Act in order to make the application to the Tribunal;
- (c) the proposed number of electroconvulsive treatments to be performed for the course of electroconvulsive treatment;
- (d) the proposed date by which the course of electroconvulsive treatment must be completed if the application is granted by the Tribunal;
- (e) the views and preferences of the person who is the subject of the proceeding and the reasons for those views and preferences, including any recovery outcomes that the person would like to achieve, in relation to—
  - (i) electroconvulsive treatment; and
  - (ii) any beneficial alternative treatments that are reasonably available;
- (f) if required under the Act, the views and preferences of the following persons with respect to the person who is the subject of the proceeding—
  - (i) the nominated person;
  - (ii) a guardian;
  - (iii) a carer;
  - (iv) a parent, if the person is under the age of 16 years;
  - (v) the Secretary to the Department of Human Services;

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- (vi) if the person is a young person who is not a patient, the views of the person who has legal authority to consent to treatment;
- (g) if the application is made under section 94 of the Act in respect of a young person who does not have capacity to give informed consent, the informed consent in writing to the performance of a course of electroconvulsive treatment on the young person given by a person who has the legal authority to consent to treatment for the young person.
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**PART 5—ADDITIONAL APPLICATIONS**

**17 Review of decision of Principal Registrar to reject application**

An application under section 187 of the Act to seek review of a decision of the principal registrar to reject an application must be in writing.

**18 Withdrawal of proceedings**

An application to seek leave from the Tribunal under section 188 of the Act to withdraw an application must be in writing.

**19 Corrections to orders or statements of reasons**

An application for the Tribunal to correct an order or statement of reasons under section 199(2)(b) of the Act must—

- (a) be in writing; and
  - (b) unless special circumstances exist, be made to the principal registrar within 20 business days after the day on which the order or statement of reasons is given to the person; and
  - (c) provide reasons for the person's claim that there is a clerical mistake, error, miscalculation or defect of the kind specified in section 199(1) of the Act that should be corrected; and
  - (d) if practicable, provide particulars of the correction proposed.
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**PART 6—DURATION OF ORDERS**

**20 Duration of the Order**

- (1) For the purposes of determining the duration of a Treatment Order, the Tribunal may calculate the duration in any manner it sees fit, including calculating the duration in a number of weeks immediately following the conclusion of the hearing for that proceeding.
- (2) The Tribunal may state the duration of the Treatment Order in the Treatment Order by stating the commencement date of the Treatment Order and the expiry date of the Treatment Order.

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Dated: 30 June 2014

MATTHEW CARROLL,  
*President*

DOMINIQUE SAUNDERS,  
*Deputy President*

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