

MENTAL HEALTH TRIBUNAL

PRACTICE NOTE 7

OBSERVERS AT MENTAL HEALTH TRIBUNAL HEARINGS

I. PRELIMINARY

Authority

1. This Practice Note has been issued by the Rules Committee of the Mental Health Tribunal in accordance with section 209(2) of the *Mental Health Act 2014* ("the Act").

Introduction and purpose

2. The Mental Health Tribunal conducts hearings at venues across Victoria. Pursuant to section 193 of the Act, hearings are closed to the public.
3. This Practice Note relates to the attendance of observers at hearings only and does not limit the exercise of the Tribunal's power pursuant to subsection 193(2) to order that a hearing or any part of a hearing be open to members of the public if the Tribunal is satisfied that it is in the public interest.

Scope of application

4. In cases that meet the requirements of this Practice Note, the Tribunal may allow the attendance of observers at hearings.
 - 4.1 Where all the requirements of this Practice Note have been met, the decision whether to allow an observer remains at the discretion of the Tribunal.
 - 4.2 Where the Tribunal has allowed an observer to attend the hearing, the Tribunal may request an observer to leave the hearing room at any time for any reason it thinks fit.
5. This Practice Note applies to all persons who are not a 'party' to the proceeding and who are not a patient's carer, friend, family member, guardian, nominated person, advocate or legal representative attending the hearing at the patient's request or a person giving evidence at the hearing.
 - 5.1 Section 182 of the Act defines who is a 'party' to the proceeding.
 - 5.2 The psychiatrist treating the patient is a party to the proceeding pursuant to section 182(b). The psychiatrist may arrange for other members of the treating team to present evidence to the Tribunal or attend the hearing in addition to or on behalf of the psychiatrist.
6. In some cases security or other personnel employed by the designated mental health service may be required to attend a hearing. This Practice Note does not apply to those persons.
7. This Practice Note does not apply to interpreters.

Commencement date

8. This Practice Note takes effect on 18 January 2016.

Definitions

9. Unless otherwise specified, all references to sections in this Practice Note are to sections of the Act.
10. Unless otherwise specified, terms in this Practice Note have the same meaning as in the Act.
 - 10.1 The term 'patient' used in this Practice Note includes:
 - (a) the definition of 'patient' in section 3 of the Act, which defines 'patient' as a compulsory patient; or a security patient; or a forensic patient; and
 - (b) any other person who is the subject of the proceeding but does not fall into the definition of 'patient' under section 3 of the Act.
11. This Practice Note may be referred to as '*PN7 – Observers at Mental Health Tribunal Hearings.*'

II. PROCEDURES FOR THE ATTENDANCE OF OBSERVERS AT HEARINGS

Persons permitted to observe hearings

12. Observers of hearings are limited to persons with a legitimate purpose.
 - 12.1 The Tribunal considers the following observers to have a 'legitimate purpose':
 - (a) persons employed by or engaged in training at the designated mental health service where the hearing is held;
 - (b) persons undertaking research in mental health;
 - (c) persons employed by or engaged in training with the body providing legal representation or advocacy to the patient at the hearing;
 - (d) persons employed by or engaged in training at the Tribunal; and
 - (e) persons whose training in mental health would benefit by observing a hearing.

Members and Tribunal staff observers

13. Where the observer is a Tribunal member or a member of staff of the Tribunal, paragraphs 16, 17 and 25 shall not apply.
 - 13.1 Despite that paragraph 17 does not apply to Tribunal members or members of staff, the Tribunal will take into account as a key consideration the patient's views and preferences as to whether a Tribunal member or member of staff should be permitted to observe the hearing.

Notice to the patient

14. Where the person observing the hearing is engaged by the designated mental health service or the body representing or advocating for the patient, the

designated mental health service or the body should seek and obtain the patient's verbal consent to the observer before the hearing.

- 14.1 In seeking the patient's consent, the relevant designated mental health service or body must discuss the following matters with the patient:
 - (a) the name of the observer and why they wish to observe;
 - (b) that the observer has been made aware of the confidentiality provisions under the Act;
 - (c) that the patient may refuse to give their consent;
 - (d) that there is no need to give any reason for such refusal; and
 - (e) that refusal will in no way impact on the outcome of their hearing.
- 14.2 Where the patient consents to the observer, the relevant designated mental health service or body must inform the Tribunal at the hearing of the discussions it has undertaken with the patient in accordance with paragraph 14.1.

Observer undertaking research

15. If the person wishing to observe the hearing is undertaking research, in addition to the requirements in paragraph 14, the person must write to the President of the Tribunal in advance of the hearing to request to observe the hearing.
 - 15.1 The person must inform the President of their area of research, the reason they wish to observe the hearing and provide information regarding ethics approval of the research.
 - 15.2 The person must demonstrate to the President that they are aware of the confidentiality provisions under the Act.
 - 15.3 If the President approves of the research, the President will provide his or her consent in writing, including any directions or restrictions.
 - 15.4 If the President consents to the research, the person is not required to complete a request form pursuant to paragraph 16. A copy of the President's letter should be provided to the Tribunal members at the relevant hearing.

Completion of the request form

16. The person wishing to observe a hearing must complete the form at Appendix 1 prior to the hearing and submit it to the Tribunal members at the hearing.
 - 16.1 Only one form needs to be completed if the person wishes to observe more than one hearing on the same day and at the same hearing venue.
 - 16.2 The Tribunal will retain the form and upload it to the Tribunal's electronic database.

Patient's consent at hearing

17. Despite the requirements in paragraph 14 being met, where the patient attends the hearing, the attendance of a person observing a hearing is subject to the patient's consent at the hearing. The Tribunal shall satisfy itself that the patient's consent is voluntary and informed at the hearing.
 - 17.1 The Tribunal division shall confirm with the patient:

- (a) the name of the observer and why they wish to observe;
 - (b) that the observer has been made aware of the confidentiality provisions under the Act;
 - (c) that they may refuse to give their consent;
 - (d) that there is no need to give any reason for such refusal;
 - (e) that refusal will in no way impact on the outcome of their hearing; and
 - (f) the patient may withdraw their consent at any time during the hearing.
18. If a patient does not attend the hearing, the person's attendance to observe the hearing is at the discretion of the Tribunal members at the hearing.
- 18.1 In making this decision, a relevant consideration for the Tribunal is whether the designated mental health service or body has sought consent from the patient pursuant to paragraph 14.
- 18.2 The Tribunal may take into account other considerations as it sees fit.

Number of observers

19. Ordinarily, one to two persons at a time will be allowed to observe hearings. In special circumstances, the division may approve more than two persons.

Confidentiality and conduct of observers

20. In addition to any confidentiality or privacy agreement an observer may be subject to at the designated mental health service or representative or advocacy body, all observers are bound by the confidentiality provisions of the Act.
- 20.1 Section 175 provides that a current or former Tribunal member or member of staff of the Tribunal must not disclose any information which may identify a person acquired in the performance of functions or duties or the exercise of powers under the Act. The penalty for disclosure is 60 penalty units. Section 175 contains exemptions.
- 20.2 Section 194 provides that the name and other identifying details of a patient must not be published unless the written consent of the President of the Tribunal has been obtained.
- 20.3 Section 346(1) provides that any member of staff or former member of staff of a mental health service provider must not disclose health information about a consumer. The penalty for disclosure is 60 penalty units. Section 346(2) contains exemptions.
21. The presiding Tribunal member shall confirm the observer's obligations under the Act with the observer.
22. The observer must not participate in the hearing or take notes.

Video hearings

23. During hearings conducted by video-link, where the observer is not in the same room as the patient or the Tribunal, the observer shall remain on-screen at all times.

Written material

24. Access by the observer to the written material prepared by the designated mental health service for the purpose of the hearing is at the discretion of the designated mental health service.

Tribunal's deliberations and decision

25. An observer should not remain in the hearing room while the Tribunal members are deliberating and discussing their decision.
26. The observer may be present when the Tribunal delivers its oral decision.

END OF PRACTICE NOTE



REQUEST TO OBSERVE HEARINGS



| | | | |
|--|--|-------------|--|
| Name | | | |
| Address | | | |
| Position/ occupation | | | |
| Employer/ place of study | | | |
| I request to observe a Mental Health Tribunal hearing. The reason I seek to be an observer is: | | | |
| | | | |
| I request to observe the following hearings: | | | |
| Date of hearing | | | |
| Hearing venue | | | |
| I have read and understood Practice Note 7 and have undertaken the steps outlined in the Practice Note. I understand that even though I have complied with each step in Practice Note 7, the patient's views and preferences are the Tribunal's primary consideration. | | | |
| I have read and understood the secrecy provisions contained in sections 194 and 346 of the <i>Mental Health Act 2014</i> . I have taken note of the penalties that apply pursuant to those sections. | | | |
| In the event that section 346 does not apply to me, I undertake not to publish or cause to be published any report of the Tribunal hearing that may contain any particulars that may lead to the identification of the person who is subject of the proceeding or any other person concerned in the proceedings. | | | |
| Signed | | Date | |

****Please hand this completed form to the Tribunal members at the hearing.**

| | |
|--|--|
| Tribunal member use only: (tick as applicable and list relevant patients) | |
| | Patient names and state-wide UR numbers: |
| <input type="checkbox"/> Patient did not attend hearing and the Tribunal consented to the observer | |
| <input type="checkbox"/> Patient gave consent (at the hearing) to the attendance of the observer | |
| TRIBUNAL MEMBERS TO RETURN COMPLETED FORM IN RED COURIER BAG | |
| Registry use: upload to CMS with determination for the above patients | |