# Part 3: Responding to the needs of particular consumers in order to promote solution-focused hearings

## Chapter 7: Solution-focused hearings for young people

### 7.1 Introduction

In the foreword and elsewhere in this *Guide to Solution-focused hearings in the Mental Health Tribunal*, it is acknowledged that the first edition of the guide was intended to be a starting point that would evolve based on the input of Tribunal members and key stakeholders and our experience of how the Act works in practice.

In particular, it was recognised that a generic guide could not address the needs of all consumers and that it needed to be enhanced to explore solution-focused hearings for particular groups of consumers. One of the groups identified as a priority for initial review were children and adolescents up to the age of 18 years of age (referred to in this chapter as young people).

Accordingly, this chapter focuses on how the Tribunal can improve the experience of young people who are the subject of Tribunal hearings.

### 7.2 Methodology

The initial step towards enhancing the guide and formulating a chapter on the needs of young people was to draft an issues paper to identify some of the concerns surrounding Tribunal hearings for young people, their families and support people.

The issues paper was drafted with input from a variety of sources with expertise in the field and was distributed widely. Submissions were received from: Victoria Legal Aid (VLA), representatives from Orygen services (consumers, family peer support workers and clinicians), the Royal Children's Hospital, and Austin Health – Child & Adolescent Mental Health (forwarding consumer feedback) as well as Mental Health Tribunal members.

In addition Tribunal representatives attended a state-wide meeting of the Children and Adolescent Mental Health Services / Child and Youth Mental Health Services (CAMHS / CYMHS) Clinical Leaders' Group to discuss the issues identified and spoke with clinicians, managers and directors of CAMHS and youth services formally at liaison meetings and informally during the course of conducting hearings. Tribunal members with child and youth expertise were also consulted. Comments from all of these discussions were collated and added to the submissions received.

All submissions and additional comments were then themed and are outlined below as a framework for best practice for conducting robust hearings that maximise participation and involvement of young people and are sensitive to the particular issues that might arise for young people, their families and support networks. Finally, a draft of this Chapter was reviewed by a leading psychiatrist in child and adolescent mental health.

## 7.3 Statistical snapshot

Over the first 18 months of the operation of the Tribunal (1 July 2014 – 31 December 2015) 129 young people being treated compulsorily under the Act were the subject of a hearing conducted by the Tribunal. This represents 1.2% per cent of all Tribunal hearings conducted in this 18-month period. Most of the hearings (126) involved young people between the ages of 15 and 17 and three involved young people under 15.

The rate of consumer attendance was 62% (80). Twenty-six percent (34) were represented by a lawyer. At 55 hearings (43%) records indicate that no family member, carer, nominated person or lawyer were present to support the young person.

The most common diagnoses for patients under the age of 18 were schizophrenia (30), schizo-affective disorder (15), eating disorder (14), bipolar disorder (8) and depressive disorder (2). On 50 occasions the diagnosis was listed as 'other'.[1]

As the statistics for hearings for young people are very low and not considered to be a major part of usual Tribunal business, it is particularly important for Tribunal members to be mindful of the issues concerning young people as they may have contact with a young person at a hearing only a few times in a year.

## 7.4 Practices and Strategies in hearings for young people

In this section we outline practices and strategies that can be adopted in hearings for young people in the three main phases of the hearing process, namely: preparing for the hearing; conducting the hearing and concluding the hearing / delivering the decision.

### 7.4.1 Preparation for a hearing

***Prior to arriving***

Hearings for young people are usually conducted at a specialist service, for example, at one of Victoria's child and adolescent services, the Royal Children's Hospital or at one of the Orygen youth services. As such, Tribunal members rostered to sit at one of these venues should be prepared for the hearing to involve a young person.

Occasionally, however, a young person's hearing will be conducted at a venue that is not a specialist service for young people. In this instance, it is essential that notification that the matter is in regard to a young person be forwarded to the relevant Tribunal members. Accordingly, the Tribunal's registry will attach a notification to the case papers highlighting that the consumer is less than 18 years of age. Any other known information such as whether or not the young person is expected to attend and who else will be present will also be included in the notification.

To help mitigate the issues of mounting anticipatory stress and anxiety for the young person and their support persons, the mental health service will have been advised to list the matter as the first hearing of the sitting if at all possible, thus minimising the waiting time.

**Billy's experience: '**I thought my Tribunal hearing was going to be in the morning, but it didn't end up happening until the afternoon. I was so anxious and nervous because I didn't know when it would happen; I didn't know if I would be waiting for an hour or two hours. I

was just waiting and waiting. It would have been better if the hearing happened first thing in the morning so that I knew what to expect.'[2]

### *The physical environment*

When the Tribunal arrives at the hearing venue, members should assess the physical environment to ensure that it is as welcoming and non-threatening as possible. While many venues have their limitations, clinical teams at CAMHS and youth services have been working with the Tribunal regarding the physical layout of their hearing rooms. It remains the case that some are still far from ideal, for example the young person might be seated in a formal configuration across from the panel of three members at a wide table. The Tribunal has rightfully and necessarily been concerned for members' safety during hearings; however, this should not be a barrier to creating a feeling of comfort and safety for the young person.

A more informal setting is desirable, for example, a semi-circle, provided it is still clear who the Tribunal members are and that they are obviously separate to and independent of the mental health service.[3] In addition, 'a table may not be strictly necessary in the hearing room. If it were necessary, a round table would be better.'[4] One consumer commented: 'no desks / people sitting behind tables like you're being faced with an interview panel.'[5] A familiar, [quiet and comfortable] environment is preferred so that consumers and families feel as safe as possible.'[6] 'Tissues and water should be available.'[7]

### *Tribunal preparation*

Prior to the hearing it will be important to give adequate time for Tribunal preparation and discussion of how to most effectively and sensitively conduct a hearing given what is known (from the clinical reports and the medical records) about the specific circumstances of the young person.[8]

Complexities that might arise in any Tribunal hearing may be especially acute or distressing in the case of young people and, when known in advance, require particular pre-hearing planning – 'this may reduce the need to ask questions already adequately covered in the material.'[9] Volatile family relationships may mean a young person is currently unable to live at home or their situation, including accommodation, may be tenuous. Exploration of such matters may be necessary, but needs to be planned and circumspect. The Tribunal should take into consideration who might be the most appropriate member to lead the general discussion and questioning, including if, and how, any sensitive issues might be addressed. There should be a strategy planned and articulated to alleviate any distress that is evident during the hearing. 'Well prepared and informed members … will contribute to reducing the stress of a hearing.'[10]

### *Anticipatory anxiety*

In spite of many efforts to make Tribunal hearings as informal as possible in the circumstances, Tribunal hearings are often still experienced as a formal process and are anxiety provoking.[11] There can be disparity between what the Tribunal states about itself (that it is informal, solution-focused) and the reality of the Tribunal experience for participants (that it is very formal, even at times, adversarial).[12] In light of this it is imperative to put in place some strategies to reduce any anxiety and to mitigate an overly formal atmosphere, particularly for hearings involving young people.

As a first step, it can be good for one of the Tribunal members to introduce himself or herself to the young person prior to the hearing (on the ward or in the clinic) to explain how the process will work. VLA commented that they

> …have had positive experiences with [Tribunal] members introducing themselves on an informal basis prior to the hearing to reassure the young person and confirm that all relevant information has been received. We encourage this practice to continue.[13]

This may be an opportunity to give a verbal explanation to the young person and their family or support people about how and why the Tribunal hearing is happening as they may not have read or understood the written information provided.

Given how difficult it can be for young people to articulate their feelings, they could also be given the opportunity to write down what they feel at this point.[14] They could then read this out or it could otherwise be presented to the Tribunal.

In addition to this, the member might spend a few minutes checking that the right people are there to support them. At least one member of the treating team whom the young person trusts should be there. This would go a long way to putting the young person at ease, promoting their sense of safety and encouraging them to have confidence to actively participate in the hearing.[15]

Any suggestion that this undermines procedural fairness,

> …is readily countered by the possible benefit to engagement and the opportunity to make the hearing a positive and meaningful experience (therapeutic jurisprudence). This could be explained to other participants beforehand and at the hearing (in opening remarks).[16]

Young people can be 'more sensitive to family relationships [due to] their still evolving independence and can be quite ambivalent of the involvement of key adults in any way'.[17] Mental health services should be aware of this information and have taken 'additional steps to encourage and arrange for families, carers, guardians and those closest to the young person to attend'[18] if appropriate.

## 7.4.2 Conducting a hearing

All Tribunal hearings are meant to be informal. Notwithstanding the need to address issues of procedural fairness and legislative accuracy, additional efforts to make the hearing even less formal than a hearing involving an adult consumer may encourage the participation of a young person.

### *Managing anxiety at the hearing*

Carney et al found that many compulsory patients do not experience hearings as positive or helpful and may feel the system is weighted against them.[19] Added to the feelings of trepidation for most consumers, young people may have the extra burden of not really understanding what the process is all about and feeling powerless and confused.

A brief preamble about how the hearing will progress (even if they have been told previously) can help the young person calm down at the beginning of the hearing.[20]

This should be followed by the 'legal preamble which should not be too long or wordy': mental state and education must be clear considerations to avoid anxiety and perhaps 'getting lost in the words.'[21]

Young people can feel like they are 'on trial' and are being treated like criminals. The information in the preamble could include advising that the hearing process 'is as

much about reviewing the clinical team's decisions' as it is about making decisions about Treatment Orders.[22]

One young person suggested:

> Try to bring a little light heartedness and humour to the situation; it's incredibly intimidating being in a meeting with a group of adults/important people.[23]

**Riley's experience: '**Before the hearing I felt nervous and scared because having to go to a hearing was a completely new experience for me. It was really helpful having a lawyer there to support me and talk for me in the beginning. Once the lawyer began speaking I felt more comfortable and in the end I was able to speak for myself. Once I warmed up I felt comfortable telling the Tribunal what I thought about being in hospital and about the treatment. I felt like I had an opportunity to say what I felt was important and that the Tribunal listened to me.' [24]

### *Use plain English*

Carney et al[25] found that members of tribunals are generally aware of the need for plain English and tailoring language to suit the consumer. The Tribunal always seeks to avoid jargon and technical language but hearings with young people call for even greater vigilance to ensure language is age-appropriate and that what is being discussed is explained in simple, clear and age-appropriate terms. Tribunal members should also be mindful of any developmental or learning difficulties and it is recommended that they frequently 'check-in' to ensure that the young person and their support people are not being overwhelmed by information and that they are following and understanding the proceedings.

As one young person put it:

> Check in with me regularly to make sure I understand everything so far or if I have any questions. Check in with me along the way to see how I'm going. I might need a smoke break or to take a breather for 2 minutes.[26]

### *Effective engagement and rapport*

Engaging the young person and their support persons would be the first priority for any Tribunal division. However, young people suffering mental illness can be 'difficult to engage and can sometimes sit silently and stony faced'.[27] This is better understood as fear, anxiety and powerlessness rather than defiance/obstinacy or difficult behaviour.[28]

Given each hearing is different and each person individual, there may be various unforeseen barriers to full participation in the process. For example, regression during the hearing process is quite possible. 'The stresses of illness, psychosocial adversities, learning and or developmental difficulties' and of the hearing itself can all contribute to the young person regressing during the hearing. In other words, the young person may function at a much younger level than one would expect - cognitively, emotionally and / or socially.[29]

It is more respectful and effective when Tribunal members speak directly with the young person rather than their parent or carer. Questioning should be conversational rather than inquisitorial and the Tribunal should not appear overly deferential to the treating team, parents and other support people. [30] One consumer explained this issue very succinctly: 'Don't talk about me as if I'm not there'.[31]

Whether or not one member should take the lead in engaging the young person will vary according to the physical setting for the hearing, who will be attending and the particular expertise of the members constituting the Tribunal on the day.[32] As previously stated, it might be appropriate for only one person to be the main questioner; and the member with the most rapport perhaps being the one to deliver the decision.[33] However, this 'should not preclude other members questioning other attendees at the hearing for example, treating doctors, case managers, family members' and other support people.[34]

One way to establish rapport and trust and enable participation is for the Tribunal to ask questions, at the beginning of a hearing, more generally about who the young person is independent of any mental illness – questions about 'interests, what the young person's been doing etc.'[35] before the necessary questions that relate to the treatment criteria in the Act. Questions about mental illness and treatment are likely to be more acceptable once rapport and trust have been gained (see, also, addressing sensitive issues below).

### *Addressing sensitive issues*

Each Tribunal division should look at strategies for handling any possibly sensitive issues. If a matter is not particularly relevant and potentially highly distressing, there should be no need to address it in a hearing.[36] Questions to young people need to be framed particularly carefully, and questioning should also be kept to the minimum needed to cover the relevant issues. Having one member responsible for the discussion with the young person may also reduce confusion or a sense on the part of the young person that they are being interrogated.

Tribunal members should have awareness that 'comments made in this setting could have ramifications for the carer when they return home with the young person.'[37]

The experience of trauma, violence, abuse and family breakdown/dysfunction may be among the factors that have made voluntary or less restrictive treatment untenable. In this context sometimes the most neutral questions may inadvertently tap into deeply upsetting or embarrassing emotions. The fear of such issues emerging could restrict participation of a young person.

In some circumstances it may be appropriate to give the young person the opportunity to speak to the Tribunal without the family in the room[38] or for a member to meet the young person individually if they do not want to attend the hearing.

Other possible issues and sensitivities in a young person's life may include: drug and alcohol abuse – in their lives or that of their support people; poverty, sexuality and sexual activity; loss and homelessness and a familial history of mental illness. Questions from relatively safe and non-confrontational areas can progress to areas of greater delicacy and intrusion if necessary and appropriate.[39]

If questioning has led to the young person or one of their support people becoming distressed and emotional, Carney et al suggest acknowledging when a person is upset trying 'to address these emotions as well as what a person may require, whether it be a break, a glass of water or some other support.'[40]

### *Hearing the young person*

In most (but not all) hearings there are people in attendance with opposing views. This complex situation can be overwhelming for the young person at the centre of the issues, whose voice is only one of many and who might feel that they are the least

powerful person in the room.

In this context it is important to bear in mind the principle in section 11(1)(c) of the Act which emphasises the importance of consumers participating in decisions about their treatment:

> Persons receiving mental health services should be involved in all decisions about their assessment, treatment and recovery and be supported to make, or participate in, those decisions, and their views and preferences should be respected.[41]

Accordingly, a central focus must be accorded to the views and preferences of the patient, as well as the people who support them including their nominated person (if there is one identified) and carers.[42] In relation to this, Carney et al found that:

> (human rights) principles could find more room within MHT hearings, through enhanced opportunities for the views of consumers (and their carers) to be reflected in respectful and participatory conversations about the treatment and other issues of concern to them, and through support and advice measures ... to more closely attune decision-making to their views and values.[43]

Carney et al found that a frequently expressed view during fieldwork interviews with consumers was that consumers felt 'forced into a passive role, unable to effectively voice their concerns and have those heard and taken into account' and that consumers felt unable to discuss treatment and support and issues such as housing, employment and support services.[44]

In light of this, the Tribunal should ask at the beginning what the young person would like the outcome to be and let them know that they will have an opportunity to talk about their wishes and respond to the stated wishes and opinions of others.

For some young people, their nominated person, a peer support worker or a trusted case manager could be well placed to present their needs and wishes if they feel nervous or unable to otherwise speak independently.[45]

**Amir's experience:** 'I had only been in Australia for a very short time before I was taken into hospital. My parents wanted to care for me at home but the doctors said that I needed to be in hospital. I wasn't nervous about the hearing - actually I felt good about the hearing before it happened because I thought I could raise my concerns about being in hospital and about the medication I was on and perhaps be able to go home. I liked the idea of being able to talk about what was happening and for me and my family and the doctors to make a decision about what should happen together. However during the hearing I felt like the Tribunal members were mainly listening to the doctors. It would have been better if they listened to me and my family more, instead of just the doctors.'[46]

### *Promoting a recovery focus*

Reflecting and promoting service reforms that had commenced prior to its enactment, the Act embeds a focus on recovery and recovery-orientated practice.[47] Definitions for 'clinical' and 'personal' recovery are well articulated previously in this Guide which suggests the term recovery-oriented practice generally refers to personal recovery, the holistic process of personal growth, self-determination, choice and empowerment, working with the individual's strengths and building hope.[48] The goal of recovery is to progress towards a meaningful and satisfying life and what this means for any particular young person will be subjective, individual and related to their stage of maturity. It will be important for the Tribunal to explore with the young person their particular recovery goals and 'support … encourage [the young person by]

...positively affirming … achievements provided that these are relevant and appropriate…'[49]

### *Allowing for an element of risk*

A recovery-oriented approach involves promoting choice and self-management, even in circumstances where this may involve a degree of risk, and this is reflected in the principles enshrined in the Act.

This concept is sometimes referred to as 'dignity of risk' and evolved in the field of disability rights advocacy. In any hearing the Tribunal is required to explore concerns regarding serious deterioration in mental or physical health; the potential for serious harm; and in this context grappling with the implications of dignity of risk needs to take into consideration a range of perspectives including those of the young person, their nominated person (if they have one) carers and the treating team.

> Assessment of risk and dignity of risk requires consideration of the developmental issues. [It needs to be recognised] that children and adolescents will be much more impulsive than adults because of the immaturity of the developing brain... As well, the young person's concept of death can be quite different from that of the adult… they may think that death is reversible…or even that they are immortal…[50]

Balancing risk and the provision of optimal treatment is a principle which should drive clinical practice and could be assumed/expected that this therefore is an important issue for the treating team. The Tribunal might even explicitly ask the treating team how they see the proposed treatment fitting with a consideration of patient choice and dignity of risk.[51]

### *Role of families and carers*

The role of parents can be very complex and inevitably important, even critical, when the young person lives with the parents. Siblings can also be part of this complexity. As such a hearing can be a traumatic event for family members as well as the young person.[52]

In regard to parents, their

> …reactions to mental illness in their child can be complicated and at times unhelpful. This should … be met with some empathy and efforts to assist and support their understanding and importantly their role in their young person's care. [53]

The Act states that the Tribunal needs to consider the needs and wishes of certain people such as family members and carers[54] and therefore 'carers may need encouragement to attend and [the] young person may need encouragement to invite their family'.[55] There may be an assumption in some services that the consumer does not want family there, whereas the preferable assumption may be that young people *do* want their family there. In many cases, the family will be the people who will be caring for the young person after the Tribunal hearing (or once they are being treated in the community) and they need the ability to express their feelings about that especially if there are safety issues for family members.[56]

Family peer support workers or carer consultants can be used to 'coach' the family about the upcoming Tribunal hearing so they feel less anxious and to empower them to advocate for their needs in a respectful context.[57]

Unfortunately, as observed by VLA:

> …the reality for many of the young people we assist is that often they do not have supports they trust and can rely on. In this context, insisting on the participation of family members can operate to inhibit engagement by the young person. [58]

The Tribunal should be mindful in these situations to ensure that the young person has had the opportunity to get independent legal advice and that all aspects of procedural fairness have been observed.

**A duty lawyer's observation:** 'I assisted a 15-year-old young person with a hearing before the MHT. To everyone's surprise, the young person's father attended the hearing unexpectedly. It was clear from the material contained in the report on compulsory treatment that the family dynamic was a concern. The young person also disclosed in her instructions that she did not feel comfortable returning home.

During the hearing the father was questioned at length about the family environment and his own circumstances before the young person was given an opportunity to speak. Following this the young person did not feel safe to disclose her concerns about the home environment and did not engage well with the Tribunal. Given the power imbalance, she also did not feel comfortable enough to request that her father leave the room.

In this case it would have been appropriate and ultimately more beneficial for the Tribunal to speak with the young person without her father present for a period during the hearing. This should be initiated by the Tribunal because in my experience it is common for young people to not feel comfortable enough to request that their parents leave the room and they are also unlikely to openly discuss issues regarding drug use, family violence or an unwillingness to return to the home environment in front of them.'[59]

***Note taking by Tribunal members***

As mentioned previously in this guide (see paragraph 5.2.1), excessive note taking and reading files during hearings can be a barrier to building rapport and encouraging participation in any Tribunal hearing; these matters may be a particular issue in hearings involving young people. Accordingly, the purpose of taking notes and how they will be taken should be explained. For example, a division may opt to take notes whilst participants are speaking or opt to take pauses while the members take notes during the hearing.

The preferred option is that one Tribunal member is elected to take notes, or that members take notes in turn so that the young person and their support person/s are not faced with the three members all writing at the same time thereby losing eye contact with the young person, risking losing rapport and trust.

### 7.4.3 Concluding the hearing

The Tribunal member who appears to have the most rapport with the young person may be best placed to be the one to deliver the decision.[60] The Tribunal decides whether or not to make an Order and, if so, the category and duration of that Order. Explaining Tribunal decisions can be quite complicated. However, VLA suggests:

> decisions are better received when the Tribunal acknowledge[s] and articulate[s] the specific views of the young person, explicitly state[s] how these have been considered during their deliberations [and provides] specific reasons [for the decision] in an open and direct way. [61]

A particular complication and source of confusion for patients of any age is when the Tribunal makes an Inpatient Treatment Order. The Tribunal sets the duration for compulsory treatment (the majority of which may be received in the community) but

patients often hear the duration as the amount of time they will actually spend in hospital. Regarding the duration of an Order, the Tribunal should be mindful that a young person may have a different perspective of what is considered short-term and long-term.[62]

Carney et al observed that consumers were often confused about the decision and some wanted to discuss or clarify it. Carney suggested that the delivery of the determination should be an opportunity to provide a person with a 'clear outline of how their views have been considered'[63] as a way of validating their concerns and opinions. Listening to and considering consumers' views is integral to solution-focused communication principles and it is important to capture and convey this when explaining the Tribunal's decision.

Accordingly, whether or not the decision was to make an Order or to revoke a current Order, explaining the determination is an opportunity to be reflective about the positive gains the young person has made in their journey thus far to recovery. As noted above, the Tribunal should positively [affirm] the young person's achievements provided that these are relevant, appropriate and specific'[64] and offer encouragement about future progress. The importance of positive feedback as part of the technique of supporting is highlighted earlier in this Guide.

While the discussion cannot be too prescriptive, a young person should leave with a clear picture about 'where to from here?' In other words, if an Order has been made it is preferable for the Tribunal to indicate the support and treatment it will facilitate, and critically, the steps or changes that will mean an Order becomes unnecessary in the future. Of course this discussion can only occur at the time of explaining the determination if the issues have been canvassed in the course of the hearing.

It is important that families and support people are informed of the outcome of the Tribunal hearing – this is particularly important if the outcome is the person living at home and / or if it involves risk for those living at home.[65]

## 7.5 Conducting a hearing with a young person present as a carer or support person for the patient

The Act specifically recognises that young people can be the carer of a family member or friend who has a mental illness (section 11(1)(k) and (l)). The Tribunal intends to undertake further work to identify strategies that facilitate the most effective participation of carers in hearings. As part of this work we will examine whether additional strategies are needed in those instances where a carer is a young person.

Patients may also attend hearings with a young person as support for them or as a dependant. This can give rise to some complexities. Depending on the nature of the issues that may need to be discussed in the hearing, consideration needs to be given to the possibility of any distress or discomfort that the young person might experience as a result of the discussion. This needs to be balanced against the very real possibility that the patient may be distressed if their (young) support person or dependant child is not present – which may impact detrimentally on their participation – and also distress for the young person or child.

These situations are complex and there is no 'one-size-fits-all' solution. Tribunal divisions need to weigh up the following considerations in order to decide whether on balance it is appropriate for the young person or child to be present:

- the age of the young person
- their role in the life of the patient
- the possible content of the information that will be presented at the hearing
- the patient's expressed wish in regards to the presence of the young person or child and in particular, how critical it is to their attendance / participation
- the young person's expressed wish about being present at the hearing
- the treating team's view based on their knowledge of the situation and family roles and
- approaches to the hearing that might enable the young person or child to be present for most of the discussion but absent when distressing matters are being explored.

If it is considered not appropriate or desirable for the young person to attend part or all of the hearing, suitable arrangements need to be confirmed about where they will be and who will be with them. The patient, young person and other relevant people all need to be comfortable with this arrangement.

**Case study:** Danh, a young man in his late teens, lives at home with his parents and other family members. Danh's mother, Kim-Ly, is his primary support and carer. Kim-Ly is also the guardian of her grand-daughter, Lan, who is 18 months old.

It was Danh's first admission to hospital and his diagnosis was uncertain. However, he had made good progress during the three-week admission supported by Kim-Ly who had visited Danh almost every day and was engaging in family meetings and psychosocial education with the treating team (with the assistance of an interpreter).

At the hearing, Kim-Ly asked the Tribunal if she could bring Lan into the hearing as the child care arrangements she had made had fallen through. The Tribunal considered that it was appropriate to allow the little girl to attend the hearing for the following reasons:

• it was Danh 's first hearing and therefore it was particularly important that Kim-Ly was also able to attend, participate and provide him with support

• the Tribunal did not want to exclude family members who were willingly engaging with the service and were keen to provide support to the patient both during his admission and on return to the community

• Lan was an infant and was unlikely to understand the discussion at the hearing given her age and the fact that English was not spoken in the home.

Prior to the hearing, it was agreed with Kim-Ly that if Lan became disruptive or upset, she would take her outside to allow the hearing to progress without distraction.

During the hearing Lan was calm and quiet and sat either in her grandmother's or uncle's lap. Danh was openly affectionate with Lan and this interaction was important for the Tribunal to observe as part of Danh's overall presentation.

At the conclusion of the hearing, Kim-Ly thanked the Tribunal for helping her to participate in the hearing by allowing her grand-daughter to remain in the hearing room.[66]

## 7.6 Conclusion

As stated earlier in this guide, at its heart, a solution-focused approach aims to engage participants in hearings as active partners in the discussion and decision-making process of a court or tribunal. This approach is based on the premise that the best outcomes are achieved when participants in these processes are key players in the formulation and implementation of plans to address the underlying issues. This framework also complements many of the reforms included in the Act, particularly those reforms that promote the right to autonomy, self-determination and supported decision-making.

This chapter has focused on a variety of issues with respect to solution-focused hearings for young people that have been experienced, debated and considered over the first two years of the Tribunal's operation. Situations that have blocked the participation of young people at their hearings have been examined, as have the features of Tribunal practice that have enabled engagement and participation by young people.

Many people including young people and their carers, mental health services for young people and Tribunal members with clinical expertise with young people have been consulted in relation to the drafting of this chapter.

From the above discussion, it is clear that the Tribunal can improve the experience of Tribunal hearings for young people, with resultant better outcomes for all participants. This chapter is a first step towards achieving that aim.

---

[1] All statistics compiled by the Mental Health Tribunal's business analyst.
[2] Victoria Legal Aid, Response to Mental Health Tribunal's discussion paper, 19 August 2015, 4.
[3] Ibid.
[4] Participant at CAMHS / CYMHS Clinical Leaders Group 19 August 2015.
[5] Orygen Youth Health, young person. Email dated 8 July 2015.
[6] Orygen Youth Health, family peer support worker. Email dated 30 July 2015.
[7] Orygen Youth Health, young person. Email dated 8 July 2015.
[8] Tribunal Member, Legal. Submission dated 18 June 2015.
[9] Ibid.
[10] Ibid.
[11] Participant at CAMHS / CYMHS Clinical Leaders Group 19 August 2015.
[12] Ibid.
[13] Victoria Legal Aid, above n 2, 4.
[14] Tribunal Member, Medical. Email dated 1 August 2015.
[15] Ibid.
[16] Ibid.
[17] Tribunal Member, Psychiatrist. Email dated 16 August 2015.
[18] Tribunal Member, Legal. Submission dated 18 June 2015.
[19] Carney, T, Tait, D, Perry, J, Vernon, A, and Beaupert, F, (2011) *Australian Mental Health Tribunals: Space for Fairness, Freedom, Protection & Treatment?* Law and Justice Foundation of NSW, Adelaide, 279.
[20] Participant at CAMHS / CYMHS Clinical Leaders Group 19 August 2015.
[21] Tribunal Member, Psychiatrist. Email dated 2 June 2015.
[22] Orygen Youth Health, clinician. Email dated 8 July 2015.
[23] Orygen Youth Health, young person. Email dated 8 July 2015.
[24] Victoria Legal Aid, above n 2, 4.
[25] Carney et al, above n 19, 178.
[26] Orygen Youth Health, young person. Email dated 8 July 2015.
[27] Tribunal Member, Medical. Email dated 1 August 2015.
[28] Ibid.
[29] Tribunal Member, Psychiatrist. Email dated 16 August 2015.

[30] Victoria Legal Aid, above n 2, 5.
[31] Orygen Youth Health, young person. Email dated 8 July 2015.
[32] Tribunal Member, Legal. Submission dated 18 June 2015.
[33] Tribunal Member, Psychiatrist. Email dated 2 June 2015.
[34] Tribunal Member, Psychiatrist. Email dated 29 May 2015.
[35] Orygen Youth Health, young person. Email dated 8 July 2015.
[36] Participant at CAMHS / CYMHS Clinical Leaders Group 19 August 2015.
[37] Orygen Youth Health, family support worker. Email dated 30 July 2015.
[38] Victoria Legal Aid, above n 2, 5.
[39] Tribunal Member, Medical. Email dated 1 August 2015.
[40] Carney et al, above n 19, 294.
[41] However, the 'views and preferences' principle (section 11(1)(c)) must be balanced against other principles and objectives of the Act, for example, the 'best interests' principle (section 11(1)(i) which states that: children and young persons receiving mental health services should have their best interests recognised and promoted as a primary consideration.
[42] *Mental Health Act 2014*, s. 11(1)(k) and (l); s. 55(2).
[43] Carney et al, above n 19, 46.
[44] Ibid, 272.
[45] Participant at CAMHS / CYMHS Clinical Leaders Group 19 August 2015.
[46] Victoria Legal Aid, above n 2, 6.
[47] Department of Health 2011, *Framework for recovery-oriented practice*, State Government of Victoria, Melbourne.
[48] See 3.3.3 *'Embedding recovery-oriented practice.'*
[49] Victoria Legal Aid, above n 2, 6.
[50] Tribunal Member, Psychiatrist. Email dated 16 August 2015.
[51] Tribunal Member, Medical. Email dated 1 August 2015.
[52] Ibid.
[53] Ibid.
[54] *Mental Health Act 2014*, s. 55(2)(a) for example.
[55] Orygen Youth Health, Family Peer Support Worker. Email dated 30 July 2015.
[56] Ibid.
[57] Ibid.
[58] Victoria Legal Aid, above n 2, 5-6.
[59] Ibid, 6.
[60] Tribunal Member, Psychiatrist. Email dated 2 June 2015.
[61] Victoria Legal Aid, above n 2, 6-7.
[62] Tribunal Member, Legal. Submission dated 18 June 2015.
[63] Carney et al, above n 19, 304.
[64] Victoria Legal Aid, above n 2, 6.
[65] Orygen Youth Health, Family Support Worker. Email dated 30 July 2015.
[66] Tribunal Member, Legal. Email dated 29 June 2016.