



## Application for electroconvulsive treatment – Voluntary Adult

A guide about applying for electroconvulsive treatment for voluntary adults

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### Background

In March 2018 amendments to the *Mental Health Act 2014* (“the Act”) came into effect as a result of a new legislative regime introduced by the *Medical Treatment Planning and Decisions Act 2016* (“MTPD Act”). The amendments extend the Mental Health Tribunal’s (“the Tribunal”) jurisdiction to hear applications for electroconvulsive treatment (ECT) for an adult who is treated on a voluntary basis (“voluntary adult”).

Note: To make an application for ECT for a young person who is treated on a voluntary basis, please refer to the [procedural guide](#) on the Tribunal’s website under *Procedures, Rules and Practice Notes*

### Language

The Act refers to ‘other applicable person’, but for the purpose of this guide, we will use the term ‘voluntary adult’ or ‘person’.

A voluntary adult is a person who is not a compulsory patient or a young person.

For other common terms and their meaning, refer to the Glossary on page 4 of this document.

### Who can apply?

A psychiatrist can apply to perform ECT when:

- the person does not have capacity to give informed consent; and
- the psychiatrist is satisfied that there is no less restrictive way for the person to be treated; and
  - the person has an instructional directive giving informed consent to ECT; or
  - if the person does not have an instructional directive, the person’s medical treatment decision maker gives informed consent in writing to the ECT.

### Documents and resources

The applicant psychiatrist should read these documents before applying. These documents are available on our website at [www.mht.vic.gov.au](http://www.mht.vic.gov.au).

1. Practice Note 1 – Tribunal documents and attendance requirements
2. MHT 39 - ECT Report – Voluntary Adult and instructions

## How to apply?

Complete and send these documents to the Tribunal by email to [registry@mht.vic.gov.au](mailto:registry@mht.vic.gov.au):

- MHA132A (Application for electroconvulsive treatment – Voluntary Adult)
- MHT 39 Electroconvulsive treatment report – Voluntary Adult if available at the time of filing
- Instructional directive giving informed consent to electroconvulsive treatment; or
- MHA131A Evidence of informed consent (in writing) by medical treatment decision maker;
- Evidence of appointment of a medical treatment decision maker;
- Advanced care directive if applicable;
- Any other information that the psychiatrist will rely to support the application.

### Further information to include when emailing the Tribunal

- Details of a contact person to liaise with the Tribunal about the hearing;
- Names of persons who will attend the hearing, including family members;
- Confirmation of legal representation at the hearing and/or whether an interpreter will be required;
- A preferred date and time for the hearing.

## Tribunal Hearing

### Listing the hearing

The Tribunal will hear an application as soon as practicable and within **five business days** of receiving the application.

If the application is urgent, the applicant psychiatrist should include on the Application for ECT that the application is urgent and how and when they need the application to be heard.

The Tribunal will liaise with the health service to organise a hearing date that is mutually convenient to the Tribunal, the treating team and the person subject to the application. The Tribunal will confirm the date, time and location of the hearing will all relevant persons.

The Tribunal will travel to the health service to conduct the hearing. If the hearing is at a private clinic, the Tribunal will need information about the safety of the room and details on how to access the room. The hearing room should meet the following requirements:

- be able to accommodate up to eight people;
- have two exits to facilitate safe exit;
- be designed to create a calm and therapeutic environment.

For further information about room requirements please refer to the guidelines prepared by the Department of Health and Human Services Infrastructure Planning and Delivery Branch.

## Attending the hearing

The applicant psychiatrist must be available for the hearing (see [Practice Note 1](#) under *Procedures, Rules and Practice Notes* on the Tribunal's website regarding attendance requirements). It is beneficial that the consumer attend the hearing as well as the medical treatment decision maker, support person (or other compulsory notification person e.g. Nominated Person) and any other person that the person may wish to bring to the hearing.

The Tribunal division will consist of three Tribunal members –

- a legal member; and
- a psychiatrist member; and
- a community member.

A Tribunal registrar may also attend to help with administrative arrangements for the hearing.

## What happens at the hearing?

The hearing will generally take one hour. It is expected that all parties are available for this time.

The Tribunal always endeavours to conduct hearings with minimal legality and formality. The Tribunal's focus is on hearing from everyone who attends the hearing, and for the discussion to be constructive and respectful of all participants.

The Tribunal can either grant or refuse the ECT application. If the Tribunal grants the application it will set the number of treatments and the timeframe in which those treatments must be completed. An ECT Order can be made for a maximum number of 12 treatments and maximum timeframe of six months.

The Tribunal will give the consumer and the applicant psychiatrist a copy of the determination at the hearing.

If the Tribunal grants an ECT Order the registry will provide a copy of the Order within five business days of the hearing. This Order will be sent to the psychiatrist, the person subject to the proceeding, and the medical treatment decision maker, support person or compulsory notification person.

## Further questions

If you have further questions about ECT applications for voluntary adults please contact us.

## Glossary

### Support person

Under section 31 of the MTPD Act, a voluntary adult who has decision-making capacity may appoint another person as their support person.

The support person's role is to advocate for the voluntary adult and to ensure treatment is provided in accordance with the voluntary adult's preferences and values.

Note: Under section 31(2) only one support person may be appointed for a voluntary adult.

### Medical treatment decision maker

Under section 26 of the MTPD Act, a voluntary adult who has decision-making capacity may formally appoint a medical treatment decision maker. The medical treatment decision maker's role is to make medical treatment decisions on behalf of a voluntary adult who does not have decision-making capacity.

If a voluntary adult does not have an instructional directive, consent for ECT must be obtained from the medical treatment decision maker.

### Compulsory notification person (CN)

Under the Act, the Tribunal is required to notify certain persons of –

1. Tribunal hearings in accordance with section 189, and
2. Tribunal Orders in accordance with sections 96(4) and 195 of the MTPD Act.

In order for the Tribunal to list hearings and notify any CNs, health services need to provide the Tribunal with current contact information for the following people:

- Nominated Person - a person who is formally nominated under section 24 of the Act;
- Guardian – has the same meaning as in Section 3(1) of the Guardianship and Administration Act 1986;
- Carer – has the same meaning as in Section 3 of the Carers Recognition Act 2012.

### Instructional directive

An instructional directive is a set of binding instructions about medical treatment that a person wishes to consent to or refuse.

An *instructional directive* is contained within an advance care directive and only comes into effect after the person receiving treatment no longer has decision-making capacity.

This is distinct from a *values directive* which records a person's preferences or values for medical treatment as part of a non-binding statement.