



# RECORDING HEARINGS

## MENTAL HEALTH TRIBUNAL POLICY ON RECORDING TRIBUNAL HEARINGS

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### Purpose

This policy sets out the approach of the Mental Health Tribunal (the Tribunal) to recording hearings, including hearings where security personnel who are equipped with audio and visual recording devices are in attendance.

### Background

It has been a long-standing policy of the Tribunal not to allow audio or audio-visual recording of its hearings. This policy is based on the secrecy provisions in the *Mental Health Act 2014* (the Act) which apply to the Tribunal's proceedings as well as the particular statutory framework in which the Tribunal operates.

### Privacy obligations

Given the sensitive and highly personal nature of the issues discussed in Tribunal hearings, the Act contains a number of provisions to protect privacy. Current and former Tribunal members and staff have extensive privacy obligations set out in section 175; hearings are closed to the public unless the Tribunal orders otherwise (section 193); and details that identify a patient can only be published with the written consent of the President (section 194).

### Statutory framework

At the same time, the Act contains a range of provisions to ensure the Tribunal is accountable for its decisions. For example, parties to a hearing can make a written request for a statement of reasons for a Tribunal decision (section 198) and can apply to the Victorian Civil and Administrative Tribunal (VCAT) for a review of a Tribunal decision (section 191).

It is relevant to note that VCAT reviews are 'de novo.' This means that VCAT is not limited to considering the evidence provided at the Tribunal hearing but rather hears all the evidence afresh, including any new evidence available at the time of the VCAT hearing.

### Hearings where security personnel are in attendance

Occasionally security personnel attending hearings are equipped with audio and visual recording devices. In such cases, the Tribunal will adopt a balanced approach that accommodates the various interests and concerns arising in these situations.

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Importantly, this policy reflects that if a security incident occurs during a hearing, the hearing will effectively have been interrupted or stood down meaning that anything recorded is an interaction between security personnel and the individual/s involved.

In summary, in these situations:

- Security personnel cannot record hearings. This means they must switch off any audio and / or visual recording devices if present in the hearing room. Security personnel outside the hearing room can have their recording devices switched on.
- If a security incident occurs, security personnel who are in the room may activate their recording devices and any additional security personnel entering the room may do so with their devices switched on.
- If a hearing can be resumed any recording devices must be switched off.

## Queries

If you have any questions regarding the Tribunal's this policy, please contact the Tribunal's legal team by emailing [legal@mht.vic.gov.au](mailto:legal@mht.vic.gov.au) or calling 9032 3200.

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