

## Consumer & Carer Forum- Summary of the Panel Discussion

The Mental Health Tribunal held its Consumer and Carer Forum on Wednesday 18 October.

Over 120 people attended, including over 70 people identifying as either a consumer, a carer or a member of the Lived Experience workforce. After the Forum we sent out a survey monkey link and received 34 responses. Verbal feedback was given on the day and also via email. The survey was developed with the Tribunal Advisory Group.

Our survey results were very encouraging with over 75% of our Evaluation Survey respondents agreeing or strongly agreeing with the statement “I learned something at the Forum that will help me (or help me to support somebody else) participate in a Tribunal hearing.”

Attached is a summary of the questions and answers from the panel discussion. We have not provided a direct transcript as some changes have been made to ensure accuracy and readability of the answers provided.

We have provided the survey data at the of the panel discussion.

## Contents

Consumer & Carer Forum- Summary of the Panel Discussion .....	1
Complaints and feedback at the Mental Health Tribunal.....	3
What are the complaint mechanisms for consumers regarding the Mental Health Tribunal? Is there an external complaints body? .....	3
Lived experience workforce.....	3
How can lived experience workers support consumers in interactions with the Tribunal before, during or after a hearing? .....	3
Carer participation: Private confidential information .....	3
Are families and carers allowed to provide private and confidential information? Can they express their concerns in a private way? .....	3
Can a letter be marked FOI exempt and be submitted to the Tribunal to maintain carer confidentiality? .....	4
The Panel’s views on secrecy sought in hearings .....	5
Role of the Tribunal .....	5
How has the role of Tribunal changed with Mental Health Act?.....	5
How does the Tribunal see its role in reducing the number of Compulsory Treatment Orders across Victoria? .....	6
What is Tribunal attitude and responsibility to Nominated Persons?.....	6
Supported Decision Making .....	6

How is the Tribunal ensuring its members understand work with a supported decision making framework? .....	6
Attending hearings and increasing participation in hearings .....	6
What happens if the person does not know their hearing was scheduled? .....	7
How can the Tribunal improve the experience when people do attend a Tribunal hearing? .....	7
How can you can write your own report for the Tribunal? .....	7
Are there any things/options in place to support consumers when the hearing goes against their wishes? .....	7
In a Treatment Order hearing where the patient is on a Community Treatment Order, can the Tribunal explore ECT treatment? .....	8
Advance Statements .....	8
How much legitimacy does an Advanced Statement have? Consumer outcomes? Preparing for Advanced Statement? How do you recommend someone do so? .....	8
How binding is the Advance Statement? For example, is Advance Statement clearly stating that consumer does not want ECT and does not consent to ECT binding? .....	8
Second Psychiatric Opinion Service .....	9
How much does it cost? .....	9
How do you access or contact the Second Psychiatric Service? .....	9
Unasked questions on the Day .....	10
What emphasis does the Tribunal place on public safety when determining decisions? .....	10
Under what circumstances would the Tribunal NOT accept the recommendations of the authorised psychiatrist and treating team (supported by the family) when all (except the consumer) consider that the risk of relapse is high? .....	10
How do we get information to consumers particularly inpatients when phones and chargers are often restricted along with cost of internet? .....	10
Do you have data about what happens at the end of a Treatment Order that's less than the maximum length of duration? Is a 26-week CTO usually followed by discharge from the Order, or by another 26 week (or other duration) Order? .....	10
Would it be possible for the Tribunal to look at how long the treating psychiatrist has worked with the patient for? .....	10
Given we have recovery-focused approach to mental health, how is a solution-focused approach aligned with this? .....	11
VCAT Appeals .....	11
How many consumer have appealed the decision of the Tribunal at VCAT or equivalent bodies? .....	11
Why are the figures so low? .....	11
What support does a consumer have to appeal the Order? .....	11

## Complaints and feedback at the Mental Health Tribunal

### What are the complaint mechanisms for consumers regarding the Mental Health Tribunal? Is there an external complaints body?

Complaints and feedback about Tribunal members or staff should be made to the Executive Officer. Please contact us via our website or send an email to [mht@mht.vic.gov.au](mailto:mht@mht.vic.gov.au). Information on complaints and feedback is published in our quarterly reports, available on the website.

Some complaints about the Tribunal, inclusive of privacy breaches, can be made to the Health Services Commissioner. When the Tribunal is aware of a privacy breach, the Tribunal advises the affected persons how to make a complaint, and self-reports the breach to the Health Services Commissioner.

Where a consumer disagrees with the outcome of a Tribunal hearing they have three options for appealing the decision. The consumer can appeal to VCAT, apply to the Tribunal for a revocation, or appeal to the Supreme Court on a point of law.

## Lived experience workforce

### How can lived experience workers support consumers in interactions with the Tribunal before, during or after a hearing?

Members of the lived experience workforce can support people by informing them of their rights before and after a hearing. Some workforce members are able to provide support by attending a Tribunal hearing but this is not always possible. There are services such as Victoria Legal Aid, the Independent Mental Health Advocacy Service and the Mental Health Legal Centre that can also assist consumers with support about their rights.

Printed information for *Your rights at a Mental Health Tribunal Hearing* is available on the Tribunal's website. There is also a guide by Victoria Legal Aid: *Going to a Mental Health Tribunal Hearing* available on the VLA website.

When a notice of hearing is sent out, consumers should also receive a copy of 'Your report to the Tribunal'. This document can be used as a prompt for any points you may want to refer to in your hearing and can be provided to the Tribunal members prior to the hearing.

Sometimes workforce members will help debrief after a hearing.

## Carer participation: Private confidential information

### Are families and carers allowed to provide private and confidential information? Can they express their concerns in a private way?

Families and carers may want to talk to the treating team prior to a hearing. Information will **not** generally be kept private or confidential. This is because procedural fairness means that the person who the hearing is about is entitled to read notes and hear what people think about why a Treatment Order is being considered by the Tribunal.

## Can you submit letters to the Tribunal ?

If you bring a letter on the day of the hearing, the Tribunal will consider how to handle the information. You can submit a letter or ask the Tribunal to consider a letter at the hearing, or you can provide information to the treating team, which the treating team can bring to the Tribunal.

Sometimes, families and carers may provide highly sensitive information to the treating team which may be included on the clinical file. If the authorised psychiatrist believes information contained in the clinical file may cause serious harm to the person or to another person (such as harm to an existing relationship), they can apply for an Application to Deny Access to Documents. Please click on arrow below to find out more about Access to Documents.

### → Access to documents

These applications are rare.

The *Mental Health Act 2014* (the Act) is different to the *Freedom of Information Act* (FOI Act) The Act governs a patient's access to information before a hearing.

Tribunal members are very experienced at drawing out information from all parties present at a hearing and are able to ask questions of all parties at the hearing.

The Tribunal finds that in many instances, the person who is the subject of the hearing has a clear understanding of their family's or carer's concerns.

Treating teams may consider how they write notes in clinical files, to consider the ramifications of how their notes are read by the consumer who, in principle, should have access to documents at least 48 hours prior to a hearing. When families or carers share information with the treating team it is important to note that the treating team will write file notes and that such notes can normally be accessed by the consumer.

## Can a letter be marked FOI exempt and be submitted to the Tribunal to maintain carer confidentiality?

No. A patient's right to access documents under the Act is separate from any rights they have under the FOI Act. This means that notations in the clinical file that a document is 'FOI exempt' or similar do not mean that the patient cannot access the documents under the Act.

If written material is provided to the Tribunal about the person who is having a hearing, under the Act, the person is entitled to read it, unless the Tribunal has granted an application to deny access to documents.

People need to be sensitive to these issues and be mindful of maintaining the relationship. It is suggested families and carers think about how to share their views in ways that will not cause friction in their relationship.

If someone has a hearing, and a carer plans to attend, we encourage them to write things down in advance so they can refer to their notes in the hearing, reading it out or talking it through.

## **The Panel's views on secrecy sought in hearings**

The Tribunal invited Peter McKenzie from the Bouverie Centre to be a part of the panel discussion and along with members of our Tribunal Advisory Group. One of the more robust discussions was on how secrecy in relationships can be very damaging for people. The panel talked very strongly about the need to bring people together, to have safe facilitated conversations between patients and their family or carers, perhaps (and ideally) before the hearing.

Family members can decide that they do not want to come to the hearing, or the person who is having the hearing may request that their family or carer are not present. The Tribunal will usually explore this. The Tribunal will try to negotiate a process where everyone can be present in the hearing. However, this is not always possible.

A panel member said:

‘Being upfront can cause lots of issues. Having lost the ability to support the person I care about at different times, I value my relationship with the person I care about, I encourage the person I care for, to tell their clinicians what I’m being told. I will not go to the clinician myself as that would jeopardise our relationship. I strongly encourage the person I care for to have the conversation directly. This has taken a long time to achieve this level of trust between us.’

## **Role of the Tribunal**

### **How has the role of Tribunal changed with Mental Health Act?**

In relation to access to documents, the default position is information under the Act is that a person has access to information about them.

Sharing information is encouraged. There are only a small number of cases where the Tribunal would deny access to material.

The Act introduced very significant changes and these changes are continuing to evolve. One of the most important changes is that the Tribunal is now a primary decision maker (that is, it makes Orders) rather than approving Orders made by the treating psychiatrist. The Tribunal decides whether an Order is required, then make the Order, decide the type of Order and length of Order.

The Tribunal’s role has evolved and it takes a different approach to allow more thoughtful use of hearings. It asks: ‘Why is the treating team asking for a particular Order? Why is the treating team asking for this length of order? ‘

The Tribunal members are inquisitive and curious. They ask questions and use the opportunity to gather perspectives. In summary, the Tribunal seeks to have a conversation within treating teams, consumers and their representatives.

## **How does the Tribunal see its role in reducing the number of Compulsory Treatment Orders across Victoria?**

Members of the Tribunal are consistently providing feedback to consumers, carers and treating teams about how we make decisions. The Tribunal often asks treating teams, how would you know treatment is working? The Tribunal asks detailed questions.

The Tribunal challenges simplistic or superficial treatment plans.

## **What is Tribunal attitude and responsibility to Nominated Persons?**

The Tribunal's responsibility to a Nominated Person is that the Tribunal notify them of the hearing date, in the same way we notify carers.

The Tribunal encourages people to make use of Nominated Persons. A Nominated Person is relevant to a person's life journey, particularly through mental health services. They are very helpful in a range of ways - not just for Tribunal hearings. They provide support and encouragement to the person, through all ups and downs of a person's life.

The Tribunal aims to hold hearings which include the consumer, the important people in that person's life including the Nominated Person, and the treating team. The presence of a nominated person and family members and carers can be extremely valuable.

## **Supported Decision Making**

### **How is the Tribunal ensuring its members understand work with a supported decision making framework?**

Ideally treating teams should be using supported decision making with consumers to make treatment plans where the consumer has more say in their treatment plans and goals.

In the Tribunal's experience, treating teams can and do change their views when they hear the discussions in a hearing, including acknowledging that a voluntary arrangement is now possible. It would be better if this type of discussion happened before a hearing. In the hearing the Tribunal may ask questions of the treating team, the consumer and other parties about the consumer's willingness to make decisions in the context of a broader understanding, and an emphasis on what they want, how they want it and when they want it to happen. One aspect of Supported Decision Making is to explore alternatives with the consumer and the treating team, and getting the treating team and the consumer (and carer/family or nominated person if present) to think about how things could be done differently.

## **Attending hearings and increasing participation in hearings** **Preparing people for their hearings beforehand**

Based on his reflection of the discussion between panel members, Peter McKenzie, the carer academic from the Bouverie Centre commented that:

'It seems to me the work needs to be done before the Tribunal comes into action, particularly about Advance Statements and Nominated Persons. A lot of work needs to be done before you get to the Tribunal, relational work before hearings. Treating teams need to assist with preparations.'

One of the key parts of preparing for a hearing is the clinical report which the service prepares. This report is intended for the patient to read. It should be provided to the person 48 hours or 2 days prior to their hearing. Sometimes, people are not able or they may not want to, read the report. Asking staff to explain what is in the report would be very useful.

### **If they are able to, can consumer be required to attend?**

No, attendance is a choice for the person to make. Some people may find a hearing traumatic, in which case it may be better to have the Nominated Person, Carer (or family member), or legal representative attend on their behalf. The Tribunal encourages attendance as it does help inform their decision.

### **What happens if the person does not know their hearing was scheduled?**

When the Tribunal becomes aware that the person did not know the hearing was scheduled, where possible, it may be adjourned so the person can attend.

The Tribunal is bound by the rules of procedural fairness, and this means that the person should have time to prepare for the hearing, arrange for legal representation and time to read their clinical file.

### **How can the Tribunal improve the experience when people do attend a Tribunal hearing?**

The Tribunal is aware some people feel it is not worth attending their hearing. However, a key aspect of the Tribunal is to facilitate conversation that may not have occurred before. In many cases the Tribunal explores what the person wants from the hearing, their treatment goals and future plans.

### **How can you can write your own report for the Tribunal?**

When Registry sends out a Notice of Hearing they include a copy of 'Your report to the Tribunal' which people can use to write down key points they want the Tribunal to hear; and a copy of "'Your rights at a Tribunal hearing'.

The Tribunal's website has links to useful resources and services that may assist you in preparing for your Mental Health Tribunal hearing. There is a Frequently Asked Questions(FAQs) section on the website. Please click on Orange Arrow to see '*What to expect at my Mental Health Tribunal hearing*'

### **→ What to expect at my Mental Health Tribunal hearing**

One of the panel members said that the Tribunal staff provide very good support to people who have hearings coming up and help people lodge an application to revoke their Order. The staff of the Tribunal also provides information about the other services that can assist.

### **Are there any things/options in place to support consumers when the hearing goes against their wishes?**

The hearing often deals with a range of issues for the consumer and the Tribunal discusses these issues with the treating team, carers, family members and/or nominated persons if they are at the hearing.

The Tribunal can use the hearing process to give people more access to conversations dealing with a range of issues around what is happening to them, including supports from carers and agencies.

This starts with consumer being heard. When the decision is not what the consumer wants, there may be a discussion about the progress and steps needed for their Order to be revoked.

Under the Act, consumers can make an application to revoke the Treatment Order, they can ask for a Statement of Reasons if they did not understand the reasons for the Tribunal's decision. They can also appeal to VCAT.

### **In a Treatment Order hearing where the patient is on a Community Treatment Order, can the Tribunal explore ECT treatment?**

The Tribunal would decide if the person still meets the criteria of the Act to be on an Order. If the Community Treatment Order is revoked, ECT performed under an ECT Order would end. If the Tribunal finds the treatment criteria are met, ECT would continue. If the Tribunal makes a new Treatment Order, the consumer would be advised of their right to apply to the Tribunal to revoke the Treatment Order or apply to VCAT to revoke the Treatment Order or the ECT Order.

When there is an ECT Order the treating team has a duty to check whether the person has the capacity to give informed consent.

## **Advance Statements**

### **How much legitimacy does an Advanced Statement have? Consumer outcomes? Preparing for Advanced Statement? How do you recommend someone do so?**

The panel members commented that they had not seen many Advance Statements. One panel member commented 'We need to see advance statements that are written clearly, coherently and apply to situation in which it is likely to be used.'

There are several organisations that are working on assisting people with writing Advance Statements, for example, the Mental Health Legal Centre, Victoria Legal Aid, and Independent Mental Health Advocacy (IMHA). VMIAC has written a guide for consumers. Some services have developed their own workshops or guides for consumers; ask your service what they can provide to help write an Advance Statement.

### **How binding is the Advance Statement? For example, is Advance Statement clearly stating that consumer does not want ECT and does not consent to ECT binding?**

An Advance Statement is not binding but the Tribunal must have regard to the person's Advance Statement. The Tribunal will look at all of the circumstances. A patient may state, 'I never want to have ECT', but the Tribunal may be satisfied they don't have capacity to give informed consent, and there is no less restrictive treatment available. If the criteria are met, the Tribunal will make the Order.



## **Second Psychiatric Opinion Service**

### **What is the Second Psychiatric Opinion Service and how do you access it?**

The Second Psychiatric Opinion Service has been established to provide independent second psychiatric opinions to 'entitled patients' under the Act, in circumstances when a second opinion via other means is not available or feasible.

The primary means to access a second psychiatric opinion are:

- another psychiatrist at their designated treating mental health service
- a psychiatrist from a different designated mental health service, or
- a private psychiatrist

The Second Psychiatric Opinion Service can assist where these options are not available or feasible.

If you are receiving treatment under the Act, you can also ask someone to contact the Second Psychiatric Opinion Service on your behalf, such as your carer, advocate, treating team, or nominated person.

### **How much does it cost?**

This is a free service.

### **How do you access or contact the Second Psychiatric Service?**

Call 1300-503-426

Email: [intake@secondopinion.org.au](mailto:intake@secondopinion.org.au)

Online form at <https://www.secondopinion.org.au/contact/>

For further information visit the website [www.secondopinion.org.au](http://www.secondopinion.org.au)

## Unasked questions on the Day

### **What emphasis does the Tribunal place on public safety when determining decisions?**

The Tribunal takes into consideration all relevant information depending on the type of hearing it is conducting.

The Tribunal takes a range of factors into account when considering whether the treatment criteria are met. Section 5(b) means that the Tribunal will look whether immediate treatment is required to prevent serious harm to others (so, that would include public safety) and consider whether treatment is required to prevent a serious deterioration in the person's mental health (the risk of relapse is part of that). And when looking at whether there is a less restrictive way for the person to receive treatment (s5(d)) the Tribunal take into account a whole array of factors and the mental health principles in the Act. Where there is a high degree of risk to the public that would be part of the Tribunals' consideration of whether the Treatment Order is required - the bar for less restrictive treatment might be raised where there are considerable risks.

### **Under what circumstances would the Tribunal NOT accept the recommendations of the authorised psychiatrist and treating team (supported by the family) when all (except the consumer) consider that the risk of relapse is high?**

The Tribunal takes all of the information into account, and weighs all of the information provided against the legal requirements of the Act, including the principles and objectives then makes its decision. Sometimes families and carers do not agree with the Tribunal's decision. The risk of relapse is one of many factors the Tribunal would take into account.

### **How do we get information to consumers particularly inpatients when phones and chargers are often restricted along with cost of internet?**

The Tribunal is responsible for sending notices of hearings to people and sends notices of hearing to the hospital if the person is an in-patient. When a notice of hearing is sent out, the Tribunal includes the brochure 'Your rights at a Tribunal hearing' and a template to write their own report to talk through at their hearing.

### **Do you have data about what happens at the end of a Treatment Order that's less than the maximum length of duration? Is a 26-week CTO usually followed by discharge from the Order, or by another 26 week (or other duration) Order?**

No. Unfortunately, this information is not available.

### **Would it be possible for the Tribunal to look at how long the treating psychiatrist has worked with the patient for?**

Many Tribunal divisions ask how long the members of the treating team have known the patient at the commencement of the hearing. Where the Tribunal members are not satisfied with the information before them, the Tribunal members can and do ask for input from someone who has known the patient longer - e.g. by speaking to the consultant by phone.

**Given we have recovery-focused approach to mental health, how is a solution-focused approach aligned with this? Specifically, how does the Tribunal support self-determination and hope? How does it allow for people who do not find medical diagnosis and explanation useful?**

On the Tribunal's website is the resource "A guide to solution focused hearings in the Mental Health Tribunal." It is available on our website by clicking on this arrow:

<http://www.mht.vic.gov.au/wp-content/uploads/2014/07/Solution-focused-hearings-guide.pdf>

The Guide includes the following about the Tribunal's approach to hearings:

"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 proceedings are key players in the formulation and implementation of plans to address the underlying issues." (Page 9)

'..in a jurisdiction such as the Mental Health Tribunal, a member's role is not simply about applying the "black letter" of the law; it is about actively facilitating an approach to hearings that promotes the objectives of the Act, including promoting the recovery of persons who have mental illness and to enable and support persons who have mental illness to participate in decisions about their treatment and recovery." (Page 9)

## **VCAT Appeals**

**How many consumer have appealed the decision of the Tribunal at VCAT or equivalent bodies?**

From the Annual Report

	2016-17	2015-16	2014-15
Applications made to VCAT for review	33	20	24

**Why are the figures so low?**

The Tribunal cannot comment as to whether these figures are low as Tribunals for mental health across Australia are difficult to benchmark. They operate under different Acts and can include different jurisdictions.

**What support does a consumer have to appeal the Order?**

The Tribunal is required to be independent. The support to appeal the Order would be available from organisations who can assist consumers such as Victoria Legal Aid and the Mental Health Legal Centre.

A consumer can apply for a Revocation of Treatment Order, or appeal to VCAT.

## Survey results

We asked people to assess their satisfaction with different aspects of the Forum.

Satisfaction	Very dissatisfied	Dissatisfied	Neutral	Somewhat satisfied	Very satisfied	No Answer
Registration	0	0	0	16.13	74.19	9.68
Info from speakers and panel	3.03	9.09	0	27.27	60.61	0
Information Bags	0	3.03	9.09	15.15	69.70	3.03
Length of Forum	0	0	15.15	15.15	66.67	3.03
Opportunity to have questions answered	9.09	3.03	3.03	21.21	57.58	6.06
Opportunity to network	0	3.03	12.12	12.12	66.67	6.06

We asked people to rate how useful were parts of the Forum

Usefulness	Not Useful	Not very useful	Neutral	Useful	Very useful	No Answer
Welcome & housekeeping	0	0	18.18	39.39	39.39	3.03
Tribunal Advisory Group review	0	0	6.06	45.45	48.48	0
Keynote: Demystifying the Tribunal	0	6.06	15.15	18.18	60.61	0
Therapeutic Family Practice	3.03	6.06	15.15	30.30	42.42	3.03
Poetry and music	0	3.03	18.18	30.30	45.45	3.03
Panel discussion	6.06	9.09	6.06	18.18	57.58	3.03