

MENTAL HEALTH TRIBUNAL

PRACTICE NOTE 1

TRIBUNAL DOCUMENTS (APPLICATION FORMS, URGENT APPLICATIONS AND CLINICAL REPORT TEMPLATES) AND ATTENDANCE REQUIREMENTS

I. PRELIMINARY

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

Introduction and purpose

2. The Mental Health Tribunal has decision making functions with respect to a range of hearing types under the Act. The Act provides who may make an application and the time within which an application may be made.
3. If a person is entitled to make an application to the Tribunal, the person must make an application in writing. The Mental Health Tribunal Rules 2014 prescribe what information must be contained in an application to the Tribunal and how the application must be lodged.
4. The Rules also prescribe that for certain applications, the authorised psychiatrist or psychiatrist must submit a clinical report that contains information of the type specified in the Rules.
5. The purpose of this Practice Note is to identify template application forms which can be used to facilitate an application to the Tribunal under the Act and to provide template clinical reports to assist authorised psychiatrists or psychiatrists to provide the information required by the Rules.
6. This Practice Note also provides guidance on the procedure to be followed when lodging urgent applications.
7. Finally, this Practice Note identifies the attendance requirements for all hearing types and provides guidance on preparation for hearing.

Commencement date

8. This Practice Note takes effect on 1 July 2014.

Definitions

9. Unless otherwise specified, all references to sections in this Practice Note are to sections of the *Mental Health Act 2014*.
10. Unless otherwise specified, terms in this Practice Note have the same meaning as in the Act.

11. This Practice Note may be referred to as '*PN 1 - Tribunal Documents (Application Forms, Urgent Applications and Clinical Report Templates) and Attendance Requirements.*'

II. APPLICATION FORMS

12. The Department of Health has developed a range of application forms to assist potential applicants in making an application so that applicants can understand what information is required and can more easily comply with the relevant legislative requirements.
13. If you intend on making an application to the Tribunal, you can download the application forms from the Department of Health's website at: www.health.vic.gov.au
14. Certain forms are also available on the Mental Health Tribunal's website at: www.mht.vic.gov.au
15. **Applications to the Tribunal to perform electroconvulsive therapy** can only be submitted by email or fax to the following address/number:

Mental Health Tribunal

Facsimile: 9032 3223

Email address: mht@mht.vic.gov.au

16. **All other application forms** may be submitted to the Tribunal by post, fax or email during business hours at the below address:

Mental Health Tribunal

Level 30, 570 Bourke Street

Melbourne 3000, Victoria, Australia

Facsimile: 9032 3223

Email address: mht@mht.vic.gov.au

III. URGENT APPLICATIONS

17. Where the *Mental Health Act 2014* permits an application to be made to the Tribunal for an urgent hearing and a person seeks to apply for an urgent hearing, the application must be lodged after the person first gives the Tribunal notice of the urgent application by --
 - (a) telephoning the telephone number specified on the Tribunal website or other documents for the purposes of making an urgent application and providing the following particulars --
 - (i) the name of the person making the application;
 - (ii) that the person is making an urgent application; and

- (iii) particulars of the application sufficient to identify the nature of the application and why the person considers the application is urgent.

IV. CLINICAL REPORTS TO BE PROVIDED

18. Rule 10 of the Rules requires that a psychiatrist or authorised psychiatrist give to the Tribunal a Report that contains clinical information with respect to all hearing types.
19. This Practice Note incorporates template Reports that can be used to provide the Tribunal with the information required by the Rules for each application type.
20. These template Reports identify the required information that must be included in the Report before it is provided to the Tribunal.
21. Reports must be provided to the Tribunal as soon as is reasonably practicable or otherwise as directed by the Tribunal.

Temporary amendment to clinical report requirements due to ongoing pressures on the health system until 3 March 2023

This amendment sets out reduced requirements for clinical reports for Tribunal hearings if and when mental health services are impacted by ongoing pressures to the health system including those arising from COVID-19. Even though the pandemic declaration ended on 12 October 2022 health services are still operating according to stringent protocols to limit the impact of COVID-19 and the ongoing impact of COVID-19 is still significant. This amendment currently applies to hearings listed until and including 3 March 2023 at which point it will be reviewed.

The Rules require mental health services to give the Tribunal clinical reports in the form set out in the Tribunal's Practice Notes. In all of the most common hearing types, report templates are provided. Practice Notes 2-6 set out the information to be provided in less common hearing types. The Rules and Practice Notes are available on the Tribunal's website under the following link: <https://www.mht.vic.gov.au/rules-and-practice-notes>.

If mental health services are unable to provide a report in the usual format due to the impact of COVID-19, they can provide the Tribunal with:

- if one is available, a previous report for the same hearing type prepared within the last 12 months, together with a brief written update to that report, noting what has changed since the previous report; OR
- If there is no report for the same hearing type from the past 12 months, a brief document setting out –
 - the relevant clinical and personal background of the patient
 - the reasons the authorised psychiatrist or psychiatrist is satisfied of the criteria that apply to that hearing type
 - the current and proposed treatment
 - whether there is an advance statement or second psychiatric opinion (and provide

copies if available)

- the patient's views and preferences
- the views and preferences of any other persons whose views the Tribunal is required to take into account – for example any nominated person, guardian, carer etc.

Additional information required for ECT hearings is:

- the proposed number of treatments and the proposed date by which treatment must be completed if the application is granted by the Tribunal.
- for voluntary patients, any informed consent in writing that is required; OR
- If this written summary cannot be prepared, the following should happen:
 - Provision of the usual extracts from the patient's clinical file (see our Guide for health services – uploading documents for Tribunal hearings available on the [guides, policies and procedures tab](#) of the Tribunal's website.)
 - Attendance at the hearing by a representative of the service with sufficient knowledge of the patient and experience with Tribunal hearings, to be able to provide oral evidence addressing the matters listed above that would otherwise be covered in a written summary.
- In addition, mental health services are required to advise the Tribunal in advance of any hearing where no report or written summary can be prepared and/or it is not possible for the service to provide parties and attendees with the MS Teams hearing links.

Available templates

22. Template Reports are provided as follows:

- 22.1 Report for hearings about a Treatment Order;
- 22.2 Report on Court Secure Patient Order;
- 22.3 Report on Secure Patient Order;
- 22.4 Electroconvulsive Treatment Report - Adult Patients;
- 22.5 Electroconvulsive Treatment Report - Young Persons (patients);
- 22.6 Electroconvulsive Treatment Report - Young Persons (voluntary);
- 22.7 Application to perform neurosurgery for mental illness.

Templates to be used for each hearing type

23. The **Report for hearings about a Treatment Order** template may be used for hearings under Part 4 of the Act, including hearings to determine:

- 23.1 whether to make a Treatment Order under section 53 in relation to a person who is subject to a Temporary Treatment Order; or
 - 23.2 an application by an authorised psychiatrist for a Treatment Order under section 54 in relation to a person who is currently subject to a Treatment Order; or
 - 23.3 whether to make a Treatment Order or revoke an Inpatient Treatment Order under section 58(5) in relation to a person who is made subject to an Inpatient Treatment Order, that was varied to the Inpatient Treatment Order from a Community Treatment Order by an authorised psychiatrist; or
 - 23.4 an application to revoke a Temporary Treatment Order or Treatment Order under section 60.
24. The **Report on Court Secure Treatment Order** template may be used for:
- 24.1 hearings conducted under section 273(1)(a) within 28 days of the security patient being received at the designated mental health service;
 - 24.2 hearings conducted under section 273(1)(b) at least every 6 months during the treatment of the security patient following the initial review of the Order;
 - 24.3 an application under section 272 by or on behalf of the security patient to determine whether the criteria in section 94B(1)(c) of the *Sentencing Act 1991* apply to the patient.
25. The **Report on Secure Treatment Order** template may be used for:
- 25.1 hearings conducted under section 279(1)(a) within 28 days of the security patient being received at the designated mental health service;
 - 25.2 hearings conducted under section 279(1)(b) at least every 6 months during the treatment of the security patient following the initial review of the Order;
 - 25.3 an application under section 278 by or on behalf of the security patient to revoke the Secure Treatment Order.
26. The **Electroconvulsive Treatment Report - Adult Patients** template may be used for applications to perform a course of electroconvulsive treatment on a patient who is not a young person, under section 93.
27. The **Electroconvulsive Treatment Report- Young Persons (patients)** template may be used for applications to perform a course of electroconvulsive treatment on a patient who is a young person, under section 94(1).
28. The **Report on Electroconvulsive Treatment Report - Young Persons (voluntary)** template may be used for applications to perform a course of electroconvulsive treatment on a young person who is not a patient, under section 94(2).

29. The Application to perform neurosurgery for mental illness template may be used for applications to perform neurosurgery for mental illness, under section 100.

V. ATTENDANCE REQUIREMENTS

30. The following attendance requirements are relevant for all hearing types.
31. At a minimum, services must ensure a medical officer with relevant experience as well as direct and sufficient knowledge of the patient is available to provide information to the Tribunal.
32. A consultant psychiatrist should also be available to provide information where necessary. If unable to attend the hearing in person, it will be sufficient for the consultant psychiatrist to attend by telephone.
33. If clinical staff at the hearing are unfamiliar with the patient and the consultant is unavailable, it is unlikely that the Tribunal will be able to make a Treatment Order. The Tribunal recognises that if the hearing concerns a person's first compulsory admission, it is possible the treating team will still be in the process of developing this knowledge. The Tribunal strongly encourages the attendance of case managers as their perspective and input is invaluable.
34. In preparing for a Tribunal hearing, a treating team should have regard to the complexity of a particular matter. If the circumstances of a particular case are complex, the treating psychiatrist should attend. The Tribunal recognises that complexity cannot always be predicted and questions may arise on the day of the hearing, and as such the treating psychiatrist needs to be available to contribute to a hearing (including by telephone) in the event that issues arise requiring their input.
35. If it is not possible for the treating psychiatrist to be available, the Tribunal requires another senior clinician with sufficient knowledge of the individual patient's current circumstances and treatment plan to attend in their place.

END OF PRACTICE NOTE