Electroconvulsive Treatment Report instructions

Urgent hearings

A psychiatrist or authorised psychiatrist may request the Tribunal to list an urgent ECT hearing in limited circumstances. The psychiatrist or authorised psychiatrist must be satisfied that the course of ECT is necessary as a matter of urgency to:

- save the life of the person; or
- prevent serious damage to the person; or
- prevent the person from suffering or continuing to suffer significant pain or distress.

In these circumstances the Tribunal will list and complete the hearing as soon as practicable. In all other circumstances, the Tribunal will list and complete the hearing within a maximum of five business days of receiving the application (usually much sooner).

In order to make an urgent application, please email or fax a completed ECT application form (do not send via post) to the Tribunal. At the same time, please telephone the Tribunal on 9032 3200 to notify the Tribunal of the urgent application.

Guidance for preparing the report

The ECT Report should be a collaborative report prepared by registrars / medical officers and case managers, and reviewed and endorsed by the authorised psychiatrist (or delegate) or treating psychiatrist in the case of applications for ECT for voluntary adults or young people. This is to ensure that all relevant information is included in the report and the Tribunal's decision is based on a holistic understanding of the patient. Details should be written in plain English, avoid jargon and acronyms and explain medical terminology using descriptive language to enable patients to understand the contents.

Please note that insufficient evidence to substantiate the treating team's position that the ECT criteria are met will mean that the Tribunal cannot make an ECT Order. Please ensure the Report is sufficiently detailed.

Attaching documents to the report is permitted and will reduce the time required to prepare this report and the amount of time required by the Tribunal to prepare for each hearing. Information contained in attached documents does not need to be repeated in the report and responses to questions can refer to the relevant attachment. However, it is not sufficient to answer questions simply by referring the Tribunal generally to a patient's clinical file.

Relevant sections of the *Mental Health Act 2014*

The following information does not attempt to outline all the criteria for each of the different ECT application types but rather provides information on some common terms used in the Act and also in the ECT clinical report templates.

Provisions regarding capacity to consent

Section 68(1) of the *Mental Health Act 2014* ("the Act") provides that a person has the capacity to give informed consent if the person:

- understands the information he or she is given that is relevant to the decision; and
- is able to remember the information that is relevant to the decision; and
- is able to use or weigh information that is relevant to the decision; and
- is able to communicate the decision he or she makes by speech, gestures or any other means.

Section 69(1) provides that a person gives informed consent if they:

- have the capacity to give informed consent to the treatment or medical treatment proposed; and
- have been given adequate information to enable the person to make an informed decision; and
- have been given a reasonable opportunity to make the decision; and
- have given consent freely without undue pressure or coercion by any other person; and
- have not withdrawn consent or indicated any intention to withdraw consent.

Under section 70(2) the person seeking the informed consent of another person to a treatment or medical treatment must presume that the other person has the capacity to give informed consent. However, under section 70(3), a person does not have to seek informed consent if they form the opinion that the other person does not have the capacity to give informed consent at the time the informed consent would otherwise be sought.

What is meant by least restrictive treatment?

In determining whether ECT is the least restrictive way for a person to be treated, the authorised psychiatrist or psychiatrist must (to the extent that is reasonable in the circumstances, have regard to a range of factors in section 93(2), 94(3) or 94A as follows:

- the views and preferences of the patient and any beneficial alternative treatments that are reasonably available and the reasons for those views or preferences, including any recovery outcomes the patient would like to achieve;
- the patient's advance statement;
- the views of the patient's nominated person;
- the views of the patient's guardian;
- the views of a carer of the patient, if ECT will directly affect the carer and the care relationship;
- the views of the parent, if the patient is under the age of 16 years;
- the views of the person who has legal authority to consent to treatment, if the patient is a young person;
- the likely consequence for the patient if ECT was not performed; and
- any second psychiatric opinion obtained by or on behalf of the patient.

Voluntary adult patients

In applications for ECT for voluntary adults, the authorised psychiatrist or psychiatrist must also have regard to the following factors (listed in section 94A):

- any values directive of the person;
- the views of the person's medical treatment decision maker or support person (if any).

Scope of Orders

If the Tribunal makes an ECT Order it must specify the approved course of ECT and the duration of the Order. Under section 91(1) a course cannot exceed 12 treatments, and the duration must not exceed six months, subsequent Orders can be made (see below).

Regaining capacity during a course of ECT

A principle of the Act is that a person's capacity to give informed consent may change over time: section 68(2). Therefore, a person who previously lacked capacity to give informed consent to ECT may develop capacity.

If a person is being administered ECT pursuant to a Tribunal Order and they regain/ have capacity and refuse ECT, that refusal must be respected. In accordance with section 98 of the Act, ECT must not be performed on a patient who withdraws their consent (if they had previously consented) or on a patient who develops capacity to give informed consent and subsequently does not consent to ECT (in cases where the Tribunal has granted an ECT Order).

Similarly, in the case of voluntary adults and young people ECT, if the medical treatment decision maker (in the case of adults) or a person with the legal authority to consent to treatment (in the

case of adults) gave informed consent to ECT, ECT must not be performed if that person withdraws consent.

In a situation such as this, the Tribunal Order is effectively nullified. Should the person's capacity subsequently become impaired and their treating team believe ECT is required, a further application must be made to the Tribunal if their treating psychiatrist believes the statutory test is met.

Further applications to perform ECT

A psychiatrist or authorised psychiatrist may make a further ECT application during or after the performance of a course of ECT. If there are any treatments that have not been performed subject to the previous Order, the remaining treatments will not be added to the new ECT Order. For example, if there are two remaining treatments on the previous Order and the psychiatrist or authorised psychiatrist applies for (and the Tribunal authorises) a further 12 treatments, the person may only be administered 12 further ECT treatments, not 14.

The new ECT order will replace the previous ECT Order. Once the Tribunal grants a new Order, the previous ECT Order is no longer effective and any remaining treatments under the previous Order must not be performed.

Patient's access to information

Under section 191(1) of the Act a designated mental health service must give a person who is the subject of a proceeding access to any documents in its possession in connection with the proceeding at least **48 hours** before the hearing.

The Tribunal has released a detailed Practice Note and related resources to guide all participants in hearings on a patient's right to access documents before hearings, when and how an application to deny access to documents needs to be made and the procedure to be followed in the hearing of such applications.

In particular, the Practice Note sets out certain documents (including this Report) that the Tribunal considers always have the requisite 'connection with the proceeding.' The Tribunal requires designated mental health services to give patients access to these documents (*at a minimum)* unless the authorised psychiatrist is satisfied that the serious harm test is met. If this is the case the authorised psychiatrist must apply to the Tribunal to deny the patient access to the particular documents.

If there is no document on a patient's file that, if disclosed, may cause serious harm to them or another person, then the most straightforward strategy to comply with section 191 of the Act will usually be to give the patient access to the current volume of their clinical file.

For further details please refer to Practice Note 8- Access to Documents and related resources available on the Tribunal's website.

Access to documents in ECT applications involving voluntary adults or young people treated at private facilities

Mental health services that are not designated mental health services under the Act are not strictly subject to section 191. In practice this only affects hearings for applications for ECT for voluntary adults or young people. However, providing persons access to documents before their hearing, particularly the ECT clinical report is still required. This is because the Tribunal is bound by the rules of procedural fairness which includes that people must have an adequate opportunity to prepare for their hearing and to respond to what is said about them. If a mental health service has not given the person access to the report and other relevant documents that will be before the Tribunal in advance of the hearing, the hearing may not be able to go ahead (for instance, the Tribunal may need to adjourn the hearing to allow time for this to occur).

Treating team attendance at the Tribunal hearing

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. A consultant psychiatrist should also be available (by telephone will be adequate) to provide information where necessary. If clinical staff at the hearing do not know the patient and the consultant is unavailable, it is unlikely the Tribunal will be able to make an ECT Order. (The Tribunal acknowledges that if the person was admitted for the first time recently first the treating team may still be in the process of developing this knowledge.) The Tribunal also strongly encourages the attendance of case managers as their perspective and input is invaluable.

Planning for Tribunal hearings by treating teams needs to involve assessing the complexity of a particular matter and if the circumstances of a particular case are complex the treating psychiatrist should attend. Of course complexity cannot always be predicted and questions can arise on the day, as such the treating psychiatrist needs to be available to contribute to a hearing (including by telephone) in the event issues or questions arise requiring their input. If it is not possible for the treating psychiatrist to be available another senior clinician with sufficient knowledge of the individual patient's current circumstances and treatment plan must be able to cover for them.

Last updated: February 2018