

MENTAL HEALTH TRIBUNAL

PRACTICE NOTE 2

APPLICATIONS TO PERFORM NEUROSURGERY FOR MENTAL ILLNESS

I. PRELIMINARY

1. This Practice Note has been issued by the Rules Committee of the Mental Health Tribunal (the Tribunal) established by section 389 of the *Mental Health and Wellbeing Act 2022* (the Act) and this Practice Note has been made pursuant to section 391 of the Act.

Introduction and purpose

2. The Tribunal has decision making functions with respect to a range of hearing types under the Act.
3. Under section 120 of the Act, a psychiatrist may apply to the Tribunal for approval to arrange for the performance of neurosurgery for mental illness on a person if the person has personally given informed consent in writing to the performance of neurosurgery on himself or herself.
4. The Tribunal must hear and determine an application made under section 120 within 30 business days after receipt of that application.
5. The Tribunal must not grant an application unless it is satisfied that the person in respect of whom the application is made has given informed consent in writing to the performance of neurosurgery for mental illness on himself or herself and the performance of neurosurgery for mental illness will benefit the person.
6. In determining whether the neurosurgery will benefit the person, the Tribunal is required to consider the matters specified in section 121(3) of the Act.
7. The Tribunal requires the psychiatrist who made the application, to give the Tribunal a report in order to assist the Tribunal to consider the matters it is required to consider under the Act.
8. To this end, the purpose of this Practice Note is to assist psychiatrists to provide the report required to assist the Tribunal to make its determination. It describes the minimum information relevant to the particular application for review.

Scope of application

9. This Practice Note applies to a psychiatrist who has applied to the Tribunal for approval to arrange for the performance of neurosurgery for mental illness under section 120 of the Act.
10. The guidance in this Practice Note does not exhaustively determine the matters which the psychiatrist may provide to the Tribunal. In each case, the Tribunal may require the psychiatrist to provide further information and/or attend the hearing of the application.

Commencement date

11. This Practice Note takes effect on 1 September 2023.

Definitions

12. Unless otherwise specified, all references to sections in this Practice Note are to sections of the Act.

13. Unless otherwise specified, terms in this Practice Note have the same meaning as in the Act.
14. In particular, readers of this Practice Note should understand the following definitions:
 - 14.1 **'capacity to give informed consent'** as defined at section 87 of the Act
 - 14.2 **'informed consent'** as defined at section 86 of the Act;
 - 14.3 **'neurosurgery for mental illness'** is defined at section 3 of the Act.
15. This Practice Note may be referred to as '*PN 2 - Applications to perform neurosurgery for mental illness*'.

II. CONTENT OF REPORT

16. Where an application is made under section 120, the psychiatrist must provide a report to the Tribunal that contains the following information that clearly identifies:

Identifying details

- 16.1 The applicant psychiatrist's:
 - (a) name; and
 - (b) address for service;
- 16.2 With respect to the person who is the subject of the application, that person's-
 - (a) name;
 - (b) residential address and/or other address for service;
 - (c) date of birth;
 - (d) usual occupation;
 - (e) name and address of the person's carer (if applicable);
 - (f) name and address of the person's treating psychiatrist;

Information concerning the person upon whom it is proposed to perform neurosurgery

- 16.3 Details of the person who is the subject of the application's capacity to give informed consent to the proposed neurosurgery for mental illness;
- 16.4 Details of whether the person who is the subject of the application has given informed consent to the performance of neurosurgery on himself or herself, including the process that has been followed and the information provided to obtain the patient's informed consent;
- 16.5 Details of who will perform the neurosurgery for mental illness and where it will be performed;

- 16.6 Details of who will be the members of the patient's treating team leading up to and following surgery;
- 16.7 Particulars of the exact nature of the neurosurgery for mental illness proposed to be performed; and
- 16.8 Whether the patient's treatment is part of a research program and, if so, what the details of this are;

Information concerning the benefit of neurosurgery

- 16.9 Detailed reasons as to why the psychiatrist considers that the proposed neurosurgery for mental illness will benefit the person, having regard to each of the following:
 - (a) whether neurosurgery for mental illness is likely to remedy the mental illness or alleviate the symptoms and reduce the ill-effects of the mental illness;
 - (b) the likely consequences for the person if neurosurgery for mental illness is not performed;
 - (c) any beneficial alternative treatments that are reasonably available and the person's views and preferences about those treatments; and
 - (d) the nature and degree of any discomfort, risks and common or expected side-effects associated with the proposed neurosurgery for mental illness, including the person's views and preferences about any such discomfort, risks or common or expected side-effects;

Include attachments with the report

- 16.10 Details of assessments that have been undertaken in order to reach the decision to apply to perform neurosurgery;
 - (a) Attach all relevant reports and results of investigations from treating psychiatrists and other persons, and include a full psychiatric history; and
 - (b) See following paragraph for a list of the relevant assessments;
- 16.11 The psychiatrist must attach to the report a copy of the following documents:
 - (a) The written informed consent of the person who is the subject of the application in the form of the Tribunal's Template '**Consent to performance of neurosurgery for mental illness**';
 - (b) Any medical test results for the person who is the subject of the application; including, if available:
 - (i) full blood count (including ESR, electrolytes and creatinine);
 - (ii) skull and chest X-rays;
 - (iii) EEG results;

- (iv) brain imaging;
 - (v) thyroid function test results;
 - (vi) liver function test results;
 - (vii) Vitamin B12 and folate;
 - (viii) syphilis serology results; and
 - (ix) AIDS antibody testing.
- (c) Any psychological test results; including (if applicable) the result of:
- (i) IQ tests;
 - (ii) personality or neuropsychological tests;
 - (iii) depression and anxiety ratings, performed by persons who are skilled in the administration and interpretation of those instruments;
- (d) Details of previous treatments that have been tried to alleviate the condition for which it is proposed to perform the neurosurgery, including all treating details and responses, including the chronology, dosage, combination, duration of treatment procedures, the responsible clinician's name, place of administration and response;
- (i) Antidepressants (including SSRI, SNRI, MAOI, NARI, Tricyclic and Tetracyclics);
 - (ii) prescribed medications; particularly, antipsychotics and mood stabilisers, clomibramine (in the case of a person who has been diagnosed with Obsessive-Compulsive Disorder);
 - (iii) Electroconvulsive treatment (unilateral and bilateral) and/or transcranial magnetic stimulation (rTMS);
 - (iv) Psychotherapy, including cognitive behaviour therapy, interpersonal therapy, or any other treatment;
- (e) clinical notes of all significant inpatient admissions relevant to the application, or if not practicable to provide such notes, accurate and detailed chronological summaries of those notes;
- (f) detailed reports from all medical and allied health professionals who have provided significant treatment and care for the patient during periods relevant to the application, which include:
- (i) accurate and detailed chronological summaries of all pharmacological, psychiatric, psychological and other treatments provided to the patient;
 - (ii) detailed reports from all treating practitioners, including consultant psychiatrists, psychologists and all other allied health professionals, including

- (A) any mental state, treatment or other relevant assessments given; and
 - (B) outlining their involvement in the patient's treatment;
- (g) accurate and detailed chronological summaries of the clinical notes of all significant inpatient admissions relevant to the application;
- (h) detailed report(s) from at least one of the leading clinicians containing, with respect to the person who is the subject of the application, an accurate and detailed:
 - (i) chronological developmental history;
 - (ii) chronological past psychiatric and co-morbid psychiatric history;
 - (iii) chronological pharmacotherapy and treatment history relevant to the application, including:
 - (A) names of medications;
 - (B) combinations of medications;
 - (C) dosages of medications;
 - (D) dates and periods of use;
 - (E) changes to the medications and the dates of those changes;
 - (F) cessation of the treatment and the dates of the cessation;
 - (G) symptom response and benefits, and periods of symptom response and benefits;
 - (H) side-effects and adverse reactions;
 - (I) periods of side-effects and adverse reactions;
 - (J) clinical indications; and
 - (K) reasons for decisions to change and/or cease medications;
- (i) a detailed and comprehensive report and assessment from an independent psychiatrist who:
 - (i) is considered a leading expert in the management of the psychiatric disorder(s) relevant to the application; and
 - (ii) has personally examined the person who is the subject of the application.

III. IMPORTANT NOTICE

17. Psychiatrists who propose to apply to the Tribunal under section 120 should note:
 - 17.1 The Tribunal has prepared an application form for applications under section 120;
 - 17.2 A copy of the application form and attachments provided in support of the application will be provided to the person who is the subject of the application; and
 - 17.3 Under section 123, the psychiatrist who made the application, or the psychiatrist treating the person following the neurosurgery for mental illness, must provide a written report to the chief psychiatrist on the results of the neurosurgery for mental illness. The report must be given to the chief psychiatrist within 3 months after the surgery is performed and within 9 to 12 months after the surgery is performed.
 - 17.4 Under section 37, the psychiatrist must ensure that a statement of rights is given to the person and that the person also receives an oral explanation of the statement of rights pursuant to section 39 of the Act.
18. Reports, all attachments and the signed consent form must be provided to the Tribunal at the same time as the application or as otherwise directed by the Tribunal.

END OF PRACTICE NOTE