

**Authorised Version**  
**Mental Health Tribunal Rules 2023**  
**S.R. No. 87/2023**

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## Authorised Version

### STATUTORY RULES 2023

S.R. No. 87/2023

#### *Mental Health and Wellbeing Act 2022*

### **Mental Health Tribunal Rules 2023**

The Rules Committee established by section 389 of the **Mental Health and Wellbeing Act 2022** makes the following Rules:

## **Order 1—Preliminary**

### **1 Object**

The object of these Rules is to regulate the practice and procedure of the Mental Health Tribunal.

### **2 Authorising provisions**

These Rules are made under section 391 of the **Mental Health and Wellbeing Act 2022** and all other enabling powers.

### **3 Commencement**

These Rules come into operation on 1 September 2023.

### **4 Revocation**

The Mental Health Tribunal Rules 2014<sup>1</sup> are **revoked**.

### **5 Definitions**

In these Rules—

*hearing report* means a report given under rule 14(1) about the person who is the subject of the proceeding;

*register of proceedings* means the register established under section 356 of the Act;

*the Act* means the **Mental Health and Wellbeing Act 2022**.

## **6 Dispensing with compliance**

The Mental Health Tribunal may dispense with compliance with any of the requirements of these Rules, either before or after the occasion for compliance arises.

## **Order 2—Applications to the Mental Health Tribunal**

### **7 Form of application**

For the purposes of section 367(a) of the Act, an application to the Mental Health Tribunal must be in writing.

### **8 Information to be contained in application**

For the purposes of section 367(b) of the Act, an application to the Mental Health Tribunal must contain the following information—

- (a) the name of the person making the application;
- (b) the postal or email address of the person making the application;
- (c) if the person making the application is not the subject of the application, or is making the application on behalf of another person—
  - (i) the name of the person who is the subject of the application; and
  - (ii) the postal or email address of the person who is the subject of the application;
- (d) if the person who is the subject of the application is receiving treatment from a designated mental health service, the name of that designated mental health service, including the name of the specific treating service;
- (e) if the person who is the subject of the application is receiving treatment from a mental health and wellbeing service that is not a designated mental health service, the name of that mental health and wellbeing

service, including the name of the specific treating service;

- (f) details of the application that are sufficient to identify the nature of the application.

## **9 Manner of lodging application**

- (1) For the purposes of section 367(c) of the Act—
  - (a) an application to the Mental Health Tribunal under section 99, 104, 109 or 114 of the Act for authority to perform a course of electroconvulsive treatment on a person must be lodged with the Tribunal by facsimile or other electronic communication; and
  - (b) any other application to the Mental Health Tribunal may be lodged with the Tribunal by post, facsimile or other electronic communication.
- (2) An application to the Mental Health Tribunal under the Act is lodged with the Tribunal when it is received by the Tribunal.

### **Note**

See rule 13 in relation to receipt of documents by the Mental Health Tribunal.

## Order 3—Proceedings

### 10 Register of proceedings

For the purposes of section 356 of the Act, the register of proceedings must contain the following details in respect of each proceeding in the Mental Health Tribunal—

- (a) the kind of proceeding under the Act;
- (b) the name and identifier of the person who is the subject of the proceeding;

**Note**

*Identifier* has the same meaning as in the **Health Records Act 2001** (see section 3(1) of the Act).

- (c) if the person who is the subject of the proceeding is receiving treatment from a designated mental health service, the name of that designated mental health service, including the name of the specific treating service;
- (d) if the person who is the subject of the proceeding is receiving treatment from a mental health and wellbeing service that is not a designated mental health service, the name of that mental health and wellbeing service, including the name of the specific treating service;
- (e) the date, place and mode of the hearing of the proceeding;
- (f) the name and class of each Tribunal member who constitutes the Mental Health Tribunal for that proceeding;
- (g) if the proceeding is commenced by application, a copy or electronic record of that application;

- (h) if the proceeding is otherwise required under the Act, the section of the Act which requires the conduct of a hearing;
- (i) the order made by the Mental Health Tribunal;
- (j) any statement of reasons prepared under section 380 of the Act.

### **11 Application for joinder**

An application of a person to be a party to a proceeding under section 364(2) of the Act must—

- (a) be in writing; and
- (b) specify reasons why it is desirable that the person be joined as a party.

### **12 Joinder of parties**

For the purposes of section 364(3) of the Act, a senior Tribunal member may join a person as a party to a proceeding.

## **Order 4—Documents to be given to the Mental Health Tribunal**

### **13 Receipt of documents**

Unless otherwise provided by these Rules or the Act—

- (a) if the Mental Health Tribunal registry is open for business when a document that is required or permitted to be given to the Mental Health Tribunal is received physically or electronically by the registry, it is received by the Tribunal on the day and at the time it is received by the registry;
- (b) if the Mental Health Tribunal registry is not open for business when a document that is required or permitted to be given to the Mental Health Tribunal is received physically or electronically by the registry, it is taken to be received by the Tribunal on the next day that the registry is open for business.

### **14 Hearing report to be given to the Mental Health Tribunal**

- (1) At least 2 business days before a hearing specified in subrule (2), one of the following must give a hearing report to the Mental Health Tribunal—
  - (a) the psychiatrist who is treating the person who is the subject of the proceeding;
  - (b) if the person who is the subject of the proceeding is receiving treatment from a designated mental health service, an authorised psychiatrist for that designated mental health service.

- (2) For the purposes of subrule (1), a specified hearing is—
- (a) a hearing under Part 3.5 of the Act of an application for authority to perform a course of electroconvulsive treatment on a person; or
  - (b) a hearing under Part 3.6 of the Act of an application for approval to perform neurosurgery for mental illness on a person; or
  - (c) a hearing under Part 4.5 of the Act to determine whether to make a treatment order in respect of a temporary treatment patient or treatment patient; or
  - (d) a hearing under Division 1 of Part 4.6 of the Act to determine whether a treatment patient should be subject to an inpatient treatment order that was varied from a community treatment order; or
  - (e) a hearing under Division 2 of Part 4.6 of the Act of an application to revoke a temporary treatment order or treatment order; or
  - (f) a hearing under Part 4.8 of the Act of an application to review a decision that a court assessment order, temporary treatment order or treatment order be varied to specify that assessment of, or treatment for, the person subject to the order will be provided by another designated mental health service; or
  - (g) a hearing under Part 10.2 of the Act to determine whether the criteria set out in section 535(1)(b) of the Act currently apply to a security patient who is subject to a secure treatment order; or

- (h) a hearing under Part 10.3 of the Act to determine whether the criteria set out in section 94B(1)(c) of the **Sentencing Act 1991** currently apply to a security patient who is subject to a court secure treatment order; or
- (i) a hearing under Part 10.4 of the Act of an application for a review of a decision not to grant a leave of absence to a security patient; or
- (j) a hearing under Part 10.6 of the Act of an application for a review of a direction to take a security patient to another designated mental health service; or
- (k) a hearing under Part 13.3 of the Act of an application for an interstate transfer of treatment order or interstate transfer order; or
- (l) any other hearing under the Act specified in any practice note issued by the Rules Committee for the purposes of giving or making hearing reports.

**Note**

See section 580 of the Act in relation to a report for an application for an intensive monitored supervision order.

**15 Contents of hearing report**

- (1) A hearing report must contain the following information in respect of the person who is the subject of the proceeding—
  - (a) information on the relevant clinical and personal background of the person;
  - (b) if the authorised psychiatrist or psychiatrist who gives the report is required under the Act to be satisfied of certain matters, the reasons why the authorised psychiatrist or psychiatrist is satisfied of those matters;

- (c) details of the treatment currently being provided to the person;
- (d) details of the treatment proposed to be given to the person;
- (e) the person's views and preferences about the treatment of the person's mental illness and the reasons for those views and preferences, including—
  - (i) any beneficial alternative treatments that may be reasonably available; and
  - (ii) any recovery outcomes the person would like to achieve; and
  - (iii) views or preferences expressed by the person's nominated support person (if any);
- (f) if required under the Act, the views and preferences of the following persons—
  - (i) any guardian of the person who is the subject of the proceeding;
  - (ii) any carer of the person who is the subject of the proceeding;
  - (iii) a parent of the person who is the subject of the proceeding, if the person is under 16 years of age;
  - (iv) the DFFH Secretary, if that Secretary has parental responsibility for the person who is the subject of the proceeding under a relevant child protection order;
- (g) any other information specified in any practice note issued by the Rules Committee for the purposes of giving or making hearing reports.

- (2) A hearing report given for a hearing under Part 3.5 of the Act of an application for authority to perform a course of electroconvulsive treatment on a person must contain the following additional information—
- (a) the proposed number of electroconvulsive treatments to be performed for the proposed course of electroconvulsive treatment;
  - (b) the proposed date by which the proposed course of electroconvulsive treatment must be completed;
  - (c) if the hearing relates to an application under section 104 of the Act in respect of an adult person who does not have capacity to give informed consent to the course of electroconvulsive treatment—
    - (i) the instructional directive giving informed consent to electroconvulsive treatment or the informed consent in writing given by the adult person's medical treatment decision maker; and
    - (ii) the views of the adult person's medical treatment decision maker;
  - (d) if the hearing relates to an application under section 114 of the Act in respect of a young person who does not have capacity to give informed consent to the course of electroconvulsive treatment—
    - (i) the informed consent in writing given by the young person's medical treatment decision maker; and
    - (ii) the views of the young person's medical treatment decision maker.

## **16 Form of hearing report**

A hearing report must be in the form specified in any practice note issued by the Rules Committee for the purposes of giving or making hearing reports.

## **Order 5—Additional applications**

### **17 Review of principal registrar's decision to reject application**

An application under section 369 of the Act to seek review of a decision by the principal registrar to reject an application under section 368 of the Act must be in writing.

### **18 Withdrawal of proceedings**

An application under section 370 of the Act to seek leave from the Mental Health Tribunal to withdraw an application must be in writing.

### **19 Correction of order or statement of reasons**

For the purposes of section 381(2)(b) of the Act, an application for the Mental Health Tribunal to correct an order or a statement of reasons must—

- (a) be in writing; and
- (b) unless special circumstances exist, be made within 20 business days after the day on which the order or statement of reasons is given to the person; and
- (c) specify reasons for the person's claim that the order or statement of reasons contains a mistake, an error, a miscalculation or a defect of a kind referred to in section 381(1) of the Act that should be corrected; and
- (d) if practicable, specify details of the proposed correction.

## **Order 6—Duration of orders**

### **20 Duration of treatment order**

For the purposes of section 193 of the Act, the Mental Health Tribunal may calculate the period of the treatment order in any manner it sees fit.

Dated: 16 August 2023

MATTHEW CARROLL,  
*President*

EMMA MONTGOMERY,  
*Deputy President*

CAMILLE WOODWARD,  
*Senior legal member*

MICHAEL MCCAUSLAND,  
*Psychiatrist member*

HELEN WALTERS,  
*Community member*

LYNNE RUGGIERO,  
*Community member*

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## **Endnotes**

<sup>1</sup> Rule 4: S.R. No. 89/2014.