

## Practice Note 7

# Review of Decisions of the Mental Health Tribunal under the *Mental Health Act 2014*

### What is this document?

Procedures for applications under the *Mental Health Act 2014* are generally informal and aim to make the process as accessible as possible to the parties.

This document sets out the Tribunal's practices and procedure for dealing with applications for review of decisions of the Mental Health Review Tribunal. It is a practice note issued by the Rules Committee of the Tribunal under section 33 of the *State Administrative Tribunal Act 2004*.

If you need help understanding this document please contact the Tribunal on (08) 9219 3111 or 1300 306 017 or email [sat@justice.gov.wa.au](mailto:sat@justice.gov.wa.au).

### Making an Application

#### Who can apply?

The following persons may apply to the Tribunal for review of a decision of the Mental Health Tribunal:

- (a) the person affected by the Mental Health Tribunal's decision; or
- (b) any other person whom the Tribunal considers has sufficient interest in the matter and who is given leave to apply.

#### How to apply

Application forms may be obtained:

- (c) from the Tribunal's website at [www.sat.justice.wa.gov.au](http://www.sat.justice.wa.gov.au);
- (d) by telephoning the Tribunal on (08) 9219 3111 or 1300 306 017; or
- (e) by emailing the Tribunal at [sat@justice.gov.wa.au](mailto:sat@justice.gov.wa.au).

#### When to apply

Applications must be made within 28 days after the day on which the Mental Health Tribunal gives notice of its decision. Applications received after this date will not be accepted unless the Tribunal grants an extension of time.

## What documents should be included with the application?

It helps the Tribunal if the application includes as much information as possible.

If you have a copy of the Mental Health Tribunal's decision and reasons, you should include them with your application.

If you are seeking leave to apply, or you are seeking an extension of time to file your application, you must give reasons for why you are seeking leave or seeking an extension. Include your reasons on the application form or on a separate sheet of paper.

## What happens when the Tribunal gets an application?

When it receives an application, the Tribunal lists it for a preliminary directions hearing.

At the same time the Tribunal will give the Mental Health Tribunal a copy of your application and will ask the Mental Health Tribunal for:

- (f) a copy of the order that the Mental Health Tribunal reviewed;
- (g) a copy of the Mental Health Tribunal's decision and reasons for decision;
- (h) a transcript of the Mental Health Tribunal's hearing;
- (i) whether there has been any change in circumstances since the Mental Health Tribunal made its order;
- (j) the name of the treating psychiatrist; and
- (k) any other relevant information.

The Mental Health Tribunal must give the Tribunal a bundle of documents with all of the above information as quickly as possible. The bundle of documents must be in chronological order, and indexed and paginated.

## Directions Hearing

### What is a directions hearing?

A directions hearing is a short preliminary hearing to decide:

- (l) when the main hearing will be;
- (m) where the main hearing will be;
- (n) who, including treating doctors, must attend the main hearing;

- (o) whether anyone will attend by telephone or by video-link;
- (p) what information, including medical records, is to be provided before or at the main hearing;
- (q) whether additional medical reports are required;
- (r) how long the main hearing will take; and
- (s) anything else relevant to conducting the main hearing.

The Tribunal will also consider whether the application should be dealt with by the Mental Health Tribunal rather than by the Tribunal (see below: What if circumstances have changed since the making the application to the Tribunal?).

The directions hearing is usually held about 2 to 3 weeks after the Tribunal receives the application.

### **Who attends the directions hearing?**

The following people usually attend the directions hearing:

- (t) the applicant;
- (u) the applicant's legal representative (if they have one); and
- (v) a representative of the State Solicitor's Office.

The Mental Health Tribunal is not represented at the directions hearing or the main hearing. A representative of the State Solicitor's Office attends the directions hearing to assist the Tribunal to identify treating doctors, relevant documents and other information about the application.

Parties usually attend the directions hearing in person but the Tribunal may allow attendance by telephone or video-link when it is appropriate and if suitable facilities are available.

## **The Hearing**

### **When will the hearing be?**

The hearing will usually be 2 to 3 weeks after the directions hearing. Urgent hearings can be held sooner.

The Tribunal makes every effort to hold the main hearing before the date of expiry of the order under review.

### **How are parties notified when the hearing will be?**

The Tribunal will send a written notice to the applicant and any other persons it thinks should attend the hearing advising of the date and time of the hearing.

## **Who will be at the hearing?**

There will be three Tribunal members. One must be legally qualified, one must have medical qualifications, and one will be a community member. They will ask the applicant about the application and why he or she disagrees with the Mental Health Tribunal's decision.

Other persons whom the Tribunal has notified of the hearing may also attend, including the treating psychiatrist and other doctors.

The applicant may have a lawyer represent them if they wish.

## **How long will the hearing take?**

Hearings may take from one hour to two or three hours. It is wise to allow half a day for the hearing.

Sometimes the hearing may be adjourned if the Tribunal decides it needs more information.

## **Is the hearing private?**

Hearings are held in private.

## **What if someone needs an interpreter or other assistance at the hearing?**

Contact the Tribunal's support staff on 9219 3111.

## **What if circumstances have changed since making the application to the Tribunal?**

### **If the applicant is no longer an involuntary patient**

If an applicant has been discharged from involuntary status and is no longer an involuntary patient by the time of the hearing, the Tribunal cannot deal with the application. It will make an order dismissing the application.

### **If other circumstances have changed**

The applicant's circumstances may have changed since making the application to the Tribunal. For instance, a detention order might have been converted to a community treatment order.

If this happens, the Tribunal may require the applicant to seek a further review by the Mental Health Tribunal before applying to the Tribunal for review.

## The Decision

### When will I get the decision?

Decisions and reasons are usually given orally at the end of a hearing. Sometimes the Tribunal will reserve its decision, in which case it will give written reasons for its decision. If the Tribunal reserves its decision it must give its reasons within 90 days or such longer period as the President allows.

### Can I get written reasons?

Where reasons are given orally, parties may ask for written reasons. A request must be made within 28 days after the decision is given. The Tribunal must give written reasons within 90 days of the request or such longer period as the President allows.