

MENTAL HEALTH TRIBUNAL

PRACTICE NOTE 1

APPLICATIONS, REPORTS AND ATTENDANCE REQUIREMENTS

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.

Commencement date

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

Introduction and purpose

3. The 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.
4. If a person is entitled to make an application to the Tribunal, the person must apply in writing. The Mental Health Tribunal Rules 2023 prescribe what information must be contained in an application to the Tribunal and how the application must be lodged.
5. The Rules also prescribe that for certain applications, the authorised psychiatrist or psychiatrist must submit a hearing report that contains information of the type specified in the Rules.
6. 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 hearing reports to assist authorised psychiatrists or psychiatrists to provide the information required by the Rules.
7. This Practice Note also provides guidance on the procedure to be followed when lodging urgent applications.
8. Finally, this Practice Note identifies the attendance requirements for all hearing types and provides guidance on preparing for hearings.

Definitions

9. Unless otherwise specified, all references to sections in this Practice Note are to sections of the *Mental Health and Wellbeing Act 2022*.
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 – Applications, Reports and Attendance Requirements*'.

II. APPLICATION FORMS

12. Most forms for applications to the Mental Health Tribunal are available on the [Mental Health and Wellbeing Act 2022](#) website.
13. Forms for applying for neurosurgery or to deny access to documents are available from the [Forms page of the Mental Health Tribunal website](#).

II. SUBMITTING APPLICATIONS

14. The Tribunal receives most applications automatically via the interface between the state-wide mental health database and the Tribunal's hearing management system.
15. The following types of hearing requests are received via the interface automatically when the order, event or request to conduct electroconvulsive treatment (ECT) are recorded in the state-wide mental health database:
 - Temporary Treatment Order
 - Application for a further Treatment Order
 - Application for electroconvulsive treatment (except in relation to voluntary adult and young person patients)
 - Variation of Community Treatment Order to Inpatient Treatment Order
16. The following types of hearing requests need to be sent to the Tribunal manually by emailing, faxing or posting the relevant forms to the Tribunal:
 - Security Patient 28-day hearings
 - Out of time treatment order applications (made less than 10 business days prior to expiry of the current treatment order)
 - Patient applications to revoke an Order
 - Application against transfer to another designated mental health service (written request from patient or alternatively these applications can be made by patients using the contact form on the Tribunal's website)
 - Applications to deny access to documents
 - Application for neurosurgery for mental illness
17. Applications for electroconvulsive treatment for voluntary adult and young persons need to be sent to the Tribunal manually by emailing or faxing the relevant forms to the Tribunal.

18. **The Tribunal's contact details for submitting manual applications are:**

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

Fax: 9032 3223

Mental Health Tribunal

Level 30, 570 Bourke Street

Melbourne 3000, Victoria, Australia

III. APPLICATIONS CONCERNING ELECTROCONVULSIVE TREATMENT

19. When listing the hearing of applications for electroconvulsive treatment the Tribunal needs to consider the obligation to afford patients procedural fairness alongside clinical considerations, including urgency. For all applications for electroconvulsive treatment registry staff email the mental health service a series of procedural fairness questions to assist with determining a suitable hearing timeslot. These questions are outlined in the [Tribunal's Guidelines for ECT hearings and orders](#).
20. Section 97 of the *Mental Health and Wellbeing Act 2022* permits an application to be made to the Tribunal for an urgent hearing of an application concerning electroconvulsive treatment. To apply for an urgent hearing a person must contact the registry by email and telephone after lodging the application to provide 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 to be urgent having regard to Section 97(2).

IV. HEARING REPORTS TO BE PROVIDED

21. Order 4 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.
22. This Practice Note specifies report templates that can be used to provide the Tribunal with the information required by the Rules for each application type.
23. These report templates identify the required information that must be included in the report before it is provided to the Tribunal.
24. Order 4 requires reports to be given to the Tribunal at least 2 business days before a hearing.

Available templates

25. The specified report templates are available on the [Forms for health services page of the Tribunal's website](#).

Templates to be used for each hearing type

26. The **Report for hearings about a treatment order (MHT 3)** template may be used for hearings under Part 4 of the Act when the patient is not being treated in a secure extended care unit, including hearings to determine:
 - 26.1 whether to make a treatment order under section 189 in relation to a person who is subject to a temporary treatment order; or

- 26.2 an application for a treatment order under section 190 in relation to a person who is currently subject to a treatment order; or
 - 26.3 whether to confirm, vary or revoke an inpatient treatment order under section 204 in relation to a person whose community treatment order has been varied to an inpatient treatment order pursuant to section 201 of the Act; or
 - 26.4 an application by or on behalf of a person to revoke a temporary treatment order or treatment order under section 203 of the Act.
27. The **Report for SECU patient hearing about a Treatment Order (MHT 36)** template may be used for hearings under Chapter 4 of the Act when the patient is being treated in a secure extended care unit, including hearings to determine:
- 27.1 whether to make a treatment order under section 189 in relation to a person who is subject to a temporary treatment order; or
 - 27.2 an application for a treatment order under section 190 in relation to a person who is currently subject to a treatment order; or
 - 27.3 whether to confirm, vary or revoke an inpatient treatment order under section 204 in relation to a person whose community treatment order has been varied to an inpatient treatment order pursuant to section 201 of the Act; or
 - 27.4 an application by or on behalf of a person to revoke a temporary treatment order or treatment order under section 203 of the Act.
28. The **Report for hearings about a court secure treatment order (MHT 4)** template may be used for:
- 28.1 hearings conducted under section 543(1)(a) within 28 days of the security patient being received at the designated mental health service;
 - 28.2 hearings conducted under section 543(1)(b) at least every 6 months during the treatment of the security patient following the initial review of the order;
 - 28.3 an application under section 543(1)(c) 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.
29. The **Report for hearings about a secure treatment order (MHT 5)** template may be used for:
- 29.1 hearings conducted under section 538(1)(a) of the Act within 28 days of the security patient being received at the designated mental health service;
 - 29.2 hearings conducted under section 538(1)(b) of the Act at least every 6 months during the treatment of the security patient following the initial review of the Order;
 - 29.3 an application under section 537 by or on behalf of the security patient to revoke the Secure Treatment Order.

30. The **Report on electroconvulsive treatment for compulsory adult (MHT 6)** template may be used for applications to perform a course of electroconvulsive treatment on an adult patient pursuant to section 99 of the Act.
31. The **Report on electroconvulsive treatment for voluntary adult (MHT 39)** template may be used for applications to perform a course of electroconvulsive treatment on an adult who is not a patient pursuant to section 104 of the Act.
32. The **Report on electroconvulsive treatment for compulsory young person (MHT 7)** template may be used for applications to perform a course of electroconvulsive treatment on a patient who is a young person, under section 109 of the Act.
33. The **Report on electroconvulsive treatment for voluntary young person (MHT 8)** template may be used for applications to perform a course of electroconvulsive treatment on a young person who is not a patient, under section 114 of the Act.
34. The combined **Report for compulsory adults about whether they need both a treatment order and compulsory ECT (MHT 45)** pursuant to both Chapter 4 and section 99 of the Act.
35. The **Application to perform neurosurgery for mental illness (MHT 31)** template may be used for applications to perform neurosurgery for mental illness, under section 120 of the Act.
36. The **Report for an application for review of refusal to grant leave of absence for a security patient (MHT 43)** template may be used for applications to review a decision not to grant a security patient a leave of absence under section 548 of the Act.
37. The **Report for patient application against being transferred to another health service (MHT 42)** template may be used for applications under section 226 of the Act for a review of a decision to vary an order or direct the variation of the order to specify that the treatment of the person subject to the order will be provided at another mental health service.
38. The **Report for application for review of direction to take a security patient to another health service (MHT 44)** template may be used for applications under section 558(1) of the Act for a review of the direction that a security patient be transported to another designated mental health service.
39. The **Report for application for interstate transfer (MHT 41)** template may be used for applications for interstate transfers of a community patient or inpatient without consent under section 601(1) and 602(1) of the Act.

V. ACCESS TO OTHER DOCUMENTS FOR TRIBUNAL HEARINGS

40. In addition to the Tribunal documents specified in this practice note, the health service must also provide the Tribunal, the patient and their legal representative with access to the documents specified in Practice Note 4 – Access to Documents in Tribunal Hearings.

VI. ATTENDANCE REQUIREMENTS

41. The following attendance requirements are relevant for all hearing types.
42. At a minimum, services must ensure a medical officer with relevant experience, direct and sufficient knowledge of the patient is available to provide information to the Tribunal.
43. A consultant psychiatrist should also participate in the hearing, or at least be available to answer the Tribunal's questions by telephone, if required.
44. The Tribunal strongly encourages the attendance of case managers as their perspective and input is invaluable.

END OF PRACTICE NOTE