

**Mental Health
Tribunal**



Tandem Time

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I acknowledge the Traditional Owners of the land on which we are meeting. I pay my respects to their Elders, past and present, and the Aboriginal Elders of other communities who may be here today



What is the Mental Health Tribunal



Established under the *Mental Health Act 2014*



Is made up of 139 members supported by registry and administration



Each tribunal division is made up of 3 members, 1 from each category

- Community member
- Psychiatrist or registered medical member
- Legal member



The Tribunal is non-adversarial, recovery focussed, person-centred and supports self-determination

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Types of orders that can be made

If on a Temporary Treatment Order (TTO) – must make determination within 28 days

If a Community Treatment Order (CTO) is varied to an Inpatient Treatment Order (ITO) – within 28 days

Current Treatment Order is ending and authorised psychiatrist makes application for further Treatment Order

Person applies to revoke their Treatment Order

Authorise treatment with ECT

Secure Treatment Orders, transfers (facility to another/interstate), applications for neurosurgery, Court Secure Treatment Orders

Definitions

A **Mental Illness** is a medical condition that is characterised by a *significant disturbance* of **thought, mood, perception** or **memory**.

A person is **not** considered to have a mental illness by reason of one or more of the following: where the person expresses or refuses or fails to express a particular....political opinion or belief, religious opinion or belief, philosophy; sexual preference, gender identity or sexual orientation... or engages or refuses or fails to engage in political activity, religious activity, sexual promiscuity, immoral conduct, illegal conduct, antisocial behaviour...or, has an intellectual disability, uses drugs or alcohol, identifies with a particular socioeconomic status, cultural or racial group, is or was previously involved in family conflict, or, has been treated in the past for mental illness.

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Considerations: Test for making a Treatment Order

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Section 5 Mental Health Act 2014

MHT must be satisfied of the following:

- a) Person has a mental illness;
- b) Because of that mental illness, the person needs immediate treatment to prevent *serious deterioration* in the person's mental or physical health, or *serious harm* to the person or another person.
- c) Immediate treatment will be provided
- d) There is no less restrictive means available to enable the person to receive immediate treatment.

If YES to all, MHT will Make a treatment order

- MHT to determine whether INPATIENT or COMMUNITY
- If inpatient (current MHA (2014) -maximum of 6 months for adults (3 months if child) or;
- Community Treatment Order (current 12 months for adults, 3 months if child).
- NB. Under Mental Health and Wellbeing Act [2022] limit is 6 months

Tribunal must have regard to:

In determining whether the criteria are met, the MHT must have regard to the following (s.55(2) MHA):

- The **person's views and preferences**;
- Any views or preferences expressed in an **advanced statement**;
- The views of the **nominated person**;
- The views of the **guardian**;
- The **views of the carer** (if satisfied that the making of an order will directly affect the carer and the care relationship);
- The views of the **parent** (if person under 16 years)
- The views of the Dept Human Services (where person subject to custody or guardianship order to the Secretary)

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Considerations: Electroconvulsive Therapy (ECT)

Treating team can apply to the MHT to authorise a course of ECT treatment (s.93 MHA).

MHT compelled to consider (section 96(1)(a) MHA [2014]):

- (i) Capacity – the patient **does not have capacity** to give informed consent;
and
- (ii) there is **No less restrictive way** for the patient to be treated.

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Tribunal hearings

- Hearings are CLOSED to the public;
- MHT is NOT bound by strict rules of evidence and procedure;
- MUST have regard to the rules of procedural fairness;
- May inform itself on any matter as it sees fit;
- Must conduct each proceeding as expeditiously;
- As little formality and technicality as required.

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Mental Health and Wellbeing Act 2022 vs Mental Health Act 2014

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- MHW Act – **1 September 2023**
- How the new act is different? – MHW – encompassing recommendations from Royal commission
- Objectives and Overarching principles
- Framework – recovery focused and patient's voice
- Value of lived experience
- Fundamentally – legal framework for determining if treatment order should be in place – largely unchanged
- However, Lens that we view information/ listen to others/ weigh up is informed by the Principles enshrined in MHW Act [2022]

MHW Act 2022

Supported Decision Making Principle



Supported decision making practices are to be promoted. Persons receiving mental health and wellbeing services are to be supported to make decisions and to be involved in decisions about their assessment, treatment and recovery including when they are receiving compulsory treatment.

The views and preferences of the person receiving mental health and wellbeing services are to be given priority.

MHW Act 2022

Lived Experience Principle



The lived experience of a person with mental illness or psychological distress and their carers, families and supporters is to be recognised and valued as experience that makes them valuable leaders and active partners in the mental health and wellbeing service system.

MHW Act 2022

Family and Carers Principle



Families, carers and supporters (including children) of a person receiving mental health and wellbeing services are to be supported in their role in decisions about the person's assessment, treatment and recovery.

MHW Act 2022

Dignity of Risk Principle



A person receiving mental health and wellbeing services has the right to take reasonable risks in order to achieve personal growth, self-esteem and overall quality of life. Respecting this right in providing mental health and wellbeing services involves balancing the duty of care owed to all people experiencing mental illness or psychological distress with actions to afford each person the dignity of risk.

Nominated Support Persons



Role of nominated support person in the MHW Act 2022

1. The role of a **nominated support person** in relation to a patient is—
 - a) to **advocate for the views and preferences expressed by the patient**, including preferences provided in the advance statement of preferences; and
 - b) to **support** the patient **to make and participate in decisions**; and
 - c) to **advocate for any appropriate supports** that would assist the patient **to communicate and participate** in decision making; and
 - d) to **support** the patient **to understand information** and decisions; and
 - e) to **support** the patient **to communicate** their views, preferences, decisions, questions or concerns; and
 - f) to **receive information, and be consulted**, about the patient in accordance with this Act; and
 - g) to support the patient to exercise any rights the patient has under this Act.
- h) 2. A nominated support person is to perform their role in a manner that supports a constructive relationship between—
 - i) the patient; and
 - j) the authorised psychiatrist and any other person employed or engaged, or volunteering, at a designated mental health service.

Advance Statement

An Advance Statement of preferences is a document that sets out a person's preferences in relation to their treatment, care and support in the event that they become a patient.

Carer's can encourage their loved ones to make an Advance Statement.

Advance Statements must be considered by the Tribunal members at a hearing.

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How to support a loved one

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The person has the right to deny access to attending hearing?



What I want to tell the tribunal worksheet, will be provided to the person under procedural fairness



If person denies me access to attend, can I apply to be part of the hearing?



MHLC online help [Online Help – Mental Health Legal Centre \(mhlc.org.au\)](https://www.mhlc.org.au)

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How can carers interact with the Tribunal

How can we let the Tribunal know our views and thoughts

What I want to tell the tribunal worksheet

Email registry@mht.vic.gov.au

Attend in person

Rights of a Nominated Person

Rights of a Guardian

Compulsory Notifications

IMHA – Opt Out

What if I don't want my loved one to know what I have said?

All information that is supplied to the Tribunal is available to the patient unless the Tribunal grants an application from the treating team to deny access to documents (den docs) to the patient on the basis that it could cause harm.

This is an additional hearing that is normally held prior to the patient hearing.

Carers can speak to the treating team if they have concerns about information they want to share.

Best advice is: Talk to treating team

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What if I disagree?

What happens if I am not happy with my loved ones Treating Team or treatment?

What if I disagree with the decision about my loved one?

What if an order is revoked and I disagree?

- Speak with the Treating Team
- Speak with Tandem - carer advocate
- Contact MHCC



We welcome your questions



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