

Legal Representation at Tribunal Hearings

When can a lawyer represent me at a Tribunal hearing?

Mental Health Review Tribunal (Tribunal) hearings are conducted in an informal manner and attendance by patients is promoted.

You are not expected to have a lawyer. Even if you are not represented, the Tribunal is required by law to provide a fair hearing.

However, you may wish to be represented at a Tribunal hearing by a lawyer. You may employ (pay) a private lawyer to represent you.

Additionally, the *Mental Health Act 2016* (the Act) requires the Tribunal to appoint a lawyer at no cost to the patient for certain hearings.

When will a lawyer be appointed at no cost?

The Tribunal must appoint a lawyer to represent the patient **at no cost** to the patient:

- if the patient is a minor
- for a review of a patient's fitness for trial
- for an application for approval to perform Electroconvulsive Therapy (ECT)
- for a hearing for a forensic patient where the Attorney-General is to be represented.

How is a lawyer appointed?

Once your hearing date is scheduled, the Tribunal will notify Legal Aid Queensland of your matter.

Legal Aid Queensland will then appoint a lawyer to represent you in the hearing. As far as possible, this lawyer will be local to your area; however in some cases the lawyer may reside in an area that is not local and will represent you via videoconference.

Legal Aid Queensland may contract private firms or community legal centres to represent patients at Tribunal hearings. This means your appointed lawyer may not work for Legal Aid Queensland, but may work for another law firm.

What happens once a lawyer is appointed?

Once a lawyer has been appointed, the lawyer will contact you. This contact may be facilitated through your local Authorised Mental Health Service (AMHS) so it is important you keep your treating team updated about your contact details.

The lawyer may wish to meet (or speak) with you prior to the hearing to discuss your matter. Your lawyer will also speak to you on the day of the hearing to obtain your instructions.

What information is given to my lawyer?

The Tribunal will provide your lawyer with a copy of the Tribunal report which is prepared by your treating doctor.

If you are a forensic patient, the Tribunal will also provide your lawyer with a copy of the Tribunal dossier which contains summary information from your previous Tribunal hearings (if applicable).

Your lawyer can also request your treating AMHS to provide them with additional information (such as your patient records) if you would like your lawyer to have this information.

What happens on the day of my hearing?

On the day of your hearing, your lawyer will speak to you again to obtain your instructions.

With your consent, your lawyer may also talk to your Nominated Support Person or another support person who may be attending your Tribunal hearing to support you.

Your lawyer will put forward your views and wishes to the Tribunal during the hearing.

Additionally, the Act requires your lawyer to also represent your best interests if you are unable to express your own views, wishes or preferences.

Your lawyer may put submissions to the Tribunal in relation to the evidence presented by the treating team or the representative of the Attorney General.

At the end of the hearing, your lawyer will talk to you about the Tribunal decision and what it means for you.

What if I don't want a lawyer or I already have a private lawyer?

If you are an adult and you have capacity, you may waive your right to have a lawyer appointed. This waiver must be provided to the Tribunal in writing.

The lawyer who was appointed to represent you may be able to assist you with completing this waiver. Alternatively you could discuss this with a member of your treating team or the Independent Patient Rights Adviser at your AMHS.

Where can I get more information?

- Legal Aid Queensland can be contacted on 1300 65 11 88
- *Mental Health Act 2016* website – This website provides the Act, Chief Psychiatrist policies and practice guidelines, fact sheets, forms and other helpful resources. (www.health.qld.gov.au/mental-health-act)
- Authorised Mental Health Service – You can ask for more information from a member of your treating team or the Independent Patient Rights Adviser.