

Mental Health Review Tribunal

The Mental Health Review Tribunal is an independent decision-making body under the *Mental Health Act 2016*. The Tribunal's main role is to review the appropriateness of Treatment Authorities, Forensic Orders and Treatment Support Orders made under the Act. The Tribunal also hears applications for Examination Authorities and to perform electroconvulsive therapy.

Who are the members of the Tribunal?

The Tribunal consists of the President, Deputy President and other members appointed by the Governor-in-Council.

Members must have the competencies developed by the President in administrative law, the operation of the Act, and mental health and intellectual disability issues, including forensic mental health and forensic disability issues.

Members of the Tribunal are located throughout Queensland so that Tribunals can be constituted in different locations as required.

The Act outlines how Tribunals are to be constituted to hear particular matters. For a review of a Treatment Authority, Forensic Order or Treatment Support Order, the Tribunal is constituted by between three and five members of which:

- at least one must be a lawyer
- at least one must be a psychiatrist or, if a psychiatrist is not readily available, another doctor, and
- at least one person who is not a lawyer or doctor.

The President of the Tribunal decides the composition of members for hearings having regard to the safety and welfare of the patient, the safety of others, and the patient's mental condition.

What are the functions of the Tribunal?

The Tribunal's jurisdiction encompasses reviews, applications and appeals.

The Tribunal reviews:

- Treatment Authorities
- Forensic Orders
- Treatment Support Orders
- the 'fitness for trial' of particular patients, and
- the detention of minors in high security units.

The Tribunal hears applications:

- for Examination Authorities
- to perform regulated treatments (electroconvulsive therapy and deep brain stimulation procedures)
- for approval to transfer a person subject to a Forensic Order or Treatment Support Order
 - into and out of Queensland, or
 - to another country
- Confidentiality orders



The Tribunal hears appeals against decisions of the Chief Psychiatrist in relation to:

- Information Notices
- a decision of an administrator to refuse to allow a person to visit a patient in an authorised mental health service.

The Tribunal must act independently and is not subject to the direction or control of anyone, including any Minister.

In all cases, the *Mental Health Act 2016* details the decisions that may be made by the Tribunal and the criteria for the decisions.

What decisions can the Tribunal make?

The Tribunal has wide decision-making powers. In regard to its jurisdiction to review matters, the Tribunal may:

- confirm an authority or order
- revoke an authority or order
- approve limited community treatment
- change the category or an authority or order from inpatient to community and vice versa, and
- decide whether or not a person is fit for trial.

In making a decision the Tribunal must have regard to:

- the relevant circumstances of the person, such as the person's response to treatment and care
- the nature of the relevant unlawful act and the period of time that has passed since that act happened
- any victim impact statement given to the Tribunal relating to the unlawful act.

How does the Tribunal notify its decisions?

The Tribunal must, within 7 days after making its decision in a proceeding, give written notice of the decision.

The person to whom the notice is given may ask the Tribunal for written reasons for its decision and may also appeal the Tribunal's decision to the Mental Health Court.

How often are reviews conducted?

Reviews can occur periodically, on application by the relevant person or someone on the person's behalf, or on the Tribunal's own initiative.

A periodic review of a Treatment Authority must occur:

- within 28 days after the authority is made
- within six months after the initial review and six months thereafter, and
- at subsequent intervals of not more than 12 months.

Reviews of Forensic Orders and Treatment Support Orders must occur six monthly.

If a person has been approved by the Tribunal to transfer out of Queensland, the requirement to conduct periodic reviews is suspended while the person subject to the order is out of Queensland.

Where are hearings conducted?

There are no restrictions on where hearings can be conducted. Hearings of the Tribunal may be held in a hospital, at the Tribunal premises in Brisbane, or at another suitable location, for example somewhere close to where a patient is receiving treatment and care.

Where required, it may be necessary to conduct hearings via audio-visual technology however the Tribunal aims to maintain face-to-face hearings wherever possible.

How can a person be supported at Tribunal hearings?

A person may be accompanied at the hearing by a nominated support person, family member, carer or other support person. With the Tribunal's permission, more than one person may attend to support the person.

The person providing support must represent the person's views, wishes and preferences (if they are able to express these), or otherwise represent the person's best interests.

Is the person represented at a Tribunal hearing by a lawyer?

Tribunal hearings are conducted in an informal manner and attendance by patients is encouraged.

The person before the Tribunal is not expected to have a lawyer. The Tribunal is required by law to provide a fair hearing including where a person is not represented.

However, a person may engage or employ (pay) a private lawyer to represent them if they wish. A person may be eligible for legal aid funding to be represented at the Mental Health Review Tribunal if they meet the relevant Legal Aid Queensland means and merits test.

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

- If the person is a minor
- for a review of a person's fitness for trial

- for an application for approval to perform electroconvulsive therapy
- for a hearing where the Attorney-General is to be represented, and
- for another type of hearing prescribed by regulation.

An adult with capacity may waive the right to be represented. This can be done either verbally or in writing. The lawyer who was appointed to the person may be able to assist them with completing this waiver. Alternatively, the person could discuss this with a member of their treating team or the Independent Patient Rights Adviser at the authorised mental health service.

How is a lawyer appointed?

Once a hearing date is scheduled, the Tribunal will notify Legal Aid Queensland of the matter who will appoint a lawyer.

As far as possible, the lawyer will be local to the person's area; however, in some cases the lawyer may reside in an area that is not local and will represent the person via videoconference.

Legal Aid Queensland may also contract private firms or community legal centres to represent people at Tribunal hearings.

What happens once a lawyer is appointed?

Once appointed, the lawyer will contact the person. This contact may be facilitated through the local authorised mental health service so it is important for treating teams to have up to date contact details.

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

What information is given to the lawyer?

The Tribunal will provide lawyers with a copy of the Tribunal report which is prepared by the person's treating doctor.

If the person is subject to a Forensic Order, the Tribunal will also provide the lawyer with a copy of the Tribunal dossier which contains summary information from previous Tribunal hearings (if applicable).

The lawyer can also request for the treating authorised mental health service to provide them with additional information (such as patient records) if the person would like their lawyer to have this information.

What happens on the day of the hearing?

The lawyer will speak to the person to obtain their instructions.

With the person's consent, the lawyer may also talk to a Nominated Support Person or other support person who may be attending the Tribunal hearing to support the person.

The person's lawyer will put forward their views, wishes and preferences to the Tribunal during the hearing and act in the person's best interests.

The 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, the lawyer will talk to the person about the Tribunal decision and what it means for them.

More information:

Mental Health Act 2016

www.health.qld.gov.au/mental-health-act

Mental Health Review Tribunal

www.mhrt.qld.gov.au

Legal Aid Queensland can be contacted on 1300 65 11 88.

www.legalaid.qld.gov.au/Home

Contact your local mental health service
1300 MH CALL (1300 642255)

www.qld.gov.au/health/mental-health/help-lines/services

Resources:

Factsheet: [Forensic Orders](#)

Factsheet: [Treatment Support Orders](#)

Factsheet: [Treatment Authorities](#)

Factsheet: [Examination Authorities](#)

Factsheet: [Regulated Treatments \(Electroconvulsive Therapy\)](#)

Factsheet: [Information about Electroconvulsive Therapy for you and your family](#)