

# MENTAL HEALTH REVIEW TRIBUNAL

## Practice and Policy Guideline #10

### CO-OPTED MEMBERS

*Practice and Policy Guidelines provide general direction and assistance to the members and secretariat of the Review Tribunal. They may be departed from or supplemented by the Review Tribunal as circumstances require. They do not constitute legal opinions.*

*This Practice and Policy Guideline is designed especially for the benefit of co-opted members of the Review Tribunal who may be unfamiliar with its functions and procedures.*

### Introduction

1. Most hearings of the Review Tribunal are conducted by a panel of three persons: a lawyer, psychiatrist and community member.
2. Occasionally the Review Tribunal co-opts a fourth member for reasons of ethnic identity; if necessary it can also co-opt for reasons of gender, or special knowledge or expertise.
3. Co-opted members have the same standing, role and responsibilities as the other three members of the panel. It is not the role of any member to represent the interests of, or advocate for patients.
4. Hearings are conducted pursuant to the Mental Health (Compulsory Assessment and Treatment) Act 1992.
5. The hearing process is quasi-judicial. The hearing panel must display independence, integrity and fairness.
6. The hearing process is private and confidential. The hearing panel must not discuss or share any information about the case with anyone other than the secretariat, or other members of the Review Tribunal. Care must be taken to ensure the security of all documentation received.

7. If co-opted members know the patients or persons of significance to them, the secretariat and other panel members should be advised at the earliest opportunity.
8. Hearings relate either to civil patients or to special patients. Although the same process applies to both categories of patient, the legal considerations are different. They are referred to below. Co-opted members should be clear as to whether the hearing in which they are involved relates to a civil or special patient.

### **The Review Tribunal's role in relation to civil patients**

9. The hearings are under section 79 of the Act.
10. The Review Tribunal is required to determine whether the patient is fit to be released from compulsory status.
11. This in turn requires the Review Tribunal to decide whether or not the patient remains mentally disordered.
12. The term mentally disordered is defined in the Act as:  
*“an abnormal state of mind (whether of a continuous or intermittent nature), characterised by delusions, or disorders of mood or perception or volition or cognition, of such a degree that it –*
  - (a) Poses a serious danger to the health and safety of that person or of others; or*
  - (b) Seriously diminishes the capacity of that person to take care of himself or herself.”*
13. Mental disorder, as defined above, is not the same as mental illness. A patient may have a mental illness but not be mentally disordered. Typically, the issue is whether or not the danger or self care issues referred to in the second part of the definition apply to the patient, and if they do, whether that is of such a degree as to justify compulsory treatment.
14. If the Review Tribunal finds the patient to be mentally disordered, it means that they are not fit to be released from compulsory status. Equally, if the Review Tribunal finds the patient no longer to be mentally disordered, it means that they are fit to be released from compulsory status.

15. It is not the Review Tribunal's role to make any decisions or recommendations about the treatment patients should receive, or whether or not they should be in hospital.

### **The Review Tribunal's role relation to special patients**

16. The hearings are under section 80 of the Act.

17. There are two categories of special patient: those who have been found by a criminal court unfit to stand trial, and those who have been found not guilty by reason of insanity.

18. In the case of the former, the Review Tribunal is required to express an opinion as to whether or not the patient remains unfit to stand trial, and if they still are, express the further opinion as to whether they should still be subject to detention as a special patient.

19. Unfit to stand trial, in relation to a patient (referred to below as a defendant):

*“(a) means a defendant who is unable, due to mental impairment, to conduct a defence or to instruct counsel to do so; and*

*(b) includes a defendant who, due to mental impairment, is unable –*

*(i) to plead:*

*(ii) to adequately understand the nature or purpose or possible consequences of the proceedings:*

*(iii) to communicate adequately with counsel for the purposes of conducting a defence”<sup>1</sup>.*

20. In the case of a person who was made a special patient after being found not guilty by a criminal court on account of insanity, the Review Tribunal is required to express an opinion as to whether or not the patient's condition still requires, either in the patient's own interest or for the safety of the public, that he or she should remain a special patient.

### **The Hearing**

21. Immediately before the commencement of the hearing the co-opted member has the opportunity to discuss the case with other panel members, and to clarify any

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<sup>1</sup> Section 4, Criminal Procedure (Mentally Impaired Persons) Act 2003.

matters concerning their role. The co-opted member is also welcome to contact the legal member of the hearing panel at any time before the hearing.

22. The hearing process is described in Practice and Policy Guideline #6 which is available from the secretariat.
23. After the hearing the lawyer member of the panel will draft a written decision. All four members of the panel are required to agree on its contents.
24. Once the written decision is finalised, panel members are required to shred the hard copies of all documents or send them to the secretariat for that purpose. Electronic copies of documents are to be deleted.

*Last updated August 2015*

NJ Dunlop

Convener