

**MENTAL HEALTH REVIEW TRIBUNAL**  
**Mental Health (Compulsory Assessment and Treatment) Act 1992**

Guidelines for reports to the Review Tribunal by Responsible Clinicians: March 2018

**1. Purpose**

- 1.1 The purpose of this guideline is to assist Responsible Clinicians to provide reports to the Tribunal that give a proper basis for its decision making. We thank you for your cooperation. High quality reports are necessary to help ensure that:
- (a) the requirements of natural justice are met;
  - (b) decisions can be made on a proper factual and legal basis;
  - (c) patients are not detained when they ought not to be, nor released when they ought not to be; and
  - (d) hearings are not delayed in order to seek further medical information.

**2. The role of the Tribunal**

- 2.1 The Tribunal performs an important statutory function that directly affects the rights and interests of patients treated with compulsory treatment orders, and can impact on their friends, family and the community.
- 2.2 For ordinary patients, when an application for review is made, the Tribunal is required to assess whether a patient is fit to be released from compulsory status.<sup>1</sup> In the case of special and restricted patients, other aspects must be considered.<sup>2</sup>
- 2.3 The key issue for the Tribunal is usually whether the applicant has a “*mental disorder*”.<sup>3</sup> It is defined in s2 of the Mental Health (Compulsory Assessment and Treatment) Act 1992<sup>4</sup> as follows:
- mental disorder, in relation to any person, means an abnormal state of mind (whether of a continuous or an intermittent nature), characterised by delusions, or by disorders of mood or perception or volition or cognition, of such a degree that it—*
- (a) *poses a serious danger to the health or safety of that person or of others; or*
  - (b) *seriously diminishes the capacity of that person to take care of himself or herself.*
- 2.4 That definition involves two limbs. The first focuses on whether a person has an abnormal state of mind.

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<sup>1</sup> Mental Health (Compulsory Assessment and Treatment) Act 1992, s79.

<sup>2</sup> Mental Health (Compulsory Assessment and Treatment) Act 1992, s80 for special patients and s81 for restricted patients.

<sup>3</sup> *Waitemata Health v the Attorney-General* [2001] NZFLR 1122.

<sup>4</sup> Herein the Act.

2.5 The second focuses on whether the abnormal state of mind is of such a degree that it poses a serious danger to the health or safety of that person or another, or seriously diminishes the capacity of that person to take care of him or herself.

2.6 For special and restricted patients the relevant legal test will need to be addressed.

### **3. Timeliness**

3.1 The Tribunal is subject to specific statutory timeframes. When an application for review is made, it must arrange for the review to start within 21 days, however the Tribunal can extend that timeframe by up to 7 days.<sup>5</sup>

3.2 This means that all involved in a review will be required to discharge their roles, including report writing, swiftly. The Tribunal recognises this can be an imposition, and is grateful for the continued support of health professionals.

### **4. Responsible Clinician report requirements and report of second health professional**

4.1 Responsible Clinician reports are critical to The Tribunal's decision making. Your report should follow the guidelines below. A high quality report will:

- (a) provide the reader with correct details relating the patient;
- (b) provide the reader with a good understanding of the patient and his or her relevant history;
- (c) address the relevant statutory criteria;
- (d) provide a proper factual basis for your expert opinion; and
- (e) be accompanied by relevant additional material to help support your opinion;

4.2 Your report must address the legal definition of mental disorder (being both limbs identified above)<sup>6</sup> in the case of compulsory treatment orders, and for special or restricted patients, the legal criteria for continued detention.<sup>7</sup>

4.3 Responsible clinicians ought to also ensure that a report is provided by the second health professional.

### **5. Disclosure of report**

5.1 The rules of natural justice mean that the Tribunal discloses the evidence it receives to the patient and his or her lawyer. Sometimes wider disclosure may be required, for example to a psychiatrist providing a second opinion. The entire report and accompanying material must be prepared on that understanding.

5.2 If there is something in the report that ought not to be disclosed, for example private contact details for a victim, you will need to consider whether it is necessary to include that.

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<sup>5</sup> Mental Health (Compulsory Assessment and Treatment) Act 1992, s79(5) and (6).

<sup>6</sup> This term is defined in the Mental Health (Compulsory Assessment and Treatment) Act 1992, s2.

<sup>7</sup> Mental Health (Compulsory Assessment and Treatment) Act 1992, s80 for special patients and s81 for restricted patients.

## **Report Guidelines/Template**

1. Name/address;
2. Date of Current order;
3. Date of original order;
4. How long the applicant is known to the responsible clinician;
5. Relevant mental health history including alcohol and drug history and specific diagnoses;
6. Current social situation including:
  - Living arrangements;
  - Family involvement;
  - Cultural background and significance of this in managing mental disorder;
  - Community support;
7. Any forensic history;
8. Chronological summary of admissions to hospital, court orders, changes of status and involvement with police;
9. Identification and assessment of risk behaviours, including dates, duration of behaviours or events and impact on others if known;
10. Specific information on any incapacity to care for self;
11. Current mental state;
12. Current management and future plans including comment on the patient's involvement in and agreement with these;
13. Opinion on whether and if so how the patient's situation fulfils the legal definition of mental disorder and for special patients and the legal criteria for continued detention.

## **Additional Material**

The following accompanying documents are important in establishing the facts and should accompany the report:

- The current order by which the patient is detained or committed and the accompanying report;

- The most recent clinical review under s 76, s 77 or s 78 of the Act (certificate and report);
- Relevant second opinions (particularly under s 59 of the Act);
- Any relevant specialist reports (e.g. psychologist, social worker or occupational therapist, medical specialist, cultural assessment), and discharge summaries;
- A copy of the relevant police caption sheet/summary of facts, order of detention and list of previous convictions (for special patients);

**Note: The Tribunal does not have previous reports and annexures available to it and so these need to be sent afresh, if relevant. However, repetition of material is best avoided.**