

MENTAL HEALTH REVIEW TRIBUNAL

Practice and Policy Guideline #4

DECISION WRITING

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.

1. A written record should be made of the outcome of all Review Tribunal hearings.
2. The purposes of such documents include:
 - to record the decisions reached and the means and reasoning by which those decisions were reached;
 - to provide a useful point of reference for subsequent reviews;
 - to record concerns;
 - to interpret and clarify mental health law;
 - to provide encouragement and support.
3. Documents should be able to withstand scrutiny by a wide range of persons, including applicants, whanau and friends, clinicians, lawyers, judges, Ministry officials, academics and the media.
4. The standard heading for documents is:

“MENTAL HEALTH REVIEW TRIBUNAL

NO.

IN THE MATTER

*of an application pursuant to section.....
Mental Health (Compulsory
Assessment and Treatment) Act 1992*

AND

IN THE MATTER

*of an application by.....
(d.o.b.....)*

Review Tribunal Members:

Date of Application:

Date of Hearing:

Place of Hearing:

Previous Reviews:

Responsible Clinician:

Counsel for Applicant:

Persons attending:

5. The heading for investigations is:

“MENTAL HEALTH REVIEW TRIBUNAL

NO.

IN THE MATTER

*of an investigation pursuant to section 7
75 Mental Health (Compulsory
Assessment and Treatment) Act 1992*

AND

IN THE MATTER

*of a referral by.....
(d.o.b.....)*

Review Tribunal Members:

Date of Referral:

Date of Hearing:

Place of Hearing:

Counsel for Applicant:

Persons attending:

6. Where the document is a procedural one and does not record the outcome of a concluded hearing, it should be entitled *Minute*. Where the document relates to a s79 or s81 hearing in respect of which a decision has already been announced, it should be entitled *Reasons for Decision*, but otherwise should be entitled *Decision*. In s80 cases the document should be entitled *Opinion*. In the case of s75 hearings, the document should be entitled *Complaint Investigation Findings*.
7. The documents should record not only the Review Tribunal's findings and conclusions, but the reasons they have been reached.
8. Where there is conflict of evidence, documents should record which facts are accepted, and which facts are not, and the reasons for the choice.
9. Similarly, documents should record which submissions are accepted, and which are not, and the reasons for the choice.
10. In s79 and s81 cases, the Review Tribunal should record its findings by reference to the various elements of the mental disorder definition.
11. In section 80 insanity cases, the Review Tribunal should record its findings by reference to the definition of unfit to stand trial in section 4 of the Criminal Procedure (Mentally Impaired Persons) Act 2005. It should also refer to the additional enquiries in P v. Police [2007] 2 NZLR 528 (HC) referred to in its decision 11/026.
12. In section 80 unfitness to stand trial cases, the Review Tribunal should record its findings by reference to the various matters referred to in its decision 13/173.
13. Documents should display the following qualities:
 - factual accuracy;

- legal accuracy;
- clear expression in plain English
- correct grammar and spelling;
- an avoidance of inflammatory comment which might cause offence or give rise to controversy;
- a courteous and respectful tone;
- protection of personal and private information to the extent possible commensurate with explaining the decision;
- even-handedness;
- clarity of reasoning and persuasiveness;
- completeness as to relevant and vital information;
- avoidance of irrelevant information or statements.

14. Documents should have a stand-alone quality, such that it can be understood, without reference to any other document. Other documents should not be attached to it.

15. Documents are to be written by the lawyer member dealing with the matter concerned. He or she should be identified as the author of the document and sign and date it.

16. Documents recording outcomes of hearings should be agreed to by all three members of the Review Tribunal dealing with the case (and where there is a co-opted member, all four members) before they are issued. Should a member disagree with the decision of the remaining members, that member may express a dissenting opinion incorporated into the document.

17. If possible, documents should be finalised and in the hands of the secretariat no later than **10 working days** following the conclusion of the hearing process.

Last updated August 2015

NJ Dunlop

Convener