

MENTAL HEALTH REVIEW TRIBUNAL

Practice and Policy Guideline #5

APPLICATIONS BY THOSE NOT SUBJECT TO COMPULSORY TREATMENT

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.

Section 79 Reviews

1. Section 79 provides that any person to whom a copy of a certificate of clinical review is sent under section 76 may apply to the Review Tribunal for a review of the patient's condition. Those persons are specified in section 76 (7)(b):
 - (i) the patient
 - (ii) any welfare guardian of the patientⁱ
 - (iii) the patient's principal care giverⁱⁱ
 - (iv) the medical practitioner who usually attended the patient before the patient was required to undergo assessment and treatment
 - (v) a district inspector
 - (vi) an official visitor.

2. Where an application is signed by someone other than the patient, the Review Tribunal should ascertain whether that person is signing *on behalf* of the patient, or whether they are an applicant in their own right.

3. Where it appears that the applicant is someone other than the patient:
 - (a) The secretariat should alert the member dealing with the pre-hearing telephone conference;

 - (b) The secretariat and member should endeavour to ascertain the eligibility of the applicant in terms of section 79 (7)(b).

- (c) The secretariat should ascertain whether the applicant and the patient are each legally represented. If they are then both lawyers should participate in the pre-hearing telephone conference. If the applicant is not legally represented then he/she should be requested to participate in the pre-hearing telephone conference.
 - (d) The member should at the pre-hearing telephone conference ascertain why the patient is not the applicant, and what the implications for that might be for the hearing processⁱⁱⁱ. The applicant should be asked what issues they intend to raise. Should the applicant wish to complain about aspects of care and treatment they should be referred to section 75 of the Act. The member should have regard to section 79(6)(b) which empowers the Review Tribunal to refuse to consider an application made by a relative or friend of a patient otherwise than in the interests of the patient.
 - (e) The hearing should not proceed unless the Review Tribunal is satisfied that both the applicant and the patient will be present at the hearing.
- 4. Where the Review Tribunal is aware that the Director of Mental Health is contemplating or intending to apply for a patient to be made a restricted patient, the Director should be given the opportunity to be heard^{iv}.**

Section 80

- 5. Section 80 (1) which relates to special patient reviews refers to section 77 which in turn at subsections (3)(b)(iii) and (4)(b)(iii) refers to 76(7)(b) with the result that the same categories of persons can be applicants as with s.79 reviews. Therefore, the same considerations as above apply. It is noted that additionally the Minister of Health, Attorney General and Director of Mental Health can be applicants^v; in such cases the hearing may proceed without the applicant being represented should they choose not to be represented.

Section 81

- 6. Section 81(1) refers to section 78, subsection (4)(c) of which refers to section 76(7)(b) with the result that the same categories of persons can be applicants as

with section 79 reviews. Therefore the same considerations as above apply. It is noted that additionally the Director of Mental Health and the Minister of Health can be an applicant^{vi}; in such cases the hearing may proceed without the applicant being represented should they choose not to be represented. The Director should however be given the opportunity to be heard in relation to all section 81 hearings^{vii}

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Convener

ⁱ Section 2 includes the following definition: “**welfare guardian** has the same meaning as it has in section 2 of the Protection of Personal and Property Rights Act 1988”.

ⁱⁱ Section 2 includes the following definition: “**principal caregiver**, in relation to any patient, means the friend of the patient or the member of the patient’s family group or whanau who is most evidently and directly concerned with the oversight of the patient’s care and welfare.”

ⁱⁱⁱ Some of the relevant issues were discussed in case 13/012 which is available online at <http://www.nzlii.org/nz/cases/NZMHRT/2013/12.html>

^{iv} Waitemata Health [2001] NZCA 312; [2001] NZFLR 1122; (2001) 21 FRNZ 216 (3 October 2001)

^v Section 80(2) and section 77(3)(d) and section 77 (4)(d).

^{vi} Section 81(2) and section 78(5)(b) and section 78(6)(b)(ii).

^{vii} See iv above.