

MENTAL HEALTH REVIEW TRIBUNAL

Mental Health (Compulsory Assessment and Treatment) Act 1992

TO THOSE INVOLVED IN THE ADMINISTRATION AND HEARING OF APPLICATIONS TO THE MENTAL HEALTH REVIEW TRIBUNAL

4 June 2020

Tēnā koutou,

RE: COVID-19 : Changes to arrangements for reviews by the Tribunal

On 24 March 2020 the Tribunal outlined how it would operate under then foreshadowed Covid-19 Alert Levels 3 and 4, with hearings predominately being conducted by Zoom. Since then:

- the Alert Level has been reduced to Alert Level 2;
- the possibility of an imminent move to Alert Level 1 has been foreshadowed;
- the COVID-19 Response (Further Management Measures) Legislation Act 2020 has passed, Schedule 11 of which clarifies when a Tribunal may perform its functions by audio visual link or by telephone. Relevant provisions are repealed on the earlier of 31 October 2021 or a date set by the Governor-General by Order in Council.

This letter seeks to give some guidance to those involved in hearings. The Tribunal will seek to return to its more usual way of conducting reviews, involving hearings in person. However, it will not always be practicable for this to occur.

Making applications

The Tribunal previously asked applicants to delay making applications until the Covid-19 crisis had passed or reduced. It encouraged resolution of issues which might lead to an application being made.

It has been grateful for the cooperation of patients and others involved in the administration of the Mental Health (Compulsory Assessment and Treatment) Act 1992 (MHA).

It is no longer necessary for the Tribunal to ask applicants to delay making applications.

Applications ought to be emailed to the Secretariat

The filing of applications by email has proven useful. The best way to file an application is still by emailing the application form to Secretariat@mhrt.co.nz.

Earlier telephone conferences

Where possible, pre-hearing telephone conferences will occur within 10 to 14 days following receipt of an application. This is to allow time for understanding and planning hearing requirements, particularly given the possibility that some hearings will still include an element of attendance by audio visual link or telephone.

At the conference, participants ought to be in a position to have meaningful discussion regarding the conduct of the initial examination and hearing, with regard to the changes to the MHA introduced by the COVID-19 Response (Further Management Measures) Legislation Act 2020. The main changes are turned to below.

The initial examination will usually be conducted in person

Pursuant to new s6A(3) of the MHA, a member of the Tribunal may conduct an examination of a person (the patient) by audio visual link, where that member "*... considers that it is not practicable for the person to be physically present for an examination.*"

Where one or more Tribunal members can attend a hearing in person, then the examination required by Clause 1 of Schedule 1 of the MHA can be expected to occur in person, prior to the hearing. It may be conducted by a psychiatrist, lawyer or community member.

Where no Tribunal member can attend a hearing in person, then arrangements will be made for the examination to occur by audio visual link, likely using Zoom.

These aspects may be expected to be discussed at the telephone conference.

Hearings will usually be in person, but in limited circumstances remote participation may occur

The default position is that all participants in a hearing are required to attend in person. However, pursuant to new cl 3A(1) of Schedule 1 of the MHA, the Tribunal "*...may determine that a participant be permitted to appear at a hearing by remote technology if the Tribunal considers that it is not practicable for the participant to be physically present.*"

A "*participant*" means a party, the patient, a person to whom a certificate of clinical review is sent pursuant to ss 76(7)(b) or 77(3)(b) of the MHA, counsel, a witness or a member of the Tribunal.

Clause 3A(2) of Schedule 1 sets out the criteria to be considered when determining whether a person can attend remotely. It states:

"(2) The Tribunal must take into account the following criteria when making a determination:

- (a) the available remote technology must allow, wherever reasonably practicable, the person to be both heard and seen:*
- (b) the potential impact of the use of the technology on the effective maintenance of the rights of the person under clause 3, including the right to assess the credibility of witnesses and the reliability of evidence presented to the Tribunal:*
- (c) any other relevant matters."*

If it is likely to not be practicable for a participant to attend a hearing in person, then that ought to be raised with the Secretariat by email at the earliest opportunity, or at latest at the telephone conference, by the patient, his or her lawyer, the DAMHS, responsible clinician, or other attendee of that conference.

At the conference the Tribunal can be expected to indicate whether any of its members may have difficulty attending a hearing in person. The main reason will be difficulty making practical arrangements

for travel between where the member lives and the hearing venue, which will often be in a different region of New Zealand.

The Tribunal will make its determination subsequent to the conference, but may at the conference encourage agreement between the parties, a matter which may be relevant to its determination.

Other issues

The Tribunal, directly or through the Secretariat, may raise other issues, or may give other instructions, in the course of preparation for hearings. Please can you respond to them as best as possible.

If there are any issues you are aware of which are likely to impact on the smooth and safe running of a hearing, then please raise those by email with the Tribunal, through the Secretariat.

Thank you

The Tribunal and I thank you for your cooperation. We hope you, your families and whanau, stay safe.

Ngā mihi nui,



James Wilding QC
Convener
Mental Health Review Tribunal