

Chief Psychiatrist's Clinical Practice Forum: Clinical decision making and the Mental Health Tribunal

***Making compulsory orders: the role of the Mental
Health Tribunal as primary decision maker***

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*Mental Health
Review Board
of Victoria*

Issues to be covered

- The role and functions of the Mental Health Tribunal (MHT).
- Key principles and considerations governing decision making by the MHT under the MHA 2013.
- Practical differences between the current operation of the MHRB and what will be required for the MHT.
- Immediate priorities of the MHT establishment project.
- The MHT's proposed ECT jurisdiction.
- Duty of care and the MHA 2013.

The role of the MHT

- One of the safeguards in the MHA designed to protect the rights and dignity of people being compulsorily treated for mental illness.
- A forum for exploring and delineating the parameters of the MHA.
- The MHT will have an obligation to perform its functions in a manner that promotes the principles and objectives of the MHA.

The functions of the MHT

- The MHT will make orders for / approve:
 - compulsory treatment beyond an initial 28 day period, including setting the duration of an order;
 - ECT for compulsory patients and young people under 18;
 - neurosurgery for mental illness.
- Orders are time limited and expire on their end-date. An application by a psychiatrist for a further treatment order must be heard by the MHT before a person's current order expires. If orders expire before the MHT makes a new order, compulsory treatment must cease.
- Patients will still be able to appeal to the MHT – this will be called an application for revocation.

Key principles and considerations governing MHT decision making

- The MHT will be a primary decision maker rather than a review body.
- A presumption of capacity.
- Reaffirmation of the principle of least restriction.
- Administrative law principles applicable to all tribunals and statutory decision makers.

Practical differences between the MHT & the MHRB

- More frequent hearings scheduled at venues, supplemented by a capacity to conduct videoconference hearings as needed.
- Adjournments will be limited to matters involving *exceptional circumstances*, therefore it must be assumed that hearings have to proceed on the day they are scheduled. If they don't, an order is likely to expire.
- Reports and oral evidence from the treating team must address each of the applicable criteria and provide sufficient detail in relation to treatment. Insufficient / inadequate evidence will mean the MHT will not be able to make an order.

Immediate priorities of the MHT establishment project

- Over the next 2-3 months liaison between the MHRB's tribunal project team and MHA project officers based in AMHS will focus on:
 - Feedback on strengths and gaps in current practices based on data collected from hearings;
 - Establishing reliable video links between the MHT and venues;
 - Developing the state-wide MHT hearing schedule;
 - Roll out of the CMS to integrate with the CMI-ODS; and
 - Continuing to develop and pilot key tools for hearings, in particular report templates and application forms.

The MHT's proposed ECT jurisdiction

Responsiveness:

- A fundamental obligation of the Tribunal will be to ensure no treatment order expires, or ECT application (including urgent applications) is delayed through it not being able to conduct a hearing.

Streamlining:

- Wherever possible the Tribunal's procedures will allow for ECT applications to be handled jointly with any other pending matter.

Duty of care and the MHA 2013

- Duty of care is fulfilled through both voluntary and compulsory engagement with patients / consumers.
- When an individual sets boundaries regarding what they will accept on a voluntary basis, duty of care cannot create an obligation to do more than what is permitted / authorised under the MHA.
- There is a duty to ensure that the MHT is provided with complete and reliable evidence so as to be in a position to make an informed decision.
- If fully and accurately appraised of the circumstances of an individual the MHT is responsible for the decision it makes.
- MHT decisions are made at a specific point in time, and do not act as an impediment to the obligation to respond to subsequent changes / a deterioration in the circumstances or condition of an individual.

Concluding comments

- Commencement will be a start not an end-point. The MHT will be committed to ongoing refinement and improvement of processes e.g.:
 - streamlined hearing administration (e-documentation, individual case management);
 - tailored processes for particular groups (aged, young people, Aboriginal consumers);
 - tailored processes for specific AMHS.
- Increased rigour does not equate to formality and legalism. In consultation with all stakeholders / hearing participants the Tribunal will continue to develop and embed the practice of solution-focused hearings.