mhrt
Mental Health Review Tribunal

FROM THE DEPUTY PRESIDENT:

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Doctors role structure

From time to time, clinical reports make reference to different acronyms when describing a clinician – for example, SMO or VMO.

To assist members in better understanding the roles that these clinicians have in the relevant Service, we have found an outline published by Queensland Health: https://www.health.qld.gov.au/employment/work-for-us/clinical/medical/career-structure.

This outline discusses the difference between Resident Medical Officers (from intern to Senior Registrar), who work in teams led by senior medical staff and Senior Medical Officers (SMO).

Practicalities of making a TA

Section 451 of the *Mental Health Act 2016* provides that the Tribunal may make a treatment authority (TA) on the revocation of a forensic order (FO). Similarly, section 483 provides that a TA may be made on revocation of a treatment support order (TSO). (Please read sections 451 and 483 for the detail on when a TA can be made). But, if the Tribunal decides to make a TA, does the treating team need to provide appropriate paperwork for the making of a TA (e.g. a recommendation for assessment form and a TA form)?

No, paperwork in the form usually completed by the treating team when an authorised doctor makes a TA is not required. The recommendation from an authorised psychiatrist that a TA be made (required for the Tribunal to make a TA under sections 451 and 483) can be contained in the clinical report relating to the FO or TSO review. This can be done by ticking the TA box in the recommendation section in the clinical report and then addressing the criteria in the text below.

If the MHRT decided to make a TA, the TA is made by order of the Tribunal. That is, the decision paperwork will specify that a TA is made (similar to when the panel make a TSO). No separate TA document is required. The requirements regarding specifying the category, AMHS responsible, nature of extent of LCT and conditions will all be contained within the Tribunal's decision.

Victim impact statements – legal representation

Section 743 of the *Mental Health Act 2016* (MHA2016) provides how the Tribunal determines whether a victim impact statement (VIS) is disclosed to the person the subject of the FO or TSO. Whether or not the Tribunal decide to disclose the VIS to the person, section 743(4) says that the section does not prevent the Tribunal disclosing the VIS to a lawyer of the person the subject of the review if satisfied the disclosure is in the best interests of the person. The person's lawyer is specifically prohibited from disclosing the VIS to the person unless the lawyer has a reasonable excuse. For the purposes of that section, lawyer includes another representative.

It would be usual for the disclosure of the VIS to be in the person's best interests for the following reasons:

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- if the Attorney-General is represented, the Attorney-General's representative will have access to the VIS. It seems appropriate that all representatives have access to the same information.
- if the person is given access to the VIS, it is likely in their best interests that the VIS be disclosed to their lawyer so that the lawyer can take the person's instructions on how the VIS should be taken into account.
- if the person is not given access to the VIS, it is likely in their best interests that their lawyer have access to the VIS so that the Tribunal still has the benefit of submissions from someone acting on behalf of the person as to how the VIS should be taken into account.

However, what if the person does not have a lawyer (or another representative) for the hearing at which a VIS is being considered? The MHA2016 does not specifically require the person to have a lawyer appointed by the Tribunal because a VIS is being considered. Section 743 says that it does not prevent the VIS being disclosed to the lawyer, as opposed to the section dealing with confidentiality orders (s722) which says that if a confidential order is made, the Tribunal must give the information to the person's lawyer. Therefore, regardless of whether a VIS is given to the person or not, it is not mandatory for the person to have a lawyer or other representative for the hearing.

There may be circumstances when the person has a lawyer already. For example, where the Attorney-General is represented at a hearing, the Tribunal will automatically provide the person with a lawyer for that hearing. Also, a person may appoint their own lawyer. If the person is not represented and the panel hearing a matter consider that it would be in the person's best interests to have a lawyer represent them at the hearing, the panel may wish to request that the Tribunal office arrange a legal representative for their hearing. If this is requested on the day of the hearing or shortly before the hearing, this may result in an adjournment.

Consequences for existing TA when TSO made by MHC

Section 167 of the MHA2016 provides that where the Mental Health Court makes an FO (mental health) for a person subject to a TA or TSO, the TA or TSO 'ends' on the making of the FO.

Unfortunately, there is no equivalent section for the consequences for an existing TA upon the making of a TSO by the MHC. We believe this is an error, and have referred it to the Chief Psychiatrist, the administrator of the Act. We indicated to the Chief Psychiatrist that we will proceed as if the TA is similarly automatically ended on the making of a TSO by the Court, and that view was accepted.

This view is supported by section 31 which provides that a doctor must not examine a person subject to a TSO in order to decide whether to make a recommendation for assessment for the person, the first step to the making of a TA.