

SESLHD PROCEDURE COVER SHEET



Health
South Eastern Sydney
Local Health District

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EXECUTIVE SPONSOR or EXECUTIVE CLINICAL SPONSOR	Clinical Director, Mental Health Service
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FUNCTIONAL GROUP(S)	Mental Health
KEY TERMS	Mental Health Review Tribunal, Mental Health Inquiry, Involuntary Patient, Person Detained
SUMMARY	The procedure outlines the appropriate level of support to patients preceding a mental health tribunal inquiry and hearing.

COMPLIANCE WITH THIS DOCUMENT IS MANDATORY

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SESLHD PROCEDURE

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1. POLICY STATEMENT

SESLHD Mental Health Service promotes high quality, compassionate and safe practices within a therapeutic setting. This procedure is consistent with [NSW Mental Health Act \(2007\)](#), [PD2015_049 - NSW Health Code of Conduct](#), and [SESLHDGL/074 - Clinical Documentation in Mental Health](#).

2. BACKGROUND

The NSW Mental Health Review Tribunal (MHRT) is a quasi-judicial body constituted under the *Mental Health Act (2007)*. Responsibilities include conducting mental health inquiries, making and reviewing orders and hearing appeals relating to the treatment and care of people with mental illness.

Timely and high-quality health care, in accordance with professionally acceptable standards, must be provided for all people who are detained within a mental health service for treatment. The rights and dignity of each person must be maintained, including protecting the civil rights of a person with a mental illness and ensuring treatment for their own protection and/or the protection of others is provided.

A set of activities must be completed in preparation for a mental health inquiry and/or mental health review by staff to promote optimal and effective patient care.

2.1 Key Definitions

- **Mental Health Inquiry** is an inquiry that examines the reasons put forward for patient's detention or release.
- **Mental Health Review** is a review of care and treatment for an involuntary patient.
- **Assessable Person** means a person detained in a declared mental health facility for whom a mental health inquiry is required.
- The **treating team** consists of medical officer, registrar, specialist staff, nursing staff, allied health professional, peer worker, and community health professionals. Authorised medical officer is either the medical superintendent of a declared mental health facility or a doctor who has been authorised by the medical superintendent to fulfil responsibilities under the Act. In SESLHD, all psychiatry trainees and CMOs are designated as authorised medical officers.
- The term **patient, consumers, and clients** are used interchangeably within the mental health context.
- For other definitions refer to [NSW Mental Health Act 2007](#).

3. RESPONSIBILITIES

3.1 Employees will:

Follow this procedure related to clinical and non-clinical activities.

3.2 Line Managers will:

Ensure staff are familiar with this procedure, circulated and implemented locally.

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3.3 District Managers/ Service Managers will:

Distribute this procedure within their relevant service. Ensure line managers and staff are familiar with and adhere to this procedure.

3.4 Medical staff will:

Familiarise themselves and follow this procedure in relation to timely clinical activities.

3.5 Administration staff will:

Familiarise themselves and follow this procedure in relation to timely administrative activities.

4. PROCEDURE

4.1 Mental Health Act Compliance

The Medical Superintendent will ensure that all staff comply with the requirements for assessment, admission and detention of patients under the *NSW Mental Health Act 2007* and for applications for Community Treatment Orders (CTO).

This includes clinical documentation, completion of MHA forms, appointment and notification of Designated Carers and Principal Care Providers.

4.2 Inpatient Units

4.2.1 Identification of Patients. Refer to [SESLHDPR/288 - Identification of Patients within Inpatient Mental Health Care Settings](#).

4.2.2 The Registrar or Medical Officer will complete the following, ensuring correct documentation occurs in the patient's healthcare record:

- Inform the patient of the type and duration of order being sought from the Tribunal.
- Inform the patient of the Tribunal process that they will be represented by legal aid unless they wish to appoint their own representative.
- Ensure all *NSW Mental Health Act* documentation is present and correct, including that the following documents are correctly completed and retained within the patient's healthcare record at least three days prior to the hearing:
 - [Form 1: Clinical Report as to Mental State of a Detained Person including a 2nd Form 1 by Psychiatrist. If 2nd Form 1 was incomplete, then to notify the attending Medical Officer.](#)
 - [Schedule 3: Statement of Rights for Persons Detained in Mental Health Facility.](#)
 - [S76\(1\)\(a\) Notice of Detained Person of Mental Health Inquiry.](#)

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- [Form 2: Notice to Primary Carer of Proceedings Before Mental Health Tribunal.](#)
- [S72. Nomination of Designated Carer\(s\).](#)
- Report from the Medical Officer, including the Final Review prior to the Tribunal Hearing.
- Contemporaneous patient progress notes including details of medication administered.
- Assess whether a Healthcare Interpreter is required according to [NSW Health Policy Directive PD2017_044 - Interpreters – Standard Procedure for Working with Health Care Interpreters](#) and when an interpreter is required, inform the local Administration Officer by email or telephone as soon as practicable.
- Review the patient's medication for the day of the scheduled hearing, including PRN medication, with consideration of avoiding medication that may alter their ability to present themselves to the Tribunal, where this is safe and clinically appropriate.
- Attend and present at the Tribunal Hearing.

4.2.3 The attending Medical Officer

- Ensure that second Form 1 is correctly completed.
- Check that all *NSW Mental Health Act* Documentation is complete and correct.
- Approve all requested orders and management plans.
- Support the Registrar or Medical Officer to attend and present at the Tribunal Hearing as required.

4.2.4 The allocated Primary Nurse will:

- Provide to the patient a copy of the completed *Notice of the detained person of Mental Health Inquiry upon completing the MHRT preliminary list*.
- Provide to the patient the [NSW MHRT resources information sheet “understanding my rights at a Tribunal Hearing”](#) and [“what to expect at my Tribunal Hearing”](#).
- Provide to the designated carer **at least THREE days before a hearing** a copy of the completed *Form 2: Notice of proceedings before the Mental Health Review Tribunal*.
- Assist the patient/consumer in choice of attire (inclusive of street clothes) so as the consumer can present themselves to the Tribunal members in the best possible manner.
- Discuss the outcome from the tribunal with the patient and primary carer, providing a written copy of the order.

4.2.5 The Social Worker will:

- Assess the person's capacity to manage his or her financial affairs and prepare a written report. Evidence of any reports are to be documented on the patient's healthcare record and related forms are to be given to the administration staff.

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- **If a CTO is required:**
A completed application form, confirmed service of notice, and treatment planned, are to be prepared by the community mental health team, and documented on the patient’s healthcare record. All completed and related documents are to be given to administration staff.

4.2.6 The Community Primary Clinician will:

Complete CTO application where this is sought by the team.

4.2.7 The Administration Officer will:

4.2.7.1 Prepare List of Patients for Tribunal

- Collate the list of patients who meet the inclusion criteria to be Scheduled on the Mental Health *Inquiries* list. This list should only consist of patients with *mentally ill* status. Refer to **Table 1** for *Schedule Patient Pending Tribunal List: Forms Required*. Not all patient will have a Schedule 1.

Table 1: Schedule Patient Pending Tribunal List: Forms Required

PATIENT MAY PRESENT WITH ONE OF FOUR FORMS
Section 19 – Schedule 1 Medical Officer or Accredited Person
Section 20 – Ambulance Officer
Section 22 – Police
Section 33 – Court Order

- Remove all patients where the Mental Health Act status has changed from Scheduled to Voluntary.
- Confirm with the Medical Officer the patient *order* request type (inpatient or CTO) and duration (four weeks, six weeks, months, etc.)
- Send the amended list to the Tribunal via email on mhrtmhinquries@doh.health.nsw.gov.au **ONE week prior to the scheduled hearing.**
- Send the amended list to the Legal Aid via email on civilmhas@legalaid.nsw.gov.au **ONE week prior to the scheduled hearing**

4.2.7.2 Check completeness of documentation

- Ensure all activities are completed per *Mental Health Inquiry Checklist*. See **APPENDIX A** and where items are missing or incorrect, inform the relevant team member. If items are not fully completed by the deadline for transmission to the Tribunal then inform the Nursing Unit Manager (NUM).
- Ensure the patient has been offered legal representation. A signed copy of *Confirmation as Legal Representative* should be placed in each patient’s health care record, or where patient has refused to appoint a legal representative this

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should be recorded under patient notes. See **APPENDIX A** for a copy of *Confirmation as Legal Representative*.

4.2.7.3 Notify Tribunal and Legal Aid and transmit documentation

- Collate and arrange two copies of all relevant documents (See Checklist under Confirmation of Legal Representative Form) and place these into plastic sleeves, one for the tribunal and one for the legal team. Refer to Section 4.3: Legal Representative. NOTE: Collation of documents should be based on the final list. All paperwork must be faxed to the MHRT prior to a hearing if a video conference occurs.
- Send the final list to the Tribunal via email on mhrtmhinquries@doh.health.nsw.gov.au at **least TWO days prior to the hearing**.
- Send the final list to the Legal Aid via email on civilmhas@legalaid.nsw.gov.au at **least TWO days prior to the hearing**.
- If a fax has been sent to MHRT, dial **(02) 8876 6307** to confirm all the list (referred in 4.3) has been received. All confirmations are to be documented on the respective patient's healthcare record.

4.2.7.4 Organise Hearing

- Notify the NUM and Health and Safety Assistance (HASA) if the Legal Aid team conducts pre-tribunal patient visits. Refer to [Section 4.3: Legal Representative](#).
- Book Healthcare interpreter where required on **(02) 9515 0030**.
- Liaise with HASA to ensure the room is set up for Inquiries.
- All equipment is turned on, is in working order and that a person is present who can operate the system and resolve any technical difficulties, if using video conferencing.
- Notify the Nurse in charge of shift of the Tribunal schedule.
- Notify the relevant Medical Officers of the Tribunal schedule.
- Notify the relevant Medical Officer when they are required by the Tribunal.

4.2.7.5 Post-Hearing Follow-up

- Send signed CTO to the Community Mental Health Service via fax.
- Record the expiry date noted on the order on the live bed board

4.3 Legal Representatives

- The patient's legal representative (including the patient) has the right to inspect and access the patient's healthcare records when the patient has a matter before the MHRT. If the Medical Officer considers that there is information in the medical records that will be harmful for the patient's legal representative to share with the patient, the medical officer should warn the legal representative, as per [NSW Health Information Bulletin IB2018 019 - Right to access medical records by legal representatives - Mental Health Review Tribunal hearings](#).

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- All patient healthcare records reviewed by a legal representative prior to the hearing should be returned to administration officer and stored according to [NSW Health Privacy Manual for Health Information](#). If a copy of the records is removed from the hospital, the consumer's legal representative will follow their own professional and privacy obligations to maintain the confidentiality of the consumer's medical records.

4.4 Community Applications

If the consumer is not currently admitted to a mental health facility, the application for a CTO must not be heard earlier than 14 days after the notice for hearing and the treatment plan is given to the consumer. Notice must also be given to any nominated/ designated carer.

Refer to [Guidelines for Community Treatment Order Application](#), where required, follow the [Civil Hearing Kit: Community Treatment Order](#). The relevant information detailed on the [MHRT Information Sheet: Community Treatment Order](#) should be provided and explained to support the consumer through an application and review.

4.4.1 Community Primary Clinician will:

- In collaboration with the team Registrar or Medical Officer prepare a written report to the tribunal supporting the application, and complete a CTO treatment plan.
- Collate other relevant notes and reports from the clinical record.
- Provide the CTO application and proposed treatment plan to the consumer at **least 14 days** before the date of the proposed Tribunal hearing.
- Explain the CTO requirements to the consumer and inform the consumer and primary care provider of the MHRT Inquiry date, time and location.
- Provide the consumer with contact details for Legal Aid should they wish to seek legal representation.
- Inform the consumer of the appeals process, by their primary clinician, should they disagree with the MHRT decision.

4.4.2 The team Registrar or Medical Officer will:

- Collaborate with the Primary Care Clinician to prepare a written report to the tribunal supporting the application and complete a CTO treatment plan.
- Co-sign the report and application with the Community Primary Clinician.

4.4.3 The attending Medical Officer will:

Review reports and CTO applications and approve contents.

4.4.4 The Director of Community Treatment Facility will:

Review reports and CTO applications and approve contents.

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4.4.5 The Administration Officer will:

- Collate all relevant documents including the CTO plan and report and send to the Mental Health Review Tribunal (MHRT), along with relevant eMR notes and recent Psychiatrist reviews.
- Ensure the patient is included in the Mental Health *Inquiries* list for the MHRT Inquiry.
- Note: Consumers in the community may attend alone, with family members/ friends or legal representation for the MHRT Hearing.
- **NOTE: The orders application can either be for six months or 12 months in length.**

4.4.6 Renewal of Community Treatment Orders

- A clinical review must be scheduled at 4 weeks prior to expiry of a CTO.
- If at clinical review a decision is made to renew a CTO then the application process above must be completed, and documents provided to the MHRT at **least three weeks** before the requested date.

4.4.7 Communication and debriefing

- The primary clinician will discuss the outcome of the MHRT Inquiry with the consumer and their primary carer as soon as possible after the MHRT hearing, to ensure that the consumer understands any orders made and the outcome of the hearing. Discussions with the consumer, carers and legal representatives must be documented in the consumer's electronic medical record.
- **If the outcome concerns a CTO, the granted CTO will be sent to the Community Mental Health Service via fax.**

5. DOCUMENTATION

5.1 Clinical Documentation

Refer to [SESLHDGL/074 - Clinical Documentation in Mental Health](#).

5.2 The Social Worker or Community Case Manager will complete the following document, as required:

- A copy of Treatment Plan if a Community Treatment Order (CTO).
- *s44, NSW Trustee and Guardian Act* – Date of notice of the proceedings is given to interested parties for Financial Management Order.
- Social work or allied health report.
- Any other documents specifically requested by the Tribunal in relation to the matter.

5.3 Administration Staff will complete the following documents at least two days prior to the hearing

- *Confirmation of Legal Representative* form and items on the checklist completed.

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- Any other documents specifically requested by the tribunal in relation to the matter including ensuring the confirmation of legal representative form.
- **NOTE: The mental health legal status with dates is to be updated on the Patient Administration System (iPM).**

6. AUDIT

The line manager will review the completion of documents as stated on the [Confirmation of Legal Representative](#) checklist six monthly for quality improvements.

7. REFERENCES

NSW Health

- [PD2015_049 - NSW Health Code of Conduct](#)
- [IB2018_019 - Right to access medical records by legal representatives - Mental Health Review Tribunal hearings](#)
- [NSW Government, Mental Health Branch, Mental Health Act 2007 Forms](#)
- [Privacy Manual for Health Information \(2015\)](#)
- [PD2017_044 - Interpreters – Standard Procedure for Working with Health Care Interpreters](#)

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- [SESLHDGL/074 - Clinical Documentation in Mental Health](#)
- [SESLHDPR/288 - Identification of Patients within Inpatient Mental Health Care Settings](#)

Others

- [National Safety and Quality Health Service Standards, Second Edition: Standard 1 Clinical Governance Standard, Standard 2 Partnering with Consumers Standard](#)
- [NSW LegalAid: Mental Health Advocacy Service](#)
- [NSW Mental Health Act \(2007\)](#)
- [NSW Mental Health Review Tribunal: Civil Hearing Kit](#)

8. REVISION AND APPROVAL HISTORY

Date	Revision No.	Author and Approval
October 2017	0	Trinh Huynh, District Policy and Document Development Officer Literature review, consulted administration staff, initial draft reviewed by District Clinical Nursing Manager and A/Chief Psychiatrist.
November 2017	0	Trinh Huynh, District Policy and Document Development Officer Incorporated feedback from Draft 1 into Draft 2. Revised structure, use of language and included MH Advocacy Service under references. Revised by Dr Peter Young, A/Chief Psychiatrist; amend Section 4.1 and reshaped document to excise administrative requirements.
December 2017	0	Confirmed contacts from SGH, TSH.

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		Patient preparation updated by SESLHD MHS Clinical Nurse Manager. Under consultation with Community Service Manager.
January 2018	0	David Tobin, Inpatient Service Manager: included consideration of appropriate length of time to work with the patient, family or carer under Section 4.2.5 Legal Representation. Community application updated by Robin Ellis and Jeanine Smith. Wider consultation to clarify roles and responsibilities from medical staff, no additional comments.
February 2018	0	Edited by Dr. Peter Young and reformatted by Trinh Huynh.
March 2018	0	Endorsed by DDDCC with amendment to include Confirmation of Legal Representative Form as Appendix A when available
April 2018	0	Included approved Appendix A.
May 2018	0	Endorsed by MHS Clinical Council.
May 2018	0	Draft for Comment
June 2018	0	Processed by Executive Services and progressed to Clinical and Quality Council for approval prior to publishing.
July 2018	0	Endorsed by Clinical and Quality Council
July 2022	v1.0	Routine review commenced.
August 2022	v1.1	Minor changes to wording only. Endorsed for publication by the Executive Sponsor.
September 2022	v1.2	Circulated to DDCC for review and feedback
October 2022	v1.3	Minor grammatical feedback received.
November 2022	v1.3	Recirculated to DDCC for out-of-session endorsement. Endorsed. Endorsed for publication by Executive Sponsor.

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APPENDIX A. Confirmation of Legal Representative Form

	FAMILY NAME	MRN
	GIVEN NAME	<input type="checkbox"/> MALE <input type="checkbox"/> FEMALE
Facility:	D.O.B. ____/____/____	M.O.
CONFIRMATION AS LEGAL REPRESENTATIVE	ADDRESS	
	LOCATION / WARD	
	COMPLETE ALL DETAILS OR AFFIX PATIENT LABEL HERE	

I _____ of _____
Name Name of legal firm

confirm that I have been appointed by _____ to legally represent the patient below
Insert name of agency
who has a hearing before the Mental Health Review Tribunal.

Name of patient: _____

Admission date / ward / unit: _____

I acknowledge that I have been provided the documents indicated below -

- Schedule 1 or other admitting documents under s 18 MHA, to establish lawful detention
- Medical Report as to Mental State of a Detained Person
- Second Medical Report as to Mental State of a Detained Person
- Third Medical Report as to Mental State of a Detained Person
- Schedule 3 Statement of Rights for Persons Detained in Mental Health Facility
- Notice to Detained Person of Mental Health Inquiry - Mental Health Act 2007 Sections 76 (1)(a)
- Notice to Designated Carer / Principal Care Provider of Mental Health Inquiry - Mental Health Act 2007 Section 73 (3)
- Community Treatment Order
- Financial Management Order
- Medical Officer's report
- Second Medical Officer's report
- Social Workers report
- Documentation of any reviews carried out by all members of the treating team, including opinions expressed about the order being sought by the treating team, or under review.
- Any documents specifically requested by the Tribunal in relation to the matter
- Progress notes date range: _____
- Other _____

If a patient does not confirm the instructions, I undertake to inform the mental health facility and to promptly return all records provided to me by the facility.

I understand I am responsible for the secure storage of the medical record in order to protect this information from unauthorised access, loss, disclosure or other misuse.

Print name _____ Contact Details _____

Signature _____ Date _____

Note: under the Mental Health Act 2007, if a medical practitioner warns the legal representative that it may be harmful to communicate to the patient, or any other person, specified information contained in the medical record, the legal representative is to have full and proper regard to that warning and the legal representative is not obliged to disclose to the patient any information in the record.



Holes Punched as per AS2828.1: 2012
BINDING MARGIN - NO WRITING

CONFIRMATION AS LEGAL REPRESENTATIVE
SMR020.140

NO WRITING

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Mental Health Review Tribunal	
Reception	(02) 9816 5955
Fax Number	(02) 9817 4543
Senior Registry Officer	(02) 8876 6309
Senior Registry Officer	(02) 8876 6311
Senior Registry Officer	(02) 8876 6317
Senior Registry Officer	(02) 8876 6356
Mental Health Inquiries (Friday)	
Fax Number	(02) 9879 0214
Registry Officer	(02) 8876 6335
Senior Registry Officer	(02) 8876 6307
Legal Aid	
Reception	(02) 9745 4277
Fax Number	(02) 9744 6936