

Mental Health and Related Services Act 1998

Part 15

Approved procedure number 19

Northern Territory Civil and Administrative Tribunal (NTCAT) hearings

Target Audience	Approved Treatment Agencies under the Mental Health and Related Services Act; Approved Treatment Facilities under the Mental Health and Related Services Act; General Public,
Jurisdiction	Northern Territory
Document Owner	Chair Mental Health and Related Services Act Approved Procedures and Quality Assurance Committee
Approval Authority	Chief Executive
Author	Approved Procedures and Quality Assurance Committee

Purpose

To provide guidance on the role of the Northern Territory Civil and Administrative Tribunal (NTCAT) in the care and treatment of people under the *Mental Health and Related Services Act 1998* (the Act), and to document procedures required for Tribunal hearings.

Introduction

NTCAT (the Tribunal) is an independent panel set up to make decisions about the treatment and care of people in the Northern Territory (NT) who suffer from a mental illness or mental disturbance.

The Tribunal looks at each patient's individual circumstances and makes decisions about any of the following, including:

- if a person should remain an involuntary patient after they have been admitted to a mental health facility
- if a person should be treated as an involuntary patient but allowed to live outside of a mental health facility
- whether a person should continue as a voluntary patient inside a mental health facility
- non-standard treatments, such as electro-convulsive therapy, recommended by doctors for involuntary patients
- hearing requests for reviews of a patient's admission or treatment
- hearing appeals against a patient's admission or treatment.

It is established under Part 15 of the Act, which places specific requirements on its membership, composition and requirement for a Registrar.

Further general information on the Tribunal can be found on the relevant webpage, currently located at: <https://nt.gov.au/law/courts-and-Tribunals/mental-health-review-Tribunal/introduction>.

Practice Note: 'Best Interest' and 'Cooperative' Approach

The focus of the Tribunal process is primarily in line with the 'best interests' of the patient/client. The Tribunal favours a 'cooperative' working approach between mental health facilities, Tribunal personnel and legal representatives. An inclusive approach toward family and the patient's primary carer is also essential wherever possible.

In order to promote a cooperative environment regular liaison should occur between all parties in order to identify and resolve administrative matters outside of hearings and to promote a smoother hearing process.

Wherever possible and appropriate, the patient's treating Approved Psychiatric Practitioner (APP) should be prepared to engage in discussion with the patient's legal representative prior to a Tribunal hearing in order to facilitate communication regarding the application and to promote better understanding of issues surrounding the application.

Procedure

Requirements under the Act

The Tribunal is consistently referred to throughout the Act because it plays such an integral part in the treatment and care of people who suffer from a mental illness or mental disturbance. Where it is raised in areas other than Part 15 of the Act, the relevant Approved Procedure should be referred to.

A list of other sections of the Act and the title of the relevant procedure is provided in Attachment 1 of this document.

Review of long term voluntary admissions

Section 122 of the Act requires for the Tribunal to review the admission of a voluntary patient (including those that have been admitted by an APP upon application by an adult guardian or decision maker) where the person remains in the Approved Treatment Facility (ATF) for longer than 6 months, The Tribunal must then continue to review the person's admission at intervals not longer than 6 months as long as they remain admitted as a voluntary patient.

Following the review the Tribunal may confirm the admission of the person as a voluntary patient if it is satisfied that the person:

- is able to give informed consent; or
- has an adult guardian or a decision maker, is willing to be admitted and does not fulfil the criteria for admission on the grounds of mental illness or mental disturbance.

However, if the Tribunal determines that that the person fulfils the criteria for involuntary admission on the grounds of mental illness or mental disturbance, it may order that the person be detained as an involuntary patient on those grounds for not longer than 3 months (mental illness) or 14 days (mental disturbance). It must also authorise the treatment that may be administered to the person under the order and fix a date for the order to be again reviewed.

An order made by the Tribunal to admit a person involuntarily on the grounds of mental illness ceases to have effect if the person is discharged from the ATF after a review by an APP wherein it was determined that the person no longer meets the criteria for involuntary admission.

The Tribunal may also determine that that the person fulfils the criteria for involuntary treatment or care in the community and as such, may make a community management order in relation to the person.

If the Tribunal is not satisfied that the person meets any of this criteria, or will not benefit from continuing to be admitted as a voluntary patient, it must order that the person be discharged from the ATF.

Review of involuntary admissions and community management orders

Under the provisions of section 123, the Tribunal must review:

- A person's admission as an involuntary patient within 14 days after admission
- A person's admission as an involuntary patient through a Tribunal order by the date stated in the order.
- An interim community management order (CMO) made by an APP not later than 14 days after it is made.
- A CMO made by the Tribunal for a person receive involuntary treatment or care in the community by the date stated in the order.

The Tribunal may also review the admission of a person as an involuntary patient or an order made under the Act (except where this has occurred under a Court Order) upon request by the person, or someone with a genuine interest in, or a real and immediate concern for the health or welfare of the person.

A review is not required to be conducted where the admission of the person is revoked by an APP who has examined the person and is satisfied that they no longer meet the criteria for involuntary admission.

Practice Note: Patient's right to early review

Patients who are given an involuntary treatment or an interim community management order and the patient's primary carer are to be informed by their doctor within 24 hours of their right for an early review by the Tribunal.

Early review means patients do not have to wait the standard two weeks before their case is heard by the Tribunal.

Patients and/or their carers must tell their doctor if they want an early review.

Ensure patients understand that they have a right to have a lawyer represent them, this can be either:

- a private lawyer
- a Legal Aid lawyer
- a Aboriginal Legal Aid Service lawyer
- have a family member, friend, carer (if you are the subject of the review) or community health representative be present during the hearing
- use an interpreter if English is not your first language
- have an Aboriginal health worker or liaison be present if you are an Indigenous person.

Within 24 hours of admission, all patients must be provided with information regarding their rights to apply to the Tribunal for a review of their admission.

If a patient requests an early review, the Tribunal must be notified by the relevant team member within 24 hours and a hearing scheduled.

Within 72 hours of admission, the issue of early review should be revisited with the patient in order to confirm the patient's earlier decision remains relevant. The advantages and disadvantages of early review should be discussed with the patient in the context of their current mental and physical condition.

Following a review, the Tribunal may order that the person:

- **Be detained as an involuntary patient if the person fulfils the criteria for admission on the grounds of mental illness**
 - Not longer than 3 months
 - The Tribunal must also authorise the treatment that may be administered to the person
 - The Tribunal must fix a date for the order to be reviewed again

NB: The order ceases to have effect if the person is discharged from the ATF by an APP who has examined the person and is satisfied that they no longer meet the criteria for involuntary admission

- **Be detained as an involuntary patient if the person fulfils the criteria for admission on the grounds of mental disturbance**
 - Not longer than 14 days
 - The Tribunal must also authorise the treatment that may be administered to the person
 - The Tribunal must fix a date for the order to be reviewed again.
- **Continue to be detained as an involuntary patient on the grounds of complex cognitive impairment**
 - Not longer than 14 days
 - The Tribunal must also authorise the treatment that may be administered to the person.

NB: The order then ceases to have effect at the end of the period stated in it and the Tribunal cannot further review the person's detention on the grounds of complex cognitive impairment. However, the person may be detained as an involuntary patient on the grounds of mental illness or mental disturbance following assessment, if the person fulfils the criteria for involuntary admission on those grounds.

- **Is to receive involuntary treatment or care in the community (a CMO)**
 - Not longer than 6 months
 - The Tribunal must fix a date for the order to be reviewed again, not longer than 6 months
 - The Order may be extended for periods of not longer than 6 months after considering an application made by an APP before the order expires.
 - Following a review, the Tribunal may vary a CMO where it is satisfied that there is a significant change in the condition of the person.

If the Tribunal is not satisfied that the person fulfils a criteria for admission as an involuntary patient, or a CMO, the Tribunal will revoke admission of the person as an involuntary patient, interim CMO or CMO as required.

Where the Tribunal revokes the admission of the person as an involuntary patient the Tribunal will order that the person is to be immediately discharged from the ATF or to be discharged when arrangements are made for the care of the person upon their discharge. If it is the latter, this is to occur not later than 7 days after the order is made.

Review of reports

The Tribunal must review reports forwarded to it under this Act as soon as practicable after it is received. Following the review, the Tribunal:

- (a) may give a written direction to the CE relating to a practice under, or interpretation of, this Act arising out of a matter contained in the report; and
- (b) where it considers that a person may be guilty of professional misconduct, must notify the relevant professional body.

Determination as to whether person able to give informed consent

The Tribunal determines a person's capacity to give informed consent, where an Authorised Psychiatric Practitioner (APP), is unable to form a view as to whether a person is capable of giving informed consent to their voluntary admission and or treatment under sections 25 and 54 of the Act.

Refer to Approved Procedure - 5 Voluntary admission for further information.

Applications for review

Section 127 provides for the review of the application of the certain sections of the Act by a practitioner by the Tribunal. This occurs upon request to the Tribunal from the person or their adult guardian, primary carer, representative, their legal representative or a person with a genuine interest in, or with a real and immediate concern for the health or welfare of, the person. This applies to the following sections:

25(8)	A decision of a medical practitioner to refuse to admit a person as a voluntary patient or a decision of an APP to refuse to confirm the admission of a person as a voluntary patient where they are not satisfied that the person is likely to benefit from being admitted.
27	A decision of an APP to admit or refuse to admit a person who has adult guardian or decision maker as a voluntary patient.
39(3)(a)	A decision of an APP to detain a person admitted as an involuntary patient on the grounds of mental illness at an approved treatment facility for a further period of up to 14 days.
42(2)	A decision of an APP to detain a person admitted as an involuntary patient on the grounds of mental disturbance at an approved treatment facility for a further period of up to 7 days.
47(2)	A decision of an APP to not notify a person's primary carer that an interim community management order has been made for the person.
88(3)	A decision of an APP to not allow the giving of information concerning treatment of a person to the person's representative or primary carer.
89(5)	A decision of an APP to not allow consultation with, or the giving of information concerning the details of a discharge plan to, a person's representative or primary carer.
92(4)	A decision of an APP to refuse an application for access to information in a person's records kept by an ATF or approved treatment agency (ATA).
98(1)	An order of an APP to restrict or deny a person's right.
167(1)	A decision of a person-in-charge (PIC) of an ATF to transfer a person admitted as an involuntary patient to another ATF.

Practice Note:

The request is to be made to the Tribunal person in the approved form. The Tribunal must be notified by the relevant team member within 24 hours. The contact details for the Tribunal are (08) 8999 5001 or email mentalhealthreviewtribunal.doj@nt.gov.au.

Tribunal reviews occur within the time limited by the Act (i.e. within 14 days of admission in the case of mental illness - section 39 and 10 days in the case of mental disturbance - section 42). Thereafter the Tribunal sets the review period.

Limitation of further reviews

Under the requirements of section 128, after conducting a review, the Tribunal may order that an application for another review for the same matter may not be made before a specific date that they determine.

Proceedings before Tribunal

Hearings

The Tribunal may undertake a review by conducting a hearing. In addition, the Tribunal must conduct a hearing to decide an application for an order for a person's admission and detention as an involuntary patient on the grounds of complex cognitive impairment. The hearing must be conducted in the manner decided by the Tribunal and practice directions have been issued to regulate tribunal practices and procedures. These are available from the Tribunal Registrar to clinicians and practitioners upon request.

The Tribunal may:

- summon a person to appear before it; and
- order reports to be prepared and presented to it; and
- appoint persons to assist it so that it may inform itself on any matter it thinks fit.

It may also adjourn a hearing. If this occurs, any order that is in force at the adjournment remains in force during the adjournment despite any earlier date that may have been fixed for its expiry.

The PIC of an ATF must ensure, as far as is reasonably practicable, that a person who is admitted as an involuntary patient at the facility is dressed in a manner that maintains his or her inherent dignity as a human being when the person appears at a hearing of the Tribunal.

Practice Note:

What to expect during your hearing

The reason for a tribunal hearing is so that each party involved in a review can express their concerns.

Most hearings are conducted at the health facility a patient is being treated at. At a hearing you can expect the following people to be present:

- the three-member tribunal panel
- the treating psychiatrist, doctor and medical team
- the lawyer of the person requesting the review
- the applicant's case manager
- requested family, friends or legal guardians or carers

Sometimes other medical professionals or students can be present at hearings as an observer. Hearings are not open to the public.

What happens at the hearing

Any or all of the above people present will have the opportunity to speak at the hearing.

At least one of the panel members, usually an appointed medical professional from another state, will view the case via audio visual link.

The tribunal will ask questions. This can be to any or all of those present who have spoken with regards to the matter being considered.

If you are the subject of the hearing you have the right not to speak to the tribunal and allow others to speak on your behalf.

After the panel has heard all evidence they will usually adjourn the proceedings to make a decision in private.

This is generally done straight away. When they have made a decision they will call everyone back in to the hearing room to hear their decision.

Hearings in remote areas

If you live in a remote area your hearing may be heard via audio visual link or through a telephone conference. Sometimes a patient may be transported by NT Health to the nearest treatment facility for the hearing.

Your hearing is an important opportunity to have your say about whether you need compulsory treatment. You do not have to go to your hearing. But if you do not go we will have to make a decision without you. If you do not want to go you can still contact the Tribunal before your hearing to tell us what you think and want or ask your nominated person to represent you.

Each hearing remains part of a legal process. The Tribunal follows the rules of procedural fairness and natural justice, but it is not bound by the formal rules of evidence. During a hearing, the members of the Tribunal will ask questions, so as to gather the information needed to make sure that all legal requirements have been met before the Tribunal makes a decision.

Most Tribunal hearings are completed in about 30 minutes. However, sometimes they take longer to complete, depending on what may be needed to make sure that each person receives a full and fair hearing.

Role of the APP

Appointment as an APP is divided into two streams, each requiring particular levels of experience and qualifications, which is aligned to particular responsibilities under the Act.

For the purpose of preparing and presenting material to the Tribunal, a Level 2 APP (Registrar, Hospital Medical Officer or Medical Officer) will assist in the preparation of reports and gathering any other information for Tribunal's consideration. The Level 1 APP (Consultant Psychiatrist or Senior Registrar) overseeing the treatment and care of the patient has final responsibility for the content of reports and information provided to the Tribunal.

Either the Level 1 or 2 APP may present the patient's case at the hearing. The decision regarding who is the most appropriate practitioner to present the material will be made by the Level 1 APP and must take into account the complexity of the matter, experience of the Level 2 APP to undertake this task and availability of either practitioner to attend the hearing.

Unless specifically required earlier under the provisions of the Act or this Approved Procedure, all relevant documents relating to the matter under review are to be provided to the Tribunal and the person's legal representative at least 48 hours before the hearing.

At the hearing the APP will be required to provide information which satisfies the Tribunal that criteria relevant to the order sought are satisfied.

The APP will need to state the type of harm which may occur to the patient or others if the order does not continue and will also need to advise the Tribunal why the order being sought is the only viable way that the risk of harm can be reduced.

As the least restrictive alternative for the patient will often be voluntary treatment the APP will need to satisfy the Tribunal that this is not appropriate for the patient at this time.

At the Tribunal hearing the members of the Tribunal, or the patient or any person attending on the patient's behalf, can question the APP as to the patient's diagnosis, treatment, history, compliance or insight. The APP should be in a position to answer these queries or ensure that the patient is accompanied by an APP who can.

Matters to be considered by Tribunal

When undertaking a review or deciding an application for involuntary detention, the Tribunal considers the person's:

- current state in relation to the criteria for involuntary admission on the grounds of mental illness, mental disturbance or complex cognitive impairment; and
- medical and psychiatric history and current social circumstances.

In determining whether a person has a mental illness, mental disturbance or complex cognitive impairment, the Tribunal gives due regard to:

- any cultural factors relating to the person that may be relevant to the determination; and
- any evidence given to the Tribunal by an expert witness concerning the person's cultural background and its relevance to any question of mental illness, mental disturbance or complex cognitive impairment.

Right of appearance and representation

A person who is the subject of a review or application for involuntary detention may represent themselves or may be represented by a legal practitioner or other person. However, the Tribunal must appoint a legal practitioner to represent the person if the person is unrepresented at the hearing and it considers that the person should be represented (despite any objections the person might have).

If the Tribunal appoints a legal practitioner to represent the person, it may also order the Territory to pay all or part of the reasonable costs and disbursements of the legal practitioner.

The Tribunal may also conduct the hearing in the absence of the person or the person's representative if:

- reasonable notice of the hearing was given to the person or representative; and
- the person or representative had a reasonable opportunity to attend the hearing; and
- the person or representative refuses to attend the hearing.

The Tribunal may also conduct the hearing in the absence of the person if there are exceptional circumstances that make the attendance of the person inappropriate and the person's representative has a reasonable opportunity to attend the hearing.

Access to medical records

Section 132 requires that the person who is the subject of a review or involuntary detention application must be given access to his or her medical records and reports that are before the Tribunal. The Tribunal must also give access to the medical records and reports to the following:

- the person's adult guardian;
- if the person has a decision maker – the decision maker;
- the person's representative.

This information should be provided to the consumer and above stakeholders as early as possible, and at least 24 hours prior to the Tribunal hearing.

However, the Tribunal may order that a person who is the subject of a review or application for involuntary detention not be given access to some or all of this information where it is satisfied that to do so may cause serious harm to the health of the person or may put the safety of others at risk.

The Tribunal may also order that only the adult guardian, decision maker or representative of the person be given access to all or part of this information, and in so doing, may require that the adult guardian, decision maker or representative give an undertaking that they will not disclose specified information in the medical record or report. It is then an offence for a person who has given an undertaking to disclose to the person, or to any other person, any information to which the undertaking relates.

Practice Note: Patient rights

Patients or carers will need to have certain evidence ready for the Tribunal to consider.

Patients or carers have the right to access medical records to present to the Tribunal as part of the review.

Patients have the right to have their treating doctor or team present to assist them, especially in instances when heavy medication could affect their ability to fully understand what is happening during the hearing.

Patients also have the right to suggest a different course of treatment other than the one being offered to them by NT Mental Health. This could be an alternative already offered by NT Mental Health or one offered elsewhere.

Patients involved in a review from the tribunal are also legally allowed:

- To access to your medical records or any documents relevant to their case to present to the tribunal
- to know exactly what information and recommendations your treating doctor or psychiatrist plans to tell the panel
- to request copies of any other documents your doctor or psychiatrist plans to submit to the tribunal
- to access to a lawyer and the right to ask anybody else to speak on their behalf or in their defence at the hearing.

Family members, friends or carer rights

Family members, friends or carers have the right to be present during a person's hearing with the tribunal.

Although in some instances the tribunal panel has the right to limit the number of people who can be present.

Family members, friends or carers can write a letter to the tribunal in support of the patient seeking the review.

If family members, friends or carers can't be there for the hearing they can request the panel phone them for a verbal statement in support of the review. Family members, friends or carers are to tell the lawyer representing the patient if you wish to do this.

Pursuant to s132, a patient and their representative must be given access to the patient's medical records and reports that are before the Tribunal.

Where the Tribunal is aware that a legal representative acts for a patient, the Tribunal Registrar or Deputy Registrar will fax those records and reports to that relevant legal representative.

In some instances the APP may deem it necessary to withhold some information from a patient. In cases where this occurs the APP must advise the Tribunal of that objection. The Tribunal will decide the issue of disclosure prior to the commencement of the hearing. Such objection should be communicated to the Tribunal in writing, via **Form 47 Disclosure of information and request for information**, prior to or at the same time the records and reports are made available to the Tribunal.

Pending determination of disclosure issues, the patient may have access to those parts of the records or reports in respect of which no objection is made as soon as they are finalised. In the inpatient setting, this should occur at least 24 hours in advance of hearings.

Evidence

A person who is the subject of a review or application for involuntary detention, or their representative, may call and produce evidence, including reports from medical practitioners, psychologists and persons having particular expertise considered by the Tribunal to be relevant to the issues to be determined by it. A request can also be made for that a person to attend the hearing to give evidence. However this request may be refused by the Tribunal if satisfied that the attendance of the person may cause serious harm to the health of the person who is the subject of the review or application or that the safety of other persons may be placed at risk.

The Tribunal is not required to comply with the rules of evidence and may inform itself of any relevant matter in any way it considers appropriate.

Interpreter

The Tribunal must, so far as is reasonably practicable, permit a person who is the subject of a review or involuntary detention application to have access to an interpreter to assist them prepare for the hearing and to assist them at the hearing where they do not speak English to a level that will enable them to understand the proceedings. The interpreter is to be provided at no cost to the person.

Practice Note:

Any patient from a non-English speaking background, should be assessed within the clinical setting to determine whether an interpreter is required prior to Tribunal Hearings.

If required, an appropriate interpreter is to be pre-booked at least one day prior to the hearing. Refer to Approved Procedure 27 - Interpreters for further information.

Hearing not open to public

A hearing of the Tribunal is not normally held in public. However the Tribunal may direct otherwise upon its own initiation or at the request of the person who is the subject of the review or application for involuntary detention. The Tribunal will only make this direction if it is satisfied that the person has

provided consent. The Tribunal must also be assured that the privacy of the parties to the review or application for involuntary detention will not be adversely affected and that the public hearing will not result in serious harm to the health of the person or will not place other people's safety at risk.

Contempt of Tribunal/ Conduct at hearing

Under the provisions of section 135A, it is an offence for anyone to:

- (a) threaten, intimidate or insult the Tribunal, or one of its members, in relation to the performance of the functions or the exercise of powers of the Tribunal; or
- (b) interrupt, obstruct or hinder a proceeding of the Tribunal; or
- (c) create a disturbance, or take part in creating or continuing a disturbance, in or near a place where the Tribunal is sitting.

Practice Note:

The contempt provisions apply universally, however it is unlikely that they will ordinarily be applied to the patient before the Tribunal as, due to their mental illness they will invariably lack insight into their behaviour and it would therefore be inappropriate to target them for use of contempt powers. These powers do apply to all clinical staff, family and friends, other support people, legal representatives, guardians or other individuals presenting to the Tribunal or observing the proceedings.

Record of proceedings

The Tribunal must make a record of all its proceedings in the form of a recording of sound, or sound and pictures, by electronic means and retain the record for 12 months. A person who is the subject of a review by the Tribunal or application for involuntary detention may request a copy of the record, however the Tribunal may refuse to provide it where it is satisfied that to do so may cause serious harm to the health of the person or put the safety of others at risk.

However, a Tribunal may order that only the adult guardian, decision maker or representative of the person be provided with a copy of the record and require the adult guardian, decision maker or representative to give an undertaking that they will not disclose specified information in the record. If that person then discloses information in contravention of this undertaking, they have then committed an offence under the Act.

Miscellaneous

Evidence before the Tribunal cannot be used in civil or criminal proceedings and a person commits an offence if they publish or broadcast:

- identifying information (the name of another person; or information that results in the identification of another person); and
- that the other person is the subject of a review or involuntary detention application.

However this does not apply if the publication is made in an official report made for this Act or with the approval of the Tribunal or other person.

Unless justified or excused by or under law, Tribunal members, staff and authorised officers commit an offence if they obtain information in the course of carrying out functions connected with the administration of this Act; and they:

- make a record of, or use, the information; or
- engage in conduct that results in the disclosure of the information to someone else.

Under section 140, the Minister receives an annual report on the exercise of the Tribunal's powers and the performance of its functions. The Minister then provides the report to the Legislative Assembly.

The Tribunal may also prepare and publish de-identified reports of the reasons for its decisions. Such reports can only be published after giving due consideration to the wishes of the person who is the subject of the decision and if it satisfied that:

- (a) the privacy of the parties to the review or involuntary detention application will not be adversely affected; and
- (b) it will not result in serious harm to the health of the person who is the subject of the review or involuntary detention application or will not place at risk the safety of other persons; and
- (c) the publication of the report is in the public interest.

Appeals of decisions made by the Tribunal

Under the provisions of section 142, if the person (or a person with sufficient interest in a matter) is aggrieved by a decision of the Tribunal, or the refusal of the Tribunal to make a decision within a reasonable time, they may appeal to the Supreme Court.

The Supreme Court may suspend the operation or effect of a decision being appealed against pending the determination of the appeal. The Supreme Court may also refuse to hear an appeal where it is satisfied that it is frivolous, vexatious or has not been made in good faith.

Operational Requirements not Prescribed by the Act

Obligations and requirements of practitioners when interacting with the Tribunal

Practitioners have a number of legislated obligations and requirements when interacting with the Tribunal. In order to fulfil these obligations and requirements reasonable assistance must be provided to the Tribunal, including answering questions, responding to enquiries and providing necessary materials in a timely manner when required to do so.

Format of correspondence to the Tribunal

Where correspondence is to occur between the practitioner and the Tribunal, it is to be done in a timely fashion and in the approved format. Forms and templates have been developed to provide guidance to clinical staff regarding the format and required content of such requests/notifications/reports.

All related material produced by the Northern Territory Department of Health is available from:

<https://health.nt.gov.au/professionals/mental-health-information-for-health-professional>

Tribunal liaison point

The Tribunal can be contacted by phone on (08) 8999 5001 or email mentalhealthreviewtribunal.doj@nt.gov.au.

In order to facilitate better communication between inpatient areas, the Tribunal and legal representatives, a 'single point of contact' is to be established by an approved treatment agency. The contact points are the Clinical Nurse Consultants on each ward, who are available via:

Top End Mental Health Service (Cowdy Ward, Royal Darwin Hospital)	(08) 8922 8050
Mental Health Central Australia (Inpatient Unit, Alice Springs Hospital)	(08) 8951 7610

Preparation for a Tribunal Hearing

Prior to a Tribunal Hearing

1. **All admission applications, notifications and accompanying reports are to be provided to the Tribunal and other relevant parties within 'one day' of admission.**

Ensure patients and carers have been informed of their rights in relation to Tribunal hearings in a format and where possible language they understand (sections 10 (d) and 12 (a)).

The treating APP/DMHP/Medical Practitioner, as appropriate must complete the appropriate application, notification form or report for the circumstance and ensure it is available by 11am the day following a decision that requires an application/notification to the Tribunal or where a report is to be provided.

The PIC of the ATF is to then ensure administrative arrangements are in place to coordinate the provision of these documents to the Tribunal within the required timeframe.

2. **All other documentation is to be completed in sufficient detail and submitted to the Tribunal no later than 48 hours prior to the scheduled hearing.**

Components of clinical reports and the management plan relating to non-clinical matters (i.e. social and/or cultural factors) must also be completed by the most appropriate clinician (i.e. the patient's primary nurse or case manager).

Progress notes made by both the Psychiatric Case Manager (PCM) and the APP responsible for reviewing a CMO under section 50(1)(b) of the Act are required to assist the Tribunal in reviewing a CMO.

3. **Subject to the patient's consent, relatives are contacted by ATF/ATA staff to invite them to attend the hearing if it is felt that they can assist the Tribunal in its deliberations.**

With the patient's consent, relatives and friends of the patient who have a genuine interest in, or real concern for the welfare of the patient can be that a Tribunal hearing is scheduled.

The consent of the patient and the permission of the Tribunal is then required before they are permitted to attend.

4. **Additional information is to be provided to the Tribunal.**

This is to include:

- The legal service most appropriate to represent the patient (i.e. NT Legal Aid, NAAJA, CAALAS, Private Lawyer).
- Whether the patient has refused legal counsel and is planning to represent themselves. In these circumstances the Tribunal may elect to appoint a legal representative for the person;
- Whether a patient has an appointed legal guardian and if so the name and contact details of the guardian;
- Whether a patient has a case manager and the name and contact details of the case manager;
- Whether a patient requires the services of an interpreter at the hearing.
- Names of all persons who wish to attend the hearing and their relationship to the patient. The consent of the patient and the permission of the Tribunal is required before they are permitted to attend;
- The name of the staff member responsible for liaison with the Tribunal who will coordinate hearings for that week;
- Any other special arrangements that need to be made in relation to the hearing.

5. **As soon as possible, and at least 24 hours prior to the hearing, the treating APP must provide the patient with an opportunity to read the relevant forms and reports that are to be placed before the Tribunal.**

The APP should explain the information contained in these documents to the patient and inform the patient as to the purpose and nature of the hearing.

The APP should at all times give the patient reasonable opportunity to attend the hearing and encourage his or her attendance.

6. **In the case of a patient from a non-English speaking background, ATF/ATA staff should determine whether an interpreter is required.**

If required, an appropriate interpreter is to be pre-booked at least one day prior to the hearing (refer to Approved Procedure 27 Interpreters).

7. **The treating APP should ensure, in advance of the hearing, that the ATF/ATA advises the Tribunal of any change of circumstances concerning the patient where this involves a change in admission status.**

This includes where:

- (a) The patient is discharged as an involuntary patient from an ATF;
- (b) The patient is discharged from being an involuntary patient and admitted as a voluntary patient;
- (c) The patient is discharged from the ATF on an Interim CMO;
- (d) The patient will not be attending the hearing – in this event the APP should be in a position to satisfy the Tribunal that the patient was given reasonable notice of the hearing, that the patient or the representative had a reasonable opportunity to attend and that the patient or the representative refused to attend;
- (e) Any special arrangements are needed.

On the day of the Tribunal Hearing

1. The clinical file must be made available to Tribunal members 30 minutes prior to the first scheduled hearing of the day, in the event that information contained in the file may need to be referred to by Tribunal members during the hearing.
2. The APP who will appear before the Tribunal to present a particular case must contact the staff member responsible for liaison with the Tribunal in advance of the scheduled hearing to confirm the commencement time of the hearing.
3. For hearings involving inpatients of an ATF, a nurse, preferably one involved in the patient's care, must attend the hearing.
4. For hearings regarding involuntary treatment in the community, the patient's PCM, or a suitable alternative, must attend the hearing.
5. In the case of a patient from an Aboriginal background, arrangements should be made wherever practicable for an Aboriginal Health Worker or Aboriginal Liaison Officer to attend the hearing.

The Hearing Process

1. All parties will be called by the Tribunal to enter the hearing room at the same time.
2. The presiding member, usually the legal member, will open the hearing and each Tribunal member will introduce themselves to those present at the hearing. All other persons in attendance will then be asked to introduce themselves.
3. Everyone present will introduce themselves for the benefit of the person subject to the hearing, and for the purpose of recording the proceedings. Observers may be in attendance with the consent of the person subject to the review, and the permission of the Tribunal.

4. There will generally be at least one site linked into the hearing by video conferencing as some members of the Tribunal may reside interstate.
5. The Tribunal's presiding member will:
 - a. Address any applications for non-disclosure of information, following the procedures set out in the Tribunal Practice Direction No 7 - Access to Medical Records;
 - b. Inquire as to the patient's preferred mode of address;
 - c. Explain the nature of the review;
 - d. Verify notification of the hearing to the patient/legal representative;
 - e. Verify that the patient has been given access to the records and reports that have been placed as evidence before the Tribunal;
6. The Tribunal members will question the treating doctor and/or the APP.
7. The patient and his or her representative will be given the opportunity to question the treating APP.
8. The patient and his or her representative will be given the opportunity to place evidence before the Tribunal and to respond to any questions asked by Tribunal members.
9. The Tribunal may seek information from, and ask questions of, other parties such as a nurse, case manager, relative or friend, any of whom may be in attendance at the hearing.
10. The patient and his or her representative will be invited to make any submissions.
11. All parties present will be asked to leave the hearing room for the Tribunal to consider its decision (in some cases an adjournment may not be considered necessary).
12. Everyone is called back into the hearing room. The Tribunal will deliver its decision, and may give brief reasons if it is considered necessary.
13. After delivery of the decision, the patient is advised of the order, including the date for the further review, by the Tribunal's presiding member.
14. At the conclusion of the hearing, the APP and staff are to ensure that the patient is escorted from the hearing room.

It will be appropriate in some cases to vary the hearing process from the above format.

Document Quality Assurance

	Method	Responsibility
Implementation	Document will be accessible via the MHARS Act internet and intranet pages and the PGC.	Senior Compliance and Clinical Policy Co-ordinator MHAOD Branch
Review	Document will be reviewed within a period of 4 years.	Approved Procedures Quality Assurance Committee
Evaluation	Document will be informally evaluated at time of review.	Approved Procedures Quality Assurance Committee

Key Associated Documents

All related material produced by the Northern Territory Department of Health is available from:

<https://health.nt.gov.au/professionals/mental-health-information-for-health-professional>

Mental Health and Related Services (MHARS) Act 1998 – available from:

<https://legislation.nt.gov.au/en/LegislationPortal/Acts/By-Title#>

Definitions and Search Terms

Preferred Term	Description
APP	Approved Psychiatric Practitioner
ATA	Approved Treatment Agency
ATF	Approved Treatment Facility
CMO	Community Management Order
DMHP	Designated Mental Health Practitioner
FMO	Financial Management Order
Patient	A person who is being assessed or receiving treatment under the Mental Health and Related Services Act 1998
PCM	Psychiatric Case Manager
PIC	Person in charge

Alternative Search Terms

Attachment 1

Where the Tribunal makes a decision regarding the care and treatment of a person

The following sections of the Act provide for the Tribunal to make a decision regarding a person's treatment and care:

25(7)(b)	The Tribunal determines a person's capacity to give informed consent, where an Authorised Psychiatric Practitioner (APP), is unable to form a view as to whether a person is capable of giving informed consent to their voluntary admission. Refer to Approved Procedure - 5 Voluntary admission
37(1)	The Tribunal determines whether to issue a warrant to apprehend a person for assessment following an application by an APP, Designated Mental Health Practitioner (DMHP), Medical Practitioner or police officer. Refer to Approved Procedure - 19A Assessment warrants
44C(1)	The APP and Authorised Officer must apply for a Tribunal order for a person's involuntary admission and detention on the grounds of complex cognitive impairment. Refer to Approved Procedure - 6.1 Involuntary admission on the grounds of complex cognitive impairment
54(4)	The Tribunal determines a person's capacity to give informed consent, where an APP is unable to form a view as to whether a person is capable of giving informed consent to treatment while voluntarily admitted. Refer to Approved Procedure - 5 Voluntary admission
55(1)	The Tribunal must authorise treatment to a person who is admitted as an involuntary patient. Refer to Approved Procedure - 6 Involuntary admission
63(3)	The Tribunal must approve non-emergency non-psychiatric treatment if the person or their adult guardian or decision maker is unable to consent to the treatment. Refer to Approved Procedure - 30 Non-psychiatric treatment, major medical procedures, clinical trials and experimental treatments
64(2)	The Tribunal must approve perform non-emergency major medical procedures on an involuntary patient or person subject to a Community Management Order (CMO) if the person or their adult guardian or decision maker is unable to consent to the treatment. Refer to Approved Procedure - 30 Non-psychiatric treatment, major medical procedures, clinical trials and experimental treatments
65	The Tribunal must approve for a person to participate in a clinical trial if the person or their decision maker is unable to give consent. Refer to Approved Procedure - 30 Non-psychiatric treatment, major medical procedures, clinical trials and experimental treatments
66(2)	The Tribunal must approve to perform non-emergency Electroconvulsive Therapy (ECT) if the person or their adult guardian or decision maker is unable to consent to the treatment. Refer to Approved Procedure - 12 Electroconvulsive therapy (ECT)

Where the Tribunal review decisions regarding the care and treatment provided to a person

122	The Tribunal must review all voluntary admissions longer than six (6) months. Refer to Approved Procedure - 5 Voluntary admission
123	The Tribunal must review all involuntary admissions and interim CMOs within 14 days of the order being made. Refer to Approved Procedure - 6 Involuntary admission Refer to Approved Procedure - 4 Community management

Where the Tribunal is to be notified of a decision regarding the care and treatment provided to a person

There are a number of points at which the Tribunal (and others) are to be notified of a decision made regarding the care and treatment provided to a person. Approved Procedure number 15 - Notification, reporting and record keeping requirements, also contains further information on notifications to be made to the Tribunal.

Under the requirements of the Act, a notification must be provided to the Tribunal when:

26(4)	A person under the age of 18 is admitted as an voluntary patient and the APP decides not notify the person's parent or guardian Refer to Approved Procedure - 5 Voluntary admission
34(6)(b)	A recommendation for psychiatric examination by a Medical Practitioner, APP or DMHP has been revoked. Refer to Approved Procedure - 3 Entry to mental health services
41	A person is admitted as an involuntary patient under the mental illness provisions Refer to Approved Procedure - 6 Involuntary admission
43	A person is admitted as an involuntary patient under the mental disturbance provisions Refer to Approved Procedure - 6 Involuntary admission
47	An Interim CMO is made in relation to a person Refer to Approved Procedure - 4 Community management
50A(1)	A CMO is revoked Refer to Approved Procedure - 4 Community management
63(5)	Emergency non-psychiatric treatment is performed on a person without prior consent from the person, their adult guardian or decision maker or prior approval from the Tribunal Refer to Approved Procedure - 30 Non-psychiatric treatment, major medical procedures, clinical trials and experimental treatments
64(4)	Emergency major medical procedures have been undertaken on an involuntary patient or person subject to a CMO without prior consent from the person, their adult guardian or decision maker or prior approval from the Tribunal. Refer to Approved Procedure - 30 Non-psychiatric treatment, major medical procedures, clinical trials and experimental treatments

66(4)	Emergency ECT has been performed on a person without prior consent from the person, their adult guardian or decision maker or prior approval from the Tribunal. Refer to Approved Procedure - 12 Electroconvulsive therapy (ECT)
89(6)	The practitioner decides not to allow consultation with, or the giving of information to a person's representative or primary carer regarding discharge. Refer to Approved Procedure - 7 Discharge planning Refer to Approved Procedure - 16 Information dissemination and access to records
98	The entitlements of a person at an ATF (correspondence via letters and postal articles, telephone access and receipt of visitors) are restricted or denied to the person.
166A(5)	A person who is admitted to an ATF is absent without leave or fails to return to the ATF at the end of a period of leave. Refer to Approved Procedure - 8 Leave of Absence and Missing Patients
168A	A Financial Protection Order (FPO) is made in relation to a person Refer to Approved Procedure - 9 Financial protection orders (FPO)

A number of the above circumstances also require that notification be provided concurrently to other parties including:

- The Principal Community Visitor (PCV);
- A person's Adult Guardian;
- A person's primary carer (unless the APP considers that it is not in the person's best interests to do so) and/or the person's representative.

It is the responsibility of the ATA or ATF to ensure the notification is provided to each of the relevant entities. Agency and facility procedures should be in place to facilitate these requirements.

Where the Tribunal reviews upon request (appeal) decisions made by a Medical Practitioner, APP or PIC

The application of the following sections of the Act by a practitioner can be reviewed by the Tribunal upon request from the person or their adult guardian, primary carer, representative, their legal representative or a person with a genuine interest in, or with a real and immediate concern for the health or welfare of, the person:

25(8)	A decision of a medical practitioner to refuse to admit a person as a voluntary patient or a decision of an APP to refuse to confirm the admission of a person as a voluntary patient where they are not satisfied that the person is likely to benefit from being admitted. Refer to Approved Procedure - 5 Voluntary admission
27	A decision of an APP to admit or refuse to admit a person who has adult guardian or decision maker as a voluntary patient. Refer to Approved Procedure - 5 Voluntary admission
39(3)(a)	A decision of an APP to detain a person admitted as an involuntary patient on the grounds of mental illness at an approved treatment facility for a further period of up to 14 days. Refer to Approved Procedure - 6 Involuntary admission

42(2)	A decision of an APP to detain a person admitted as an involuntary patient on the grounds of mental disturbance at an approved treatment facility for a further period of up to 7 days. Refer to Approved Procedure - 6 Involuntary admission
47(2)	A decision of an APP to not notify a person's primary carer that an interim community management order has been made for the person. Refer to Approved Procedure - 4 Community management
88(3)	A decision of an APP to not allow the giving of information concerning treatment of a person to the person's representative or primary carer. Refer to Approved Procedure - 16 Information dissemination and access to records
89(5)	A decision of an APP to not allow consultation with, or the giving of information concerning the details of a discharge plan to, a person's representative or primary carer. Refer to Approved Procedure - 7 Discharge planning Refer to Approved Procedure - 16 Information dissemination and access to records
92(4)	A decision of an APP to refuse an application for access to information in a person's records kept by an ATF or approved treatment agency (ATA). Refer to Approved Procedure - 16 Information dissemination and access to records
98(1)	An order of an APP to restrict or deny a person's right.
167(1)	A decision of a person-in-charge (PIC) of an ATF to transfer a person admitted as an involuntary patient to another ATF. Refer to Approved Procedure - 28 Transport of patients