



Queensland

Mental Health Review Tribunal Amendment Rule (No. 1) 2011

Explanatory Notes for SL 2011 No. 123

made under the

Mental Health Act 2000

General outline

Short title

Mental Health Review Tribunal Amendment Rule (No. 1) 2011.

Authorising law

Section 479 of the *Mental Health Act 2000* (the Act) provides that the Governor in Council may make rules under the Act and the rules will be rules of court.

Policy objectives and the reasons for them

Chapter 6 of the *Mental Health Act 2000* sets out the matters that the Mental Health Review Tribunal must review. These are:

- The application of the treatment criteria to a patient under an involuntary treatment order;
- The detention of young patients in high security units;
- The mental condition of patients under forensic orders; and

- The mental condition of persons found not permanently unfit for trial due to mental illness.

Also Chapter 6 of the Act establishes the matters that must be considered by the Tribunal for particular reviews.

Under Section 459 of the Act, the Tribunal is not bound by the rules of evidence and may inform itself on a matter in a way it considers appropriate.

The Tribunal has determined that written evidence in the form of a report from the current treating practitioner is critical evidence to a review of an involuntary treatment order, forensic order and fitness for trial review. To meet the natural justice requirements under the Act, such evidence must be made available to the parties in advance of the hearing.

The Tribunal has determined that a report template is the most efficient and effective way of gathering the written evidence for the review. The report must be received at least seven days before the hearing date for administrative purposes and so that sufficient time is allowed for the parties, including the patient and the Attorney-General for a forensic review, to view the material.

A practice direction established by the President under Section 480 of the Act has been in place since 2002 to support this requirement, encompassing standardised report formats for particular reviews.

The Tribunal Rule was established in 2009 in response to recommendations of the Butler review of the forensic mental health system which found among other things, substantial non-compliance in authorised mental health services with the reporting requirements established under Section 480.

The *Forensic Disability Act 2011* and consequent amendments to the *Mental Health Act 2000* establishes a new category of forensic order with associated separate considerations for the Tribunal at a review. It also establishes a new category of practitioner (senior practitioner) who will be responsible for the care of a forensic disability client, thereby attaching to that category of practitioner an obligation to provide evidence to the Tribunal for the review.

This necessitates broadening the scope of the Tribunal Rule to extend the reporting and natural justice requirements to the new environment of the forensic disability service and to senior practitioners within that environment in relation to a new report form. That report will address the

issues to which the Tribunal must have regard in relation to a person with an intellectual disability or cognitive impairment who comes under the new category of forensic order.

Achievement of policy objectives

The Rule supports the purpose and operation of both the *Mental Health Act 2000* and the *Forensic Disability Act 2011* by prescribing the inclusion of the new forensic order (Mental Health Court - Disability) and the senior practitioner in section 3 of the *Mental Health Review Tribunal Rule 2009*.

This is to streamline the operation of the new legislation for forensic disability clients and support compliance with both the requirement under section 459 of the *Mental Health Act 2000* for procedures of the Tribunal to provide a fair, just, timely, economical and informal hearing; and the framework of principles under both Acts for involving the person in decisions affecting the person's life.

Report for each review

Background

Section 3 of the Mental Health Review Tribunal Rule 2009 states how a clinical report for a patient must be prepared. This section will be amended to include a report for the forensic order (Mental Health Court - Disability). This section also sets out who should be preparing the reports and to whom the report must be provided before the hearing. This will be amended to include the senior practitioner and its definition (see content below).

Section 3(4) of the Rule states that the treating psychiatrist must give a copy of the clinical report to the relevant patient at least 7 days before the hearing date, or make the patient aware of the contents of the report. This section will be amended to include reference to the report (forensic disability) for a forensic order (Mental Health Court - disability) review and include the senior practitioner as having responsibility to give the relevant patient access to the relevant report, or discuss the contents of the report with the relevant patient.

Content

3 Report for each review

- (2) A clinical report
 - insert* or report (forensic disability)
 - (a) be prepared and signed by the relevant patient's treating psychiatrist
 - insert* or senior practitioner
- (3) At least 7 days before the day notified, under section 189, 196, 202 or 211 of the Act, of the hearing for the review, the relevant patient's treating psychiatrist
 - insert* or senior practitioner
- (4) At least 7 days before the day notified, under section 189, 196, 202 or 211 of the Act, of the hearing for the review, the relevant patient's treating psychiatrist
 - insert* or senior practitioner
 - (a) Give a copy of the clinical report or
 - Insert* report (forensic disability)
- (5) However, the treating psychiatrist
 - insert* or senior practitioner
- (6) *Insert*
 - senior practitioner***, of the relevant patient, means the senior practitioner currently responsible for performing obligations for the patient under the *Forensic Disability Act 2011*, chapter 2, part 1.

Consistency with policy objectives of authorising law

The Mental Health Review Tribunal Amendment Regulation 2011 is consistent with the objects and principles of the *Mental Health Act 2000*, as indicated in the "Achieving of Policy Objectives".

Benefits and costs of implementation

The benefits of implementation of the Regulation will primarily be to ensure compliance with the procedural requirements of the Tribunal that are necessary for a fair, just, timely, economical and informal review hearing in accordance with the *Mental Health Act 2000*, for people subject to the involuntary treatment provisions of the Act and for forensic disability clients who come under the *Forensic Disability Act 2011*.

Consistency with fundamental legislative principles

This is not applicable as it is only a minor amendment and it does not affect any legislative principles.

Consultation

Not applicable.

Regulatory Impact Statement (RIS)

Queensland Treasury confirmed on 1 June 2011 that the proposed amendments to the Mental Health Review Tribunal Rule are for the internal management of a public sector body and/or machinery in nature and are therefore excluded from the RIS system.

ENDNOTES

- 1 Laid before the Legislative Assembly on . . .
- 2 The administering agency is the Department of Health.