

TASCAT MENTAL HEALTH STREAM

Orders, hearings and reviews:
Information for patients, their carers
and support people

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 **TASCAT**
TASMANIAN CIVIL &
ADMINISTRATIVE TRIBUNAL

ABOUT THIS GUIDE

This guide explains:

- what the Tribunal does
- the main orders the Tribunal manages that you may be affected by
- what hearings are
- what reviews are.

Who should read this guide

This guide is for patients and their family, carers, guardians and other support people.

ABOUT THE TRIBUNAL

The Tribunal is an independent body established under the *Tasmanian Civil and Administrative Tribunal Act 2020*.

It protects the rights, safety, inclusion and dignity of people being involuntarily treated for mental illness under the *Mental Health Act 2013*.

The Tribunal is responsible for civil and forensic matters. Information about forensic orders and reviews is in a separate guide.

Main functions

The Tribunal's main function is:

- to authorise and review the treatment of people with mental illness, who are too unwell to make decisions about their treatment.

This includes deciding:

- when people with a mental illness can be detained in a hospital or a secure mental health facility.
- what treatment a doctor can provide when it has been decided that the person is too unwell to make treatment decisions for themselves.

The Tribunal is independent. It is not connected to any hospital or other facility or organisation that provides mental health services.

In detail

The Tribunal mainly authorises treatment. This includes whether:

- the patient is given medication
- they are treated in a hospital and/or the community

This treatment is to ensure the health and safety of the patient and/or the safety of others in the community.

The Tribunal can review decisions about a patient's treatment. These are detailed in the section on Tribunal reviews.

The Tribunal can authorise:

- treatment for involuntary patients
- special psychiatric treatment
- applications for leave by patients detained in mental health units
- the treatment of forensic patients.

ORDERS REVIEWED AND MADE BY THE TRIBUNAL

The orders that the Tribunal primarily reviews and/or makes are:

- assessment orders
- interim treatment orders
- treatment orders
- supervision orders
- restriction orders.

These orders are made under the *Mental Health Act 2013* and the *Criminal Justice (Mental Impairment) Act 1999*.

Assessment order

What it is

An assessment order allows someone who has a mental illness (or appears to have a mental illness) to be assessed by a doctor, without their informed consent, to determine if they need treatment.

Who makes it

A doctor can make an assessment order. The doctor considers:

- if someone has the capacity to make decisions about treatment for themselves
- if someone is a risk to their own safety and health or to others.

How long it lasts

An assessment order lasts for only 24 hours, unless a second doctor (an approved medical practitioner) extends it. It can be extended, but only for up to 72 hours.

Interim treatment order

What it is

A doctor may ask the Tribunal to make an interim treatment order for a patient who may be at risk, before the Tribunal organises a hearing to determine the application for a treatment order.

An interim treatment order authorises treatment to be given to the patient until the treatment order is determined by the Tribunal.

Who makes it

A single member of the Tribunal makes an interim treatment order.

How long can it last

An interim treatment order is valid for up to 10 days.

Treatment order

What it is

A treatment order authorises treatment for a patient. The treatment is set out in a treatment plan, and it can take place in a hospital, in the community, or a combination of both. A treatment order authorises mental health officers or police officers to escort the patient to their treatment in some circumstances.

A doctor (approved medical practitioner) can apply to the Tribunal for a treatment order.

A treatment order may follow on directly from an assessment order.

A treatment order can be applied for even if the patient is not on an assessment order.

Who makes it

The Tribunal can make a treatment order. It will consider factors such as:

- if someone is well enough to make decisions about treatment for themselves
- if someone is a risk to their own health and safety or to the safety of others
- if the treatment will be helpful for the patient to become well.

How long it lasts

A treatment order is valid for up to 6 months.

It automatically expires unless a doctor (approved medical practitioner) applies to the Tribunal to renew it (they need to do this at least 10 days before the treatment order's expiry date).

There is no limit to the number of times a treatment order can be renewed. The first time it can be renewed for 6 months; after this, it can be renewed for 12 months at a time.

TRIBUNAL HEARINGS

A hearing is a meeting between the patient, their advocate, lawyer or support person, their doctor (who is treating their mental illness) and other members of their treating team (such as case manager) and the Tribunal. It is where decisions are made about a patient's treatment, and where patients can have their say about treatment.

Where they are held

Hearings are held in designated hearing rooms in the south, north and north west of Tasmania. These hearing rooms are in hospitals where the patient is being treated, a meeting room provided by the Department of Health hearing rooms, or the Tribunal's offices. Video or teleconferencing can be used to enable people to take part in the hearings where they can't attend in person.

The Tribunal will send the patient, their doctor and a nominated responsible person a letter with the date, time and place of the hearing.

Attending the hearing: patients

The patient can decide whether or not they'll attend a hearing:

- if they attend, they have their say about their treatment to the Tribunal
- if they don't attend, the Tribunal may decide on treatment without the patient's input.

Who else can attend

Lawyers

A patient has the right to be legally represented at hearings. They can:

- arrange their own lawyer, or
- ask Tasmania Legal Aid for someone to represent and support them. Call 1300 366 611.

Advocates

Advocacy Tasmania can provide support to patients. Its trained advocates can attend the hearing to help patients talk to the Tribunal. This service is free. Call Advocacy Tasmania on 1800 005 131.

Support people

A patient can bring a relative, carer, friend or other support person to the hearing, for support and help putting their views to the Tribunal.

Preparing for the hearing

Before the hearing, the patient should:

- read the application for the treatment order and the treatment plan (available from their doctor)
- show and discuss these papers with the lawyer, advocate or support person who is attending the hearing with them
- thinking about what they want to say and discuss in the hearing.

What happens at the hearing

There is a Tribunal panel of three people:

- a presiding member (who is a lawyer)
- a psychiatrist
- a person with experience in mental health.

The patient's doctor and other people treating them for their mental illness may also be present (patients should tell the Tribunal if they're not happy with someone being at their hearing).

At the hearing:

- the doctor will give the Tribunal information about the patient and their treatment
- the patient (or their lawyer/advocate) can ask questions, discuss the treatment, say if they agree with the treatment plan, and say if the plan causes them and hardship or discomfort
- other people present can share relevant information.

After these discussions, everyone except the Tribunal panel leaves the room while the Tribunal considers the information it has heard.

Then, everyone is called back into the room to hear the Tribunal's decision and its reasons for making that decision.

Confidentiality

Hearings are generally held in private and are not open to the public.

All information provided at the Tribunal hearing is kept confidential, except when authorised under the law.

The Tribunal's decision

Following the hearing, if the Tribunal determines that the patient should be on a treatment order, the patient and other relevant people will be given a copy of that treatment order.

Anyone attending the hearing can ask the Tribunal for a written statement of the reasons for the decision, either at the hearing or within 30 days of the hearing.

Once it has received this request, the Tribunal will provide this written statement in PDF format within 21 days.

Appealing the decision

Anyone involved in the hearing can appeal the Tribunal's decision. To do so, they must lodge an appeal with the Supreme Court, within 30 days of the Tribunal:

- making its decision at the hearing, or
- providing the written statement of its reasons.

For more information about the appeals process, go to www.supremecourt.tas.gov.au.

TRIBUNAL REVIEWS

The Tribunal carries out a range of reviews, including:

- reviewing decisions about a patient's treatment, to make sure it remains appropriate and effective
- reviewing whether the patient still needs to be on an order.

The Tribunal is required by law to carry out certain reviews; for example, reviewing treatment orders.

The Tribunal also responds to requests for reviews to be carried out.

Who can ask for a review

A patient or their lawyer, advocate, support person, doctor or others involved in their treatment can ask for a review.

Others who can ask for a review are members of the patient's treating team, the Chief Psychiatrist, and anyone else the Tribunal believes has a valid interest.

What can be reviewed

Treatment orders

The Tribunal is required to review a treatment order within 60 days of it being made, and then every 180 days after that.

Decisions about the patient's treatment

The Tribunal can review the decisions a doctor has made about the patient's treatment.

These decisions include:

- making assessment orders
- making, varying and discharging treatment orders
- assessing the status of voluntary patients admitted to a facility
- admitting a patient to a secure mental health unit (the Wilfred Lopes Centre)
- transferring a patient from one hospital to another
- secluding, restraining or using force on a patient
- withholding information from a patient
- restricting who can visit a patient
- restricting a patient using a phone or device, or sending letters or emails
- granting (or not) a patient's leave from a secure mental health unit.

How to apply for a review

The Tribunal has specific forms on its website, depending on what you want to be reviewed.

To find these, go to www.tascat.tas.gov.au.

A patient's lawyer, advocate or support person can help them complete the form. If the patient is in hospital, staff must help the patient, including getting the patient access to someone who can help them complete the form.

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