MENTAL HEALTH STREAM GUIDELINE

Issued under s 169 (2)(a) of the *Mental Health Act 2013 (Tas)*

Requirement to Appear - Approved Medical Practitioners (AMPs) in relation to Applications for Treatment Orders and Renewal of Treatment Orders

Legislative provisions: *Mental Health Act 2013 (the Act), s*ections 11, 37, 39, 40, 48

Any approved medical practitioner (AMP) may make an application for a Treatment order [s 37(1)] or for the renewal of a Treatment order [s 48(1)] for a person. Both of these types of applications must be determined by the Tribunal as soon as is practicable after the application has been made, and, most importantly, by way of a hearing [s 39(4), s 48(5)]. If the Tribunal is satisfied that the applicant has complied with all of the requirements outlined for an application for a treatment order [s 37] or for a renewal of a Treatment order [s 48], then the Tribunal can proceed to make the order requested if it satisfied, after conducting a hearing and assessing the evidence, that the person meets the “treatment criteria” as defined in s 40 of the Act.

When conducting a hearing, the Tribunal is required to act fairly, affording procedural fairness, in the making of decisions, which affect the rights, interests and/or legitimate expectations of the person who is subject to the application for a Treatment order or the renewal of a Treatment order. This means that a person the subject of an application has the right to examine the evidence before the Tribunal, including the right to ask questions of the applicant/or presenting AMP or challenge the evidence – particularly given the impact of a Treatment order on a person’s life and their right to liberty.

Accordingly, it is best practice for the proper exercise of the Tribunal’s functions that the applicant or, in the absence of the applicant, another AMP who has assessed the patient, appear at the hearing for any application for a Treatment order or for the renewal of a Treatment order. So that the Tribunal can decide if it is satisfied that the applicant has complied with s 37 for an application for a Treatment order, or s 48 for a renewal application, and that the person meets the treatment criteria, it is important that in the course of the hearing the Tribunal is able to test the evidence and otherwise obtain the views of the applicant (or other presenting AMP), the person the subject of the application, and any other parties to the application.

Please note that applications for a Treatment order or for the renewal of a Treatment order are only valid when the person the subject of the application has been given a copy of the application [see s 37(6), s 48(4)]. The person must be given the application as soon as practicable [s 11].

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