



Preparing for an MHRT Hearing

Clinical Reports

What is a clinical report?

A clinical report is a standardised report format developed by the Mental Health Review Tribunal (**Tribunal**) that the treating practitioner must complete for each patient reviewed by the Tribunal.

While other members of the treating team can add to the clinical report, the report should be signed by the treating practitioner and, ultimately, the treating practitioner is responsible for completion of the clinical report.

There are different report templates for each review type:

- treatment authority
- forensic order
- treatment support order
- person's fitness for trial
- the detention of a minor in a high security unit.

Who is the treating practitioner?

- The psychiatrist treating the person
- For Forensic Disability Service: a senior practitioner under the Forensic Disability Act 2011 responsible for performing the relevant obligations for the person under that Act.

TIP: Make sure you choose the correct report template.

TIP: If a person has multiple matters of different types to be heard on one day (e.g. fitness for trial review and forensic order review), two clinical reports should be completed.

In accordance with the *Mental Health Act 2016 (Act)*, the clinical report must be prepared using the Tribunal's approved templates¹.

Copies of the most up to date clinical report templates can be found on the Tribunal's website – www.mhrt.qld.gov.au. Templates are also made available in the Consumer Integrated Mental Health Application (**CIMHA**).

TIP: Make sure you are using the most up to date template. Simply adding to an existing report may mean the document you are using is out of date.

When do I need to prepare a clinical report?

The Act requires the treating practitioner to give a copy of the clinical report to the Tribunal and the person the subject of the review **at least 7 days before the hearing**.

¹ Section 723(2) of the Act



There is a specific way to calculate ‘at least 7 days’ in Queensland legislation².

To assist in determining when the material needs to be provided by before the hearing date, follow these steps:

1. excluding the hearing date, count 8 days backwards
2. include Saturday, Sunday and public holidays
3. if the eighth day falls on a business day, the material needs to be provided to the Tribunal on that day at the latest
4. however, if the eighth day falls on a Saturday, Sunday and/or a public holiday, keep working backwards until you reach a business day. That business day is when the material should be provided to the Tribunal at the latest.

What if the clinical report is late?

The Tribunal has the power to control its procedures³. If the clinical report is not provided to the Tribunal or the patient within the prescribed times the Tribunal will determine how to proceed, taking into account all the circumstances, in order to ensure the proceeding is conducted fairly and efficiently.

Failure by a treating practitioner to provide a report within the required timeframe may result in an adjournment of the hearing. For more information on provision of material prior to hearings, see the Tribunal’s Practice Direction number 1 of 2017 available at the Tribunal’s website – www.mhrt.qld.gov.au.

What needs to be included in a clinical report?

All sections of the clinical report should be completed with as much up to date, relevant information as possible. Each clinical report template is slightly different to take account of the different factors the Tribunal considers at each different review type.

TIP: Before completing the clinical report, check the criteria the Tribunal will consider at each review and be sure to address each point in your report.

The below information relates to specific topics to be canvassed in clinical reports.

Revoking a forensic order and making a treatment support order

There is no set formula or checklist that a treating team can look to satisfy when proposing that a person have their forensic order revoked and a treatment support order made.

² Section 38 of the *Acts Interpretation Act 1954*

³ Section 733(1) of the Act



The Tribunal are required to decide whether a treatment support order, rather than a forensic order, is necessary because of the person's mental condition, to protect the safety of the community, including from the risk of serious harm to other persons or property⁴.

In reaching that decision, the Tribunal will consider a range of factors, including those outlined in the Mental Health Court case *In the matter of MGL* [2017] QMHC 7 which is available at the Mental Health Court website: www.sclqld.org.au/caselaw/QMHC. Treating teams can find additional guidance in the Chief Psychiatrist Information Sheet titled 'Tips for making application to Mental Health Review Tribunal for step down'.

TIP: For further guidance, have a look at the statements of reason published by the Tribunal on its website (mhrt.qld.gov.au).

Mental Health Court Recommendations

The Act provides that the Mental Health Court may, in a forensic order, make recommendations it considers appropriate about particular intervention programs that a treating team should provide for the person⁵. Examples of intervention programs include drug and alcohol programs, anger management counselling programs and sexual offender programs.

TIP: Recommendations made by the Mental Health Court appear in the Court's transcript of the proceedings, its written reasons or on the decision document. The Tribunal understands that these documents are provided to the relevant AMHS, a copy also appears in the Forensic Dossier prepared by the Tribunal.

When making its decision, the Tribunal has regard to matters raised or comments made by the Mental Health Court judge. Further, when making a decision regarding a forensic order (or treatment support order made after a forensic order is revoked), the Tribunal must have regard to, if the Mental Health Court made a recommendation about an intervention program, the person's willingness to participate in that program if offered⁶.

Therefore, the Tribunal may ask questions of the treating teams about any action taken in respect of the recommendations, including what programs have been offered and if not, why not. The Tribunal recommends that treating teams be familiar with any recommendations made by the Mental Health Court and be prepared to speak about them at a hearing before the Tribunal. If a treating team is unable to access suitable programs or interventions recommended by the Mental Health Court, this should be referenced, with reasons, in the clinical report.

⁴ Section 450 of the Act

⁵ Section 136 of the Act

⁶ Section 432(1)(d) of the Act



Personal guardian - section 420

At the third periodic review of a person's treatment authority (i.e. the second six-monthly review) if the person does not have a personal guardian⁷:

- the administrator must give Tribunal a report about whether the appointment of a guardian for the person may result in there being a less restrictive way for the person to receive treatment and care for the person's mental illness; and
- the Tribunal must consider whether the appointment of a personal guardian for the person may result in there being a less restrictive way for the person to receive treatment and care for the person's mental illness.

For the purposes of section 420 of the Act, the term 'personal guardian' means a guardian for a health matter appointed by the Queensland Civil and Administrative Tribunal (**QCAT**) under the *Guardianship and Administration Act 2000*. Section 420 of the Act does not require consideration of appointment of only the Public Guardian, an appropriate personal guardian could be any person suitable to act.

TIP: When completing the part of the clinical report referring to whether a personal guardian would result in a less restrictive way, do not simply write "yes" or "no". Include details of what has been considered, your conclusion and give some reasons.

In considering whether appointment of a personal guardian may result in a less restrictive way, consideration may be given to:

- the types of healthcare decisions that would need to be made for the patient
- having regard to the person's mental health treatment and care needs, whether appropriate and safe clinical care can be provided through the consent of a guardian
- whether the treating team is aware of a person who may be able to be appointed as a personal guardian or whether it would need to be the Public Guardian
- whether the possible guardian would be prepared to make the required decisions
- whether any information is known about the views of a possible guardian and whether those views are in the best interests of the patient and in accordance with best medical practice.

In completing the clinical report component relevant to the appointment of a personal guardian, the clinician should record:

- whether the person has a personal guardian appointed by QCAT
- if the appointment of a personal guardian is possible but would not result in a less restrictive way for the patient to receive treatment and care - the reasons it would not result in a less restrictive way
- if the appointment of a personal guardian is possible and would result in a less restrictive way for the patient to receive treatment and care - the reasons and actions being taken to progress an appointment.

⁷ Section 420 of the Act



Cultural section

The Tribunal finds it useful when the 'Cultural Information' section of the clinical report has been completed. We have had feedback that it is also very meaningful for patients.

If cultural support has been identified as potentially relevant by the treating team, or requested by the patient, this should be noted in the report. The Tribunal recommends that in such circumstances, the clinical report note whether cultural supports have been offered to the patient, the patient's response and the availability of cultural support suitable for the patient.

TIP: The treating team could consider seeking guidance from the Service's Indigenous Mental Health Workers or the Queensland Transcultural Mental Health Centre.

Attachments

At a hearing, the Tribunal panel does not have access to the patient's medical file, CIMHA or the Tribunal's whole file for the patient. For that reason, if a treating team seeks to rely on a document at the hearing, a member of the treating team should contact the Hearings Coordinator before the hearing.

TIP: Any documents referred to in the clinical report should be attached to the clinical report. This can be done in the same PDF document or as a separate document.

Where minutes of the Assessment and Risk Management Committee (**ARMC**) or a Community Forensic Outreach Service (**CFOS**) report are available for a patient, the Tribunal's preference is for a copy to be provided to the Tribunal. This is because ARMC minutes and CFOS reports may represent clinical evidence relevant to risk – a factor considered by the Tribunal. If ARMC minutes or a CFOS report exists and the Tribunal considers them relevant, the panel may adjourn the matter to require production of the minutes or report or the panel may determine that they are not in a position to make a change to the relevant order/authority (including, for example, a change to LCT).

Tips for completing the clinical report

Synthesise the information – e.g. rather than a detailed record of each inpatient admission, you may say "Five admissions over the previous two years in the context of medication non-compliance".

Take care if using 'copy paste' from other documents – check your formatting and that all the required text appears in the clinical report.

Ensure all relevant boxes on the front pages are completed correctly.

Ensure consistency throughout report – e.g. dates, locations and names.

Note where information is historic and ensure all information presented as "current" is actually the most up to date information available



What do I do with a clinical report once it has been prepared?

As noted above, the treating practitioner is responsible for the contents of the clinical report and will need to sign the clinical report once it has been completed.

The clinical report will need to be delivered to both the Tribunal and the patient at least 7 days prior to the hearing.

It may be appropriate for a member of the treating team to not only deliver the clinical report to the patient but also take time to review the content of the report with the patient and discuss any queries or concerns the patient may have.

Do I need to attend a hearing if I have prepared a comprehensive clinical report?

Despite a comprehensive clinical report, the treating team will still need to attend the Tribunal hearing to be available to answer any questions the Tribunal may have. The Tribunal may have specific questions or may wish to clarify that the information in the clinical report remains current as at the date and time of the hearing.

The Tribunal wants to hear from the person best placed to provide the information required to make a decision at the hearing. Ideally, the treating psychiatrist who is responsible for the patient would attend the hearing to be available to give evidence to the Tribunal. However, the Tribunal recognises that this is not always possible.

In the Mental Health Court case *Attorney-General for the State of Queensland v THL*⁸, the Judge stated that ultimately it is for the Tribunal to determine what evidence is required and will depend on the circumstances being considered. The example was given that it would generally be essential for the treating psychiatrist to attend and be heard if the Tribunal was being asked to approve different LCT conditions. Therefore, for decisions involving an increased level of risk, the Tribunal will likely want to hear from the treating psychiatrist.

When considering which member(s) of the treating team they want to hear from, the Tribunal will consider the seniority of the practitioner and how long the person has known the patient and the rapport they have.

During a hearing, why does the Tribunal ask about matters already addressed in the clinical report?

According to the Act, the Tribunal has some obligations about how it conducts its proceedings⁹:

- must act as quickly, and with as little formality and technicality, as is consistent with a fair and proper consideration of the matter before it
- may inform itself on a matter in a way it considers appropriate
- must ensure, to the extent practicable, all relevant material is disclosed to it to enable it to decide the proceeding with all relevant facts.

⁸ [2012] QMHC 20

⁹ Section 733 of the Act



If the Tribunal determines that it wishes to hear from the treating team about a particular matter, even if it is covered in the clinical report, that may be because:

- they wish to clarify that the information remains current as at the date and time of the hearing
- to ask if the view is consistently shared by all members of the treating team, and if not, why not
- to allow the patient the opportunity to hear the information from the treating team, perhaps if they were unwilling to read the clinical report
- to clarify aspects of the information in the clinical report, to ensure a complete understanding.

TIP: Asking questions of the treating team does not mean that the Tribunal doubts the treating team's evidence.

When do I need to update the clinical report?

The clinical report made available to the patient and the Tribunal for a hearing should contain the most current and up to date information available. The reason that patients are provided with the clinical report ahead of the hearing is to allow them sufficient time to consider the information that the treating team will present and prepare their response. For that reason, the amount of new information put before the Tribunal during a hearing should be limited.

TIP: It is anticipated that a clinical report for a patient should be reviewed and updated ahead of each hearing for a patient.

If a hearing is adjourned and rescheduled within 28 days¹⁰, the clinical report should be reviewed and:

- if the report is still current and contains all required information, there is no need for a current report – the treating team should provide a copy of the existing report to the Hearings Coordinator to ensure that the correct clinical report is provided to members.
- if circumstances have changed in some way, a new/updated clinical report should be prepared and delivered in accordance with the Act.

¹⁰ See section 749 of the Act