



Practice Direction Number 1 of 2019

ATTENDANCE OF LEGAL REPRESENTATIVES

1. The purpose of this practice direction is to provide clarity on the nature of attendance and representation required by legal representatives at Mental Health Review Tribunal (**Tribunal**) hearings.
2. For the purposes of this practice direction, 'legal representatives' is intended to include the representatives of the Attorney-General, legal representatives representing the Office of the Chief Psychiatrist, legal representatives for other parties attending a Tribunal hearing (such as the Director of Forensic Disability or Office of the Public Advocate) and legal representatives for the patient (whether appointed by the Tribunal or otherwise).

Number of legal representatives

The *Mental Health Act 2016* (Qld) (**Act**) specifies that the Attorney-General is entitled to be represented at a hearing by a lawyer¹. Section 739 permits the person who is the subject of a proceeding to be represented at the hearing by a nominated support person, a lawyer or another person. Similarly, according to section 740, if the person is not represented at a hearing, the Tribunal may, and in some circumstances, must, appoint a lawyer or another person to represent the person.

3. In both sections, the reference is to a lawyer or another person. The Tribunal panel hearing a matter will decide, in its discretion, any requests for any person to be represented by more than one person.

Attendance by legal representatives

4. The Tribunal may, if appropriate, conduct all or part of a proceeding by remote conferencing².
5. The Tribunal recognises both:
 - a) the benefits of having all persons appearing before the Tribunal attend in person; and
 - b) the convenience and efficiencies of having persons appearing before the Tribunal attend the Tribunal remotely utilising remote conferencing facilities.

¹ Section 737(2)

² Section 746(1)



6. With the aim of ensuring that it is appropriate for a legal representative to appear by remote conferencing, it is expected that the legal representative will appear in person at the hearing venue, or at the location of a Tribunal member, unless they have the prior approval of the Tribunal's President or Deputy President to appear otherwise.
7. Factors that the President may consider in determining whether remote conferencing is appropriate for a particular hearing may include, but are not limited to:
 - a) reasons given by the legal representatives in their request to appear by remote conferencing;
 - b) the location of the legal representative and the location of the hearing;
 - c) whether the remote conferencing proposed involves videoconferencing or teleconferencing;
 - d) the quality and reliability of the remote conferencing technology the legal representative proposes to use to attend the hearing;
 - e) the availability of remote conferencing facilities at the location of the hearing; and
 - f) the number of other attendees appearing by remote conferencing.
8. Approval from the President or Deputy President must be sought in writing.
9. The President and Deputy President may provide standing approval for a particular organisation or individual to attend a particular venue by remote conferencing on an ongoing basis.
10. If approval for remote conferencing is provided, the legal representative remains responsible for ensuring the following, and the Tribunal reserves its ability to exclude a participant from the hearing if the following does not occur:
 - a) the location is appropriately secure and private for the purposes of a Tribunal hearing
 - b) the quality of the connection offered by any remote conferencing equipment they supply
 - c) that they are adequately trained in the use of the remote conferencing equipment to adequately participate in the hearing.
11. A legal representative may make a written request to the Tribunal to utilise the remote conferencing facilities at the Tribunal's Brisbane office to attend a hearing, even when no Tribunal member will be attending from that location. Approval to use the remote conferencing facilities at this venue will be approved, subject to availability.
12. If a legal representative attends at a location from which a Tribunal member is attending a hearing using remote conferencing, the legal representative does not require the prior approval of the President or Deputy President to also attend the hearing using remote conferencing from that same venue. However, prior written notice from the legal representative will be required.



Ms Annette McMullan
President
25 June 2019