Statement of Reasons

This is an edited version of the statement of reasons issued pursuant to section 756 of the *Mental Health Act 2016*. The patient and persons attending the hearing have been de-identified and, in some cases, may be allocated pseudonyms for privacy reasons. Other details that may lead to the identification of the patient may have also been modified or omitted. The modification or omission of these details does not affect its decision or its reasons for the decision.

Matter:	Application to approve electroconvulsive therapy (ECT)
Attendees	
Patient:	Did not attend
Patient's Legal Representative:	Attended
Nominated Support Person:	Attended
Psychiatrist:	Attended
Registrar:	Attended
Decision	
Date of decision:	2021
Decision:	Application to perform ECT APPROVED, approval given for 12 treatments of ECT over a period of 60 days to commence on the date specified.

The patient is currently subject of a treatment authority. She has a history of bipolar affective disorder, mania with psychotic features and stimulant and cannabis abuse. The patient was brought into the emergency department by ambulance on an Emergency Examination Authority and is currently an inpatient following a manic episode. She has been an inpatient for a number of weeks with no consistent improvement following psychotropic medications and time on the open ward. The patient had to be nursed in a high dependency unit as she could not be managed safely, due to her aggressive behaviours.

The patient is currently treated on a number of medications. Despite treatment, the patient remains labile and entitled with no consistent improvement. She has had little sleep and is disruptive on the ward. The manic features are treatment-resistant at this stage. Her liver function test levels are elevated and well-above the normal range. The current combination of medication may have contributed to the elevated liver enzymes. The patient's history includes a severe manic episode which was treated in some years ago and required a course of electroconvulsive therapy (**ECT**), which had a good response.

Statutory Framework

Set out in Appendix A to these Reasons is a summary of the provisions of the *Mental Health Act 2016* (**Act**) that are relevant to the Tribunal's consideration of an application to perform ECT.

Summary of evidence and findings

What were the views, wishes and preferences of the person (and their parent if they are a minor)?

The patient's views, wishes and preferences were expressed on her behalf by her legal representative. The patient did not want to have ECT as past treatments of ECT were traumatic and had caused her headaches and memory loss. The patient remained concerned that she would suffer further memory loss as a result of the treatment. The patient also expressed her views to the treating psychiatrist, who told the Tribunal that ECT previously affected her cultural beliefs in that it affected her ability to see with the third eye.

The patient's nominated support person also gave evidence on behalf of the patient and told the Tribunal that they had consulted with an overseas health clinic. The nominated support person asked the treating team to reconsider the diagnosis, to consider Lyme disease as a possible diagnosis and to perform a SPECT Scan before considering ECT as a treatment option.

Is the performance of the therapy on the person in the person's best interests?

The Tribunal heard evidence from the treating psychiatrist that given the patient's current mental state, ECT was the only appropriate treatment. The treating team had given the patient time in an open ward setting, however, the patient was returned to the high dependency unit due to her aggression. She was on a number of medications prior to admission, but they were not able to hold her. The treating psychiatrist told the Tribunal that despite being in hospital for a number of weeks, there was no consistent improvement in her condition. Despite a therapeutic medication level, the patient remains elevated, irritable, overfamiliar, driven and not sleeping. She is unwell despite extended admission with low stimulus environment and extensive pharmacological management strategies in place. The patient is more and more agitated and frustrated in the hospital setting. The treating psychiatrist was now also concerned about the effect of polypharmacy as he has seen an increase in her liver enzymes.

The patient's legal representative submitted that the patient did not wish to have ECT and that she had discussed with the family the alternative treatments that were available through engagement

with an overseas health clinic. The family do not want ECT and would like to undertake further investigations before proceeding with ECT.

The Tribunal found the evidence of the treating psychiatrist persuasive and was supported by the second opinion. When considered in the context of the patient's current mental state, treatment and risks of not performing ECT, the Tribunal gave significant weight to those factors. The Tribunal considered the submissions of the family and patient in relation to the overseas health clinic and the submissions provided by the nominated support person. The Tribunal was not persuaded by those submissions and placed little weight on studies outside of the Royal Australian and New Zealand College of Psychiatrists (**RANZCP**) guidelines.

The Tribunal concluded that ECT was in the patient's best interest, because:

- the length of the patient's admission;
- the patient had not had consistent improvement during her admission;
- the patient was currently treated with a number psychotropic medications which was having an effect on her liver enzymes;
- the patient had to be returned to the unit following aggressive behaviour on the open ward;
- the patient remains frustrated with the prolonged admission;
- the patient remains a high risk of aggressive behaviours – including banging her head on metal tables;
- the patient is disruptive on the ward;
- the patient has previously received ECT treatment successfully; and
- there is a risk of death from exhaustion if ECT is not performed.

Is there evidence supporting the effectiveness of the therapy for the person's particular mental illness?

The Tribunal heard evidence from the treating psychiatrist that the patient has a treatment refractory manic state of bipolar affective disorder as per RANZCP guidelines. The treating psychiatrist told the Tribunal that the guidelines for mood disorder supports ECT as an effective treatment for bipolar affective disorder. The patient is not settling given the high doses of medications. There was also evidence that the patient had previously responded well to ECT when she presented with manic features.

The Tribunal questioned the potential side effects of ECT on the patient. The treating psychiatrist notes that the patient suffered from headaches after ECT previously. However, he noted that she felt better and was happy to complete the course of ECT. The treating psychiatrist had not seen any evidence of delirium since the patient had been admitted and she was physically well enough to undergo ECT treatment.

The Tribunal questioned the effects of the absence of ECT. The treating psychiatrist told the Tribunal that the patient was at high risk of misadventure and was vulnerable in her current mental state. The patient had been banging her head on metal tables and remained a high risk of aggressive behaviour without ECT. The treating psychiatrist told the Tribunal that if ECT treatment was not performed, it would lead to further deterioration and she would be at risk of death from exhaustion. The treating psychiatrist also told the Tribunal that the patient remained a moderate to high risk of medical complications from cumulative side effects of psychotropic medications.

The Tribunal also considered the second opinion of another psychiatrist (**Second Opinion Psychiatrist**) which supported the treating team's application for ECT. The Second Opinion Psychiatrist held concerns regarding the ongoing manic presentation of the patient's physical state and the side effects of the medication regime and dosage. The Second Opinion Psychiatrist was not aware of any physical health condition that would be worsened by ECT or preclude the patient from having ECT.

The patient's nominated support person provided submissions and material in relation to the patient undertaking a SPECT scan following discussions with an overseas health clinic. He explained that there was a need to investigate other possible diagnoses, including Lyme disease. The nominated support person also wanted to see through the full effect of one of the medications which had only been recommenced during admission. The nominated support person stated that the family did not rule out ECT, but that it was a treatment of last resort after investigations being made. The Tribunal explained that it cannot make decisions with respect to treatment, including any types of medication or scans that might be deemed necessary.

The treating psychiatrist told the Tribunal that in order for the patient to undertake the scan she would be required to lay still for a period of 90 minutes and that she would not be able to withstand that period lying still in her current condition without the medications she was currently on.

The Tribunal finds that there is evidence to support the effectiveness of the therapy for a person with the patient's illness.

Has ECT previously been performed on the person? If so, what was the effectiveness of the therapy for the person?

Approximately six years ago, the patient was admitted to hospital for a severe manic episode and was treated with a course of ECT. On that occasion, the Tribunal heard that the patient had a good response to ECT. The patient reported that she suffered from headaches and memory loss as a result of the treatment and remained concerned on this occasion of further memory loss.

The Tribunal finds that the patient has had effective results from ECT previously.

If the person is a minor, is there evidence supporting the effectiveness of the therapy for persons of the minor's age?

N/A

Human Rights

The Tribunal considers that the following human rights were engaged and limited by its decision: sections 17(c), 19, 25 and 28 of the *Human Rights Act 2019* (Qld) (**HRA**).

Section 15 is engaged but not limited: the patient's human rights were not limited on the basis of discrimination but of evidence and the relevant provisions of the Act. Sections 21 and 31 were engaged but not limited: the patient decided not to attend the hearing of her own choice, she also received the relevant material and was represented by her legal representative and her nominated support person attended.

The Tribunal was also satisfied that the limitations on the patient's human rights as a result of its' decision were lawful and proportionate to the circumstances. The Tribunal reached this decision because:

- the criteria of the relevant test under the Act were met and thus the confirmation of the ECT application is lawful and within the jurisdiction of the Act;
- the course of treatment is within the appropriate RANZCP guidelines and is necessary to prevent further or fatal deterioration to the patient;
- the aim of the limitations was to ensure that the patient received appropriate treatment for her diagnosed mental illness and prevent further or fatal deterioration to the patient;
- the human rights engaged have been balanced against the risk to patient's wellbeing that is likely to eventuate if the patient did not receive ECT treatment.

Accordingly, the Tribunal is satisfied that the limitations are reasonable and demonstrably justified,

and that its decision is compatible with human rights in accordance with sections 8 and 13 of the HRA.

Conclusions of the Tribunal

The Tribunal was persuaded by the evidence indicated that ECT would provide rapid relief from very severe symptoms of the manic episode. The Tribunal accepted that the patient has been suffering from the symptoms of this illness quite acutely for some time, leading to her admission as an inpatient and unsuccessful trial out of the high dependency unit. There has been no consistent improvement in the patient's presentation and without ECT treatment there is potential for death due to exhaustion.

The Tribunal considered the views, wishes and preferences of the patient in that she does not wish to have ECT and has concerns about side effect. Further, that she would like to undertake other tests prior to ECT. The Tribunal accepted that ECT is an effective treatment for the patient's particular mental illness and has previously had a good response for the patient previously following a similar admission.

The application, second opinion and evidence of the treating psychiatrist has been balanced against the submissions of the legal representative and the evidence of the nominated support person. The Tribunal is persuaded by the evidence of the treating psychiatrist and the Second Opinion Psychiatrist as having more weight than that of the nominated support person. The Tribunal finds that ECT is warranted in all the circumstances and supported by evidence.

Accordingly, the Tribunal concludes that the application for ECT be approved for 12 treatments over 60 days.

Presiding Member

APPENDIX A

Statement of the law regarding applications to perform Electroconvulsive Therapy

The main objects of the *Mental Health Act 2016* (**Act**) are set out in section 3(2) and must be achieved in the way outlined in sections 3(2) and 3(3).

The term **electroconvulsive therapy** (**ECT**) is defined in Schedule 3 to the Act (**Dictionary**) means: *the application of electric current to specific areas of the head to produce a generalised seizure that is modified by general anaesthesia and the administration of a muscle relaxing agent for the treatment of a mental illness.*

507 Who may apply
A doctor may apply to the tribunal for approval to perform electroconvulsive therapy on another person if the doctor is satisfied:
(a) the person is an adult and is unable to give informed consent to the therapy; or
(b) the person is a minor.

509 Decision on application
(1) In deciding the application, the tribunal must give, or refuse to give, approval for electroconvulsive therapy to be performed on the person.
(2) In deciding whether to give, or refuse to give, the approval, the tribunal must have regard to:
    (a) if the application relates to an adult who is unable to give informed consent to the therapy - any views, wishes and preferences the adult has expressed about the therapy in an advance health directive; or
    (b) if the application relates to a minor:
        (i) the views of the minor's parents; and
        (ii) the views, wishes and preferences of the minor.
(3) The tribunal may give the approval only if the tribunal is satisfied:
    (a) the performance of the therapy on the person is in the person's best interests; and
    (b) evidence supports the effectiveness of the therapy for the person's particular mental illness; and
    (c) if the therapy has previously been performed on the person - of the effectiveness of the therapy for the person; and
    (d) if the person is a minor - evidence supports the effectiveness of the therapy for persons of the minor's age.
(4) If the tribunal gives the approval, the approval:
    (a) must state the number of treatments that may be performed in a stated period under the approval; and
    (b) may be made subject to the conditions the tribunal considers appropriate.