



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
Attendees:	
Patient:	Attended
Patient's Legal Representative:	Attended
Psychiatrist:	Attended
Registrar:	Attended
Decision	
Date of Decision:	2022
Decision:	The Application to perform Electroconvulsive Therapy is APPROVED.

The patient is a young single, unemployed woman. She was an involuntary inpatient at the time of the hearing.

Prior to the current admission, there had been two presentations in the context of mental health treatment. In the first, she presented expressing suicidality and social isolation. In the second, she attempted suicide by overdose of fluoxetine. According to the clinical report she was treated for an 'acute stress reaction' at that time. Those encounters were both brief. There was no ongoing contact between the patient and the mental health service after either of these episodes.

During the week prior to the current admission, the patient came to the attention of the police and ambulance twice. She was observed to be behaving in a bizarre manner during those interactions. There appears to have been a rapid deterioration of her mental state until ambulance officers found her with symptoms of catatonia and starvation ketosis. She was transported to the hospital and admitted that day.

A treatment authority was made after the patient removed her canula and tried to abscond from the hospital. The clinical report says that she was aggressive, and some use of mechanical restraint was required at the time.

The next day treating psychiatrist applied for the patient to receive emergency electroconvulsive therapy. The doctor observed patient's persistent refusal of food, water, and medicine was compromising her physical and mental health. Her refusal to allow a canula to be used was also preventing treatment. The psychiatrist believed the patient required emergency electroconvulsive therapy to save her life or prevent her from suffering irreparable harm.

This application was for a further 12 electroconvulsive therapy treatments over a 90-day period. In her clinical report, the psychiatrist observed that the patient remained unwell. At the hearing, the psychiatrist said that the patient had received three treatments and had eaten some food. The patient was also able to speak again at the time of the hearing.

However, the doctor maintained her application before the tribunal due to her concern that the patient's catatonic symptoms would return if electroconvulsive therapy was not continued.

Statutory Framework

Appendix A to these reasons is a summary of the provisions of the *Mental Health Act 2016 (Act)* that are relevant when the Tribunal considers an application to perform electroconvulsive therapy (**ECT**).

Summary of evidence and findings

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

When the application was drafted, the patient had been catatonic and was not able to communicate a preference. The treating psychiatrist noted in the application that the patient was 'mostly mute'. The day before the hearing, the patient told the registrar that she did not want ECT.

By the time the panel convened to hear this application, the patient had received three electroconvulsive therapy treatments and had begun to drink, eat and speak more.

At the hearing, the patient was asked about her thoughts regarding having more electroconvulsive therapy. She replied “Yes, I approve. I would like more ECT”. However, she did seem perplexed by the proceedings, and she left the room for a large portion of the hearing.

The patient’s legal representative confirmed that she had reviewed the material and spoken to her client about the application. She told the tribunal that approval of the electroconvulsive therapy was in her client’s best interests.

The treating psychiatrist had consulted the patient’s family about the application. The family members were worried about the patient’s memory but were supportive of the treatment continuing.

At the hearing, the registrar was asked why there was a need for tribunal approval when the patient was agreeable towards the treatment. The doctor stated that the patient had only a vague understanding of her illness and the nature of the treatment. He believed that his patient lacked insight into her mental illness and did not have capacity to consent to electroconvulsive therapy. He gave the example that the patient was accepting of ECT at the hearing, however had said that she did not want it the day before the hearing.

Based on the available evidence of both doctors at the hearing, as well as the patient’s presentation, the tribunal found on balance that the patient did not have capacity to consent to electroconvulsive therapy.

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

The psychiatrist told the tribunal that the patient had been catatonic and not eating. After three treatments performed under the emergency approval she had begun eating again. Given the patient’s severe illness, the psychiatrist asked the tribunal to approve a further 12 treatments. She said that they may not all be needed, but she could not predict precisely how many treatments would be required at this early stage.

The treating psychiatrist expressed her concern that the patient had experienced life-threatening catatonia, and that she risked relapse if the treatment was not continued. There was no evidence before the tribunal that might dispel such a concern, and the psychiatrist’s opinion was not challenged.

The patient’s legal representative questioned whether her client had any side effects from the three previous treatments. The psychiatrist confirmed that she had not.

The second opinion report noted the patient’s features of catatonia and said that they were likely secondary to an acute psychotic episode. The second opinion psychiatrist was of the opinion that the patient had no insight into her current mental state and did not have capacity to consent to the treatment. She agreed that the patient had not sufficiently responded to medication and believed that there was an *‘ongoing risk of poor nutrition, compromise to her physical health and further deterioration to her mental health.’*

The tribunal found that the performance of electroconvulsive therapy was in the patient’s best interests.

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

The treating psychiatrist told the tribunal that the use of electroconvulsive therapy to treat the patient's mental illness was supported by *The Royal Australian and New Zealand College of Psychiatrists* guidelines. She said that there was well established clinical evidence supporting the effectiveness of electroconvulsive therapy in the treatment of psychosis with catatonia.

In her application to the tribunal, the psychiatrist stated that electroconvulsive therapy '*is a quick, effective and proven treatment for catatonia as according to the RANZCP college guidelines.*'

The tribunal was satisfied on balance that there was evidence supporting the effectiveness of the therapy for the patient's particular mental illness.

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

The three emergency treatments performed prior to the hearing had already proved to be effective in treating the patient's catatonia. Prior to this current presentation, the patient had never previously had electroconvulsive therapy.

Human Rights

The tribunal considered the relevant human rights set out in the *Human Rights Act 2019*. Sections 17(c), 25, 31 and 37 were potentially engaged and limited by the tribunal's decision. Taking into account the following, the tribunal was satisfied that the limits imposed by its decision were reasonable and justified in accordance with section 13 of the *Human Rights Act*:

- the criteria of the relevant test under the *Mental Health Act* were met;
- although the patient's capacity to express her wishes was impaired, she told the tribunal that she wanted to have '*more ECT*'. Her family members and her lawyer expressed the same view;
- the tribunal's decision limits the number of treatments to 12 of a period of 90 days, therefore requiring a subsequent application to be made if the treating team decides to continue electroconvulsive therapy beyond that limit;
- the evidence before the tribunal was that without further treatment, there was a risk that the patient's catatonic symptoms would again worsen, or not improve. Those symptoms have threatened her life as they stop her from eating, drinking and accepting medicine.
- the decision is the least restrictive way to meet the patient's treatment needs and protect her from further severe deterioration in mental state and death.

Conclusions of the Tribunal

The Tribunal concluded that the relevant criteria in s509(3) were satisfied. The application was approved for 12 treatments over a period of 90 days commencing on the date of the hearing

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.