



Practice Direction Number 1 of 2022

HEARING ATTENDANCE

1. The purpose of this practice direction is to provide clarity on the nature of attendance by Mental Health Review Tribunal (**Tribunal**) members and others at Tribunal hearings.
2. This Practice Direction repeals the following Practice Directions:
 - a) Practice Direction 1 of 2020 – Impact of COVID-19; and
 - b) Practice Direction 1 of 2019 – Attendance of Legal Representatives.
3. 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).
4. Save for those persons who have a right to attend a Tribunal hearing pursuant to the *Mental Health Act 2016 (Act)*, attendance by any person, whether in-person or remotely, is at the discretion of the Tribunal.
5. The Tribunal may, if appropriate, conduct all or part of a proceeding by remote conferencing¹.
6. 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.

Attendance at hearings – Tribunal members

7. Given the ongoing impact of COVID-19, Tribunal members will attend hearings either in-person or via remote conferencing, as is most appropriate in the circumstances. Where members cannot attend in-person, preference will always be for attendance via both audio and visual conferencing, however, where this is not possible, audio attendance will occur to allow hearings to continue.

¹ Section 746(1)



Attendance by patient

8. Where it is safe to do so, the Tribunal continues to encourage the attendance of patients in-person at their hearings. Other options for attendance include via remote conferencing facilities at a hearing venue or another location with a member of their treating team or with their legal representative.
9. Where a patient wishing to attend their hearing cannot be in the same location as their treating team or legal representative, a clinician or legal representative will be expected to dial the patient on a separate telephone and utilise loud speaker or conferencing mode to allow the patient to continue to participate in their hearing.
10. Treating teams and/or legal representatives should enquire prior to the hearing whether a patient wishes to attend their hearing. If not, they should enquire as to whether the patient is agreeable to the hearing proceeding in their absence. This information should be communicated to the Tribunal members at the commencement of the hearing.
11. Where a patient cannot, or does not wish to, attend their hearing, the Tribunal encourages the completion of a self-report to allow the Tribunal to still receive the patient's views, wishes and preferences.

Attendance by treating team members

12. Where Tribunal members are all attending a hearing by remote conferencing, treating team members are requested to attend by making use of the dial-in details provided. Attendance can be at the nominated hearing venue or another location, with preference to be given to the location of the patient should the patient be attending.
13. Where one or more Tribunal members are attending a hearing in-person, preference is for the treating team to also attend in-person at the hearing venue. Where this is not possible, the treating team may attend remotely, with preference to be given to the use of video conferencing facilities over audio only.

Number of legal representatives

14. The Act specifies that the Attorney-General is entitled to be represented at a hearing by a lawyer². 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.
15. In all those 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 at a hearing.

² Section 737(2)



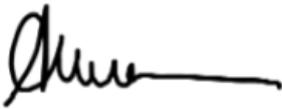
Attendance by legal representatives

16. All legal representatives should make known to the Tribunal their intended mode of attendance for a hearing well in advance of the hearing.
17. For legal representatives representing a patient at a hearing, where the patient will be attending the hearing, it is expected that preference is given by the legal representative to appearing at the hearing in-person with their client.
18. In all other circumstances, the legal representative has standing approval from the Tribunal to appear via remote video conferencing (that is using audio and visual means), unless the Tribunal has directed otherwise.
19. Factors that the Tribunal may consider in determining whether to direct that legal representative attendance should be in-person for a particular hearing may include, but are not limited to:
 - a) the location of the legal representative and the location of the hearing;
 - b) whether the alternate remote conferencing proposed involves videoconferencing or teleconferencing;
 - c) the quality and reliability of the remote conferencing technology the legal representative proposes to use to attend the hearing;
 - d) the availability of remote conferencing facilities at the location of the hearing; and
 - e) the number of other attendees appearing by remote conferencing.
20. If a legal representative attends a hearing by remote conferencing, 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) the remote conferencing equipment provides for both audio and visual connection; and
 - d) the legal representative is adequately trained in the use of the remote conferencing equipment to adequately participate in the hearing.
21. 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.
22. There may be scenarios in which a legal representative considers attendance by a legal representative by telephone is sufficient in all the circumstances. For example, where the legal representative is confident that in all the circumstances an adjournment of the matter will be required because a clinical report has not been received by the Tribunal at least two (2) days prior to the hearing. The legal representative may wish to contact the Tribunal by email to HC@mhrt.qld.gov.au to seek permission to attend the hearing by telephone. The Tribunal will provide a written response to such requests. Such email should contain the following information:
 - a) the legal representative's name and contact telephone number;
 - b) their client's name and hearing date;
 - c) whether the client is intending to attend the hearing (if known); and
 - d) the request to attend by telephone and the reasons for such request.



Written submissions

23. The Tribunal acknowledges that due to challenges with technology, some hearings by remote conferencing may take longer than usual hearings. In an attempt to reduce hearing times, legal representatives may wish to consider the use of written submissions to the Tribunal. Written submissions should be given to each other party to the proceeding at least three (3) days before the hearing in accordance with section 738 of the Act.
24. Acceptance of written submissions outside that timeframe will be at the discretion of the Tribunal.
25. Where written submissions contain a request to attend for a particular member of the treating team to attend the hearing or for permission from the Tribunal to attend by phone, the legal representative should note this information in the covering email.



Ms Annette McMullan
President
11 April 2022