



## 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 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.

<b>Matter:</b>	Application to Perform Electroconvulsive Therapy
<b>Attendees</b>	
Patient:	Attended
Patient's Legal Representative:	Attended
Nominated Support Person:	Attended
Psychiatrist:	Attended
Other attendees:	Attended
<b>Decision:</b>	The Application to perform Electroconvulsive Therapy is approved. Approval is given for 12 treatments over 90 days commencing (on the day of the hearing)

The patient is subject to an inpatient treatment authority. His last treatment authority was revoked last year following a course of 24 treatments of electroconvulsive therapy (**ECT**) that provided him with improvement in his mental health. Specifically, the treatment improved his *'psychomotor activity, negative cognition, and the intensity and conviction of his mood-congruent somatic beliefs.'*<sup>1</sup>

After the current treatment authority was made, the treating team successfully gained the Tribunal's approval for 12 ECT treatments. The patient received those treatments and had the last approved treatment in the week prior to this hearing. The treating team made this application for a further 12 treatments noting that a course of 24 treatments had been needed to treat the patient when he was admitted last year.

In her application, the treating psychiatrist noted that the patient has two diagnoses. Firstly, a recurrent depressive disorder, current episode, severe with psychotic symptoms; and secondly, a somatisation disorder. Her application for ECT was to treat the depressive episode.

The patient is a 60-year-old man who lives with his wife. He receives support under the National Disability Insurance Scheme (**NDIS**). He attended the hearing along with his treating psychiatrist, his support worker, and a registered nurse. He was legally represented. At the time of the hearing, he was able to speak for himself and express his views. He was confined to a wheelchair and reported that he was in a lot of pain. It was not clear which pain was physical and which was somatic, though there was evidence that ECT had previously improved the patient's mobility.

### **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 ECT.

### **Summary of evidence and findings**

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

At the hearing, the patient made it clear that he did not want any more ECT. He expressed that his physical pain was now his main concern. He was wanting to engage in physical rehabilitation. He said he was not depressed or suicidal anymore. He said the previous ECT course might have improved his mood, and he was now at the stage where he needed to focus on his physical health recovery.

He expressed that each ECT made him feel significantly tranquilised or *'punch drunk'*. He said the ECT had *'done its job'* and he needed a chance to recover from it. He said he would now *'take all the meds and do the physical rehab'*.

There have been times in the past where the patient was accepting of ECT. Two of the 24 treatments given in 2021 had been voluntary.

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<sup>1</sup> See under the 'Best Interests' heading in the Application.

The application noted that his wife and sister were supportive of further ECT and the treating psychiatrist confirmed this at the hearing. There was no suggestion at the hearing that the patient has an advance health directive.

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

The treating psychiatrist stated in her application and further explained at the hearing, that if the current course of ECT was not continued the patient would likely experience a deterioration in his mental state. She said that her treating team had attempted to increase the time between treatments, and even that had caused a decline in his mental and physical health. Without ECT, the patient is less willing to address his physical pain and mobility issues and this compounds both his physical and mental health.

The treating psychiatrist also told the Tribunal that after the course of 24 treatments last year, the patient's physical health improved to the point that he mobilised to his feet with a 'wheely-walker'. At that time, his wife, reported somewhat of a return to their life 'of previous times'. The treating psychiatrist believed if the current course was also continued to 24 treatments, a similar recovery to last year was likely now. She warned that stopping ECT after the 12 treatments given so far would result in the patient losing the gains he has made.

The treating psychiatrist was asked about what other treatment would be available if her application were to be refused. She said that different antidepressants had been tried, and the patient *subjectively* experiences significant intolerance within a few days. This perceived intolerance had occurred both with medication to treat to physical pain and with both depot and oral medication to treat his depressive illness. She further explained that due to the depressive illness, the patient becomes unwilling to engage in rehabilitation. That leads to a decline in his mental state, and the risks to his health worsen.

The second opinion supported the treating psychiatrist's application. The psychiatrist who provided the second opinion stated, *"In keeping with previous episodes, I suspect he will need a longer course of ECT to make maximal recovery. I believe he will need a further 12 treatments in order to continue to treat his severe depression to a point that he can readily engage in rehab and be independent enough to return home."*

The Tribunal acknowledged the patient's objection to the treatment but accepted that ECT was in his best interests. Primarily, the Tribunal accepted the evidence that the patient would stop improving and likely deteriorate in his mental and physical health if the current course of ECT was not continued by approving the treating psychiatrist's application.

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

In her application, the treating psychiatrist wrote, *'There is numerous level 1 evidence as well as the RANZCP mood disorder guidelines 2020 supporting the use of ECT in severe depressive disorder.'* She confirmed this in her oral evidence. At the hearing, the treating psychiatrist explained that there was not much evidence to support the use of ECT for somatisation disorder. She said there is significant evidence to support its effectiveness in the treatment of the patient's depressive illness. She explained that the ECT indirectly helps the somatisation disorder because improvements in his depressive illness result in a reduction of his somatic delusions and a willingness to address his pain issues generally.

The Tribunal accepted the treating psychiatrist's advice that there was significant evidence supporting ECT for the treatment of the patient's depressive episode.

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

The patient had previously received ECT in the two preceding years. This application came at the end of a third course of ECT for the patient that had begun earlier this year. The application noted that his response to the first course of treatment provided '*moderate improvement in his depressive and nihilistic thoughts.*' It was noted that following that course of ECT ceasing his somatic preoccupations persisted. However, he apparently became well enough to be '*engaged in rehabilitation to be able to be discharged for community treatment.*'

Last year, the patient received a second course of 24 treatments. The application noted that following this course of ECT he '*showed improvement in his mood, reactivity and a slight change in the intensity of his nihilistic delusions.*' At the hearing, the treating psychiatrist further explained that this improvement had extended to the patient being able to mobilise with a wheelie-walker. His improvements resulted in the revocation of his treatment authority at that time.

The doctor clarified that the ECT was not necessarily treating the somatisation disorder, but improvement of the depressive illness increased the patient's willingness to engage in rehabilitation activities that assisted him with the somatisation disorder.

Following the 12 treatments given leading up to the hearing on this occasion, the patient had not yet been able to stand up. However, the treating psychiatrist had observed noticeable gains in him with each treatment. She qualified this by explaining that those gains were not yet being sustained. She believed that another 12 treatments were necessary to further improve his mental health and maintain the gains that were being made.

The Tribunal accepted that the previous ECT given to the patient had generally been successful. The evidence established ECT as an effective treatment of depressive illness for the patient. In particular, the course last year demonstrated that 24 treatments were likely to be required to successfully treat The patient's depressive episode.

**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 Act were met;
- 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, it was likely that the gains the patient had made would be lost. That would lengthen his inpatient stay and threaten his mental health recovery.
- the decision is the least restrictive way to meet the patient's treatment needs and protect him from severe deterioration in mental state.

### **Conclusions of the Tribunal**

The Tribunal concluded that the relevant criteria in section 509(3) were satisfied. The treating psychiatrist's 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.