



# Policy – Records of Hearings

## 1.0 Policy Statement

- 1.1. The Mental Health Review Tribunal (**Tribunal**) is committed to operating at a high standard in accordance with contemporary practices and legislative requirements.
- 1.2. To ensure this high standard, the Tribunal's default position is for its hearings to be audio recorded via electronic means. However, where there are compelling reasons, a hearing may be recorded by written means.
- 1.3. The Tribunal will make records of hearings, and in certain circumstances transcripts of the proceedings, available to applicable persons in accordance with the relevant legislation.
- 1.4. The provision of records of hearings, and transcripts in relevant circumstances, will be available at no cost to applicable persons.

## 2.0 Scope

- 2.1 This policy applies to all attendees at Tribunal hearings and those that may access records of hearings.

## 3.0 Legislation & Associated Documents

- *Mental Health Act 2016 (Qld) (MHA)*
- *Recording of Evidence Act 1962 (Qld) (RoEA)*
- *Practice Direction 2 of 2023 – Use of Electronic Devices in Tribunal Hearings*
- *Information Sheet – Records of Hearings*

## 4.0 Background

- 4.1 The RoEA requires the Tribunal to create a record of all relevant matters in its hearings and such recording must be carried out in accordance with the provisions of that Act.
- 4.2 Further, and in accordance with the RoEA, the Tribunal must also have appropriate arrangements in place to ensure copies of records or transcripts are available to any persons, subject to certain restrictions.
- 4.3 The MHA restricts the availability of records or transcripts and provides that any record or transcript must not be available to a person unless the person is:
  - a) a judicial person as defined in section 4 of the RoEA; or
  - b) the registrar of the Mental Health Court; or
  - c) the chief psychiatrist performing a function or exercising a power under the MHA; or
  - d) an inspector mentioned in section 555(1) or (2) of the MHA performing a function or exercising a power under that Act; or
  - e) an entitled person, to the extent making the copy available would not contravene a confidentiality order or section 743 of the MHA. An entitled person is a person entitled under the MHA to be given written notice of a decision of a Tribunal hearing.
- 4.4 For the purposes of the MHA, an adjournment is not a decision and as such, a record for an adjourned hearing cannot be provided to an entitled person as outlined in point (e) above.



## 5.0 Policy

- 5.1 The Tribunal is committed to audio recording its hearings via electronic means as its primary method of recording. This type of recording is considered the standard practice and is the default position.
- 5.2 Notwithstanding that audio recording is the standard practice, there may be compelling reasons in special circumstances where a written record of the hearing (including typed or handwritten records) is required.
- 5.3 These circumstances may include:
- where there is a major technical fault with the electronic recording equipment; or
  - where there are compelling reasons, for example, based on the special circumstances of a particular patient (such as where a patient is significantly distressed by the hearing being audio recorded and requests that it does not occur). Such decision will be determined by the Tribunal panel conducting the hearing.
- 5.4 The Tribunal panel conducting the hearing may take account of the following to assist in determining whether the hearing should be audio recorded:
- the patient's own submissions, or submissions from a person acting on behalf of the patient (such as a lawyer, personal guardian, nominated support person or other representative). Such submission should include details in relation to how the audio recording may cause significant distress to the patient;
  - members' observations of the patient at the time of the hearing;
  - advice from the treating team; or
  - any other collateral information that the panel may choose to rely on.
- 5.5 An attendee's personal preference is not a sufficient reason for the Tribunal to not audio record.
- 5.6 Should the Tribunal panel exercise their discretion to not audio record, a written record of the hearing must be taken.

### Transcripts

- 5.7 A transcript of the hearing may only be provided in limited circumstances and at the discretion of the President of the Tribunal.
- 5.8 The President of the Tribunal will consider the following in determining whether a transcript is to be provided:
- the location of the person requesting the record (for example the person resides in a location that does not permit access to audio services, such as a correctional centre);
  - the specific needs of the person requesting the record (for example the person is deaf or hard of hearing); or
  - any other matter which demonstrates why a transcript may be needed in place of, or in addition to, an audio recording.



5.9 The Tribunal does not consider that a person's technological deficiencies or the unavailability of technology to mean that person is entitled to a transcript. The Tribunal will encourage persons to seek all avenues of support to access an audio recording prior to consideration of the provision of a transcript.

5.10 The timeframes for provision of a transcript may vary, however as far as possible, advice will be provided to the requestor regarding the expected timeframe.

#### Confidential information

5.11 The Tribunal will record the entirety of a hearing, including where confidential information is discussed. The Tribunal will suspend recording when a hearing is stood down or for the purposes of member deliberations.

5.12 Member deliberations are considered part of the Tribunal's quasi-judicial functions and are not made available unless required by law. The deliberations are not subject to the provisions of the Information Privacy Act 2009 or the Right to Information Act 2009.

5.13 Copies of records or transcripts may be redacted prior to being made available to ensure that no confidential information is released, that is, that there is no contravention of:

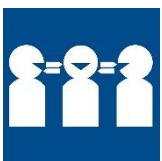
- a) a confidentiality order as made in accordance with the MHA,
- b) section 743 of the MHA; and
- c) section 793A(4) of the MHA

5.14 Copies of records or transcripts may also be redacted in circumstances where material is recorded that does not form part of the hearing (for example member deliberations) or as otherwise required by law.

#### Confidentiality Provisions

5.15 Copies of records or transcripts of hearings are subject to the confidentiality provisions of the MHA. These provisions include:

- a) section 778 limiting the use or disclosure of personal information;
- b) section 790 prohibiting the publication of reports of a proceeding of the Tribunal without leave of the Tribunal;
- c) section 791 prohibiting the publication of information that identifies, or is likely to lead to the identification of, a person who is or has been a party to a Tribunal proceeding. The Tribunal may grant leave in certain circumstances.



#### Do you need an interpreter?

If you require an interpreter, please call the Translating and Interpreting Service (TIS National) on 131 450 (within Australia) for immediate phone interpreting.