

Practice Direction

ELECTRO CONVULSIVE THERAPY (ECT) DETERMINATIONS

(updated 13 February 2019)



Purpose

This Practice Direction sets out the Tribunal's practice in relation to certain applications for the administration of Electro Convulsive Therapy (ECT).

The Tribunal has the jurisdiction to consider whether ECT should be administered to an involuntary patient (which includes a person detained in a mental health facility, a forensic patient and a correctional patient). This decision is made at an ECT Administration Inquiry, held under Part 2, Division 3 of the *Mental Health Act 2007* (s 96(2)) (the Act).

The Tribunal also has the jurisdiction to consider whether a person other than an involuntary patient is capable of consenting to the administration of ECT. This decision is made at an ECT Consent Inquiry (s 96(1)) of the Act.

The process of applying for an ECT inquiry is set out in the Tribunal's Civil Hearing Kit at Section 6.

The Ministry of Health's [Policy Directive and 'Guidelines: ECT Minimum Standards of Practice in NSW'](#) describe the minimum standards for the use of ECT in NSW and apply to all facets of care, including the indications for treatment, potential risks and strategies to minimise them, issues of consent, facilities, anaesthesia, application of the procedure, and the required quality improvement framework.

Urgent ECT applications prior to a Mental Health Inquiry

1. Where a person detained in a mental health facility is brought before the Tribunal for an ECT Inquiry, but has not yet been presented to a Mental Health Inquiry the Tribunal should, where practicable, hold both the ECT Inquiry and the Mental Health Inquiry at the same time.
2. There may be occasions where it is impracticable to proceed with the Mental Health Inquiry. For example, there may be insufficient time available to allow the Tribunal to properly hear both matters, or a legal representative may not be available as required for the Mental Health Inquiry. In such cases, the Tribunal panel will begin hearing the Mental Health Inquiry, canvass the issues as to why it is impracticable to proceed, and, if appropriate, may decide to adjourn the Mental Health Inquiry for up to 14 days.

3. The Tribunal may proceed with the ECT application even if the Mental Health Inquiry is adjourned.

Maintenance ECT applications

4. The Tribunal is sometimes asked to consider applications for ECT to be administered on a 'maintenance' basis for persons who, because of their continuing condition and likelihood of deteriorating without maintenance ECT remain classified as involuntary patients.
5. In such cases it may be necessary and appropriate for the person to be detained as an involuntary patient, but on leave from the mental health facility other than when presenting for the administration of the maintenance ECT. Such involuntary patients will need to be reviewed by the Tribunal in accordance with the requirements of the Act.
6. Where the evidence at an involuntary patient review establishes that a person is a mentally ill person, an involuntary patient order pursuant to section 38 may be made, provided that no care other than care in a mental health facility is appropriate and reasonably available. Where there is evidence that maintenance ECT is an effective treatment which enables the subject person to have leave from a mental health facility, in between treatments, and that any disruption to such treatment will very likely result in a significant deterioration or major relapse, the continuing condition component of the definition of mentally ill is made out, and an involuntary patient order may be appropriate even if the only time that the patient effectively spends in the mental health facility is for the purpose of the ECT treatment.
7. Such an interpretation promotes the objects and principles of care and treatment under the Act enabling persons to have access to the best possible care and treatment in the least restrictive environment, with interference to their rights, dignity and self-respect being kept to the minimum necessary in the circumstances.
8. Leave from a mental health facility may be approved by the authorised medical officer (AMO) under section 47 of the Act which provides that the AMO may allow a person to be absent from a mental health facility for the period, and on the conditions, that the AMO thinks fit, provided that the AMO is satisfied that, as far as is practicable, adequate measures have been taken to prevent the person concerned from causing harm to himself or herself or others. That could encompass granting leave, to allow a patient effectively to reside in the community, subject to returning for such maintenance ECT treatment as has been approved by the Tribunal.
9. Section 48 gives the AMO power to apprehend persons who are absent from the mental health facility.
10. The Act should be construed so that persons can access care and treatment in the least restrictive circumstances, which this approach supports. In some cases ECT is the only treatment which keeps such

patients sufficiently well to enable them to have leave from the mental health facility, without which they would most likely have to be detained in a mental health facility.

Administration of ECT at a mental health facility or other place that did not apply for the ECT determination

11. The Act does not specify that ECT must be administered at any particular facility (provided the facility keeps a register: s.97). Usually ECT will be administered at the facility where the patient and AMO are located. But some facilities may not have the capacity to administer ECT treatment and will send the patient to a facility that has such a capacity. There may also be circumstances when it becomes convenient or necessary for the patient to start the treatment at one facility and to continue at another facility.
12. The Tribunal's determination covers both these circumstances. In such cases a copy of the Tribunal's determination should always be provided to the facility administering or continuing to administer ECT treatment. In the case of a continuation of ECT treatment at another facility, the facility that is continuing the treatment should be provided with a clear record of the treatments already administered under that determination.
13. This Practice Direction replaces previous ECT Practice Directions issued on 13 August 2008, 8 July 2013 and 3 September 2014.

His Honour Judge Richard Cogswell SC
President
13 February 2019