

Practice Direction

No.1 of 2023 – Dissenting Opinions



Mental Health
Review Tribunal

Introduction

Our Tribunal sits in three member and single member configurations. There are no two Member Tribunal panels. Where the Tribunal sits as a three Member panel the usual outcome is a consensus decision of all three Members. Consensus outcomes are preferred wherever possible.

This practice note applies where there is dissent on the part of at least one Member. This can only occur where the Tribunal sits as a three Member panel, and there is a dissenting opinion on a material matter relevant to the Tribunal's determination

Practice Note directions:

1. The general position is that the three member Tribunal should, through panel deliberations, use their best endeavours to reach an agreed decision of all three members.
2. Where the Tribunal panel cannot agree, the following process for making the Tribunal decision will apply:
 - i. If the Tribunal is constituted by more than one member for the purposes of the determination of any proceedings, and the members are divided in opinion, the opinion of the majority is taken to be the decision of the Tribunal.
 - ii. However, a question of law arising in proceedings in which the Tribunal is constituted by three members, one of whom is an Australian lawyer, is to be decided in accordance with the opinion of the member who is an Australian lawyer (the Legal Member or the Presidential Member).
 - iii. A question of law includes whether a particular question is a question of law.
 - iv. That there was a dissenting opinion is to be recorded as set out in (3) below.
3. The following procedures will apply to recording the dissenting opinion:
 - i. The order form, recording the Tribunal's order and brief reasons of the majority decision, will contain a notation under the dissenting Members name and/or signature, that the Member dissents.
 - ii. The Member will provide a brief written statement of reasons for the dissent which will be retained on the Tribunal file.
 - iii. A document to record dissenting opinions is to be placed in the Tribunal hearing rooms but if not available a handwritten record made by the dissenting member, signed and dated with the title 'Reasons for Decision for Dissenting Opinion' will suffice.

If additional time is required for the preparation of the Reasons for Decision for the dissenting opinion, arrangements for additional time are to be made with the Tribunal Registrar, by the member in dissent who is preparing the written reasons.

Dated 10 March 2023

Her Honour Magistrate Carolyn Huntsman
President