

Voluntary Patients – Frequently Asked Questions



1. Can a person who is subject to a guardianship order be admitted as voluntary patient?

Yes. This is clear from s 7(1) of the *Mental Health Act, 2007* ('the Act') which states: 'A person under guardianship may be admitted to a mental health facility if the guardian of the person makes a request to an authorised medical officer'.

2. Can a person who is subject to a guardianship order admit themselves as a voluntary patient?

Yes. A person who is under Guardianship can admit themselves as a voluntary patient. However, they may not be admitted if the person's guardian objects to the admission to the authorised medical officer (see s 7(2)).

3. If a person is admitted as a voluntary patient under a guardianship order, is that person able to discharge him/herself from the mental health facility without the guardian's permission?

Yes. Section 8(2) of the Act states that: 'a voluntary patient may discharge himself or herself from or leave a mental health facility at any time'.

The Tribunal has consistently taken the view that s 8(2) applies to patients admitted by a guardian, as well as those who admit themselves, even if such discharge is contrary to the wishes of the guardian.

The authorised medical officer must give notice of the discharge to the patient's guardian (see s 8(3)).

4. Does a person admitted as a voluntary patient by their guardian need to be reviewed by the Mental Health review Tribunal?

Yes. Section 9 of the Act requires the Tribunal to review at least, once every 12 months, all voluntary patients, who have been receiving care or treatment, or both, whether in a voluntary or involuntary capacity in a mental health facility for a continuous period of more than 12 months. This includes voluntary patients who admitted themselves or were admitted by their guardian, as well as persons who were reclassified as voluntary by the Tribunal.

The Medical Superintendent is required to notify the Tribunal of the names of voluntary patients who are required to be reviewed (see s 9(5)).

5. What happens if the person's status changes from involuntary to voluntary? When do they need to be reviewed?

The patient needs to be reviewed at least, every 12 months whether they have been involuntary or voluntary. So, if their status changes they still need to be reviewed by

the Tribunal within 12 months from their last review, or the date they were admitted (if they have not been reviewed by the Tribunal at all).

6. What issues should the Tribunal consider on a review of a voluntary patient?

Section 9(2) as amended in 2015 states: “in addition to any other matters it considers on a review, the Tribunal is to consider whether the patient consents to continue as a voluntary patient and whether the patient is likely to benefit from further care or treatment as a voluntary patient”.

In this context, ‘consent’ should be interpreted simply as the person wishing to be a patient in the mental health facility; it does not matter whether the wish is rational or irrational. There is no requirement, for example, to consider ‘capacity’ to give an informed consent under this section.

‘Likely to benefit from further care and treatment as a voluntary patient’ should be taken to mean that there is something about the quality and type of care given in the facility that contributes to the person’s wellbeing. It may be the case, for example, that the patient has been at the facility for a considerable period of time and that their discharge is likely to have a negative effect on their well-being.

It is appropriate for Tribunal panels to make enquiries of any voluntary patient as to whether they wish to stay in the mental health facility.

In cases where the person is unable to articulate a clear view or preference, consideration as to whether they ‘consent’ may be informed by evidence as to their past expressed views, and behaviour. For example, if a person has leave from the facility and returns or is not making attempts to leave the facility, this may be evidence of their wish to continue to remain at the facility. Such issues can be explored in evidence at the hearing.

If there is a guardian or other designated carer or principal care provider, then evidence from such persons may assist the Tribunal to better understand whether the patient wishes to remain or not. However, it is the wish of the patient, not the wish of the guardian or others, that is key.

In cases where there is unequivocal evidence that the person does not wish to remain in hospital, then the patient cannot be said to be ‘voluntary’ and the Tribunal should order the person’s discharge, even if it is considered that they would benefit from further care and treatment. However, if there are genuine concerns about the patient’s welfare or safety (including safety to others) were they to be immediately discharged, it may be appropriate to adjourn the review for a period (but not longer than necessary) to allow necessary alternative arrangements to be put in place, which may include scheduling if the clinicians consider the patient to be a mentally ill person. Alternatively, the Tribunal can make the discharge order but defer the discharge for up to 14 days (s 9(4) MH Act).

The determination of these issues, particularly in cases where the Tribunal is considering ordering discharge, will be a matter requiring careful judgment by the Tribunal panel on the facts of each case.

The Tribunal has issued an Official Report ([‘Mr Peters’](#)) which touches on some of the above issues. Click on the above link or visit the Tribunal’s website at: <http://www.mhrt.nsw.gov.au/the-tribunal/official-reports.html> .