

# FACTSHEET: Tips for self advocacy at the Mental Health Review Tribunal



**Queensland Advocacy  
Incorporated**

Systems and legal advocacy for  
vulnerable people with disability.

Level 2  
43 Peel Street  
South Brisbane QLD 4101

T (07) 3844 4200  
F (07) 3844 4220  
E [qai@qai.org.au](mailto:qai@qai.org.au)

This factsheet has been prepared by Queensland Advocacy Incorporated (QAI), an independent, community-based systems and legal advocacy organisation for people with disability in Queensland ([qai.org.au](http://qai.org.au)).

This publication is for general information only. It must not be relied on as legal advice. You must seek legal advice about your own particular circumstances.

Last updated: 3/10/19

This factsheet is to provide guidance for people who will be advocating for themselves at their Mental Health Review Tribunal hearing.

## Understand what the hearing is for

- The purpose of the hearing is written on the “notice of hearing” that you will receive from the Tribunal, which also tells you the date, time and location of the hearing.
- The hearing is an opportunity for the Tribunal to talk to you, your supports, and your treating team, and ask questions, so that they have enough information to make a decision by applying the relevant legal test under the *Mental Health Act 2016* (Qld).

## Understand the law

- It helps if you understand the legal test the Tribunal will apply. There are different legal tests depending on the purpose of the hearing.

## Understand what the Tribunal’s powers are

- The Tribunal’s powers at the hearing are limited. For example, they cannot make decisions regarding medication, dosage, or who your doctor or treating team are.
- In most cases, the main decision for the Tribunal is whether the order should be confirmed or revoked, or whether electroconvulsive therapy should be given. For forensic orders, the Tribunal will also decide any conditions on your treatment in the community.

## Know which documents will be considered by the Tribunal

- For every hearing, your treating team must prepare a **clinical report** setting out their opinion and recommendations. You should receive a copy of this clinical report at least **7 days** before the hearing (3 days for electroconvulsive therapy applications) from your treating team. If you do not receive it, you should ask for it.
- The Tribunal might be given other documents. They may be documents referred to in the clinical report. For electroconvulsive therapy applications, there should be a second opinion. For forensic order reviews, there will be reports that were considered by the Mental Health Court.
- You can also submit your own documents to the Tribunal, including what you want to say to the Tribunal in writing (also known as a Self-Report). You should give these documents to the Tribunal at least **3 days** before your hearing. It might help to give these documents to your treating team before the hearing as well, so they can thoughtfully respond to them at the hearing, but you do not have to.

- You should receive all the documents that the Tribunal has before the hearing. If you are not sure whether you have all the documents, you can contact the Tribunal office and ask.

### **Know who will be at your hearing**

- The Tribunal panel is usually 3 people: a lawyer, a psychiatrist and a community member.
- One or more people from your treating team will attend the hearing. You can ask your treating team who will be at your hearing.
- You can bring a support person to the hearing. You will need permission from the Tribunal to bring any more support people. The support person is there to help you say what you want to say. They are not there to speak for themselves or voice their own opinion.
- In addition to a support person, you can be represented by a lawyer or by a non-legal advocate. Your representative is there to express your views, wishes and preferences, or if you are unable to express these, to act in your best interests.
- You can ask other people to come to your hearing to give “evidence”. For example, sometimes it can be helpful if a support worker is there to tell the Tribunal how you are managing in the community.
- If the hearing is about a forensic order, then the Attorney-General’s lawyer is allowed to attend the hearing. Their role is to represent the public interest.
- The people at the hearing might be there in person, they might be there by video conference, or they might be on the telephone.
- You should let the Tribunal know who you are bringing to your hearing.

### **Know what to expect at the hearing**

- For most treatment authority review hearings and electroconvulsive therapy application hearings, the hearing will be approximately 30 minutes long. For other hearings, the hearing might be 1 hour or more.
- The Tribunal will start by telling you what the purpose of the hearing is and the documents they have read.
- The hearing is like a conversation. You might be given the choice of whether you would like to speak first, or whether you would first like to hear what the treating team has to say. The Tribunal will ask you questions, they will ask the treating team questions, and they may ask your support people questions. Your representative and the Attorney-General’s lawyer (if at the hearing) are then allowed to say what decision they think the Tribunal should make and why.
- At the end of the hearing, the Tribunal will normally ask everyone to leave the room while they make a decision. The Tribunal will then ask everyone back into the hearing room and tell you their decision. Sometimes, the Tribunal need more time to make a decision and will give you their decision in writing on another day. You will always get the decision in writing.
- You have **60 days** from the day you receive the decision to make an appeal to the Mental Health Court. You can also write to the Tribunal and ask that they provide you with written reasons for their decision (known as a **statement of reasons**). The Tribunal will then send you a statement of reasons within **21 days**.

### **Have a goal**

- Work out what your goal is for the hearing and stay focused on this goal at the hearing. It could be something that the Tribunal has the power to order, like getting your order revoked or getting more community treatment. However, it could be something else, like clarifying or correcting information in the clinical report, or making sure the treating team knows what you want to achieve.



## Know yourself and prepare

- Reflect on your strengths and vulnerabilities and think about what you might need to be at your best.
  - Are you nervous speaking in front of people? Possible strategies: write down what you want to say, practice what you want to say.
  - Do you get emotional? What will help you manage these emotions? Possible strategies: know your warning signs and asking for a break in the hearing if you need; ask a support person to touch you on the arm to let you know when you might need to take a breath.
  - Do you forget things? Possible strategies: Write down the five key matters you want to get across. Tell your support person what is important to you to say at the hearing. Ask your support person to take notes for you at the hearing.
- Read the documents – do you have any questions for the treating team?
- If you are bringing someone with you to the hearing, make sure they know why you want them there, and that they understand what their role is.
- Look for any positives in your situation and try to put aside emotions and frustrations – remain calm and respectful.
- Keep in mind that you are the expert on your own life and have confidence that your own views and wishes are important.
- Have a plan for after the hearing – hearings can be stressful and emotionally draining. It can help to have something to look forward to after the hearing.

## Tips for treatment review meetings and other meetings with your treating team

Throughout your treatment, you will need to attend meetings with your psychiatrist, your case manager, and other members of your treating team. Sometimes these meetings are bigger, with family, friends and other people in your support network being asked to attend.

It can help if you prepare for these meetings in a similar way to preparing for Mental Health Review Tribunal hearings:

- Do you know what the meeting is for?
- Do you know what the meeting outcomes are expected to be? For example, if the outcome will be a report, who will the report be given to and will you be able to see it?
- Do you know who will be at the meeting and their role?
- Can you bring a support person?
- What are your goals for the meeting? Remain focused on these goals.
- Remain calm and respectful.
- Be prepared to listen and ask questions.
- At the end of the meeting, make sure you understand what the outcomes or agreed next steps are.
- If you are asked to agree to something you are not sure about, it is ok to ask for a bit more time to think about it.
- Take notes at or after the meeting so you have a record of what was said and agreed.



## Getting more information and advice

After reading this factsheet, you probably still have questions. What is the relevant legal test? What is the likely outcome for my hearing? Who should I ask to come to my hearing? What documents or information should I be submitting documents to the Tribunal?

It is always a good idea to get more information that is specific to your circumstances. You can get more information from:

- **Factsheets** – for example:
  - Queensland Health website: <https://www.health.qld.gov.au/clinical-practice/guidelines-procedures/clinical-staff/mental-health/act/resources/patient-rights>
  - Mental Health Review Tribunal website: <https://www.mhrt.qld.gov.au/information-for/patients>
  - Queensland Advocacy Incorporated website: <https://qai.org.au/resources/legal-information-and-guides/>
- **Independent Patient Rights Advisors** –are able to advise patients and their support networks about their rights under the Mental Health Act. Statewide contact details are available on the Queensland Health website; <https://www.health.qld.gov.au/clinical-practice/guidelines-procedures/clinical-staff/mental-health/act/resources/patient-rights>, or you can ask your nurse, case manager or treating team for contact information.
- **Lawyers** – are able to provide you with legal advice. There are limited private lawyers with expertise in this area of law. However, free legal advice is available from:
  - Legal Aid Queensland: phone 1300 65 11 88
  - Community legal centres: see <https://communitylegalqld.org.au/> and *Find Legal Help* by filtering by *Mental Health* and your location.

## Representation

You might decide you want representation for your hearing. Representation can be helpful if you find it very difficult to express your own views and wishes, your case raises complex factual or legal issues, or your human rights are at serious risk.

However, you should be aware that representation does not necessarily mean that you get the outcome you want. There are limits to what can be achieved depending upon the law and the evidence.

For some types of matters, you will be appointed a free lawyer for your hearing. This includes:

- If you are under 18 years old
- Electroconvulsive therapy application hearings;
- If the Attorney-General's representative will appear at your hearing

If you know the date for your hearing, you can contact Legal Aid Queensland Call Centre (1300 65 11 88) to find out if you have been appointed a lawyer.

If you have not been appointed a free lawyer, then you might be able to get legal or non-legal representation:

- From a private law firm for a fee;



- By applying for a grant of aid from **Legal Aid Queensland** – you will need to satisfy a means and merit test;
- From a **community legal centre**: see <https://communitylegalqld.org.au/> and *Find Legal Help* by filtering by *Mental Health* and your location. Not all community legal centres can provide you with representation: they may not have the expertise, or they do not have the resources to meet the demand. If your local community legal centre cannot provide you with representation, you can try the following statewide services:
  - **Queensland Advocacy Incorporated** - 07 3844 4200;
  - **LawRight** – 07 3846 6317 (treatment authority reviews only).