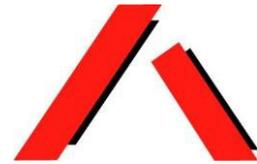


FACTSHEET: Mental Health Review Tribunal and legal representation



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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).

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.

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This factsheet is about what your rights, responsibilities and options are regarding legal representation for your Mental Health Review Tribunal (MHRT) hearing.

Do I need a solicitor at my Mental Health Review Tribunal Hearing?

The role of a solicitor at a Mental Health Review Tribunal (MHRT) hearing is to represent the person's views, wishes and preferences. If the person cannot express their own views, wishes and preferences, then the solicitor is to represent the person's best interests. (section 739(3) *Mental Health Act 2016* (Qld)).

Instead of a solicitor, a person can be represented at the MHRT by a nominated support person or another person. More information about the role of the nominated support person and the form can be found here:

- Qld Health Factsheet: [Role of nominated support person](#)
- Qld Health Guide and [Form for appointing a nominated support person](#)

A person can also be accompanied to the hearing by 1 member of their support network, or more than 1 person with the permission of the MHRT. The support person is there to provide support only, not representation. (section 739(2) *Mental Health Act 2016* (Qld)) This can include a family member or friend.

A person may be appointed a solicitor to represent them by the MHRT in certain circumstances (see [Has the MHRT appointed a solicitor for me?](#) below).

If you have not been appointed a solicitor by the MHRT, it is up to you whether you want to be represented by a solicitor, a nominated support person, another person of your choosing, or no one at all.

Has the MHRT appointed a solicitor for me?

The MHRT must appoint a solicitor, at no cost to you, to represent you if:

- You are 17 years or under; OR
- The hearing is about reviewing your fitness for trial; OR
- The hearing is about an application to treat you with electroconvulsive therapy (ECT); OR
- The Attorney-General will be represented at your hearing: (section s 740(3) *Mental Health Act 2016* (Qld)).

A representative of the Attorney-General can only attend MHRT hearings which are to review a forensic order, review fitness for trial, or applications to transfer forensic patients in or out of Queensland. The Attorney-General can choose not to attend your MHRT hearing. In those cases, you will not be appointed a solicitor by the MHRT. If a representative of the Attorney-General was at your last MHRT hearing, it is possible they will attend your next MHRT hearing.

If you have been appointed a solicitor, you should have been told this in a letter from the MHRT, usually the same one that told you about the time, date and place of your hearing.

Legal Aid Queensland is responsible for organising the MHRT appointed solicitor. This solicitor might be from Legal Aid Queensland, a private law firm, or a community legal centre. The solicitor is independent of Queensland Health and the Mental Health Review Tribunal and will represent you at your hearing at no cost to you. The solicitor's role is outlined in **What are the solicitor's responsibilities?** below.

The solicitor should contact you as soon as they are appointed to represent you at your hearing. For forensic order, fitness for trial or transfer hearings, this should be about 14 days before the hearing. For other hearings, it may be 7 days or less.

If you have been notified of the date of your hearing, and have not heard from a solicitor, and you think you should have been appointed a solicitor, it is a good idea to contact the MHRT on 1800 006 478 or 07 3235 9059 to confirm whether or not you have been appointed a solicitor.

What if I do not want a solicitor to represent me?

If you have been appointed a solicitor by the MHRT but you do not want a solicitor, then you need to write to the MHRT to tell them you do not want a solicitor (this is called ***waiving your right to legal representation***).

You can do this by sending an email to the MHRT at enquiry@mhr.qld.gov.au or by writing to them at **PO Box 15818, City East Brisbane, Qld 4002**. You can also tell the MHRT at your hearing.

You can talk to your appointed solicitor about this process or the Independent Patient Rights Adviser for your mental health service.

The solicitor might still need to attend your hearing until the MHRT accepts the waiver and releases the solicitor from their obligation to represent you.

What are the solicitor's responsibilities?

Whether you have organised your own solicitor to represent you, or you have been appointed a solicitor by the MHRT, the solicitor's role is the same:

- To the extent that you are able to express your views, wishes and preferences – represent your views, wishes and preferences; and
- To the extent that you are unable to express your views, wishes and preferences – represent your best interests.

In carrying out their role, the solicitor has a responsibility to:

- contact you before the hearing and find out your views, wishes and preferences;
- obtain all the documents that are relevant to your hearing. The MHRT will provide the solicitor with all the documents the MHRT will consider, for example, the clinical report written by the treating psychiatrist, the previous MHRT decision, and material from the

Mental Health Court about why a forensic order was made in the first place. Any other documents can only be obtained by the solicitor with your consent;

- if you have a guardian for legal matters, find out the guardian's position about your views wishes and preferences or best interests.

All solicitors have an ethical duty to:

- keep your information confidential, including not speaking to your treating team or family unless you give the solicitor permission to do so;
- act honestly and fairly and in your best interests;
- provide you with independent and unbiased legal advice and representation.

The solicitor will keep a file about your matter. This file can be destroyed 7 years after your file has been closed unless you tell the solicitor not to.

Further information about what you can expect from your solicitor can be found in:

- [The Australian Solicitors Conduct Rules](#)
- [Legal Aid Queensland's Case management standards](#) for Mental Health Review Tribunal
- [Legal Aid Queensland's Guidelines](#) for solicitors working with clients in the Mental Health Review Tribunal

What are my responsibilities to my solicitor?

You can help your solicitor to get you the best outcome possible by:

- Being open and honest with your solicitor;
- Following the solicitor's instructions as quickly as possible, such as providing further documents;
- Being contactable, and informing your solicitor of any changes to your contact details;
- Asking questions if you do not understand something.

In particular, it is important that you are honest. Solicitors have a duty not to mislead, and therefore may need to stop representing you if they know you are being dishonest to the MHRT.

What can I do if I cannot get a solicitor in time for my MHRT hearing?

If you do not have an MHRT appointed solicitor (See [Has the MHRT appointed a solicitor for me?](#) above), and you cannot organise legal representation in time, then you can attend the hearing and request that the hearing be adjourned (delayed) so that you have an opportunity to obtain legal advice and/or representation. You should do this at the start of the hearing.

You will have a strong case for adjournment if you did not get the notice of hearing in time, or did not get the clinical report in time:

- The *Mental Health Act 2016* (Qld) requires that you receive notice of your next MHRT hearing within a certain timeframe. For forensic order reviews and applications to transfer forensic patients, this is at least 14 days. For most other matters, you should have received notice at least 7 days before the hearing.
- Section 723 of the *Mental Health Act 2016* (Qld) requires that in preparation for a review hearing, the treating psychiatrist prepare a clinical report setting out their recommendations. This report must be provided to you at least 7 days before the hearing. Under section 738, if the hearing is about electroconvulsive therapy, then the application and clinical report should be provided to you at least 3 days before the hearing.

Otherwise, you should be prepared to explain to the MHRT what attempts you have made to obtain legal advice or representation, and why they were unsuccessful.

Can QAI represent me at my next MHRT hearing?

If you have been appointed, or should be appointed, a solicitor by the MHRT to represent you at your next hearing (see [Has the MHRT appointed a solicitor for me?](#) above), then you should wait for that solicitor to contact you. Legal Aid Queensland does its best to appoint solicitors who are local to you and are best placed to meet you face to face and be with you in person at your MHRT hearing.

If you have not been appointed a solicitor, then you can contact QAI on **(07) 3844 4200** and be booked in for our next available advice appointment. Sometimes the next advice appointment is several weeks away. If your matter is urgent, and QAI cannot give you legal advice before your hearing, you may be able to request the MHRT for an adjournment (see [What can I do if I have a MHRT hearing but cannot get a solicitor in time?](#) above).

Before your advice appointment, it is helpful if you are able to:

- Find out the approximate date of your next MHRT hearing. If you are not sure, then you can contact the MHRT on **1800 006 478** or **07 3235 9059** who can tell you over the phone.
- Give QAI a copy of your documents, including your clinical report, by email to gai@qai.org.au or by post to **QAI, PO Box 3384, South Brisbane Qld 4101**. If you do not have a copy of the documents, you can ask your treating team or Independent Patient Rights Adviser to send us a copy. Alternatively, you can complete a Client Authority form (ask us for a copy) and provide this to QAI so we can obtain a copy of your documents from the MHRT on your behalf.

At the advice appointment, the solicitor will be able to give you preliminary advice and assess whether we can represent you at your next MHRT hearing, having regard to:

- Our availability to represent you on the day and time of your hearing;
- Whether there is adequate time and capacity for the solicitor to prepare for your hearing;
- Your financial situation and whether you can afford a private solicitor to represent you;
- Your ability to self-advocate, or have supports who can advocate for you
- The merits of your matter, and the benefit of having a solicitor;
- Other relevant matters, such as whether you are living in the community, whether you are experiencing multiple disadvantages, or when you have been on an order for a lengthy period of time and have never had legal representation in relation to review of that order.

If QAI is able to represent you, then you will be asked to complete and sign a client-solicitor agreement and a client authority which outlines some of the responsibilities and expectations set out under [What are the solicitor's responsibilities?](#) and [What are my responsibilities to my solicitor?](#) above.

More information

Queensland Health – [Mental Health Review Tribunal webpage](#)

Mental Health Review Tribunal – [Website](#)

Legal Aid Queensland – [Information on legal advice for mental health](#)

Queensland Government legislation – [Mental Health Act 2016 \(Qld\)](#)