

Best practice guidelines for lawyers working with clients in the Mental Health Review Tribunal

1. Improve your understanding of mental illness

Guideline 1.1: Develop and maintain your own knowledge of types of mental illness, including symptoms, treatment and treatment effects.

Practice points

- Develop a sound understanding of the different types of mental illness including symptoms, treatment and treatment effects through review of professional information sources.
- Attend relevant professional opportunities and engage with qualified stakeholders to keep your knowledge base current.

2. Communicate effectively

Guideline 2.1: Assess client capacity and take steps to enhance capacity and client engagement.

Practice points

- Understand that mental illness fluctuates and that a client's capacity to understand and participate in proceedings may vary from time to time.
- Adults are presumed to have capacity unless there is evidence to contrary.
- Take steps to assess client capacity where relevant. Document your assessment process, decision and reasons.
- Understand that capacity is time-specific, domain-specific and decision-specific.
- Be aware that clients with disabilities or impairments may need a greater degree of assistance with aspects of their matter than a person without disabilities or impairments. A solicitor should act to reasonably accommodate any disability or impairment.

- Take steps to enhance client capacity:
 - Meet with the client in person and alone (unless considered unsafe to do so).
 - Focus on the client as an individual and consciously put aside biases.
 - Establish client trust and confidence by emphasising the independence of your role as legal representative and the duties owed to the client, in particular, loyalty and confidentiality.
 - Adapt your communication style to suit the needs of the client.
 - Ensure necessary interpreters, non-verbal communication tools, visual and auditory aids are available for the client to use.
 - Choose a meeting environment that will put the client at ease.
 - Consider the timing of your client meeting and gradual decision making (over a series of meetings).
 - Seek assistance from third parties such as friends, family or caregivers, but only with the prior consent of the client, bearing in mind the duty not to divulge confidential information.

Guideline 2.2: Build rapport and maintain flexibility to enhance communication

Practice points

- Be prepared to set aside additional time to interview a client.
- Consider arranging more than one interview so as to reduce client fatigue/anxiety and provide information in manageable amounts.
- Recognise the effects of the client's medication and treatment. Schedule appointments at times when the client can maximise their engagement and understanding.

- Ensure you are fully informed about the client's situation and have read all available material to give the client a sense of confidence and build trust.
- Plan your interview and use your time efficiently. You may need to allow for breaks. Accept that a client may be distressed or confused by the process and may experience difficulty concentrating for long periods of time.
- Be aware of any cultural or linguistic barriers and take steps to address client needs.
- When working with people from an Aboriginal or Torres Strait Islander background, use Legal Aid Queensland's Best practice guidelines for lawyers providing legal services to Aboriginal and Torres Strait Islander clients.
- When working with people from culturally and linguistically diverse backgrounds, apply Legal Aid Queensland's Language Services Policy, arranging an interpreter when required.
- When working with minors, apply Legal Aid Queensland's Best practice guidelines for working with children and young people.

3. Deliver quality legal services

Guideline 3.1: Recognise the importance of the recovery framework and deliver legal services in a way that promotes client engagement and recovery.

Practice points

- Develop a sound understand of the recovery framework through professional information resources (such as Queensland Health: A national framework for recovery-oriented mental health services).

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- Promote client engagement by communicating in an open, respectful and positive way.
- Recognise the limitations of your role and collaborate with other stakeholders to achieve best health outcomes.

Guideline 3.2: Understand and apply the Principles for the administration of the Mental Health Act 2016 and the Human Rights Act 2019 to the preparation and representation of clients.

Practice points

- Review Chapter 1 Part 2 of the *Mental Health Act 2016* which outlines the principles for the administration of the Act.
- Review the *Human Rights Act 2019*
- Ensure that the principles are adhered to in the preparation and representation of client matters.

Guideline 3.3: Maintain professional boundaries: clarify your role and its limitations

Practice points

- Ensure the client has a clear understanding of the service to be provided:
 - Explain your role and what you will do for them. It is important to follow through, do what you say you will do, and inform them if anything changes.
 - Explain your duty to act in the client's best interests, despite appointment by the Tribunal, but also be clear about the limitations of your role.
- Provide clear information about:
 - The client/lawyer relationship, including how confidentiality applies and how it will be managed with other interested parties, including mental health professionals, support workers and the Tribunal.
 - The role of each person involved in their matter.
 - The decisions the Tribunal has to make and what information they consider when making those decisions.

- How and when their views and wishes can be made known to the Tribunal or when the Tribunal may ask them questions.
- What may be done in preparation of their matter and who is responsible for doing them.
- Any upcoming appearances, including review or application hearing dates.
- Their rights to obtain reasons for the Tribunal's decision and/or appeal a decision.
- When your role will end.

Guideline 3.4: When preparing a client's case, ensure there is appropriate liaison with the client's appointed guardian and/or support network

Practice points

- Make enquires as to whether a guardian or attorney has been appointed by a court, tribunal or otherwise for relevant matters.
- Seek the guardian's position as to the client's views, wishes and preferences to the extent the client has been able to express them to the guardian, and otherwise to the extent the client has not been able to express them, seek the guardian's views as to the client's best interests, as required by law and in accordance with the lawyer's role under section 739 of the *Mental Health Act 2016*.
- Where an applicable attorney is in place and where the client lacks capacity, seek the attorney's view as to the client's views, wishes and preferences to the extent the client has been able to express them to the attorney. To the extent the client has not been able to express their views, wishes and preferences, seek the attorney's views as to the client's best interests.

- Consider including other stakeholders or support persons in interviews with the client's consent. Manage the interaction from the outset, making clear:
 - You are giving legal advice to and taking instructions from the client.
 - Legal professional privilege only applies to your relationship and conversations with the client. It does not extend to the support person.
- Be aware of and manage conflicts that may arise between instructions provided by an appointed guardian or attorney and the client.

Guideline 3.5: Respond collaboratively wherever possible and make appropriate referrals to improve access to justice, health and wellbeing.

Practice points

- Be aware of the client's placement in the health setting and use collaborative practices to enhance the client's access to justice, health and wellbeing.
- Preserve and enhance any existing client therapeutic relationships.
- Where appropriate and with the client's consent, inform other stakeholders about your role and representation.
- Ensure that you know or can find out about appropriate legal and non-legal support and referral services in areas such as housing, safety and healthcare.
- When necessary provide the client and, with their knowledge and consent, any associated support person/stakeholder, information about referrals.
- Review the client's consent to collaborate with others regularly.