



complaint management policy

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Introduction

From time to time, persons involved in hearings conducted by the Mental Health Tribunal (the Tribunal) complain about the conduct of Tribunal staff, the outcome of a hearing, or the conduct of Tribunal members.

All Tribunal staff are employed by the Mental Health Commission. Accordingly, if a complaint involves Tribunal staff, it will be referred to the Registrar to process in accordance with the Mental Health Commission's *Complaints and Feedback Management Policy* (MHC17/20558).

All Tribunal members are appointed by the Governor on the recommendation of the Minister. Members are not amenable to direction in the discharge of their functions under the *Mental Health Act 2014 (WA)* (the Act), and are not employees. Accordingly, the Mental Health Commission's *Complaints and Feedback Management Policy* does not apply to Tribunal members.

Nevertheless, Tribunals serve the public through the provision of accessible, fair and efficient dispute resolution services. In delivering that service they are accountable to the public. An effective complaints mechanism is an important means of ensuring that the public's expectations of Tribunal members are met. All members are capable of removal from office by the Governor on a range of grounds, including incompetence, neglect of duty, and misconduct. Furthermore, legal and psychiatrist members of the Tribunal are governed by their professional codes of conduct, and all members are public officers and subject to the *Corruption, Crime and Misconduct Act 2003 (WA)*.

To ensure that complaints about Tribunal members are appropriately considered and addressed, or if necessary, referred to an appropriate body for formal investigation, complaints about Tribunal members will be dealt with in accordance with the following policy.

Who may complain

Any person affected is entitled to make a complaint about the conduct of a Tribunal member.

What amounts to a complaint

What amounts to a 'complaint' should be broadly construed. For the purposes of this policy, a 'complaint' is any written communication that might be construed as a complaint or that evinces a general state of unhappiness on the part of the person concerned.

A complaint about a Tribunal member must be about the member's conduct, as opposed to the decision made by the member. Where the complaint concerns the substance of a Tribunal's decision, or the practice and procedure of the Tribunal determined in accordance with section 439 of the Act, it cannot be

dealt with by the complaints process. Parties who are dissatisfied with a decision of the Tribunal (including whether the conduct of the proceedings complied with section 439 of the Act) may apply to the State Administrative Tribunal for a *de novo* review of the decision.

The process for determining complaints

Depending on how a person communicates the complaint, the complaint may be received by a staff member, the Registrar, or the President. If a complaint relates to a member, it should be immediately referred to the President. If the matter is about conduct, the President (or delegate) will consider the complaint and take whatever action is open and appropriate in the circumstances.

The President (or delegate) may disclose details of the complaint to:

- anyone involved in the issue raised in the complaint (such as other members of the Tribunal panel who sat on the relevant hearing) and
- the individual who is the subject of the complaint.

Disclosing a complaint will include showing the written complaint to the person(s) involved.

The President will then consider whether the complaint warrants investigation. The President may listen to a recording of a hearing, read the transcript of the hearing, view relevant documents, or make other preliminary enquiries necessary to assess the seriousness of the complaint and the existence of any objective evidence. If the President considers it may facilitate the early resolution of the complaint, the President may invite the parties to attend the Tribunal's premises to discuss the complaint and review any objective evidence capable of resolving key disputes of fact.

If the President forms the view that resolving the complaint requires a formal written response to the allegations, the President will write to the parties seeking a formal response to the complaint. The President may also contact the complainant or any other person involved to seek further information about the incident or issues the subject of the complaint.

Once all of the relevant information has been reviewed, the President will prepare a written response to the complaint setting out a preliminary view as to the outcome of the complaint. All parties will be invited to comment on the preliminary view, and such comments will be considered by the President in determining the final outcome of the complaint.

Possible outcomes of complaints

The outcomes of the complaint may include one or more of the following:

- an explanation of the issues from the perspective of the Tribunal;
- an explanation of Tribunal expectations, policies, processes or procedures;

- an outline of any planned changes to Tribunal policies, processes or procedures based on what has been learnt from the complaint process;
- if appropriate, an apology.

For certain very serious complaints, the President may refer the complaint for formal investigation by the member's professional association, the Corruption and Crime Commission, the Police, and or the Minister.

Standards of Practice

Timeliness

It is important that complaints are dealt with in a timely manner.

- All complaints will be acknowledged in writing within 5 working days of receipt by the President (or delegate).
- All parties will receive information about the progress of the complaint (including any preliminary enquiries to be undertaken) within 15 working days of receipt.
- All parties will be kept up to date from time to time as the matter progresses.
- The final response will include information relevant to the complaint, an adequate explanation of events and any decisions, recommendations and information about any changes that have occurred as a result of the complaint.

Fairness

To ensure and promote fairness all procedures will be:

- transparent and clearly understood by all those involved in the complaint;
- not biased towards anyone involved;
- consistent and thorough, exploring all the relevant facts by talking to all those involved.

Privacy

The Tribunal has a responsibility to protect confidential information to ensure that complainants are not discouraged from making complaints. The Tribunal also has a responsibility to ensure that complaints are known only by those involved in the complaints process. Access to documentation relating to the complaint will be restricted to authorised personnel only.



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