

# *Mental Health Act 2014*

## Application for Review

### What mental health matters can the Human Rights List determine?

The Human Rights List at VCAT hears and determines applications for review of decisions made by the Mental Health Tribunal under the *Mental Health Act 2014* (the Act).

The Act establishes a scheme for the assessment of persons who appear to have mental illness and for the treatment of persons with mental illness. The Act establishes the Mental Health Tribunal (MHT) whose primary function is to determine whether all of the criteria for mental health treatment, as set out in the Act, apply to a person. If so, the MHT may make a treatment order. The MHT may also make orders for persons to receive electroconvulsive treatment where the MHT is satisfied that the person does not have the capacity to consent to that treatment or where the person is under the age of 18 years.

VCAT may hear and determine applications for review of these decisions.

### How do I lodge an application?

The Act contains mental health principles, which emphasise the provision of assessment and treatment in the least restrictive way possible with voluntary assessment and treatment, preferred. Emphasis is also placed on the rights, dignity and autonomy of persons receiving mental health treatment.

Applications are lodged online using a Form 1 that can be accessed via the VCAT website at [www.vcat.vic.gov.au](http://www.vcat.vic.gov.au). Click on the 'Disputes' tab then click 'Mental Health' and follow the links.

Applicants who do not have access to a computer, laptop, smart phone or tablet

can request, in writing, that VCAT post or email a paper-based application to them.

An application for review by VCAT must be made **within 20 business days of the later of** the date the MHT made its determination or, if a statement of reasons has been requested from the MHT, the date the person receives those reasons.

### What happens when you lodge an application for review?

When an application for review is lodged with the Human Rights List at VCAT, it will be processed by registry and the application will be allocated a reference number. Your application is referred to a VCAT Member who will determine how the application will proceed.

In most cases, the Member will initially make orders in chambers when a new application is received. This means neither party is required to attend the Tribunal. The order **may** contain some or all of the following directions:

- The mental health service provider is joined as a respondent to the proceeding
- The authorised psychiatrist at the mental health service, shall send to the Tribunal and the applicant a current treatment report
- The applicant may send to the Tribunal or bring to the hearing any further material that is relevant to the application for review
- The matter is listed for hearing
- The mental health service provider shall be represented by a medical practitioner who has knowledge of the applicant and the applicant's current

- treatment
- The MHT is excused from attending the hearing

In addition, VCAT routinely makes orders under the *Open Courts Act 2013* anonymising applicants and prohibiting publication of their identities to protect their privacy.

### Who are the parties to an application for review?

- The 'applicant' is the person who made the application for review to VCAT
- The 'respondents' are the MHT and the mental health service provider

### Applications for review - section 49 material.

Under section 49 of the *Victorian Civil and Administrative Tribunal Act 1998*, the decision maker (MHT) is required to lodge the below listed materials with VCAT. This must be done within 28 days of the MHT receiving VCAT's notification of the application for review:

- Either a written statement of reasons for the decision the MHT gave in respect of which the application is made. If no such statement has been given, a statement setting out the reasons for the decision and the findings on material questions of fact that led to the decision, referring to the evidence or other material on which those findings were based
- Every other document in the MHT's possession or under its control that it considers relevant to the review of the decision.

### Directions Hearing

A directions hearing can be listed at any time by VCAT or at the request of any party.

**Example** - If there has been a failure to comply with VCAT's orders or an extension of time for filing and serving material is requested, then VCAT may list the matter for a directions hearing.

### Hearings

Following the full hearing of the application for review, the VCAT Member may, at the conclusion of the hearing, give his or her decision orally or reserve the decision. If the decision is reserved you will be advised when VCAT is ready to give its decision. If the Member gives reasons orally, then a party may request written reasons for the decision, within 14 days of the decision being made.

### Exhibits

Any exhibits or material provided as evidence at the hearing will be placed on the VCAT file.

If you want the exhibit(s) to be returned, or in the case of bulky exhibits, you must clearly mark the exhibit(s) with the VCAT reference number and the name, address and phone number of the party tendering the exhibit(s). All exhibits remain the property of VCAT for 30 days after the determination date. You may then collect the exhibit/s from VCAT. VCAT will allow a further 30 days for the collection of the exhibit(s) after the determination date before they are disposed of.

### Seeking an adjournment

Please refer to the Common Procedures Practice Note on the VCAT website [www.vcat.vic.gov.au](http://www.vcat.vic.gov.au) for further information.

### Withdrawing an application

If an applicant wishes to withdraw his or her application for review, he or she must do so in writing and forward a copy to the respondents. The withdrawal ends a proceeding before VCAT, and restores the status that existed immediately before the application for review was received at VCAT.

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## Further information

A copy of all relevant legislation, rules, forms and Practice Notes relating to the Human Rights List and VCAT are available free of charge from our website [www.vcat.vic.gov.au](http://www.vcat.vic.gov.au).

For any further information please contact our Customer Service team on ☎ 1300 01 8228 (1300 01 VCAT)

Email: [humanrights@vcat.vic.gov.au](mailto:humanrights@vcat.vic.gov.au)