

# PRACTICE DIRECTION: ACCESS TO TRANSCRIPTS AND AUDIO RECORDINGS OF PROCEEDINGS



## PURPOSE

The Tribunal is required under s.159 of the *Mental Health Act 2007* to record all of its proceedings. Tribunal proceedings are recorded using a handheld dictaphone, operated by a Tribunal member or a Tribunal staff member.

The issues discussed in Tribunal proceedings are often intensely personal. The Tribunal therefore limits access to audio recordings and transcripts of its proceedings.

Any further distribution of an audio recording or transcript of Tribunal proceedings should be done cautiously. The publication of the name of a patient or person who is mentioned or involved in any proceedings is an offence under s. 162 of the *Mental Health Act 2007*. The disclosure of information obtained in the administration or execution of the *Mental Health Act 2007* or the *Mental Health & Cognitive Impairment Forensic Provisions Act 2020* is an offence under s. 189 of the *Mental Health Act 2007*, unless one of the exceptions to that provision is met.

## ACCESS TO AUDIO RECORDINGS

1. Access to a copy of an audio recording will be made available where the person requesting the recording can demonstrate a legitimate reason for requiring the recording.
2. The Tribunal is likely to consider it appropriate to provide access to an audio recording:
  - Where a person with a right of appeal against a Tribunal's decision is considering an appeal.
  - Where the patient has retained a new legal representative who wishes to understand what was said at a previous Tribunal hearing.
  - Where a patient has a new treating team, who wish to understand what was said at a previous Tribunal hearing.
  - Where the Minister for Health or Attorney General wish to exercise a right to appear at a Tribunal review under the *Mental Health (Forensic Provisions) Act 1990* and wish to understand what was said at a previous Tribunal hearing.
3. In any other circumstances, the Registrar will consider a person's reasons for seeking access to a recording on a case by case basis.
4. The Tribunal may decide that it is not appropriate to provide a copy of the recording to a person seeking to access it. Instead, arrangements may be made for the person to listen to the recording either at the Tribunal's premises or elsewhere.
5. Where a copy of the audio recording is provided it will be on the basis that the person making the request and/or receiving the recording undertakes not to copy or distribute the duplicate audio recording or to use it for any purpose other than the purpose for which it was provided, without first seeking the Tribunal's permission.

## TRANSCRIPTS

6. The Tribunal does not ordinarily provide transcripts of its hearings. It will make the audio recording of proceedings available in the limited circumstances outlined above.
7. Where a transcript is required for appeal proceedings, the Tribunal may provide the legal representative of either party to that appeal with a copy of the audio recording, and the legal representative should arrange for the preparation of a transcript.
8. Where an appellant is not legally represented, the Tribunal may make alternative arrangements, including:
  - Providing a copy of the audio recording directly to an authorised transcription service determined by the Tribunal, with the appellant to be responsible for payment of the transcription service; or
  - arranging for a transcript to be prepared.
9. Whether a transcript will be provided in these or other circumstances and the arrangements that are to be made will be decided by the Registrar of the Tribunal at her/his discretion.
10. The Tribunal will arrange for a transcript of its proceedings to be prepared if it is otherwise lawfully required to do so.

## APPLYING FOR A COPY OF A RECORDING OR A TRANSCRIPT

11. Applications for a copy of a recording or a transcript should be made in writing to the Registrar using the Application Form at Attachment 1 (also available from the Forms page on the Tribunal's website: [www.mhrt.nsw.gov.au](http://www.mhrt.nsw.gov.au))
12. The completed form should be sent email to the Registrar to [mhrt-mhrt@health.nsw.gov.au](mailto:mhrt-mhrt@health.nsw.gov.au)

## RETENTION OF RECORDINGS

13. Under the conditions of the Tribunal's Functional Retention and Disposal Authority (FA232) the recordings of proceedings are to be retained for a minimum of 1 year before being destroyed.

**Professor Dan Howard SC**  
**President**  
**19 June 2013**

# APPLICATION FOR A COPY OF THE AUDIO RECORDING OR A TRANSCRIPT OF TRIBUNAL PROCEEDINGS



**The Tribunal does not ordinarily release copies of recordings or prepare transcripts of hearings. Please refer to the Tribunal's Practice Direction.**

The Tribunal may provide a copy of an audio recording in the following circumstances:

- I. Where a person with a right of appeal against a Tribunal's decision is considering an appeal.
- II. Where the patient has retained a new legal representative who wishes to understand what was said at a previous Tribunal hearing.
- III. Where a patient has a new treating team, who wish to understand what was said at a previous Tribunal hearing.
- IV. Where the Minister for Health or Attorney General wish to exercise a right to appear at a Tribunal review under the Mental Health & Cognitive Impairment Forensic Provisions Act 2020 and wish to understand what was said at a previous Tribunal hearing.
- V. Other circumstances considered appropriate by the Tribunal's Registrar.

## APPLICANT DETAILS:

<b>Name:</b>			
<b>Address:</b>			
<b>Mobile:</b>		<b>Email:</b>	
<b>Relationship:</b>			

## HEARING & CLIENT DETAILS:

<b>Client Name:</b>		<b>DOB:</b>	
<b>Hearing Date:</b>		<b>Hearing Start Time:</b>	
<b>Hearing Venue:</b>			

## REASONS FOR APPLICATION :

## UNDERTAKING:

- I am aware that:
- the publication of the name of a patient or person who is mentioned or involved in any proceedings may be an offence under s. 162 of the *Mental Health Act 2007* and
  - the disclosure of information obtained in the administration or execution of the *Mental Health Act 2007* or the *Mental Health & Cognitive Impairment Forensic Provisions Act 2020* may also be an offence under s. 189 of the *Mental Health Act 2007*

I agree that I shall not broadcast, publish or distribute the audio recording/transcript obtained by me except for the purposes I have outlined above.

Signature:

Date: