

MENTAL HEALTH REVIEW BOARD — PROCEDURES

186. Hon Sally Talbot to the Minister for Mental Health:

I refer to the recent State Administrative Tribunal decision (MHA5) about the qualifications of Dr S, and I ask:

- (a) does the Mental Health Review Board (MHRB) review the detention of all involuntary patients:
 - (i) if not, why not;
- (b) how many orders made by Dr S did the MHRB review;
- (c) did the MHRB satisfy itself about the validity of Dr S's qualifications:
 - (i) if not, why not; and
 - (ii) if so, what steps did it take to confirm the validity of Dr S's qualifications;
- (d) did the Mental Health Law Centre and the Council of Official Visitors question the qualifications of Dr S at any of these MHRB reviews:
 - (i) if so, at which reviews were these questions raised;
- (e) does the MHRB have a published procedure for the conduct of MHRB reviews:
 - (i) if not, why not; and
 - (ii) if yes, where is it published and does it include procedures for reviewing the validity of involuntary orders;
- (f) who employs the members and the President of the MHRB;
- (g) are the lawyers on the MHRB subject to the *Legal Profession Conduct Rules 2010*;
- (h) how is the conduct of the MHRB members regulated;
- (i) at how many MHRB reviews did lawyers represent patients in 2008–09, 2009–10, 2010–11, 2011–12 and 2012–13 (to date) and what was this in percentage terms in each year;
- (j) does the Minister believe that it is in the best interests of patients to be legally represented at MHRB reviews of their involuntary status:
 - (i) if not, why not; and
 - (ii) if yes, what are the plans for improving the MHRB legal representation rate in the future;
- (k) what is the current budget for the MHRB:
 - (i) what percentage of the mental health budget is this funding;
- (l) what time is allocated by the MHRB for each review; and
- (m) does the Minister have confidence in the MHRB?

Hon Helen Morton replied:

- (a) No
 - (i) The Mental Health Review Board ("MHRB") only reviews whether or not a person should continue to be an involuntary patient, if at the date and time of the review, the person is still the subject of an involuntary patient order.

The reviews are carried out as soon as is practicable after the day on which the initial order is made, and in any event no later than 8 weeks after that date. Many patients are discharged before the 8 week period has elapsed. If a person is subject to a further order that carries on after the initial period, the Board is required to carry out periodic reviews in respect of that person at intervals that are no longer than 6 months. In addition, the Board reviews patients on request.
- (b) During the period between 18 October 2010 and 31 July 2013, the Board reviewed 40 orders made by Dr S.
- (c) Until the issue of whether or not Dr S had the authority to make involuntary patient orders arose, the MHRB accepted at face value official documents in which Dr S was described as a psychiatrist or as a consultant psychiatrist.

The role of the MHRB is to determine whether or not, as at the date and time of the review, a patient is mentally ill and whether the criteria to treat the patient on an involuntary basis have been met.

- (d) An Official Visitor questioned Dr S's qualifications prior to a review that did not proceed in November 2012.

The Mental Health Law Centre questioned the qualifications of Dr S at one review in March 2013, which was subsequently considered by the State Administrative Tribunal in RD and Mental Health Review Board [2013] WASAT 80.

- (e) Yes. The MHRB has published a handbook which discusses the procedure regarding reviews. The handbook is available from www.mhrbwa.org.au and hard copies are supplied on request.

In addition, the Board has published a brochure, copies of which have been sent to all hospitals and clinics to be provided to the patients. The brochure includes a form to be completed if a patient wants to apply for a review, and gives a general description of what happens at a review.

- (f) Members of the MHRB are appointed by the Governor on the recommendation of the Minister.

- (g) No.

- (h) The Mental Health Review Board is a quasi-judicial body which is independent of government. Board members may be removed from office by the Governor, on grounds set out in Clause 1(2) of Schedule 1 of the *Mental Health Act 1996 (Act)*.

Pursuant to section 146 of the Act, the MHRB is required to enquire into any complaint made to it concerning any failure to recognise the rights given under the Act to an involuntary patient or any other matter considered with the administration of the Act.

- (i)

YEAR	2008/09	2009/10	2010/11	2011/12	2012/13
Number Represented	80	118	67	103	122
% of Total Reviews	6.99%	10.51%	5.39%	9.07%	12.44%

- (j) It is in the best interests of patients to have a right to legal representation and support when appearing at MHRB reviews of their involuntary status. It is also important to recognise that some patients prefer to represent themselves or to be represented and supported by a family member or carer, a lawyer, or an Official Visitor. This government supports the right of patients to exercise choice.

- (i) Not applicable

- (ii) The Mental Health Commission has engaged an external consultant to conduct a review of representation before the MHRB. One of the Terms of Reference is recommendation of measures which maximise the quality, accessibility, efficacy, availability and effectiveness of representation before the MHRB. Involuntary patients and former involuntary patients will be key stakeholders in the review. Other key stakeholders will be the MHRB members, the Mental Health Law Centre, and the Council of Official Visitors.

- (k) \$1,197,000 for 2012–13

- (i) 0.21%

- (l) The MHRB generally schedules 30 minutes or one hour for a review. However, review hearings continue until they are completed and on occasion, may last two or more hours.

- (m) Yes.