



REVIEWS AND APPEALS

(Mental Health Act 2009)

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WHAT ARE REVIEWS AND APPEALS?

A review or appeal is a challenge to a decision or order and involves asking a higher body to review a decision or order and decide whether it is correct or should be changed. The people who undertake the review will not have been involved in the original decision and will take a fresh look at the situation. There are two kinds of reviews of treatment orders made under the *Mental Health Act 2009* (the Act).

REVIEW OF LEVEL 1 & LEVEL 2 INPATIENT TREATMENT ORDERS AND LEVEL 1 COMMUNITY TREATMENT ORDERS

The *Mental Health Act 2009* authorises certain health professionals to make orders which require persons with serious mental illness to undergo assessment and treatment even if they do not want to. These orders are called **level 1 and level 2 inpatient treatment orders** and **level 1 community treatment orders**. If a person disagrees with an order, an application can be made to the South Australian Civil and Administrative Tribunal (the Tribunal) for review of the order. The review is a fresh look at the decision, taking into account the information provided when the order was made and any new information accepted by the Tribunal. An application for review of these orders can be made at any time while the order is in effect.

WHO CAN APPLY FOR REVIEW BY THE TRIBUNAL?

The following persons can apply for review of a treatment order by the Tribunal:

- the patient,
- the Public Advocate,
- the patient's guardian or medical agent,
- a relative, carer or friend, or
- any other person who can satisfy the Tribunal that he or she has a proper interest in the matter.

REVIEW OF DECISIONS MADE BY THE SOUTH AUSTRALIAN CIVIL AND ADMINISTRATIVE TRIBUNAL (REVIEWS OF SACAT DECISIONS)

The Tribunal makes and reviews **level 3 inpatient treatment orders** and **level 2 community treatment orders** and other decisions under the Act. An application can be made to the Tribunal for an 'internal review' of these orders. An 'internal review' is undertaken by senior members of the Tribunal who were not involved in the original decision. The review is a fresh look at the decision, taking into account the information provided when the order was made and any other information accepted by the Tribunal. An application for internal review of a treatment order can be made at any time while the order is in effect.

Office of the Public Advocate

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WHO CAN APPLY FOR REVIEW OF A SACAT DECISION?

The following persons can apply for internal review by senior members of the Tribunal:

- the applicant for the order under review,
- the patient,
- the Public Advocate,
- a person who provided evidence or made submissions to the Tribunal when the order under review was made,
- any other person who can satisfy the Tribunal that he or she has a proper interest in the matter.

WHAT IS THE REVIEW PROCESS?

Applications to the Tribunal for review or internal review can be made on-line through the Tribunal's website <http://www.sacat.sa.gov.au>, by telephoning 1800 723 767, or by attending the Tribunal's office in Adelaide. More information is available on the Tribunal's website.

The Tribunal members hearing the review will be provided with the information on which the order was based. The Tribunal may also accept additional information.

Reviews will be heard by the Tribunal as soon as is practicable. Review hearings occur at treatment centres or meeting rooms at the Tribunal at Level 8 ABC Building 85 North East Road Collinswood. Internal review hearings are held at 100 Pirie Street, Adelaide.

Usually the order under appeal remains in force until a decision on review is announced. This means that the person must comply with the order until a decision of the Tribunal is announced. However, upon application, the Tribunal can choose to direct that the order not be used to enforce treatment until a decision on the appeal is reached.

A written order or decision will be issued soon after the review is heard.

PRESENTING A CASE AT REVIEW:

The person applying for review usually claims that their circumstances do not meet the requirements for involuntary treatment. The law limits the use of involuntary inpatient treatment orders or community treatment orders to certain conditions. An argument on review may include one or more of the following:-

- the person does not have a mental illness
- the person is willing to receive voluntary treatment
- the person does not require treatment for their own protection or the protection of others and/or will not suffer undue harm or deterioration due to lack of treatment
- there is no appropriate treatment facility or service available
- there is a less restrictive treatment approach which can be applied to the person's circumstances

Some applications may be about the fairness or adequacy of the process used in reaching the decision (called procedural fairness).

Some applicants for internal review of a Tribunal decision may argue that all of the conditions of the Act were met and that the Tribunal made the wrong decision by not making an order.

WHAT OTHER DECISIONS CAN BE REVIEWED UNDER THE MENTAL HEALTH ACT?

Transport interstate: The Chief Psychiatrist can approve a person who is subject to a South Australian inpatient treatment order being transported to another state or territory. That person has 14 days within which to appeal this decision to the Tribunal and the person cannot be transferred until the 14 days has passed or, if the person appeals, until the outcome of the appeal is known.

Prescribed psychiatric treatment: Prescribed psychiatric treatment includes electro convulsive therapy and certain neurosurgery. There are appeal rights regarding these decisions. See [Information sheet 16: Prescribed Psychiatric Treatment](#).

CAN A PERSON HAVE A LAWYER TO ASSIST WITH THE REVIEW?

A legal representation scheme is available free of charge to the person the order under review or internal review is about. The person is entitled to be represented by a lawyer and can be provided with a lawyer through the scheme. Other parties to a review will need to make their own arrangements and payment for legal representation.

APPEALS

An application can be made to the Supreme Court to seek leave to appeal an internal review decision of the Tribunal. An application should be made within 14 days of the Tribunal's decision or within 14 days of receiving reasons for the decision. There are costs involved in making an application to the Supreme Court and the person who is making the appeal must pay these. It is suggested that people considering an appeal to the Supreme Court seek legal advice.