

JOB DESCRIPTION FORM

HSS Registered

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| Position number | 00014641 |
| Position title | Legal Member |
| Classification | Appointment pursuant to s476 and s477(2) of the <i>Mental Health Act 2014 (WA)</i> on a full-time or part-time basis Remuneration as determined by the Minister on the recommendation of the Public Sector Commissioner pursuant to s478(2) of the <i>Mental Health Act 2014 (WA)</i> |
| Employment Instrument | Terms and conditions of appointment as determined by the Minister pursuant to s 477 of the <i>Mental Health Act 2014 (WA)</i> |
| Registration date | 01 December 2021 |
| Employing Authority | n/a |
| Key objectives of the Mental Health Tribunal | <p>The Mental Health Tribunal Western Australia is an independent statutory tribunal established under the <i>Mental Health Act 2014 (WA)</i>.</p> <p>The Tribunal's primary role is to safeguard the rights of involuntary patients receiving psychiatric treatment without informed consent in Western Australia.</p> <p>The Tribunal reviews every involuntary treatment order in Western Australia shortly after it is made, and then every three months thereafter.</p> <p>The Tribunal also determines a range of other applications, including applications to administer electroconvulsive therapy and psychosurgery.</p> |

Reporting Relationships

Reports to:

Position Title

President - Mental Health Tribunal

Classification

SAT Appointment

Position No.

00009341

Positions under direct supervision:

Position Title

N/A

Classification

Position No.

We Value:

We value respect for the law, equality before the law, fairness, impartiality, independence, accessibility, efficiency, accountability, competence, and integrity.

Primary Objectives of role:

The Tribunal conducts hearings for a range of proceedings arising under the *Mental Health Act 2014* (WA) (the Act). For most proceedings, the Tribunal must be constituted by a panel of three members: a legal member, a psychiatrist member, and a community member. The Tribunal lists more than 4,000 hearings per year and has between two and three panels conducting hearings every business day of the year. The Tribunal's hearings are usually not open to the public.

Most of the Tribunal's work involves reviewing involuntary treatment orders. The Act provides that the Tribunal must conduct an initial review of every involuntary treatment order made in Western Australia within 35 days of the order being made, and then a periodic review every three months thereafter. The Act also provides that the Tribunal must determine a range of applications, including applications to approve the administration of electroconvulsive therapy and psychosurgery.

The legal member is always the presiding member at hearings. Questions of law (including questions of mixed law and fact) must be resolved according to the opinion of the presiding member. Questions other than questions of law must be resolved according to the majority of the members constituting the Tribunal for the proceeding. The legal member is responsible for delivering *ex tempore* reasons for decision at the conclusion of each hearing. Hearings are conducted with as little formality and technicality, and as speedily, as proper consideration of the matter permits. The Tribunal is bound by the rules of natural justice. Every party must have a reasonable opportunity to call evidence, examine or cross-examine witnesses, and make submissions. The Tribunal is not bound by the rules of evidence but may inform itself of relevant matters in any manner the Tribunal considers appropriate, within the bounds of procedural fairness. In conducting every proceeding, the Tribunal must have regard to the objects set out in the Act.

Most hearings are conducted on site at a hospital or health service, and it is not unusual for members to travel between two or three hearing venues per day. Each hearing is listed for 60 minutes, and the hearing day is from about 8 am until about 5 pm. During the hearing day, members travel to and between hearing venues, prepare for and conduct on average 5 – 7 hearings, and perform other tasks as required. Depending upon the Tribunal's operational needs, members may need to engage in hearing preparation and other tasks outside business hours. The current remuneration of Tribunal members reflects the expectation that Members will work the hours necessary to meet the Tribunal's operational needs. Because of the Tribunal's operational needs, all members must be available to work full hearing days (8am to 5pm) on their assigned days

General Responsibilities

Key Responsibilities

Tribunal members hear and determine matters in the Tribunal's jurisdiction in accordance with the Act. Full-time and part-time members may also, on the direction of the President:

- assist the President to effectively manage the Tribunal's service delivery performance to achieve its performance benchmark targets;
- lead and deliver projects as assigned by the President;
- provide mentoring and support for sessional members;
- impart knowledge to Members and Tribunal staff concerning major developments in applicable law; and

- engage with relevant industry and community stakeholders to provide up-to-date information concerning the operation of the Tribunal, new initiatives or emerging issues and to receive feedback.

All members are required to work respectfully and cooperatively with the President, other Members and staff of the Tribunal.

Selection Criteria

The following work related requirements are to be read in the context of the role of this position and the Tribunal:

Essential Values

Tribunal members are expected to demonstrate commitment to the Tribunal's values, and reflect those values in the performance of their functions. The Tribunal's values include respect for the law, equality before the law, fairness, impartiality, independence, accessibility, efficiency, accountability, competence, and integrity.

Essential Competencies

Tribunal members must demonstrate the following competencies.

Knowledge and Technical Skills

- Ability to quickly develop a sound and detailed knowledge of the legal framework and jurisdiction of the Tribunal as set out in the Mental Health Act 2014 (WA).
- Ability to quickly develop detailed knowledge of the Tribunal's practices and procedures, and willingness to apply those procedures appropriately.
- For legal and psychiatrist members, in depth and up-to-date expert knowledge relevant to the member's classification.

Fair Treatment

- An established record of respecting diversity in all its forms including differences in beliefs, gender, race, religious customs, age, disability, mental capacity, sexual orientation, social or economic status and lifestyle.
- Sound understanding of, and firm commitment to, the Tribunal's obligation to ensure a fair and respectful hearing for every patient.
- An established record of treating all people with courtesy, respect and dignity, particularly those who are vulnerable and disempowered, and/or under your supervision (such as patients and junior staff members).

Communication

- Demonstrated ability to communicate courteously and effectively with a wide range of people, particularly those who are vulnerable and disempowered, and/or under your supervision (such as patients and junior staff members).

Conduct of Hearings

- Ability and willingness to conduct hearings in a manner that establishes and maintains the independence and authority of the Tribunal and enables proper participation by all involved.
- Ability and willingness to manage the hearing process to facilitate the fair and timely performance of statutory obligations.
- Ability and willingness to ensure that the hearing addresses all relevant issues.

Decision-making

- An established record of exercising sound judgment and appropriate discretion.
- Ability to quickly identify, read and assimilate large volumes of information, retain the information, and use it to form well-reasoned decisions in accordance with the Act.
- Ability and willingness to use a structured decision-making process to produce well-structured, concise and clear decisions and reasons.

- For legal members, ability and willingness to deliver clear, well-reasoned, and sound ex tempore reasons for decision at the conclusion of every hearing.

Efficiency

- Ability and willingness to manage hearings to facilitate the fair and timely resolution of the matter.
- Ability and willingness to actively manage cases to promote the efficient and just determination of disputes.
- Ability and willingness to make effective use of all available Tribunal resources, including electronic resources.

Professionalism and Integrity

- Ability and willingness to maintain and advance the independence, authority and reputation of the Tribunal.
- Ability and willingness to maintain and advance personal independence and integrity.
- Ability and willingness to promote the highest standards of behaviour.
- Willingness to fully prepare for every hearing in advance of the allotted hearing time, including (if necessary) preparation outside normal business hours without additional remuneration.

Appointment Factors

Legal Members: Must be an Australian Lawyer as defined in s3 of the Legal Profession Act 2008 (WA) (a person who is admitted to the legal profession under the *Legal Profession Act 2008* (WA) or a corresponding law). Although there is no statutory minimum period of legal experience required by the *Mental Health Act 2014* for appointment, the demands of the position require Australian Lawyers who, because of their degree of experience, competence and ability, operate with very high levels of professional autonomy. Candidates will have demonstrated by their professional performance the capacity to undertake professional work with great efficiency, effectiveness and reliability. Candidates will have demonstrated very high degrees of initiative, judgment, and originality in the performance of professional work. Equivalent private sector positions would include Senior Lawyer, Special Counsel, and established Junior at the Bar. Equivalent public sector positions would include Assistant State Solicitor, Assistant State Counsel, State Prosecutor, or Assistant Parliamentary Counsel.

All Members must:

- be fully competent in all aspects of electronic communications and able to independently operate and undertake basic trouble-shooting of electronic equipment including laptops, tablets, mobile phones, digital audio and video conferencing and recording devices, and the like. All members must be capable of operating in a fully 'paperless' environment and able to use a range of applications. All members must have access to a private mobile phone, computer, printer, internet and email for electronic delivery and preparation of hearing documentation;
- have a class C driver's licence and use of a private vehicle to drive to, and between, hearing venues as directed by the President;
- be willing and able to work the hours necessary to meet the Tribunal's operational needs, including additional and non-standard hours (the remuneration of Tribunal members set by the Minister reflects this expectation);
- be willing to undertake intrastate travel as directed by the President;
- be willing to participate in mandatory professional development training, performance management and continuous improvement processes as directed by the President;
- be willing to work continuously toward achievement of the Tribunal's strategic objectives and action plan detailed in the Mental Health Tribunal Strategic Plan.

This position is subject to:

- Successful 100 point Identification Check.
- Successful criminal record screening.
- Successful Pre-Employment integrity checks.