# Mental Health Matters Checklist

## Using this checklist:

* For all duty matters conducted under the Mental Health Act and before the Mental Health Review Tribunal
* Complete manually as the assignment progresses
* Retain a copy for your records

## Purpose of checklist:

Completing this checklist fully and accurately will help:

* Demonstrate that you have met the duties of competence and standard of care expected of a solicitor undertaking legal work of this nature
* Demonstrate that you have met Legal Aid’s expectations of practitioners undertaking legally aided work, articulated in the [Quality Standards](https://www.legalaid.nsw.gov.au/__data/assets/pdf_file/0012/41511/Quality-Standards.pdf)
* Demonstrate you have met the expectations described in *Guidelines for Panel Lawyers in matters before the Mental Health Review Tribunal* (annexed to this document)
* Another solicitor in the event they need to refer to the proceedings and determine what advice was provided, instructions given, what occurred during the inquiry and what orders were made
* If you are audited by Legal Aid

## Note:

* This tool is designed as a prompt only. It does not prescribe how the assignment should be conducted and is not exhaustive
* This document could potentially be considered a client document and provided to the client upon request (rule 14 Australian Solicitors’ Conduct Rules) or as a result of a GIPA request
* Aspects of the below Checklist are unable to be implemented whilst Covid 19 restrictions are in place. Please note, amendments to the *Mental Health Act* at s202 and 203 and *Mental Health Review Tribunal’s Covid 19 Pandemic Practice Direction* dated 27 March 2020

## Step One- Receiving request to attend a venue & attending venue

Date Venue MHI/MHRT Number of clients

| **Task** | **Details/Date Done** |
| --- | --- |
| Receive notification from the Mental Health Advocacy Service (MHAS) or relevant Roster Co-ordinator that you are required to attend a venue |  |
| Obtain copy of hearing notice(s) or duty list of patients from either MHAS or the venue you are attendingEnsure patients are eligible for representation in accordance with Legal Aid Policy (see *Guidelines for Panel Lawyers in matters before the Mental Health Review Tribunal*) |  |
| Attend venue following a request from the MHAS or in accordance with an existing regional roster  |  |
| At the venue introduce yourself to the relevant person such as the medico-legal clerk or nurse  |  |
| Obtain documents including medical report(s) and admission documents from medico-legal clerk or relevant person |  |
| Ask a member of nursing staff to take you to the patient or ask the patient to be brought to you if the patient is listed to appear in a matter which they are eligible for representation  |  |
| Introduce yourself to the patient, explain your role and confirm the patient can be represented with reference to s152 & 154 of the *Mental Health Act* |  |
| Inform the patient of the application and what the effect of an order would be if made |  |
| Where an assessable person does not refuse representation or in all other proceedings the person seeks representation, read relevant documents |  |

## Step Two- Instructions

| **Task** | **Details/Date Done** |
| --- | --- |
| Interview the patient:* in a safe, quiet, private space (not in a patient’s bedroom or the like) without third parties in attendance unless the patient insists on others attending
* in accordance with the *Quality Standards* and *Guidelines for Panel Lawyers in matters before the Mental Health Review Tribunal*
 |  |
| Enter relevant information such as patient name, date of birth in *Duty Form for Mental Health Matters (‘Duty Form’)* |  |
| Provide advice regarding the application and record same in *Duty Form* |  |
| Gain instructions and record same in *Duty Form* |  |

## Step Three – Appearing before the Tribunal

| **Task** | **Details/Date Done** |
| --- | --- |
| Meet the patient outside the inquiry room, ensure they are not adversely affected by medication and if not, confirm instructions  |  |
| Where safe and whenever possible sit next to the patient during the inquiry |  |
| At the earliest opportunity inform the Tribunal of the patient’s instructions regarding the application or if adversely affected by medication |  |
| Prosecute the patient’s position in the same manner as one undertakes advocacy in other inquisitorial forums including:* opening submission
* questioning the treating doctor and/or other relevant people
* closing submission
 |  |
| Record relevant aspects of proceedings in the *Duty Form*  |  |
| Record the outcome including any decisions and orders in the *Duty Form* |  |
| Inform the patient of the outcome and provide advice as to the effect of any orders and possible recourse where relevant  |  |

## Step Four- After the inquiry

| **Task** | **Details/Date Done** |
| --- | --- |
| Complete the *Duty Form*, either in electronic or paper form |  |
| Return *Duty Form* with any relevant attachments to the MHAS at Burwood (metro Sydney venues only) For regional venues, return your *Duty Form* to your local Legal Aid Office, where applicable  |  |
| Claim fee from Duty Purchase Order (DPO)  |  |