

Mental Health Review Board

Practice Direction 2005/1 Hearing Venues and Security

In accordance with the provisions of clause 4(1)(b) of Schedule 2 of the *Mental Health Act 1986* (the Act), the President makes the following Practice Direction to specify the minimum requirements for venues at mental health services (services) used by the Board to conduct hearings, and the safety and security requirements for those hearings. **This Practice Direction applies to all Board hearings conducted on and from 1 July 2005.**

1. Report of Review of the Hearings Venues and Security for Board hearings (September 2003)

Following a hearing incident involving a physical assault on two Board members, during mid-2003, the President and Executive Officer of the Board conducted a comprehensive review of hearing venues and security at every mental health service. In September 2003, the Board published a comprehensive report, copies of which were distributed to the Director of Mental Health, Chief Psychiatrist and all Authorised Psychiatrists.

In its report, the Board made a series of recommendations to provide improved hearing services and to enhance safety and security for all persons involved in Board hearings. It also produced a draft Memorandum of Understanding setting out standard minimum requirements to achieve these aims. After consultation with the Department of Human Services, Office of the Chief Psychiatrist and Board members, the President decided to issue this Practice Direction to give effect to those requirements for all future hearings.

2. Standard Minimum Requirements for Hearings Venues and Security for Board Hearings

Mindful of the obligations placed on employers and occupiers of premises under Victorian Occupational Health and Safety legislation, the Board endeavours to provide a safe system of work and a safe workplace for the conduct of its hearings. As its hearings venues are situated in premises under the control of services in almost all cases, it is the intention of these Practice Directions to clearly specify what standard minimum requirements and security at Board hearings are acceptable. **For this purpose, the Board distinguishes between existing venues and venues for which planning for substantial construction commences on or after 1 July 2005.**

To assist in achieving these aims, Board hearings need to be conducted in as therapeutic an environment as possible, in appropriate and safe venues, and using procedures which respect the rights of patients and enhance their dignity and effective participation in the review process. This involves appropriate skills and attitudes of Board members, appropriate skills, attitudes and support of staff of services, and appropriate attitudes and behaviour of patients and people attending hearings in support roles.

(a) New Venues or Substantial Structural Work on Existing Venues

In order to facilitate Board hearings in an appropriate and orderly manner, and to enhance the safety and security of all parties and people involved in the hearings process, **the Board directs that all Authorised Psychiatrists comply with the following standard minimum requirements for hearing venues and security for Board hearings in venues for which planning for construction or substantial structural refurbishment or renovation commences on or after 1 July 2005.**

(b) Existing Venues

The Board is mindful of the budgetary constraints under which services operate and the structural limitations of existing mental health service facilities that impact on their capacity to facilitate Board hearings in an appropriate and orderly manner, and to enhance the safety and security of all parties and people involved in the hearings process. Therefore, **the Board directs that all**

Authorised Psychiatrists use their best endeavours to comply with the following minimum requirements for hearing venues and security for Board hearings in existing venues. Specifically, for the requirements set out in 2.1.2, 2.1.4 and 2.1.5, they should be treated as best practice standards that should be applied whenever possible.

2.1. Hearing Venues

2.1.1 Other than in exceptional circumstances, hearings will be conducted in an environment outside locked patient wards.

2.1.2 All hearing rooms used by the Board are to be of a reasonable size (that is, not less than 16 square metres) to accommodate all interested personnel, namely:

- (up to) three Board members
- the patient
- the patient's representative (if any)
- family members, carers, guardians or support persons of the patient (if any)
- the treating psychiatrist and/or medical practitioner
- the patient's case manager or primary nurse (if any)
- other service staff attending (if any)
- a Community Visitor, or other observers (if any).

2.1.3 In determining the reasonableness of the size of a hearing room, services will take into account the space available to enable an agitated patient to vacate the hearing room so as to cause minimal disruption to others attending the hearing.

2.1.4 The layout of the hearing room will provide a reasonable distance between the Board Members and the patient. The table provided for the use of Board members will be of a sufficient width and area (that is, not less than 2 metres long and 1 metre wide) to provide a reasonable barrier in the event of aggressive behaviour. The layout will minimise the opportunity for a patient to block the exit from the hearing room, or access to any duress alarm or emergency telephone, and will as far as possible facilitate the easy exit of both the Board members and the patient from the hearing.

2.1.5 Hearing rooms should have a minimum of two entry/exit points, one for the use of Board members (where possible, to access a secure area), and the other for use by the parties to return to a public area.

2.1.6 Prior to the start of each sitting, service staff will prepare hearing rooms to provide an environment consistent with the importance of the decision-making process undertaken by the Board, and the respect and dignity required of a statutory review process. All fittings within the hearing room during hearings will assist this outcome, and be compatible with the following principles:

- furniture and fittings should not be capable of being used as weapons or missiles during the course of the hearing
- unnecessary movable items, fittings and furniture will be removed prior to the hearings
- water containers and drinking cups will be:
 - provided for the use of patients and others appearing before the Board, and
 - made from suitable soft materials
- no hot liquids will be allowed in the hearing room during hearings.

2.1.7 In the absence of permanent wired alarm systems in hearing rooms, services will provide a portable duress alarm system to Board members at the commencement of all sittings. Prior to the commencement of Board sittings, service staff will confirm that duress alarms are in working order.

2.1.8 Whenever possible, video conferencing facilities should be available within services to facilitate review hearings in appropriate cases.

2.2. Procedures for Hearings

2.2.1 One or more staff members of the service will accompany patients attending Board hearings at all times. Under no circumstances are patients to be left unescorted in the hearing room. In the event that workload issues impact on this requirement, the Authorised Psychiatrist and/or the service contact officer should forthwith advise the Board about alternative hearing arrangements.

2.2.2 Subject to 2.1.6, service staff must advise patients that any items with the potential to be used as missiles or weapons, including hard drinking vessels, must not be brought into the hearing room.

2.2.3 Prior to all patient hearings, service staff must conduct a thorough clinical assessment of the potential risk of agitated, aggressive or violent behaviour by the patient **in the context of the review hearing**. If specific precautions are considered necessary, service staff will take such precautions and facilitate all measures necessary to reduce or eliminate the risk (for example, ensuring additional staff are in attendance at the hearing, or within close proximity of the hearing room).

In the event of exceptional circumstances imminently affecting the personal safety of anyone involved in a particular hearing, service staff will immediately notify the Executive Officer or President of the Board of the risk issues. The Executive Officer or President of the Board will determine the appropriate course of action, including whether and how to inform Board members of the risk issues, in consultation with the service and, if appropriate, the Chief Psychiatrist.

2.2.4 Prior to the commencement of Board sittings, service staff will confirm that the emergency response plan is in place, and that staff have been notified that hearings are taking place in the hearing room.

2.2.5 Service staff should provide support for all patients to assist them to effectively participate in the review process. As appropriate, and subject to the Act's requirements, this includes provision of information about their rights under the Act; assistance with obtaining legal advice about, and representation at, hearings; access to the Report on Involuntary Status and most recent Treatment Plan, and (on request) the patient's clinical file, by the close of business two days before the hearing date; and assistance with preparation for and support in the hearing. In appropriate circumstances, and generally with the patient's agreement, staff will notify family members, carers or other support persons of the patient about the upcoming hearing.

2.2.6 Whenever possible, the patient's case manager or primary nurse will attend and participate in the hearing.

2.2.7 At the conclusion of the hearing, service staff will provide appropriate debriefing of the patient about the review process, and follow-up of any agreed issues raised during the hearing.

3. Training

With the Board's assistance, all Authorised Psychiatrists are encouraged to arrange for regular and appropriate training and skills development of service staff involved in Board hearings in:

- participating in Board hearings
- supporting patients to effectively participate in Board hearings
- dealing with agitated, aggressive and violent behaviour
- the Act.

The Board will collaborate with the Department, Chief Psychiatrist and Authorised Psychiatrists to develop training and educational programmes for Board members, service staff, patients, patients' advocates, support persons for patients, and other stakeholders in the review process.

4. Board's Powers on Failure to Comply with Standard Minimum Requirements

The Board is mindful at all times to minimise any disadvantage to patients as a result of its hearings procedures. However, the Board may **require the attendance of the patient's consultant psychiatrist and/or adjourn a hearing** in the event that, under 2(a) above, the mental health service fails to comply with any of the above standard minimum requirements or, under 2(b) above, the mental health service fails to use its best endeavours to comply with any of the above standard minimum requirements, and the Board considers that the hearing ought not proceed.

In the event that, in relation to any particular hearing or sitting of a division of the Board, the Board is satisfied that the Authorised Psychiatrist has not complied with these Practice Directions, it will be a matter for the chairperson of the division conducting the hearing or sitting to determine how to proceed. The chairperson should provide the President with a report as a matter of course on each occasion that a substantive or significant failure, which impacts on the safety of persons involved in the hearing, occurs, and the President will consider how to most appropriately deal with the matter in consultation with the Authorised Psychiatrist and the Chief Psychiatrist.

In the event that, on any sitting day, the chairperson of the division of the Board considers (in accordance with the terms of this Practice Direction) that, from a hearing or security perspective, the hearing room at a venue is inadequate or inappropriate for the conduct of Board hearings, the chairperson will consult with the President. Subject to using their best endeavours at all times to minimise any disadvantage to patients, in the event of unanticipated or exceptional circumstances, the President reserves the power (under schedule 2, clause 5(1)(b) of the Act) to determine that the Board will conduct reviews or hear appeals at a venue other than the mental health service, unless satisfactory alternative arrangements are made.

5. Review of Standard Minimum Requirements

As necessary, the Board will review the standard minimum requirements for hearings venues and security in consultation with the Authorised Psychiatrists of mental health services at which Board conducts hearings.

The Board will meet with the Authorised Psychiatrist of a particular mental health service to discuss and resolve any hearings venue and/or security issues, and/or any specific concerns raised by any party, on an as needs basis.

The Board will notify any changes to the standard minimum requirements for hearings venues and security to relevant stakeholders and on the Board's website at www.mhrb.vic.gov.au.

John Lesser
President
31 May 2005