2013/14

Annual Report

Mental Health
Review Tribunal

The Hon Jai Rowell MP
Minister for Mental Health
Assistant Minister for Health
Governor Macquarie Tower
1 Farrer Place
SYDNEY NSW 2000

Dear Minister

I enclose the Annual Report of the Mental Health Review Tribunal for the period from 1 July 2013 to 30 June 2014, as required by section 147 of the *Mental Health Act 2007*.

Yours sincerely

Professor Dan Howard SC
PRESIDENT

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MENTAL HEALTH REVIEW TRIBUNAL ANNUAL REPORT 2013/14

The MENTAL HEALTH REVIEW TRIBUNAL is a quasi-judicial body constituted under the Mental Health Act 2007.

The Tribunal has some 47 heads of jurisdiction, considering the disposition and release of persons acquitted of crimes by reason of mental illness; determining matters concerning persons found unfit to be tried, and prisoners transferred to a mental health facility for treatment; reviewing the cases of detained patients (both civil and forensic), and long-term voluntary psychiatric patients; hearing appeals against an authorised medical officer's refusal to discharge a patient; making, varying and revoking community treatment orders; determining applications for certain treatments and surgery; and making orders for financial management where people are unable to manage their own financial affairs.

In performing its role the Tribunal actively seeks to pursue the objectives of the Mental Health Act 2007, including delivery of the best possible kind of care to each patient in the least restrictive environment; and the requirements of the United Nations principles for the protection of persons with mental illness and the improvement of mental health care, including the requirement that 'the treatment and care of every patient shall be based on an individually prescribed plan, discussed with the patient, reviewed regularly, revised as necessary and provided by qualified professional staff'.

PRESIDENT'S REPORT

I am pleased to present the Annual Report of the Mental Health Review Tribunal for 2013/14, which has been a most productive and innovative year.

Change of Minister

In April 2014, the Hon Kevin Humphries MP, who had been Minister for Mental Health since 2011, took on a new portfolio as Minister for Resources, Land and Water. Kevin Humphries was highly effective in the Mental Health portfolio, where his many achievements included shepherding the Mental Health Commission into existence in 2012 – a key initiative for future planning. He has skilfully overseen the complex process of the review of the Mental Health Act and has also encouraged a rich and vigorous dialogue that has significantly elevated the level of co-operation and understanding between the many agencies, Non Government Organisations (NGOs), service providers, families, carers and users of mental health services in New South Wales. I extend my thanks to him, and his Chief of Staff, Colman O'Driscoll, for their unstinting support for the work of the Tribunal and its independence.

I also sincerely welcome the new Minister for Mental Health, Jai Rowell and his Chief of Staff, Katherine Rankin, and look forward to a continuation of the momentum that has been gathering in the mental health space since 2011.

Some Observations from the Statistics

As can be seen from the statistical information included in the annexures to this report, the year has been a busy one with the Tribunal hearing 15,416 matters in its civil division, 191 hearings in relation to financial management and another 972 matters in the forensic division. The total number of 16,579 hearings conducted is steady and comparable to the total number last year (16,678). The Tribunal's net expenditure was $6,312,749.00 resulting in an average cost per matter heard of $385.00. These remarkable figures are indicative not only of the efficiency with which the Tribunal goes about its work, but just as importantly, of the remarkable dedication and hard work that is brought to the task by the Members and Staff of the Tribunal. I would like at the outset to acknowledge their extraordinary efforts and to express my sincere gratitude and thanks to the Members and Staff of the Tribunal for the expertise and commitment that they bring to the work of the Tribunal. I would also like to thank and to acknowledge the ongoing efforts of the Tribunal's tireless Registrar, Rodney Brabin, whose exceptional management skills are reflected in these figures.

Over and above our core work of hearing matters, the Tribunal has also been extensively engaged in regular consultations with numerous stakeholder agencies within the broader mental health sector, including on the important current review of the *Mental Health Act 2007*. The Tribunal has also maintained a proactive program of providing ongoing education and support to hospital and community mental health facilities throughout NSW, and to the public, about the operation of the Mental Health Act and the Tribunal's procedures.

Looking more closely at the figures in the Tribunal's civil division, this year the total number of reported involuntary referrals to public mental health facilities was 19,328. Of those persons, 4,058 did not require involuntary detention after assessment, and 2037 were admitted as voluntary patients. Of those detained, 7,001 were discharged prior to being presented before the Tribunal for a Mental Health Inquiry (which in the vast majority of cases occurs within two weeks of initial detention) and 6,232 were presented for a Mental Health Inquiry (see Table 4). In general terms, these patterns were very similar to the figures for last year. The number of mental health inquiries has remained stable at 6,232 compared to 6321 last year. The stability of these numbers should assist policy makers to gain a reasonable sense of the current scale of the civil mental health system in New South Wales. This general stability when compared to last year's figures is also reflected across the different types of hearings that the Tribunal holds in its civil division, as seen in Table 2 of the statistical review contained

in this report including, for example, involuntary patient reviews, applications for community treatment orders and ECT administration and consent inquiries. In broad terms, this may suggest a considerable degree of consistency in clinical approach and management of persons under the *Mental Health Act 2007*.

As far as the Tribunal's forensic division is concerned, it is interesting to note that the number of new referrals of forensic patients from the courts was a total of 27 persons, including 24 persons found 'not guilty on the grounds of mental illness' and three persons who were given limiting terms at a special hearing after a finding that they were 'unfit for trial'. This was a reduction in the total number of 37 newly referred forensic patients for each of the previous two years. However, following the trend of the past several years, the total number of forensic patients subject to review by the Tribunal has increased again this year to 422, compared to 393 last year and 387 the year before. The implication appears to be that, although the input has been either stable or slightly reducing in the past three years, the total number of forensic patients is nevertheless steadily growing. However, there has been an increase in the number of conditional releases ordered this year by the Tribunal (11 this year compared to eight last year) with a further five conditional releases being made by the Courts under s39 of the *Mental Health (Forensic Provisions) Act 1990*.

A number of conditional releases have been made possible by the provision of 'HASI Plus' packages, through the Ministry of Health, which provide funding for housing and community support from NGOs to patients with high management and supervision needs. The HASI Plus initiative has provided some much needed relief to the pressure on bed-flow within the forensic system, as well as enabling a number of long stay civil patients in mental health facilities to progress to a less restrictive form of care. It is hoped that this excellent initiative will be extended and continued.

The slow but steady increase in the total number of forensic patients is likely to continue to exert significant pressure upon the capacity of Justice Health and the Forensic Mental Health Network to meet the needs of an increasing number of forensic patients, unless there is a commensurate increase in the means at their disposal to do so. In its forensic jurisdiction the Tribunal frequently hears evidence about bed shortages at the Forensic Hospital and particularly at medium secure units leading to quite lengthy waiting periods. The matter becomes particularly acute when the Tribunal feels compelled by the evidence at a hearing to make a 'time limited order' for a placement to be given effect to. The Tribunal will do this in cases where the patient's need and the principles of care and treatment under the *Mental Health (Forensic Provisions) Act 1990* and the *Mental Health Act 2007* require such an outcome.

Some Highlights in the Civil Division

In last year's annual report, I made reference to and commended the Ombudsman's report released in November 2012 entitled "Denial of Rights: the need to improve accommodation and support for people with psychiatric disability" which recognised the marked need for mental health services to more proactively address discharge planning and for proper resourcing by government to enable those with psychiatric disability, who are able to live in the community, to do so. As one of the stakeholders engaged in the Ombudsman's consultations for that report, the Tribunal had identified some 95 individuals whose cases fell within the scope of the Ombudsman's reference. Through the Tribunal's statutory process of reviewing patients, the Tribunal has continued to maintain a proactive approach to identifying cases where a patient's progress appears to have 'stalled' and to encourage appropriate discharge planning wherever appropriate. When a Tribunal panel identifies such a matter, they will generate a 'yellow' sheet report to the Tribunal's Executive, in which any systemic difficulties or other problematic issues, including apparent blockages in provision of services, are identified. The Tribunal's Executive will then, pursuant to its power to request information under s162A of the *Mental Health Act 2007* where appropriate, pursue the matter, for example, by making appropriate inquiries and contacts with relevant Local Health Districts and agencies as the case may require. Deputy President Maria Bisogni and the staff of the Tribunal's Civil Division have been tireless and highly effective in their efforts to follow up with these cases.

The Tribunal's records indicate that at the end of this reporting year, slightly more than one half of the 95 persons referred to are no longer under the Mental Health Act as either voluntary or involuntary patients. This is certainly a significant improvement and reflects a concerted effort across the mental health system to find ways of moving these patients to a less restrictive form of care. Nevertheless, the fact remains that slightly less than half of these persons identified in the Ombudsman's report remain either voluntary or involuntary patients under the Act more than two years after they were identified, so there is still work to be done. The Tribunal is aware of and grateful for the ongoing efforts of the Ministry of Health and its Mental Health Drug and Alcohol Office to develop strategies for the future to address this important ongoing need.

The Tribunal determined last year to encourage more awareness of and engagement with principles of 'recovery' based practice in mental health, in circumstances where these can be sensibly incorporated into our procedures and orders within the remit of the legislation under which we operate. With the financial support of the NSW Mental Health Commission, the Tribunal held a 'Recovery Forum' jointly with the Commission on Saturday 12 October 2013 in which a number of presentations were made to the Members by experts in the field of recovery in mental health. This was followed up with regular professional development events in which these ideas were explored further amongst our Members.

The current review of the *Mental Health Act 2007* has involved significant input from the Tribunal's Executive. I have attended a series of meetings of the review's expert reference group and the executive has been involved in numerous other consultations about appropriate amendments to enhance the quality of the legislation and bring it 'up to date' with current best practice as well as to improve a number of the operational provisions in the Act. The work is ongoing but it is anticipated that an amendment Bill will be presented to Parliament by the end of 2014. I would like to acknowledge the detailed and meticulous input and assistance of Deputy President Maria Bisogni and Rodney Brabin, the Tribunal's Registrar, with the numerous submissions the Tribunal has made throughout the course of the Review – their profound knowledge and experience of the Mental Health Act has been invaluable throughout the review process. Notable has been Maria's constant advocacy for a statement of rights for voluntary patients to be included in the Act, and Rodney's guidance as to the operational feasibility of suggested changes to certain provisions of the Act.

I have issued a number of new Practice Directions in relation to a variety of matters that arise in the work of the Tribunal's Civil Division, and these have been published on the Tribunal's website – see http://www.mhrt.nsw.gov.au/the-tribunal/practice-directions.html - the purpose of these is to plainly set out the Tribunal's practice and to add transparency and consistency to our procedures.

The Civil Division has also continued to deliver an essential education program about the work of the Tribunal to various mental health facilities in the Local Health Districts and to the Tribunal liaison clerks at those facilities. This is complemented by the continuous function that the Civil Division has of handling all manner of inquiries from these sources and from the public.

As part of the Tribunal's ongoing quality assurance, and in view of the fact that ECT for young persons was an issue raised for discussion in the current review of the Mental Health Act, the Tribunal's Executive requested one of the Tribunal's Psychiatrist Members to do a review and analysis of all of the Tribunal's files where applications for ECT administration for young persons under 18 years were made to the Tribunal between 1 January 2007 and 30 June 2013. A summary of the review and analysis is set out in Appendix 6.

For more details of the activities of the Civil Division I refer you to the Civil Division report herein. I express my great thanks to Deputy President Maria Bisogni and to Civil Team Leader Danielle White and their tireless staff for their professionalism and hard work during this year.

Some Highlights in the Forensic Division

Whilst, in numerical terms, the bulk of the Tribunal's matters are heard in the Civil Division, the 972 hearings in the Forensic Division this year have required an equivalent input in terms of the work required and the time taken to prepare and hear the regular and often complex reviews required under the *Mental Health (Forensic Provisions) Act 1990* of the 422 forensic patients under the Tribunal's jurisdiction. Deputy President Anina Johnson, who is responsible for the Forensic Division, has prepared a comprehensive report (see page 9) of the activities of the Division. However, I would like to highlight some of the Division's significant achievements this year.

There have been some particularly important legal developments in relation to the work of the Forensic Division, including amendments to the legislation that enable limiting terms to be extended in certain circumstances. In addition, the Tribunal has made a number of significant determinations. I will discuss these in turn.

Extension of Limiting Terms

On 27 November 2013 the *Mental Health (Forensic Provisions) Amendment Act 2013* commenced, which introduced Schedule 1 to the Act, whereby the Supreme Court of NSW has power to extend the limiting term of a forensic patient for a period of up to five years (and subsequent extensions can also be made) in cases where the Court is satisfied to a high degree of probability that the patient poses an unacceptable risk of causing serious harm to others if he or she ceases to be a forensic patient and the risk cannot be adequately managed by other less restrictive means. The making of an extension order does not affect the operation of any order as to the forensic patient's care, detention, treatment or release from custody to which the forensic patient was subject to immediately before the making of the extension order. Thus, for example, if the patient has been conditionally released into the community by the Tribunal, that order will continue and the Tribunal will continue to review the patient under Part 5 of the Act in the usual way.

An extension order was made for one forensic patient during this report period.

Significant Determinations by the Tribunal's Forensic Division

Generally, due to the restriction imposed by the legislation on naming forensic patients in certain circumstances and for privacy reasons, the Tribunal's decisions are not available to persons other than relevant parties to the proceedings. However, the Tribunal may, pursuant to s162(2) of the *Mental Health Act 2007* publish an 'Official Report' of any of its proceedings. The Tribunal has made a number of legally significant decisions this year that have accordingly been edited and published by the Tribunal, with the use of pseudonyms, as Official Reports of the Tribunal pursuant to s162(2). The purpose of doing this is for transparency and to promulgate important decisions that will provide practitioners and members of the public with important guidance about the practice of the Tribunal and to the applicable law. I am pleased to note that the Tribunal is making arrangements for its Official Reports to be available on the AUSTLII legal research website. They can all be accessed via the Tribunal's website at http://www.mhrt.nsw.gov.au/the-tribunal/official-reports.html. The following is a brief summary of six of these Official Reports.

1. *Early release from a limiting term: - 'Mr Dunlop' [2013] NSWMHRT 5*

   In this matter the Tribunal ordered the conditional release of Mr Dunlop (this is a pseudonym) prior to the expiry of his limiting term and subject to a number of conditions to ensure his safe management in the community. The Tribunal had previously determined that Mr Dunlop had spent 'sufficient time in custody'. The case, together with the Tribunal's earlier decision in 'Mr Adams' [2013] NSWMHRT 1, provide guidance as to the issues relevant to 'sufficient time in custody' and the kinds of conditions that the Tribunal may impose as conditions of such a release.

2. *Leave: 'Ms Croker' [2013] NSWMHRT 2*

   The Tribunal published its report in the matter of Ms Croker (a pseudonym) on 20 September 2013. This significant decision resulted in a grant of therapeutic leave from the Forensic Hospital for a female forensic patient, pending transition to a less restrictive placement, and provides guidance as to the types of considerations that the Tribunal has regard to in such matters.

3. *Time Limited Order: 'Mr Hallam' [2014] NSWMHRT 1*

   In this decision the Tribunal considered the application of the important case of State of NSW v TD [2013] NSWCA 32 in making a time limited order for the transfer of a forensic patient from the Forensic Hospital to a medium secure facility, and discussed the kinds of considerations that may warrant such an order.

4. *Repatriations: 'Mr Ban' [2013] NSWMHRT 4*

   From time to time the Tribunal receives applications to repatriate forensic patients, who are foreign nationals, to their homeland, in circumstances where the patient would not otherwise be ready to be released. However, in general terms, if the receiving country has a suitable forensic mental health system and an appropriate treatment plan that the person will be placed under upon their repatriation, the Tribunal may consider releasing the patient upon condition that they are so repatriated by immediate transfer to the forensic system in the receiving country. Such proceedings can be quite complex and in the Tribunal's determination in the matter of Mr Ban (a pseudonym) the matters that the Tribunal needs to consider in such applications was fully explicated and the case will serve as a useful guide in such matters.

5. *Consent to Publish Forensic Patient's name: Mr Ephram [2013] NSWMHRT 7*

   Section 162 of the *Mental Health Act 2007* prohibits the broadcasting or publishing of a forensic patient's name in certain circumstances unless consent has been obtained from the Tribunal. In its decision in this matter the Tribunal granted such consent and discussed considerations relevant to making such an order.

6. *No jurisdiction to determine that a forensic patient has become 'fit to be tried' after a finding of NGMI; Mr Ephram(2)[2014] NSWMHRT 2*

   In this matter the Tribunal determined that there is no jurisdiction for the Tribunal to make a finding that a forensic patient who has been found 'not guilty on the grounds of mental illness' (NGMI) at a special hearing (held after a finding that the person was not fit for trial) has become fit. The effect of this is that the person's forensic status is to be regarded in the same way as if the person had been found NGMI at a normal trial.

Ongoing Liaisons

This year the Forensic Division has pursued important ongoing liaisons with the numerous agencies that operate in the forensic mental health 'space'. Significant among these have been:

- Liaising with Corrective Services NSW with a view to identifying ways to facilitate genuine rehabilitation pathways for persons serving limiting terms. Traditionally it has been a systemic reality that persons serving limiting terms have had very few rehabilitation pathways available to them, generally serving out their limiting terms with little pre-release preparation for re-integrating into the community. Whilst acknowledging that there is an element of punishment in a limiting term, it must also be said that rehabilitation and protection of the public are key components in any sentencing exercise, and there are cases where these goals can best be achieved by ensuring that appropriate rehabilitation pathways including, for example, access to leave, appropriate drug and alcohol programs, vocational opportunities and supervised community placement through supported housing exist and are accessed sufficiently before the expiry of the limiting term to make them worthwhile. Important progress is being made with this challenging issue, which is discussed further in the Forensic Division report.

- Participation in a project in conjunction with the Community Forensic Mental Health Service, Justice Health, the Courts and the Judicial Commission to develop a clear exposition of legal and operational procedures in matters involving fitness for trial and/or verdicts of 'not guilty on the grounds of mental illness', that will be included in the NSW Judicial Commission's 'Criminal Trial Bench Book'. This will clearly set out the applicable law as well as offering practical guidance as to the best practices for forensic patient placement, the correct wording of orders and the obtaining of independent assessment reports from the Community Forensic Mental Health Service in the event that the court is considering releasing a person conditionally or unconditionally into the community. In the past, practices have been variable and frequently have created operational problems.

- Forensic Team Leader Siobhan Mullany has participated as a regular observer at the meetings of the Bed flow Management Committee of the Justice Health and Forensic Mental Health Network. This important liaison enables the Tribunal to know the current state of bed management in the forensic system, and what placement decisions and priorities are being made in relation to particular forensic patients by the Committee.

- Ongoing liaison with all of the forensic mental health facilities to address numerous issues that arise in day to day practice. A key and ongoing matter this year has been assisting medium secure facilities with identifying best practice for the safe and effective transition of forensic patients who have been granted leave or conditional release in order to take up a 'HASI Plus' package made available through the Mental Health Drug and Alcohol Office within the Ministry of Health.

- Deputy President Anina Johnson and Forensic Team Leader Siobhan Mullany have undertaken an ambitious program of educational seminars, both in person and via video link, of community mental health centres that manage forensic patients who have been conditionally released into the community, which is approximately a third of the total number of forensic patients in the State. These seminars provide comprehensive training on the Tribunal's procedures in relation to forensic patients, and provide guidance on best practice. The seminars have been very well received.

I would like to acknowledge the remarkable energy and drive that Deputy President Anina Johnson has brought to the work of the Forensic Division throughout the year, with the excellent assistance of Forensic Team Leader Siobhan Mullany. They have been supported by the hard working and efficient staff of the Forensic Division, whose attention to detail, and careful monitoring of the progress of forensic patients under the jurisdiction of the Tribunal, has been outstanding.

Registry and Staffing

The Tribunal's Registry has continued to manage our substantial case load with great skill and efficiency, a fact that is borne out by the low 'cost per hearing' figures I have referred to above.

A notable occurrence this year has been that almost all of our staff positions have been made permanent. This is a tribute to our staff members and a well-deserved recognition of the value of the great work that they do. I extend my great thanks to the Tribunal's Registrar, Rodney Brabin, who has been a tireless advocate on behalf of the staff, for his assistance in bringing this about. I know from the constant positive feedback that I have from Tribunal Members that they hold the Tribunal's staff in the highest regard and feel well supported in their work by the staff's high level of professionalism. I could not wish for a more dedicated group of people than those I have the privilege to work with at the Tribunal.

Members

I warmly welcome to the Tribunal two new Part Time Deputy Presidents who have been appointed this year, Mary Jerram and Mark Marien SC. Mary was formerly the Chief Coroner in NSW and Mark, a former District Court Judge and now an Acting Judge of that court, was formerly the Chief Judge of the Children's Court. They will be mostly sitting as presiding Members in the Forensic Division and will bring a great deal of expertise and experience to their work on the Tribunal.

The Tribunal has also recruited a number of highly regarded psychiatrist Members this year and I am very pleased to welcome Doctors Josephine Anderson, Mary Jurek, Enrico Parmegiani, Martyn Patfield, Daniel Pellen, Sadanand Rajkumar, Vanessa Rogers and Yvonne White to the Tribunal and congratulate them on their appointments. In addition, I am pleased to welcome a new Lawyer Member, Mr Shane Cunningham. Shane, who is in private practice in Orange, will be sitting in Mental Health Inquiries and civil hearings at Bloomfield Hospital from September 2014 and I am pleased that this means that the Tribunal will be doing these inquiries 'face to face' rather than by video link as has been the case in the past.

We have maintained an informative and topical program of Continuing Professional Development for the Members throughout the year. This is discussed in more detail in both the Civil Division and the Registrar's reports.

The Tribunal is extremely well served by its hard working Part Time Members and Deputy Presidents, who bring a wealth of expertise and wisdom to their judgments on the Tribunal. I would like to extend my sincere thanks and gratitude to each of the Members and to the Deputy Presidents for the hard work, dedication and good cheer that they have brought to the Tribunal's important work throughout the year.

I would also like to express my sincere appreciation to three Tribunal Members who have resigned during the course of the year. Carolyn Huntsman was appointed to the Magistracy and I wish to acknowledge the skill and expertise that she brought to the Tribunal as a Legal Member over many years and to wish her well in her new role. Dr William Lucas, Dr Peter Shea and Dr John Woodforde resigned after many years of sterling service to the Tribunal as Psychiatrist Members and after long and distinguished careers in their profession. All of these persons are held in the highest regard by their colleagues and their input to the work of the Tribunal will be greatly missed.

Systemic Issues

In last year's annual report I referred to the ongoing problem with 'bed flow' in the forensic mental health system in New South Wales. The Tribunal does all that it can to make appropriate orders for patients that accord with the principles of care and treatment in s68 of the *Mental Health Act 2007* that point to a standard of best practice that should be given effect to 'as far as practicable', in accordance with the terms of that section. However there is a real tension between these vital aspirations and the limitations on resources available to give proper effect to them. The shortfall is manifested by the significant delays in transferring patients who have been assessed as suitable for transfer to less restrictive mental health facilities, but for whom no bed is currently available. It is also manifested by the very limited forensic facilities available for women, whose passage through the forensic system is accordingly less flexible and perhaps more difficult than it might otherwise be.

I have referred above to the beneficial impact of the 'HASI Plus' scheme. This excellent initiative is, however, finite, and is currently only funded to 2016. Significantly more HASI Plus packages and an assurance of funds being available well into the future would greatly assist in alleviating the bed flow issues in New South Wales in both the Civil and Forensic mental health systems. It is well known that a long stay bed in a mental health facility is costlier than a HASI Plus package. More initiatives of this kind, as well as a greater number of community placement options and beds in the right mental health facilities, would enable the system to more

meaningfully address its aspirations.

There are many dedicated people working in the mental health space in New South Wales at present who are striving to find viable solutions to this 'aspirational gap'. The Mental Health Commission presented its strategic plan to the Government in April, although this has not yet been made public. I have no doubt that the Commission has offered many sound proposals for ways of improving mental health services in New South Wales and that the Government will continue to seek out workable solutions. Yet whilst the system may find some ways of 'working smarter', there comes a point at which the smartest thing is to simply invest in and provide the necessary resources.

It remains unclear what impact the National Disability Insurance Scheme (NDIS) will have on the creation of additional resources available to mental health in New South Wales. The pilot scheme running in the Hunter Region this year is establishing itself as part of the famous 'plane that has to fly whilst it is being built' and there are hopes that this bold new scheme will indeed, in time, significantly expand the resources available in the community to those disabled by mental illness and cognitive impairments. The Tribunal is endeavouring to keep abreast of these significant winds of change. It will be critical that existing services, such as those currently provided by the NSW Department of Aging, Disability and Home Care, not atrophy prematurely in anticipation of the NDIS filling the empty spaces.

I commend to you the Divisional Reports and the Registrar's Report below.

Professor Dan Howard SC
President

FORENSIC DIVISION REPORT

Recovery and Patient Flow

Hope for the future and the opportunity to realise a person's own goals are cornerstones of a recovery based approach to mental illness. In a forensic context, this translates to allowing patients to pursue their own ambitions so far as is safely possible and ensuring that they are detained in the least restrictive environment that is consistent with safe and effective care.

In the last 12 months there have been some positive steps towards achieving these goals, but the Tribunal is still stymied to an extent by the lack of appropriate beds.

Challenges in Patient Flow

The issue of patient flow has been a constant theme in the Tribunal's previous annual reports. As at 30 June 2014, there were nine patients who were detained in correctional centres, with orders to be transferred to the Forensic Hospital. There are few therapeutic programs available in the correctional centres where most forensic patients are detained, so that time spent waiting in custody serves little therapeutic purpose. Not surprisingly, patients in this situation begin to lose hope and with it, their motivation to continue along their recovery journey.

Some examples illustrate these difficulties.

Case studies

Mr G was detained on remand on serious criminal charges in January 2012. He received mental health treatment and improved considerably. He was found not guilty by reason of mental illness in December 2012, and the Tribunal ordered that he be transferred to the Forensic Hospital. In October 2013 he was still detained at the MRRC and by that time was so well that he no longer needed the high secure environment of the Forensic Hospital. The Tribunal made an order that he be transferred instead to a medium secure unit. He arrived at that unit in April 2014, having spent more than 780 days in custody.

Mr F was held in custody on remand from October 2012 until the Court's determination in June 2013 that he was found not guilty of robbery, by reason of his mental illness. He was still waiting for a transfer to the Forensic Hospital as at 30 June 2014. Mr F had struggled with mental illness and substance use in the community, but had also been a sole parent and was mostly able to sustain employment. He was on leave from a mental health facility in the community when he committed his offence. While waiting in custody he has lost his contacts with his employer, his child has moved interstate and he has lost many of his living skills.

In addition, as at 30 June 2014, there were seven patients at the Forensic Hospital with current Tribunal orders to be transferred to a medium secure facility. A total of 18 patients at the Forensic Hospital had been assessed by medium secure units as suitable for transfer and would have moved, had a bed been available. The wait for a place in a medium secure unit can exceed a year. In the meanwhile, these patients are unable to be transferred to a less restrictive environment.

As noted in previous annual reports the situation is particularly difficult for women, who are housed in the one ward of the Forensic Hospital and are only able to be accepted into one medium secure facility, the Bunya Unit at Cumberland Hospital. This has led to very long delays for women to access medium secure accommodation. In the meanwhile women are detained in difficult circumstances with peers who can often be acutely unwell. These problems are mirrored for female forensic patients with intellectual disabilities. Again, there is only one location in NSW that offers secure accommodation for women with significant intellectual disabilities.

Importantly, at the close of the reporting period, the Bunya Unit announced that from now on, it would prioritise women for acceptance into its Unit. This is very positive news for women.

Fundamentally, there is a shortage of medium and low secure beds in the metropolitan region that allows forensic patients to be close to family, work opportunities, public transport and supports to assist them in their return to safe community living.

The Tribunal recognises the difficulties with bed availability and will usually order that a person's transfer should occur when a bed becomes available. However, on six occasions in the past financial year, the Tribunal has felt that it was important and appropriate to put a time limit on compliance with its orders for transfer. The rationale behind making orders of this kind was set out in the Tribunal's reasons which have been published as Mr Hallam [2014] NSWMHRT 1.

Opportunities for Recovery

There have also been positive developments which have enhanced recovery opportunities for forensic patients in the past year.

Given the delays in transferring patients to medium secure units, the Forensic Hospital has begun to offer limited therapeutic outside leave to its patients. This allows those patients waiting for a bed at a medium secure unit some hope, and the chance to begin reconnecting to the outside world.

The HASI Plus program has commenced. This program offers housing and 16 or 24 hours of support to people living with mental illness. Eight forensic patients have been given an opportunity to take up one of these places. One patient told the Tribunal of the positive difference this placement has made to his life.

Case Study

Simon is a forensic patient who lives with a mental illness and a number of physical health problems. His capacity to manage fluctuates day to day and in a way that is unpredictable. Although he lives semi-independently, studies and works, he does need a high level of support to cope with memory problems, organisational skills, manage his finances and his impulsivity. After the Tribunal's hearing in May 2013, he felt hopeless because it was suggested he would be unlikely to move beyond the supported cottages at a medium secure unit. Simon said "It's hard to stay motivated if you've got nothing to look forward to".

However, the offer of a HASI+ package has led to some profound changes in Simon's mental state, insight, function and level of judgment. His attitude towards his treating team has dramatically improved, and he is much more willing to engage with them and take their advice. He has also been taking greater responsibility for his own affairs and shown initiative in own rehabilitation program. Simon now sees a way forward for himself.

The Tribunal is hopeful that the implementation of the NDIS will offer similar opportunities for other patients living with psycho social disabilities.

The Tribunal has also made three unconditional release orders for forensic patients who are foreign nationals and who have returned to live in their country of origin. Patients in this situation are unable to access housing, pensions or other forms of support which make it impossible for them to live in Australia if conditionally released. A return to their own country allows these forensic patients to access culturally appropriate care in their own language, and close to family and community supports. Their visa conditions are such that they are almost certain to be unable to return to Australia. Mr Ban's case is an example of

where this has been done: [2013] NSWMHRT 4.

In the Tribunal's last annual report, it noted that it was keen to improve opportunities for leave and conditional release for those serving a limiting term. That issue took on greater significance with changes to the *Mental Health (Forensic Provisions) Act 1990* in November 2013, which provide for the Supreme Court to extend a forensic patient's limiting term for up to five years if certain criteria in relation to ongoing risk are met. It is difficult for a person to demonstrate that they do not pose an ongoing risk to community safety if they have not had a recent opportunity to live in the community.

In the last year, the Tribunal has worked with Justice Health, Family and Community Services, Ageing, Disability and Home Care (ADHC) and Corrective Services NSW (CCNSW) to develop a process for bringing appropriate leave and conditional release applications before the Tribunal. Two patients on limiting terms have been conditionally released. Other applications for conditional release were foreshadowed as the reporting year closed.

CCNSW and ADHC have agreed that to facilitate access to leave, using either existing Corrective Services leave arrangements, or tailor made arrangements for particular patients. It is important for both the patient and the safety of the community generally that this patient group has an opportunity to transition back to safe community living under close supervision before their limiting term expires.

There remains work to be done. Thirteen patients on limiting terms are over 55, of whom about half have a form of dementia, whilst others have serious brain injuries. These patients struggle to care for themselves in a prison environment. Some have no concept that they are indeed in prison. A secure nursing home would be a more appropriate placement for these patients. It would allow their risk to be assessed in a community environment before their limiting term expires, and whilst they remain under the Tribunal's supervision.

Supreme Court Decison on the Tribunal's Powers Under the *Mental Health (Forensic Provisions) Act 1990*

On 7 February 2014, the Supreme Court handed down its decision in A by his tutor Brett Collins v Mental Health Review Tribunal (No 4) [2014] NSWSC 31. The decision considered an appeal against the Tribunal's refusal to order that a forensic patient should not receive his medication by injection. This was the first Supreme Court judgment to consider the Tribunal's role at a forensic review in depth.

The decision confirms that the Tribunal has the power to make an order prohibiting the forced administration of depot medication in the detention, care or treatment of a forensic patient. However, in exercising that power, a paramount consideration at each stage of the process must be concern for the patient's welfare, not the interests or convenience of any other person, the patient's carers or the state. The Tribunal was also required to (and did) have regard to the patient's past, present and prospective medical condition, taking into account medical evidence available, not only from the patient's Justice Health treating psychiatrist, and a competing opinion from a doctor specifically retained on behalf of the patient for the purpose of giving evidence on the patient's application for a prohibition order, but generally.

The judgment endorses the Tribunal's approach to reviews, which encourages the patient to take an active role in the review process, which canvases future pathways for the patient, and that allows scope for the Tribunal panel to comment or discuss any issue they, the patient, or the team consider important.

Interstate Forensic Patients

The importance of extending the existing interstate agreements for forensic patients to States other than Queensland and Victoria has been consistently noted in previous annual reports. Unfortunately, no further progress has been made in negotiating interstate agreements for the transfer of forensic patients to other

States. Proximity to family, community and cultural ties is often a critical aspect of a patient's recovery. The importance of family and country is particularly important for Aboriginal and Torres Strait Islander patients. The Tribunal has identified a number of forensic patients who would be appropriate candidates for an interstate transfer.

Recently, courts have made several orders conditionally releasing patients to live in other States. This makes it very difficult for the Tribunal to monitor the patient's safety and engagement with treatment. If there was the ability to transfer a patient's care to another State, this difficulty could be overcome.

As the review of the Mental Health Act 2007 (that empowers the establishment of interstate agreements) draws to a close, the Tribunal considers that the prompt completion of these negotiations deserves priority.

Key Statistics

There were 422 forensic patients in NSW at 30 June 2014, compared to 393 at the end of the previous reporting year. The Forensic Division had a small (2.4%) increase in the number of hearings during 2013/2014 compared to 2012/13 (972 to 948 respectively).

Internal and External Liaison and Training

The Forensic Division has continued its positive working relationships with key stakeholders in the field of forensic mental health, including the Justice and Forensic Mental Health Network, Legal Aid NSW, CCNSW, ADHC and victims' organisations.

In the first six months of 2014, the Forensic Division conducted 12 separate education sessions with community mental health teams discussing the role of the Tribunal in overseeing forensic patients. This was in addition to other educational work with organisations such as Legal Aid NSW, the Office of the Director of Public Prosecutions (ODPP), the Crown Solicitor's Office (CSO) and Schizophrenia Fellowship and the Tribunal's regular meetings with key forensic mental health facilities. The Forensic Division holds regular information and training sessions for Presidential members and also held a Professional Development Session for all Tribunal members who sit on forensic hearings.

The Tribunal has also been integrally involved in a working group chaired by the Judicial Commission, which has reviewed the templates for orders made under the Mental Health (Forensic Provisions) Act 1990, and developed a new entry for the criminal benchbooks in relation to the forensic mental health process.

Research Forum

The Tribunal is a partner in the successful National Health and Medical Research Council (NHMRC) Partnership Project "Improving the Mental Health Outcomes of People with Intellectual Disability". The Masters of Forensic Psychology program at the University of New South Wales continues a series of student placements with the Tribunal to work on the Forensic Database Enhancement Project. This year, the Tribunal also hosted a law student on a placement from the University of Sydney.

Victims Register

The Forensic Division continues to manage the Forensic Patient Victims Register, through which it notifies victims of upcoming hearings and the outcomes of those hearings. The Tribunal regularly updates the information for victims that is available on its website and keeps abreast of victims' concerns through its membership of the Victims of Crime Interagency Forum.

Anina Johnson	Siobhan Mullany
Deputy President	Team Leader

CIVIL DIVISION REPORT

Recovery in Action

Building on principles of recovery and trauma informed care have been important priorities for the Tribunal this reporting year. As outlined in last year's Annual Report, recovery is about recognising the right of persons living with mental distress to have hope, lead meaningful lives, realise personal goals and to self-manage. It is the right to live free of stigma and discrimination and not to be defined by illness. In addition, many individuals who present to mental health services have a history of trauma that affects their thoughts, feelings and actions. There needs to be an approach which promotes self-empowerment, is inclusive and consultative.

In October 2013, the Tribunal and the Mental Health Commission jointly hosted a conference for Tribunal members entitled "Recovery Principles in Action through the Work of the NSW Mental Health Review Tribunal". The aim of the conference was to educate members about recovery and trauma informed care principles, provoke discussion and reach some consensus as to how these principles could be practically applied in hearings. Feedback from the conference was overwhelmingly positive with members reporting a good understanding of the principles and a real enthusiasm to engage consumers, carers and mental health professionals in appropriate cases. The Tribunal is hopeful that there will be legislative recognition of these principles in the *Mental Health Act 2007* which is currently under review.

Ombudsman's Inquiry and Long Term Patients

Last year's annual report referred to a Tribunal led initiative in liaising with the Mental Health Advocacy Service, treating teams and mental health service providers to identify consumers who could be discharged, with support from hospital. This was in light of the findings of the NSW Ombudsman's Report "Denial of Rights: the need to improve accommodation as support for people with psychiatric disability" (tabled in November 2012) that had identified gaps in service, support and accommodation for a large number of consumers with psychiatric disability.

In the reporting year the Tribunal has continued to work with the above stakeholders as well as ADHC and the NSW Guardian to successfully advocate for support and accommodation for a number of individuals who were the subject of the Ombudsman's report. Whilst some individuals have now been discharged the Tribunal is aware that there are a number of consumers who continue to remain in mental health facilities for want of appropriate support accommodation and services. This group have similar narratives: long standing mental illness, sometimes with co-morbid intellectual disability or cognitive impairment; admitted to mental health facilities because of loss of family support or accommodation breakdown; sometimes accompanied by increased difficult behaviours; subject to behaviour management plans whilst hospitalised; some exercising leave to family; many on lengthy waiting lists for alternative placements. For some consumers with complex needs, placement is a very real challenge as they may not readily fit into an existing service model. It is hoped that the NDIS will have a major impact in addressing this unmet need. As part of its review function, the Tribunal will continue to actively liaise with the above groups to try to overcome barriers to discharge.

Hearing Statistics

Civil hearings account for almost 93% of Tribunal work. Of the total number of hearings 16579 Tribunal hearings that took place, 15416 were civil patient hearings under the *Mental Health Act 2007*. There were 6232 mental health inquiries; 5068 CTO hearings; 2442 involuntary patient review hearings; 707 ECT hearings; 649 appeals against the authorised medical officer refusal to discharge; 200 variation of CTOs; 74 voluntary patient reviews and a smattering of hearings for surgery, special medical treatment, revocation of CTOs and review of persons detained after a breach of CTO. As pointed out in the Registrar's report, there was a slight decrease (0.6%) in Tribunal hearings with the decrease occurring in the civil jurisdiction.

Under the *NSW Trustee and Guardian Act 2009* the Tribunal conducted 191 reviews for Financial Management Orders, two of which related to forensic patients. Interested parties were responsible for 108 applications and the remaining requests were considered at mental health inquiries. The Tribunal made 87 financial management orders. There were 28 applications by persons subject to financial management orders for revocation, with revocation being approved in 18 cases.

Legal representation at civil hearings, which is almost exclusively provided by the Mental Health Advocacy Service (a branch of Legal Aid) occurred in 73.6 % of cases and is slightly higher than last year when it was provided in 72% of cases. Whilst it would be preferable that it be provided in all matters, it is limited by Legal Aid policy and resource constraints. It is nonetheless pleasing to note that year by year representation in civil hearings continues to increase; in 2003, only 18.3% of civil cases had legal representation, and in 2008/9 it was only in 33.5% of cases. Representation at mental health inquiries occurred in 98% of cases in this reporting year.

As outlined in last year's annual report the Tribunal now refers cases of consumers with dual diagnosis of mental illness and cognitive impairment/ intellectual disability to the Mental Health Advocacy Service for legal representation at hearings. This is an important safeguard for consumers who are vulnerable and who might not otherwise have an opportunity to discuss their case with an independent third party who may in turn put the consumer's views to the Tribunal.

Legal representation in applications for financial management orders made by an interested party (under s46 of the *NSW Trustee and Guardian Act 2009*) was extended in 93% of cases. However, in applications for the revocation of financial management orders, representation was extended in only 57% of cases. This is likely due to the MHAS applying a merit and means test. Despite this, persons seeking revocation were successful in 64% of cases; four out of 28 were not successful and six were adjourned.

Orders may only be revoked by the Tribunal if the Tribunal is satisfied that the protected person is capable of managing their financial affairs and an application may only be made if the person is no longer a patient. Having an order made in the first place deprives a person from dealing in their financial affairs and may make proving capacity more difficult. At a revocation hearing the Tribunal may adjourn a matter to allow the individual a further period of time to gather evidence in support of their capacity to manager their affairs. In some cases the Tribunal may write to the NSW Trustee and ask that a person be allowed control of an aspect of their finances so as to provide an opportunity to deal with their finances and demonstrate capacity. This approach is very much in keeping with the General Principles of the *NSW Trustee and Guardian Act 2009* which emphasise autonomy, independence and least restrictive option.

Consumer attendance at civil hearings occurred in 85.9% of cases, which is very close to the attendance rate in the previous year and contrasts with 78% attendance in all civil hearings in 2008/9. There was a high attendance at mental health inquiries with persons attending in 96.5% of cases.

Community Treatment Orders (CTOs)

CTOs represent a significant proportion of the Tribunal's work. It is at these hearings, when consumers are at the cusp of discharge that the Tribunal can fruitfully explore recovery based interventions with the consumer and their community case manager. To this end, the Tribunal requests the involvement of case managers so that plans for safe and effective community care can be discussed, as well as the consumer's broader goals, including re-engaging with study, employment or a desire for increased social activities.

The strength of the therapeutic alliance can be a powerful and integral part of a recovery paradigm. The involvement of community case managers is vitally important in this process. Many managers recognise this and consult with consumers about treatment plans prior to discharge. The Tribunal would like to encourage

this as a minimum requirement across all Local Health Districts. From the Tribunal's perspective it is important to continue to emphasise this message with mental health facilities to ensure greater communication between the discharging facility and community based mental facilities.

External Training and Liaison

As has been the case for many years now the Tribunal has continued to deliver education and training sessions to both community and hospital based mental health facilities. In the reporting year training events took place at the following hospitals: Wagga Wagga; Albury Hospital; Southern Sydney; Queanbeyan; Macquarie; Sydney Children's; Manly; Cumberland; Bankstown and Lake Macquarie Community Mental Health Services. Education about the Tribunal's legislative and procedural requirements, as well as the nature and culture of hearings, is particularly important for registrars on six monthly rotations at mental health facilities. In addition, the Tribunal has issued a number of practice directions for clarifying the Tribunals' legal and procedural requirements with the aim of promoting transparency and consistency.

Good working relationships with mental health facilities are essential for the smooth and efficient conduct of hearings. The vast majority of hospital based facilities have appointed a Tribunal Liaison Clerk (TLC) whose role is to co-ordinate hearings. On 28 October 2013, the Tribunal hosted a one day session for TLCs focussing on the legal, procedural and documentary requirements for mental health inquiries and involuntary patient reviews. The session was well attended and has been useful in communicating the Tribunal's expectations.

There has also been effective liaison with a large number of bodies who interact with the Tribunal, including NSW Consumer Advisory Group (NSW CAG), the Guardianship Division of the NSW Civil and Administrative Tribunal (NCAT), CSNSW, ADHC, the Mental Health Drug and Alcohol Office, Area Directors, Directors of Mental Health Facilities, Medical Superintendents, the Mental Health Advocacy Service and the Mental Health Commission.

Training and Professional Development of Members

Professional Development Evenings for members are held four times a year. In the reporting year a range of topics were offered, including: a session following on from the Recovery Conference devoted to "Furthering recovery in Tribunal hearings"; papers by senior health clinicians from the Wesley Mission, RichmondPRA (Supported employment); the Schizophrenia Fellowship (Carer Support) and Uniting Care (supported accommodation and peer support) about key services provided by these bodies.

Performance appraisal of members is important in ensuring that Tribunal members are performing to the highest standard. In this reporting year, Deputy President Anina Johnson and I assessed a large percentage of the members whose terms are due to expire on 31 August 2016. This assessment process is a factor to consider in the reappointment of members and is also useful in identifying professional development needs of the members

Submissions

There has been considerable input by the Tribunal into the Ministry of Health's Working Group on Advance Planning for Care and End of life in Mental Health Settings. The Tribunal is a member of the Working Group, which include representatives from the mental health, justice and community sector. During the reporting year the Working Group has met on a number of occasions to guide the development of information resources for health professionals and consumers in NSW. The aim of the resources is to ensure that all dementia and mental health patients, be they in the community, in patient, forensic or community managed facilities have access to advanced care planning for end of life, including the opportunity to participate in these decisions; express their wishes, choices and preferences and to be supported in their decisions if capacity is lacking.

An Acknowledgement of Members and Staff

We would like to thank the Tribunal's members and staff for their excellent work over the past year. The Tribunal is most fortunate to have a high calibre of members and also staff who manage the enormous demands of Tribunal hearings with dedication. In particular we wish to thank the Civil Hearing Team for its dedication and professionalism and the members of the Tribunal Executive for their leadership, support and assistance.

We look forward to meeting the challenges of the next year.

Maria Bisogni	Danielle White
Deputy President	Team Leader

REGISTRAR'S REPORT

REPORT CONTENT AND PERIOD

As noted in the President's report this has been another busy and challenging year for the Tribunal and a year for consolidating a number of the changes implemented over recent years. For the first time in five years the Tribunal experienced a small reduction (less than 1 %) in the total number of hearings conducted – down from 16,778 hearings in 2012/13 to 16,579 in 2013/14.

However, despite this small decrease, in the four years since the Tribunal assumed the responsibility for conducting mental health inquiries in June 2010 there has been a staggering 82% increase in the number of hearings conducted. Further details about this increase are discussed below.

Under s147 of the *Mental Health Act 2007* (the Act) a number of matters are required to be included in this Annual Report. Each of the following matters is reported on in Appendix 1:

a) the number of persons taken to mental health facilities and the provisions of the Act under which they were so taken;
b) the number of persons detained as mentally ill persons or mentally disordered persons;
c) the number of persons in respect of whom a mental health inquiry was held;
d) the number of persons detained as involuntary patients for three months or less and the number of persons otherwise detained as involuntary patients; and
e) any matter which the Minister may direct or which is prescribed by the Regulations.

No Regulations have been made for additional matters to be included nor has the Minister given any relevant direction.

In addition to the statutory requirements I report on the following:

OPERATIONS

Caseload

In 2013/14 the Tribunal conducted 16,579 hearings including 6,232 mental health inquiries. This 99 fewer hearings represents a 0.6% decrease in the total number of hearings compared to 2012/13. The decrease in hearings was in the Tribunal's civil jurisdiction and predominantly in relation to mental health inquiries.

This was the fourth full year of the Tribunal's jurisdiction to conduct mental health inquiries under s34 of the Act. Until 21 June 2010 this role had been carried out by Magistrates. During 2013/14 the Tribunal held 6,232 mental health inquiries - 89 fewer than the previous year (a decrease of 1.4%). This slight decrease may be a result of the 'settling in' of changes made to the timing of mental health inquiries in July 2012 which now sees patients generally presented for a mental health inquiry between seven and 21 days after they are detained.

Of the mental health inquiries conducted in 2013/14, 5,268 (84.5%) resulted in an involuntary patient order being made. This percentage is slightly down from 85.7% in 2012/13 but still higher than the 79.3% in 2011/12 and could reflect the shorter period for which patients have received treatment when presented for an inquiry at an earlier stage. There was a slight increase in the percentage of Community Treatment Orders made at a mental health inquiry during 2013/14 - 5.8% (360) compared to 2012/13 - 5.4% (339) but this is still significant lower than in 2011/12 – 11.8% (581). This is again a possible consequence of the earlier presentation of patients for a mental health inquiry in that there is less time for a person's condition to stabilise and for an appropriate Community Treatment Plan to be developed. A total of 88 orders were made for the patient to be discharged or for deferred discharge (1.4%). This included 16 patients who were discharged into the care of their primary carer.

The total number of hearings for the review of involuntary patients under s37(1) of the Act increased by 11 in 2013/14 to 2422 from 2433 in 2012/13 – a 0.5% increase. The Tribunal is required to review the case of each involuntary patient on or before the end of the patient's initial period of detention ordered at a mental health inquiry, then at least once every three months for the first 12 months that the person is an involuntary patient, and then at least every six months while the person continues to be detained as an involuntary patient. Significantly, the number of initial reviews under s37(1)(a) decreased by 109 (8.3%) while the number of reviews under s37(1)(b) increased by 93 (17%) and s37(1)(c) increased by 45 (7.8%).

The number of hearings held under s44 of the Act to consider an appeal against an authorised medical officer's refusal to discharge a patient increased from 591 in 2012/13, to 649 in 2013/14. This was a 9.8% increase and reverses the 23.7 % decrease experienced in 2012/13. These changes may be attributable to the settling in after the changes to the timing of mental health inquiries in July 2012. Of the appeal hearings conducted in 2013/14, 446 were dismissed (84.1%) and the patient was ordered to be discharged on 22 occasions (3.4%).

The number of hearings to consider applications for Community Treatment Orders decreased by 112 from 5180 in 2012/13 to 5068 in 2013/14 (a 2.2% decrease). These hearings related to 3450 individual patients. A total of 5184 Community Treatment Orders were made in 2013/14 – a decrease of 37 (0.7%) over the previous year. Excluding those made at a mental health inquiry (360) the number of Community Treatment Orders made by the Tribunal under s51 of the Act decreased by 58 from 4882 in 2012/12 to 4824 in 2013/14 – a 1.2% decrease. As mentioned above, one of the consequences of the change to the timing of mental health inquires in July 2012 is that fewer Community Treatment Orders are made at a mental health inquiry and in more cases a separate application and subsequent hearing are required for a person to be discharged on a Community Treatment Order.

Under s56(2) of the Act the maximum duration of a Community Treatment Order is 12 months. However of the 5184 Community Treatment Orders made in 2013/14 only 395 were for a period of more than six months (usually 12 months). This is 7.6% which is a slightly lower percentage of such orders in 2012/13 (8.2%) and 2011/12 (9.6%). Although the Act provides that the Tribunal is able to make Community Treatment Orders for up to 12 months, the vast majority of orders continue to be made for periods of up to six months. Longer orders are generally only made in circumstances where there are clearly established reasons for justifying a longer period.

There was a 3.1% increase in the number of hearings held by the Forensic Division in 2013/14 compared to the previous year (972 in 2013/14 compared to 943 in 2012/13)

In 20013/14 the Tribunal conducted:

	2013/14
Civil Patient hearings (for details see Tables 1-14) (* includes 6232 mental health inquiries)	*15416
Financial Management hearings (for details see Table 15)	191
Forensic Patient reviews (for details see Tables 16 - 23)	972
	16579

Details for each area of jurisdiction of the Tribunal are provided in the various statistical Tables contained later in this Report. Table A shows the number of hearings conducted each year since the Tribunal's first full year of operation in 1991 when 2,232 hearings were conducted.

Table A

Total number of hearings 1991 - 2013/2014

	Civil Patient Hearings	*Financial Management Hearings*	*Forensic Patient Hearings*	*Totals per year*	*% Increase over previous year*
1991	1986	61	185	2232	%
1992	2252	104	239	2595	+16.26%
1993	2447	119	278	2844	+9.60%
1994	2872	131	307	3310	+16.39%
1995	3495	129	282	3906	+18.01%
1996	4461	161	294	4916	+25.86%
1997	5484	183	346	6013	+22.31%
1998	4657	250	364	5271	-12.34%
1999	5187	254	390	5831	+10.62%
2000	5396	219	422	6037	+3.48%
2001	6151	304	481	6936	+14.8%
2002	6857	272	484	7613	+9.8%
2003	7787	309	523	8619	+13.2%
2004	8344	331	514	9189	+6.6%
2005	8594	293	502	9389	+2.2%
2006	9522	361	622	10505	+11.9%
2007	8529	363	723	9615	-8.5%
2007-08	8440	313	764	9517	N/A
2008-09	7757	224	771	8752	-8.1%
2009-10	8084	193	824	9101	+4.0%
2010-11	12413	221	870	13504	+43.4%
2011-12	13501	219	928	14648	+8.5%
2012-13	15510	225	943	16678	+13.9%
2013-14	15416	191	972	16579	-0.6%

The Tribunal has regular rosters for its mental health inquiries, civil and forensic hearing panels. In addition to the hearings held at the Tribunal's premises in Gladesville, in person hearings were conducted at 43 venues across the Sydney metropolitan area and regional New South Wales in 2013/14. Although the Tribunal has a strong preference for conducting its hearings in person at a mental health facility or other venue convenient to the patient and other parties, this is not always practical or possible. The Tribunal has continued to use telephone and video-conference hearings where necessary and conducted hearings by telephone and/or video conference to 256 inpatient or community venues across New South Wales. In 2013/14, 8,004 hearings and mental health inquiries were conducted in person (48.3%), 7,271 by video (43.9%) and 1,304 by telephone (7.9%). The numbers and percentages although similar to the last three years, differ quite significantly from prior years due to the impact of mental health inquiries which can only be conducted in person or by video, that is, not by telephone.

If mental health inquiries are excluded from the figures then 3,713 hearings were conducted in person (35.9%), 5,331 by video (51.5%) and 1,303 by telephone (12.6%). These numbers and percentages varied slightly from 2012/13 when 3,504 hearings were conducted in person (33.8%), 5.459 by video (52.7%) and 1393 by telephone (13.5%) and show a pleasing slight increase in the number of in person hearings and decrease in the number of hearings conducted by telephone and video. The continued reduction in

telephone hearings is particularly pleasing as telephone hearings are only used where an in person hearing is not practicable and where no video conference facilities are available. The vast majority of telephone hearings related to Community Treatment Orders (98.5%), most often for people in the community on an existing Community Treatment Order (58.4%). Hearings to vary the conditions of existing Community Treatment Orders comprised 14.6% of these telephone hearings – the majority of these hearings involved varying the order to reflect a change in treatment team following a change of address by the client.

Number of Clients

Having assumed the mental health inquires role the Tribunal is now responsible for making and reviewing all involuntary patient orders and all Community Treatment Orders (apart from a small number of orders made by Magistrates under s33 of the *Mental Health (Forensic Provisions) Act 1990*). This means that the Tribunal is now able to get a fairly accurate picture of the actual number of people subject either to an involuntary patient order or to a Community Treatment Order at any given time.

As at 30 June 2014 there were 1,195 people for whom the Tribunal had made an involuntary patient order either at a mental health inquiry or at a subsequent review (this compares to 1,250 at the same date in 2013). However it should be noted that a number of these patients may in fact have been discharged or reclassified as voluntary patients since the making of the order without reference to the Tribunal. There were 66 individuals who had been voluntary patients for more than 12 months and had been reviewed by the Tribunal – again a number of these may have been discharged or reclassified since the Tribunal review. See Table 5 for further details including a summary of the facilities in which these individuals were detained/ admitted.

In terms of Community Treatment Orders, as at 30 June 2004 there were 2,704 individuals subject to an Order made by the Tribunal. While a small number of these orders may have been revoked by the Director of the Health Care Agency responsible for implementing the Order, this should be a fairly accurate count of the number of people subject to a Community Treatment Order at that point in time. This is slightly less than at the same date in 2013 when there were 2,763 individuals subject to a Community Treatment Order.

Mental Health Inquiries

The Tribunal assumed the role of conducting mental health inquiries on 21 June 2010 and at that time implemented a two weekly schedule for conducting mental health inquiries at 42 inpatient mental health facilities around the State. Initially inquiries were conducted on a fortnightly basis by video conference to most of these facilities.

In mid 2011 the Ministry of Health commissioned Communio Pty Ltd to conduct an external evaluation of the 'efficacy and cost of the mental health inquiry system'. The Final Report from this evaluation was released in early 2012. On 15 March 2012 the Minister for Mental Health announced the Government's response to the Report that in line with the Report's recommendations additional funding would be provided to the Tribunal to improve the Tribunal's capacity to conduct mental health inquiries in a timely manner.

Mental health facilities are required to present the patient to an inquiry 'as soon as practicable' after meeting various statutory requirements for the Tribunal to determine if the patient should continue to be detained as the subject of an involuntary patient order, discharged on a Community Treatment Order or otherwise discharged from the facility. From 1 July 2012 assessable persons are generally presented for a mental health inquiry on the first occasion that the Tribunal visits the relevant mental health facility to conduct mental health inquiries after the person has been detained for seven days. This means that assessable persons are now presented for mental health inquires in their second or third week of detention depending on the timing of the rostered mental health inquires day for each facility. This is a change from the previous arrangement which generally saw people presented in the third or fourth week. Patients can be presented earlier for a mental health inquiry on request, and this is so particularly if it is proposed that the patient be discharged on

a Community Treatment Order or if a hearing is required to consider an appeal or an application for ECT in relation to the patient.

The Tribunal anticipated that this change would result in an increase in mental health inquiries as more patients remained detained at the time they were due to be presented for an inquiry. The Tribunal conducted 6232 inquiries in 2013/14 which was 89 less than in 2012/13 (a 1.4% reduction) but still 1322 more than in 2011/12 prior to the changes being made (a 26.9% increase).

Inquiries are now conducted 'in person' at most metropolitan and a number of rural mental health facilities with video conferencing only used at those facilities where in person inquiries are not feasible due to distance or the small number of inquires required at the facility. This has had a significant impact on the percentages of inquires conducted in person or by video. During 2013/14 68.9% of mental health inquiries were held in person and 31.1% by video compared to 66.9% in person and 33.1% by video in 2012/13, and 47% in person and 53% by video in 2011/12, and 35.6% in person and 64.4% by video in 2010/11.

In implementing the mental health inquiries system the Tribunal has had regard to the number of mental health inquiries previously adjourned by Magistrates. Of the 10,596 inquiries commenced by Magistrates in 2009/10, 5,808 were adjourned (54.8%). The Tribunal was concerned to ensure that moving the timing of inquiries forward did not result in an increase in the rate of adjournment. Although there has been a slight increase this year, the rate of adjournment has remained relatively consistent at about 7-8% for the four years the Tribunal has been conducting mental health inquiries – 2010/11 - 7.1%, 2011/12 - 7%, 2012/13 – 7.3% and 2013/14 - 8.1%.

In 2013/14, 16% of initial mental health inquiries were commenced during the first week of a person's detention (compared to 15.1% in 2012/13 and 5.5% in 2011/12), 56.8% during the second week (56.9% in 2012/13 and 22.2% in 2011/12), 26.5% in week three (36.6% in 2012/13 and 45.1% in 2011/12) and 0.4% in the persons fourth week of detention (1.2% in 2012/13 and 26.5% in 2011/12). In a small proportion of cases, 0.3%, the inquiry was commenced sometime after four weeks (0.2% in 2012/13 and 0.8% in 2011/12). Each such case was investigated by the Tribunal and where appropriate followed up with the facility involved. Many of these cases involved patients who were AWOL, on leave or too unwell to be presented for a mental health inquiry at the time they were due.

The Tribunal has continued to closely monitor the new system of holding inquiries earlier both in terms of its cost and any impact on patients and the mental health system. A monitoring group was established with representatives from a number of the peak mental health bodies as well as Legal Aid, Public Interest Advocacy Centre (PIAC) and the Ministry of Health to assist in monitoring the implementation of this process. Given that the system had been in place for three years the monitoring group was wound up during 2012/13.

When the Tribunal first assumed the role of conducting metal health inquiries there was a significant increase in the number of hearings to consider appeals against a decision of an authorised medical officer to refuse a request for discharge a patient (775 in 2011/12 and 608 in 2010/11 compared to 255 in 2009/10). However, following the change in timing of mental health inquires in July 2012 the number of appeals reduced in 2012/13 to 591 (23.7%). The number of appeals increased again in 2013/14 by 58 to 649 (a 9.8% increase).

These increases in the number of appeals have required the Tribunal to schedule more three member panels to consider the appeals. However an amendment contained in the Mental Health Regulation 2013, s19(3), which came into effect on 1 September 2013, now allows for appeals lodged by persons other than involuntary patients to be heard by the President, a Deputy President or a member qualified for appointment as a Deputy President. This means that an appeal lodged by an assessable person is able to be heard by an experienced single legal member of the Tribunal.

From 1 November 2013 the Tribunal has adopted the practice of wherever possible listing an appeal lodged by an assessable person with the mental health inquiry for that person to be heard by a single lawyer member. This generally allows for the appeal and mental health inquiry to be heard face to face rather than by video, and gives the Tribunal much more flexibility in hearing the appeal more promptly. Since that time 141 appeals have been heard by a single member (26.3% of appeals held between 1 September 2013 and 30 June 2014).

Representation and Attendance at Hearings

All persons appearing before the Tribunal have a right under s152 and s154 of the Act to be represented notwithstanding their mental health issues. Representation is usually provided through the Legal Aid Commission of NSW by the Mental Health Advocacy Service (MHAS), although a person can choose to be represented by a private legal practitioner (or other person with the Tribunal's consent) if they wish. Due to funding restrictions the MHAS has advised the Tribunal that the Service cannot automatically provide representation for all categories of matters heard by the Tribunal. In addition to all forensic cases, representation through the MHAS is usually provided for all mental health inquiries and reviews of involuntary patients during the first 12 months of detention; appeals against an authorised medical officer's refusal to discharge a patient and all applications for financial management orders. Representation is also provided for some applications for Community Treatment Orders and some applications for revocation of financial management orders, however this may be subject to a means and merits test. During 2011/12 the Legal Aid Commission expanded representation to include some ECT inquiries, particularly those held before an involuntary patient order has been made at a mental health inquiry.

Including mental health inquiries, representation was provided in 73.6% of all hearings in the Tribunal's civil jurisdiction (see Table 1) and 99.1% of all forensic hearings in 2013/14.

All persons with matters before the Tribunal are encouraged to attend the hearing to ensure that their views are heard and considered by the Tribunal and to ensure that they are aware of the application being made and the evidence that is being presented about them. This attendance and participation in hearings can be in person or by way of video or telephone. In civil matters the person the hearing is about attended in 85.9% of all hearings – this is the roughly the same percentage as in 2011/12 and 2012/13. Included in these figures are mental health inquiries at which the patient must attend for the inquiry to proceed – for mental health inquiries the rate of client attendance was 96.5%. The mental health inquiry is usually adjourned if the patient is not able to attend. In forensic matters, where there is a general requirement that the person attend unless excused from doing so by the Tribunal, the rate was 97.6%.

Appeals

Section 163 of the Act and s77A of the *Mental Health (Forensic Provisions) Act 1990* provide for appeals by leave against decisions of the Tribunal to be brought to the Supreme Court of NSW.

During 2013/14 three appeals were lodged with the Supreme Court. Two of these appeals were finalised during the reporting period with one appeal being dismissed and a declaration made that that the Tribunal's decision was valid in the other. The remaining appeal is still to be determined along with one appeal lodged March 2013.

The Tribunal has carefully reviewed the Court's decision in these appeals with a view to adjusting its procedures as required. The Supreme Court decision in A by his tutor Brett Collins v Mental Health Review Tribunal (No 4) [2014] NSWSC 31 is discussed in more detail in the Forensic Division Report.

Multicultural Policies and Services

The Tribunal is not required to report under the Multicultural Policies and Services Program. However both tthe Act and the *Mental Health (Forensic Provisions) Act 1990* contain specific provisions designed

to promote and protect the principles of access and equity. Members of the Tribunal include consumers and persons from various ethnic origins or backgrounds including Aboriginal and Torres Straight Islanders.

Persons appearing before the Tribunal have a right under s158 of the Act to be assisted by an interpreter if they are unable to communicate adequately in English. During 2013/14 interpreters in 55 different languages were used in a total of 805 hearings. This is 26 more hearings involving an interpreter than in 2012/13 – a 3.3% increase. The most common languages used were Vietnamese (100), Arabic (88), Cantonese (88) Mandarin (79) followed by Serb/Croation (59), Korean (45) and Italian (45).

In August 2009 the Tribunal entered in to a Memorandum of Understanding with the Community Relations Commission on the provision of translation services concerning the Tribunal's official forensic orders. No forensic orders were translated in 2012/13 or 2013/14. Translated copies of the Statement of Rights are available from the Tribunal's website.

In future years, the Tribunal will continue to arrange interpreters and translations as required and ensure that its membership includes representation from people with a multicultural background. We will also investigate the option of translation of some of the Tribunal's publications once the current review of the Act is concluded.

Government Information (Public Access) Act 2009

Applications for access to information from the Tribunal under the Government Information (Public Access) Act 2009 (GIPA Act) are made through the Right to Information Officer at the NSW Ministry of Health. Information relating to the judicial functions of the Tribunal is 'excluded information' under the GIPA Act and as such is generally not disclosed.

The administrative and policy functions of the Tribunal are covered by the GIPA Act. Information was provided in response to two applications for disclosure of information during 2013/14.

This year the Tribunal published a number of new Practice Directions and Official reports of Proceedings on its website.

Public Interest Dislocures Act 1994

Public Authorities in New South Wales are required to report annually on their obligations under the Public Interest Disclosures Act 1994.

There were no Public Interest Disclosures received by the Tribunal during the reporting period.

Data Collection – Involuntary Referral to Mental Health Facilities and Mental Health Inquiries

The Tribunal is required under the Act to collect information concerning the number of involuntary referrals and the provisions of the Act under which the patients were taken to hospital and admitted or released. The Regulations to the Act provide that these details are collected by means of a form which all inpatient mental health facilities are required to forward to the Tribunal with respect to each involuntary referral (Form 10).

Although a large number of Emergency Departments are now gazetted under the Act as emergency assessment facilities, most Emergency Departments do not currently complete Form 10s. This means that the data collected from these Forms is incomplete and may not accurately reflect the full number of involuntary referrals, particularly those taken by ambulance or police to an Emergency Department rather than directly to an inpatient mental health facility.

Information from this data is contained in Table 4 and in Appendix 1.

Official Visitor Program

The Official Visitor Program is an independent statutory program under the Act reporting to the Minister for Mental Health. The Program is headed by the Principal Official Visitor, Ms Jan Roberts and supported by two permanent and one temporary staff positions. In March 2008 the Official Visitor Program relocated to share premises with the Tribunal at Gladesville and became administratively reportable to the Registrar of the Tribunal.

Although the Program is administratively supported by the Registrar and staff of the Tribunal, it remains completely independent of the Tribunal in terms of its statutory role. Official Visitors and the Principal Official Visitor continue to report directly to the Minister. The Registrar of the Tribunal is a member of the Official Visitor Advisory Committee. A Memorandum of Understanding was entered into by the Tribunal and the Official Visitor Program in 2009 setting out the agreed systems for raising issues identified by the Tribunal or the Official Visitor Program in relation to the other body.

In May 2014 the Tribunal was consulted as part of a Functional and Operational Review of the Official Visitor Program commissioned by the Ministry of Health. Under its Terms of Reference the Review will consider, among other things, the governance and administrative arrangements for the Program.

Premises

The Tribunal continues to operate from its premises in the grounds of Gladesville Hospital.

The Tribunal has six hearing rooms all fitted with video conferencing facilities. All video conference units are now able to make and receive calls using both IP (internet) and ISDN protocols. Video conferencing equipment has also been installed in the Tribunal's conference room. This room is now used occasionally for 'overflow' hearings when all other hearing rooms are being used. There are two separate waiting areas for use by people attending hearings and rooms available for advocates and representatives to meet with their clients prior to hearings.

One of the Tribunal's hearing rooms continues to be made available for use by the Northern Territory Mental Health Review Tribunal once or twice a week for the conduct of their hearings by video conference using psychiatrist members located in New South Wales.

Renovations were carried out in June 2012 to a previously unused area of the Tribunal's premises to make way for the installation of a large compactus to provide additional storage for Tribunal files. File storage is an ongoing issue for the Tribunal as it maintains a client file for each person for whom a hearing is held. The Tribunal holds records for approximately 37,000 clients.

Venues

Regular liaison with hearing venues is essential for the smooth running of the Tribunal's hearings. Venue coordinators or Tribunal Liaison Clerks at each site provide invaluable assistance in the scheduling of matters; collation of evidence and other relevant information for the panels; contacting family members and advocates for the hearing; and supporting the work of the Tribunal on the day. This role is particularly important in ensuring that all the necessary notifications have occurred and correct documentation is available for mental health inquiries. The Tribunal is very appreciative of the support provided to the Tribunal by these Tribunal Liaison Clerks. As mentioned in the Civil Division report a training session was conducted in October 2013 with Tribunal Liaison Clerks to clarify issues to do with mental health inquiries and civil hearings.

The Tribunal continues to be constrained by the limited resources and facilities available at some mental health facilities and correctional centres. Many venues do not have an appropriate waiting area for family members and patients prior to their hearing. There are safety and security concerns at a number of venues,

with panels utilising hearing rooms without adequate points of access or other appropriate security systems in place. Essential resources such as telephones with speaker capacity are sometimes unavailable in some venues. An audit of facilities available at all venues used for Tribunal hearings was carried out in late 2013. Issues of concern identified at particular venues are being followed up directly with the venue concerned.

Unfortunately, staff at some venues are not always familiar with the video conferencing equipment used to conduct hearings or the help desk or support arrangements in place to deal with problems with this equipment. This was particularly evident again during 2013/14 as more Local Health Districts (LHDs) made changes to their video conference infrastructure to change over to IP video conferencing. Pleasingly, the Tribunal is now able to calls venues in most LHD's using IP video conferencing, which is much more cost effective and has overcome some of the pervious compatibility issues with equipment at some venues.

Community Education and Liaison

During 2013/14 the Tribunal conducted a number of community education sessions to inpatient and community staff at various facilities across the State. These sessions were used to explain the role and jurisdiction of the Tribunal and the application of the Act and the *Mental Health (Forensic Provision) Act 1990*.

In May 2014 the Tribunal's President attended the annual National Heads of Mental Health Review Tribunals and Boards meeting held in Brisbane. The meeting was attended by Presidents and Registrars or Executive Officers from most states and territories across Australia. It provided a valuable forum for discussing common issues and to keep abreast of legislative and other developments in each jurisdiction.

Staff and full time members of the Tribunal also attended and participated in a number of external conferences, training sessions and events.

OUR STAFF AND TRIBUNAL MEMBERS

Staff

Although the number of hearings conducted by the Tribunal has increased more than sevenfold since the Tribunal's first full year of operation in 1991 staffing levels remained relatively the same for many years with the increased workload absorbed through internal efficiencies and the increased use of information technology. Managing the increase in the Tribunal's workload was only been possible due to the ongoing hard work and dedication of the Tribunal's staff.

With the assistance of the Ministry of Health, in July 2013 a number of long term temporary positions were able to be made permanent. This allowed for staff who had been working in positions for many years to be appointed permanently to their positions. As at 30 June 2014, for the first time ever, the Tribunal had all of its positions occupied by permanent staff all working in their own positions. This is a very positive step and provides greater stability for our staff and recognises their ongoing commitment to the work of the Tribunal.

Appendix 4 shows the organisational structure and staffing of the Tribunal as at 30 June 2014.

Tribunal Members

Appendix 3 provides a list of the members of the Tribunal as at 30 June 2014. As at this date the Tribunal had a President, two full time Deputy Presidents, ten part time Deputy Presidents and 120 part time members. Members sit on hearings in accordance with a roster drawn up to reflect members' availability, preferences and the need for hearings. Most members sit between two and four times per month at regular venues.

Due to an ongoing shortage of psychiatrist members, the Tribunal was very pleased to be able to recruit and appoint eight new part time psychiatrist members during the year. A new legal member was also appointed

as well as two new part time Deputy Presidents.

The Tribunal's part time membership reflects a sound gender balance with 70 female part time members and 60 male (this includes three female and seven male part time Deputy Presidents). There are a number of members who have indigenous or culturally diverse backgrounds as well as a number who have a lived experience with mental illness and bring a valuable consumer focus to the Tribunal's hearings and general operations.

The Tribunal is supported by a large number of dedicated and skilled members who bring a vast and varied array of talents and perspectives. The experience, expertise and dedication of these members is enormous and often they are required to attend and conduct hearings in very stressful circumstances at inpatient and community mental health facilities, correctional centres and other venues.

In 2013/14 the Tribunal continued its program of regular professional development sessions for its members. These sessions involve presentations from Tribunal members and staff as well as guest speakers. The sessions are conducted out of hours and no payment is made for members' attendance. The Tribunal is encouraged and appreciative of the high rate of member attendance at these sessions. Topics covered during the reporting period included: furthering recovery in Tribunal hearings, the role of each category of member in Tribunal hearings, key services in the mental health sector, working with women in the forensic system and key recent cases and developments in the forensic area.

In October 2013 the Tribunal partnered with the Mental Health Commission to hold a forum for Tribunal members focusing on 'Recovery Principles in action through the work of the MHRT'. The forum was held on a Saturday at the RichmondPRA Figtree Conference Centre at Olympic Park. It was opened by the then Minister for Mental Health, the Hon Kevin Humphries MP, and was attended by the Mental Health Commissioner, Mr John Feneley, and a large number of Tribunal members and staff as well as some staff from the Mental Health Commission. The Forum was expertly facilitated by InsideOut and Associates. The forum built on previous Professional Development sessions conducted by the Tribunal and was a fantastic opportunity for Tribunal members to learn more about recovery principles and trauma informed care and to reflect on how to give appropriate expression to them through the Tribunal's practices, particularly in hearings. The Tribunal is most appreciative to the Commission for its support in funding the Forum and to the staff of RichmondPRA for their assistance on the day.

The Tribunal continues to regularly distribute practice directions, circulars and information to our members to support their work in conducting hearings. Presidential members are also available on a day-to-day basis to assist and respond to enquiries from members and other parties involved in the Tribunal process.

An important component of striving to maintain the high standards of Tribunal members is the formal appraisal of members, a process which commenced in 2011. During 2014 the Tribunal's full time deputy presidents have been involved in hearing observation and appraisal of part time members. Whilst the aim of the initiative is to ensure that Tribunal members are of the highest standard, the appraisal mechanism also provides the Tribunal with additional opportunities to identify training needs or gaps in service.

The performance of members is appraised against a set of competency criteria drawn from the Tribunal's existing standards and from the 'Competence framework for Chairman and members of Tribunal' (2002) and the 'Fundamental Principles and Guidance for Appraisals in Tribunals and Model Scheme' (2003) published by the Judicial Studies Board (UK) and adopted by other Australian Tribunals.

The appraisal of members occurs at least once during each term of appointment and involves the member completing a self appraisal form, which is used as a basis of discussion with the appraiser. This is followed

by a hearing observation against the agreed standards and results in a report to the President which is signed by the appraiser and the member. The appraisal is a relevant consideration in the reappointment process.

The Tribunal would like to gratefully acknowledge the contribution of the following members who resigned from their appointments during 2013/14: Ms Carolyn Huntsman, Dr William Lucas, Dr Peter Shea and Dr John Woodforde.

FINANCIAL REPORT

The Tribunal receives its funding from the Mental Health Drug and Alcohol Office (MHDAO), Ministry of Health. Total net expenditure for 2013/14 was $6,306,196 (see Appendix 5). This was a decrease of approximately $6,600 (0.1%) from the previous financial year.

A Treasury Adjustment of $400,000 was provided to the Ministry of Health being the agreed amount transferred for the Department of Attorney General and Justice to fund the mental health inquiries role. An additional $400,000 was provided by the Ministry of Health to fund the changes to the mental health inquiry system discussed above. The actual expenditure related to this role for the financial year was $816,684. This included approximately $93,000 being the cost of additional three member Tribunal panels required to deal with the increased number of appeals lodged by patients against an authorised medical officer's refusal to discharge. This amount was $17,000 less than the previous year due to the changes that allowed for some appeals to be considered by a single Tribunal member.

The Tribunal is most appreciative of the support provided by the Minister for Mental Health and MHDAO to enable the Tribunal to meet the obligations of its core business in the statutory review of patients under the Mental Health Act 2007 and the *Mental Health (Forensic Provisions) Act 1990*.

THANK YOU

The Tribunal is very fortunate to have such great staff and fantastic and committed members. I would like to thank the staff and members of the Tribunal for their continued hard work and commitment to the very important work that we do. I would also like to thank those staff in the inpatient and community based mental health facilities with whom the Tribunal has had contact over the last 12 months. The successful operation of the Tribunal in conducting more than 16,500 hearings would not have been possible without their ongoing co-operation and support.

Rodney Brabin
Registrar

5. STATISTICAL REVIEW

5.1 CIVIL JURISDICTION

Table 1

Summary of statistics relating to the Tribunal's civil jurisdiction under the Mental Health Act 2007 for the period 1 July 2013 to 30 June 2014

Section of Act	*Description of Review*	*Hearings (Including Adjournments)*			*% Reviewed by Sex*		*Legally Represented*	*Client Attended*
		M	*F*	*Total*	*M*	*F*		
s9	Review of voluntary patients	39	35	74	53	47	39 (53%)	68 (92%)
s34	Mental Health Inquiry	3424	2808	6232	55	45	6092 (98%)	6014 (97%)
s37(1)(a)	Initial review of involuntary patients prior to expiry of magistrate's order	656	545	1201	55	45	1113 (93%)	1114 (93%)
s37(1)(b)	3 monthly review of involuntary patients after initial 12 month period	390	230	620	63	37	588 (95%)	576 (93%)
s37(1)(c)	Continued review of involuntary patients after initial 12 month period	401	220	621	65	35	341 (55%)	542 (87%)
s44	Appeal against an authorised medical officer's refusal to discharge	365	284	649	56	44	523 (81%)	595 (92%)
s51	Community treatment orders	3157	1911	5068	62	38	2066 (41%)	3644 (72%)
s63	Review of affected persons detained under a community treatment order	9	-	9	100	-	8 (89%)	7 (78%)
s65	Revocation of a community treatment order	5	2	7	71	29	4 (57%)	6 (86%)
s65	Variation of a community treatment order	128	72	200	64	36	7 (4%)	11 (6%)
s67	Appeal against a Magistrate's community treatment order	-	-	-	-	-	-	-
s96(1)	Review of voluntary patient's capacity to give informed consent to ECT	3	2	5	60	40	1 (20%)	2 (40%)
s96(2)	Application to administer ECT to an involuntary patient with or without consent	288	414	702	41	59	514 (73%)	626 (89%)
s99	Review report of emergency surgery involuntary patient	3	2	5	60	40	-	-
s101	Application to perform a surgical operation	12	9	21	57	43	14 (67%)	20 (95%)
s103	Application to carry out special medical treatment	-	3	3	-	100	3 (100%)	3 (100%)
s154(3)	Application to be represented by a person other than an Australian legal practitioner	-	1	1	-	100	- (0%)	- (0%)
s162	Application to publish or broadcast name of patient	3	-	3	100	-	- (0%)	2 (67%)
TOTAL		**8883**	**6538**	**15421**	**58**	**42**	**11313 (73%)**	**13230 (86%)**

Table 2

Summary of statistics relating to the Tribunal's civil jurisdiction under the Mental Health Act 1990/Mental Health Act 2007 for the periods 2010/11, 2011/12, 2012/2013 and 2013/14

	2010/11	*2011/12*	*2012/13*	*2013/14*
Reviews of assessable persons - Mental Health Inquiries (s34)	4447	4910	6321	6232
Reviews of persons detained in a mental health facility for involuntary treatment (s37(1))	2062	2137	2433	2442
Appeal against authorised medical officer's refusal to discharge (s44)	608	775	591	649
Applications for orders for involuntary treatment in a community setting (s51)	4380	4697	5180	5068
Variation and Revocation of Community Treatment Orders (s65)	134	190	191	207
Review of those persons detained in a mental health facility following a breach of the Community Treatment Order (s63)	11	11	8	9
Appeal against a Magistrate's Community Treatment Order (s67)	2	-	-	-
Review of those in a mental health facility receiving voluntary treatment who have been in the facility for more than 12 months (s9)	75	83	77	74
Notice of Emergency Surgery (s99)	2	8	3	5
Consent to Surgical Operation (s101)	9	14	12	21
Consent to Special Medical Treatment (s103)	-	-	-	3
Review voluntary patient's capacity to consent to ECT (s96(1))	5	12	5	5
Application to administer ECT to an involuntary patient	680	671	692	702
Application for representation by non legal practitioner	-	1	-	1
Application to publish or broadcast	-	-	-	3
TOTALS	**12415**	**13509**	**15513**	**15421**

Table 3

Summary of outcomes for reviews of assessable persons at a mental health inquiry for the period 1 July 2013 to 30 June 2014

M	*F*	*T*	*Adjourn*	*Invol Patient Order*	*Discharge*	*Deferred Discharge*	*Discharge on CTO*	*Discharge to Primary Carer*	*Declined to deal with/ withdrawn*	*Reclass to Voluntary*
3424	2808	6232*	503	5268	26	46	360	16	13	-

Note: * These determinations related to 5130 individuals.

Table 4

Flow chart showing progress of involuntary patients admitted during the period July 2013 to June 2014

Persons taken to a mental health facility involuntarily

Total involuntary referrals

Involuntary admissions (10978 mentally ill and 4292 mentally disordered persons)

Mental health inquiries commenced under s34 (includes 503 hearings that were adjourned)

Involuntary patient orders made at a mental health inquiry (30.4% of total involuntary admissions and reclassifications; 84.5% of mental health inquiries commenced)

Involuntary patient reviews by Tribunal under s37(1)(a) (6.9% of total involuntary admissions and reclassifications; 22.8% of persons placed on involuntary orders at a mental health inquiry)

Involuntary patient orders made by Tribunal pursuant to s37(1)(a) review (6.1% of total involuntary admission and reclassifications; 88.2% of patient reviews under s37(1)(a))

Involuntary patient review unders s37(1)(b) (3.6% of total involuntary admissions and reclassifications; 58.5% of patients placed on involuntary orders by Tribunal under s37(1)(a))

Involuntary patient orders made by Tribunal pursuant to s37(1)(b) reviews (3.2% of total involuntary admissions and reclassifications; 90.6% of patient reviews under s37(1)(b)).

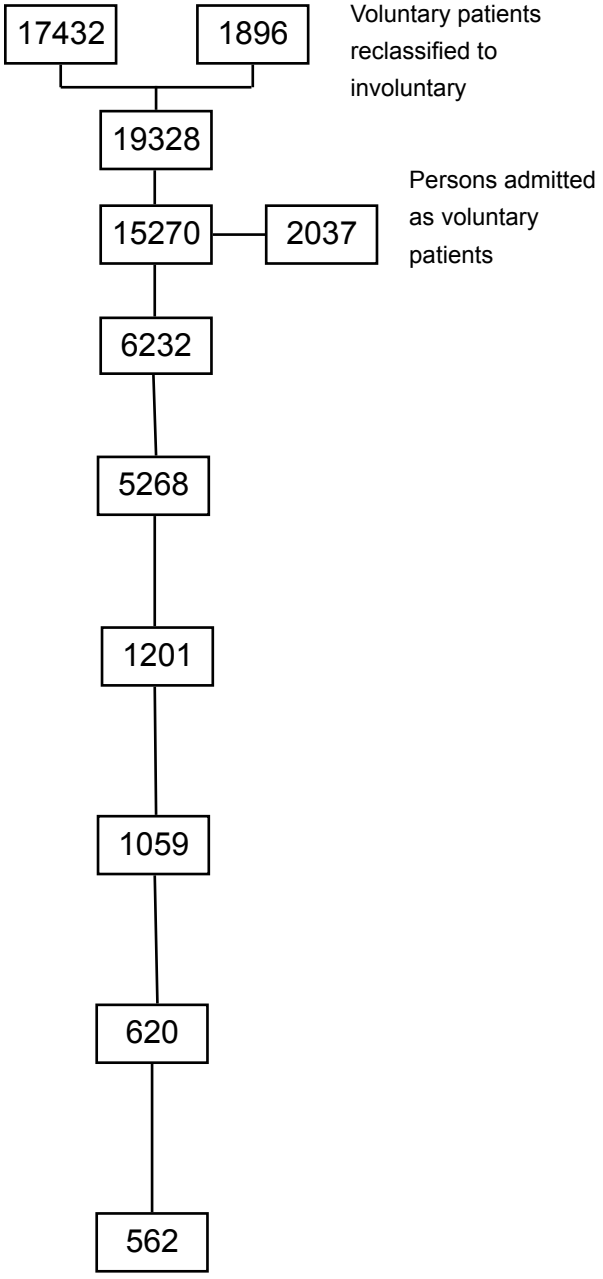


Table 5

Summary of patients subject to Involuntary patient orders or voluntary patient review as at 30 June 2014

Hospital	*s34*	*s37(1)a*	*s37(1)b*	*s37(1)c*	*Total Involuntary*	*Voluntary*	*Total*
Albury	4	1	0	0	5	0	5
Bankstown	7	1	0	0	8	0	8
Bega	2	0	0	0	2	0	2
Blacktown	9	7	3	0	19	1	20
Bloomfield	21	5	17	22	65	11	76
Blue Mountains	6	1	1	0	8	0	8
Braeside	5	3	0	0	8	0	8
Broken Hill	1	0	0	0	1	0	1
Campbelltown	25	3	0	0	28	2	30
Cessnock	0	0	0	0	0	0	0
Coffs Harbour	11	3	0	14	28	0	28
Concord	50	26	16	74	166	7	173
Cumberland	40	25	17	1	83	22	105
Dubbo	6	0	1	0	7	0	7
Forensic Hospital	1	0	0	8	9	0	9
Gosford	9	2	1	0	12	0	12
Goulburn	14	4	1	0	19	0	19
Greenwich	3	1	2	0	6	0	6
Hornsby	14	5	1	2	22	0	22
James Fletcher	0	0	1	0	1	0	1
John Hunter	4	0	1	0	5	0	5
Kenmore	3	2	2	1	8	4	12
Lismore	14	5	2	2	23	0	23
Liverpool	26	19	3	0	48	0	48
Macquarie	7	10	16	116	149	7	156
Maitland	3	6	0	1	10	0	10
Manly	12	6	1	0	19	0	19
Mater MHC	34	17	9	10	70	1	71
Morisset	1	1	4	43	49	5	54
Nepean	15	5	1	2	23	0	23
Prince of Wales	29	5	2	1	37	0	37
Port Macquarie	2	4	1	0	7	0	7
Royal North Shore	7	4	2	0	13	0	13
Royal Prince Alfred	21	13	0	0	34	0	34
Shellharbour	18	5	3	0	26	3	29
St George	20	8	2	2	32	1	33
St Joseph's	9	1	1	0	11	0	11
St Vincent's	15	3	0	0	18	0	18
Sutherland	5	1	3	1	10	0	10
Tamworth	3	6	0	0	9	0	9
Taree	4	5	0	0	9	0	9
Tweed Heads	12	2	0	0	14	0	14
Wagga	8	4	0	2	14	0	14
Westmead Adult Psych	6	1	1	1	9	1	10
Westmead Childrens	2	0	0	0	2	0	2
Westmead Psycho Geriatric	2	0	0	0	2	0	2
Wollongong	6	1	0	0	7	1	8
Wyong	24	11	5	0	40	0	40
Total	**540**	**232**	**120**	**303**	**1195**	**66**	**1261**

Table 6

Involuntary patients reviewed by the Tribunal under the Mental Health Act 2007 for the period 1 July 2013 to 30 June 2014

		M	*F*	*T*	*Adjourn*	*Withdrawn No Jurisdic-tion*	*Discharge/ voluntary*	*Discharge on CTO*	*Continued detention as involuntary patient*
s37(1)(a)	Review prior to expiry order for detention as a result of a mental health inquiry	656	545	1201	112	1	26	3	1059
s37(1)(b)	Review at least once every 3 months during first 12 months person is an involuntary patient	390	230	620	46	-	9	3	562
s37(1)(c)	Review at least once every 6 months while person is an involuntary patient after first 12 months	401	220	621	28	-	2	1	590
Total		1447	995	2442	186	1	37	7	2211

Note: The 1201 reviews under s37(1)(a) related to 1099 individuals
The 620 reviews under s37(1)(b) related to 399 individuals
The 621 reviews under s37(1)(c) related to 349 individuals
The total of 2442reviews under s37(1) related to 1512 individuals

Table 7

Summary of outcomes of appeals by patients against an authorised medical officer's refusal of or failure to determine a request for discharge (s44) during the periods 2007/8 - 2013/14

	M	F	T	Adjourned	Withdrawn no jurisdiction	Appeal Dismissed	Dismissed and no further Appeal to be heard prior to next scheduled review	Discharged	Reclass to Voluntary
Jul 07 - Jun 08	104	53	157	20	9	116	9	3	-
Jul 08- Jun 09	105	94	199	16	12	144	15	12	-
Jul 09 - Jun 10	137	118	255	27	14	192	18	3	1
Jul 10 - Jun 11	336	272	608	50	43	471	18	25	1
Jul 11 - Jun 12	413	362	775	49	62	613	20	26	5
Jul 12 - Jun 13	304	287	591	46	28	461	26	29	1
Jul 13 - Jun 14	365	284	649*	56	25	521	25	22	-

Note: * These determinations related to 504 individudals

Table 8

Community Treatment Orders for declared mental health facilities made by the Tribunal for the periods 2011/12, 2012/13 and 2013/14

Health Care Agency	*2011/12 Total CTOs*	*2012/13 Total CTOs*	*2013/14 Total CTOs*	*Health Care Agency*	*2011/12 Total CTOs*	*2012/13 Total CTOs*	*2013/14 Total CTOs*
Albury CMHS	10	12	20	James Fletcher Hospital	-	-	-
Auburn CHC	38	35	27	Kempsey CMHS	28	36	32
Bankstown MHS	144	157	165	Lake Illawarra Sector MHS	114	110	135
Bega Valley Counselling & MHS	26	20	20	Lake Macquarie MHS	90	96	78
Blacktown	172	190	189	Leeton/Narrandera CHC	2	3	4
Blue Mountains MHS	93	101	101	Lismore MHOPS	88	90	89
Bondi Junction CHC	9	5	7	Liverpool MHS	118	154	145
Bowral CMHS	19	11	9	Macquarie Area MHS	72	69	79
Campbelltown MHS	188	160	160	Manly Hospital & CMHS	142	150	141
Camperdown	124	140	155	Maroubra CMH	217	202	184
Canterbury CMHS	111	119	137	Marrickville CMHS	147	165	143
Central Coast AMHS	265	282	302	Merrylands CHC	117	132	112
Clarence District HS	43	47	37	Mid Western CMHS	71	102	123
Coffs Harbour MHOPS	87	98	84	Mudgee MHS	2	2	7
Cooma MHS	5	11	21	Newcastle MHS	134	124	145
Cootamundra MHS	2	1	1	Northern Illawarra MHS	115	135	144
Croydon	151	182	166	Orange C Res/Rehab Services	19	17	15
Deniliquin District MHS	7	4	9	Parramatta	102	77	86
Dundas CHC	28	29	27	Penrith MHS	97	114	118
Eurobodalla CMHS	19	23	15	Port Macquarie CMHS	81	54	63
Fairfield MHS	158	153	191	Queanbeyan MHS	37	35	49
Far West MHS	48	54	30	Redfern CMHS	60	74	59
Goulburn CMHS	52	48	38	Royal North Shore H & CMHS	128	139	147
Granville	17	20	17	Ryde Hospital & CMHS	89	97	109
Griffith (Murrumbidgee) MHS	9	15	17	Shoalhaven MHS	42	31	49
Hawkesbury MHS	22	10	26	St George Div of Psychiatry & MH	253	242	241
Hills CMHC	55	52	42	Sutherland C Adult & Family MHS	111	97	87
Hornsby Ku-ring-gai Hospital & CMHS	92	107	100	Tamworth	5	6	1
Hunter	23	11	3	Taree CMHS	48	77	52
Hunter NE Mehi/McIntyre	21	29	27	Temora	11	15	16
Hunter NE Peel	24	33	29	Tumut	8	9	6
Hunter NE Tablelands	13	15	15	Tweed Heads	128	124	118
Hunter Valley HCA	53	55	55	Wagga Wagga CMHS	42	48	54
Inner City MHS	125	151	97	Young MHS	13	15	14

Total Number of Community Treatment Orders 2011-12 4984*
Total Number of Community Treatment Orders 2012-13 5221**
Total Number of Community Treatment Orders 2013-14 5184***

* Includes 581 Community Treatment Orders made at mental health inquiries.
** Includes 339 Community Treatment Orders made at mental health inquiries.
*** Includes 360 Community Treatment Orders made at mental health inquiries.

Table 9

Number of Community Counselling Orders and Community Treatment Orders made by the Tribunal and by Magistrates for the period 2002 to 2013/14

	2002	2003	2004	2005	2006	2007	2007/8	2008/9	2009/10	2010/11	2011/12	2012/13	2013/14
Total MagistrateCCO/ CTOs	578	1159	2092	1542	1585	1460	1318	997	806	-	-	-	-
Mental Health Inquiry CTOs									10	566	581	339	360
Total TribunalCCO/ CTOs	3220	3676	3992	4325	4661	4854	4706	4058	3956	4128	4426	4882	4824
Total CCO/CTOs made	**3798**	**4835**	**6084**	**5867**	**6256**	**6314**	**6024**	**5055**	**4772**	**4694**	**5007**	**5221**	**5184**

Table 10

Summary of outcomes for applications for Community Treatment Orders (s51) 2013/14

	M	F	Total	Adjourned	Withdrawn No Jurisdiction	Application Decline	CTO Made
Application for CTO for a person on an existing CTO	1388	833	2221	35	-	16	2170
Application for a CTO for a person detained in a mental health facility	926	603	1529	69	6	30	1424
Application for a CTO not detained or on a current CTO	843	475	1318	63	2	23	1230
Totals	**3157**	**1911**	**5068**	**167**	**8**	**69**	**4824**

Note: * These determinations related to 3450 individuals

Table 11

Tribunal determinations of ECT consent inquiries for voluntary patients for period 2013/14

Adjourned	1
Capable and has consented	1
Incapable of consent	3
Total	**5***

Note: * These determinations related to five individuals

Table 12

Tribunal determinations of ECT administration inquiries for civil patients for the periods 2010/11, 2011/12, 2012/13 and 2013/14

Outcome	2010/11	2011/12	2012/13	2013/14
Capable and has consented	28	24	31	30**
Incapable of giving informed consent	-	-	-	-
ECT approved	584	581	560	616***
ECT not approved	23	11	38	15
No jurisdiction/withdrawn	7	13	7	6
Adjourned	38	42	56	49
Totals	**680**	**671**	**692***	**716**

Note: * These determinations related to 426 individual patients
** Includes one forensic patient determination
*** Includes 14 forensic patients determinations

Table 13

Summary of notifications received in relation to emergency surgery (s99) during the priods 2010/11, 2011/12, 2012/13 and 2013/14

	M	F	T	Lung/Heart/ Kidney	Pelvis/Hip/ Leg	Tissue/Skin	Hernia	Gastro/ Bowel/ Abdominal	Brain
2010/11	1	1	2	1	1	-	-	-	-
2011/12**	3	5	8	4	-	1	-	1	1
2012/13	1	2	3	1	1	-	1	-	-
2013/14	3	2	5	1	-	-	-	4	-

Note: ** Includes emergency surgery for one forensic patient.

Table 14

Summary of outcomes for applications for consent to surgical procedures (s101) and special medical treatments (s103) for the period 2013/14

	M	***F***	***T***	***Approved***	***Refused***	***Adjourned***	***No Jurisdiction***
Surgical procedures	13	10	23*	16	5	2	-
Special medical treatment	-	3	3**	2	-	1	-

Note: * These determinations related to 17 individuals and includes two forensic patients
** These determinations related to two individuals

5.2 FINANCIAL MANAGEMENT

Table 15

Summary of statistics relating to the Tribunal's jurisdiction under the NSW Trustee & Guardian Act 2009 for the period July 2013 to June 2014

Section of Act	*Description of Reviews*	*Reviews*			*Adjourn-ments*	*With-drawn no jurisdic-tion*	*Order made*	*No Order made*	*Interim Order under s20*	*Revoca-tion Ap-proved*	*Revo-cation Declined*	*Legal Repres.*
		M	*F*	*T*								
s44	At a Mental Health Inquiry	31	20	51	13	3	23	9	3	-	-	48
s45	Forensic patients	1	1	2	-	-	2	-	-	-	-	2
s46	On application to Tribunal for Order	60	48	108	16	3	60	19	10	-	-	101
s48	Review of interim FM order	3	1	4	-	-	2	1	1	-	-	4
s88	Revocation of Order	16	12	28	6	-	-	-	-	18	4	16
Total		**111**	**82**	**193**	**35**	**6**	**87**	**29**	**14**	**18**	**4**	**171**

5.3 FORENSIC JURISDICTION

Table 16

Combined statistics for Tribunal reviews of forensic patients under the Mental Health (Forensic Provisions) Act 1990 for 2012/13 and 2013/14

Description of Review	***2012/13 Reviews***			***2013/14 Reviews***		
	M	F	T	M	F	T
Review after finding of not guilty by reason of mental illness (s44)	26	6	32	23	1	24
Review after detention or bail imposed under s17 MHCPA following finding of unfitness (s45(1)(a))	-	-	-	-	-	-
Review after limiting term imposed following a special hearing (s45(b))	2	-	2	3	-	3
Regular review of forensic patients (s46(1))	620	67	687	643	75	718
Application to extend period of review of forensic patients (s46(4))	1	-	1	-	-	-
Regular review of correctional patients (s61(1))	11	-	11	10	-	10
Review of a forensic patient following their apprehension due to an alleged breach of a condition of leave or release (s68(2))	41	5	46	27	-	27
Application by a victim of a forensic patient for the imposition of a non contact or place restriction condition on the leave or release of the forensic patient (s76)	6	-	6	2	1	3
Initial review of person transferred from prison to MHF (s59)	57	6	63	69	2	71
Review of person awaiting transfer from prison (s58)	21	1	22	19	1	20
Application for a forensic community treatment order (s67)	8	2	10	16	-	16
Application to vary forensic community treatment order (s65)	1	-	1	4	-	4
Regular review of person subject to a forensic community treatment order and detained in a correctional centre (s61(3))	-	-	-	-	-	-
Appeal against decision of Director-General (s76F)	-	-	-	-	-	-
Application for ECT (s96)[1]	3	-	3	14	-	14
Application for surgical operation (s101)	-	-	-	1	1	2
Application for access to medical records (s156)	-	-	-	-	-	-
Application to allow publication of names (s162)	-	-	-	3	-	3
Approval of change of name (s31D)	4	1	5	-	2	2
Total	**834**	**83**	**917**	**834**	**83**	**917**
Determinations						
Fitness s16	42	1	43	33	11	44
Following limiting term s24	11	-	11	11	-	11
Total	**53**	**1**	**54**	**44**	**11**	**55**
Combined Total	**854**	**89**	**943**	**878**	**94**	**972**

[1] In 2012/13 the Tribunal approved the administration of ECT for forensic patients on three occasions and in 2013/14 on 14 occasions in relation to six forensic patients

Table 17

Determinations following reviews held under the Mental Health (Forensic Provisions) Act 1990 for the periods 2012/13 and 2013/14

	2012/13			2013/14		
	M	F	T	M	F	T
Forensic Community Treatment Order	7	2	9	16	-	16
Variation to Forensic CTO	1	-	1	4	-	4
Revocation of Forensic CTO	-	-	-	-	-	-
Determination under s59 person IS a mentally ill person who should continue to be detained in a mental health facility	52	6	58	61	2	63
Determination under s59 person IS NOT a mentally ill person who should continue to be detained in a mental health facility	3	-	3	1	-	1
Determination under s59 person is NOT a mentally ill person and should NOT continue to be detained in a mental health facility	-	-	-	5	-	5
Classification as an involuntary patient	4	-	4	2	-	2
Determination under s76F appeal against Director-General's failure or refusal to grant leave allowed, leave granted	-	-	-	-	-	-
Approval for publication of name under s162	-	-	-	3	-	3
Approval for change of name	-	-	-	-	2	2
Adjournments	4	1	5	-	-	-
Total	71	9	80	92	4	96

Table 18

Outcomes of reviews held under the Mental Health (Forensic Provisions) Act 1990 for the periods 2012/13 and 2013/14

	2012/13			2013/14		
	M	F	T	M	F	T
No change in conditions of detention	420	43	463	331	37	368
Transfer to another facility	60	4	64	61	3	64
Order to be detained in a mental health facility	-	-	-	72	2	74
Revocation of order for transfer to a mental health facility	1	-	1	-	-	-
Grant of leave of absence	74	12	86	104	16	120
Revocation of leave of absence	-	-	-	1	-	1
Less restrictive conditions of detention	-	-	-	1	1	2
Conditional release	6	2	8	11	-	11
No change to conditional release	114	13	127	113	17	130
Variation of conditions of release	48	6	54	54	5	59
Revocation of conditional release	2	-	2	-	-	-
Unconditional release	4	-	4	4	1	5
Non-association or place restriction on leave or release (s76)	5	-	5	2	1	3
Extend review period to 12 months[1]	34	1	35	36	1	37
Adjournments	58	5	63	45	-	45
Order for apprehension or detention	4	1	5	1	-	1
Decision Reserved	4	-	4	6	-	6
No jurisdiction	-	-	-	2	-	2
Hearing conducted in private	1	-	1	-	-	-
Total	**835**	**87**	**922**	**844**	**84**	**928**

[1] Under s 46(5)(b) the Tribunal may extend the review period of forensic and correctional patients from six months up to 12 months if it is satisfied that there are reasonable grounds to do so or that an earlier review is not required because:

(i) there has been no change since the last review in the patient's condition, and
(ii) there is no apparent need for any chane in existing orders relating to the patient, and
(iii) an earlier review may be detrimental to the condition of the patient.

Table 19

Determinations of the Mental Health Review Tribunal as to fitness to stand trial following reviews held under the Mental Health (Forensic Provisions) Act 1990 for the periods 2012/13 and 2013/14

	2012/2013			2013/14		
	M	**F**	**T**	**M**	**F**	**T**
s16 person WILL become fit to stand trial on the balance of probabilities within 12 months	6	-	6	7	-	7
s16 person WILL NOT become fit to stand trial on the balance of probabilities within 12 months	24	1	25	18	6	24
s24 person is mentally ill	2	-	2	7	-	7
s24 person is suffering from a mental condition and DOES object to being detained in a mental health facility	1	-	1	1	-	1
s24 person is suffering from a mental condition and DOES NOT object to being detained in a mental health facility	5	-	5	-	-	-
s24 person is neither mentally ill nor suffering from a mental condition	3	-	3	1	-	1
s45 person has not become fit to stand trial and will not become fit within 12 months	2	-	2	3	-	3
s47 person has become fit to stand trial	10	1	11	6	-	6
s47 person has not become fit to stand trial and will not become fit within 12 months	68	4	72	57	1	58
Adjournments/Decision Reserved	12	-	12	10	5	15
TOTAL	**133**	**6**	**139**	**110**	**12**	**126**

Table 20			
Location of forensic and correctional patients as at 30 June 2012, 30 June 2013 and 30 June 2014			
	30 June 2012	**30 June 2013**	**30 June 2014**
Bathurst Correctional Centre	2	1	-
Blacktown Hospital	1	1	1
Bloomfield Hospital	12	17	21
Blue Mountains Hospital	1	2	-
Cessnock Correctional Centre	1	2	-
Community	92	97	120
Concord Hospital	8	6	6
Cumberland Hospital - Bunya Unit and Cottages	34	37	31
Forensic Hospital	103	111	112
Gosford Hospital	-	1	-
Goulburn Correctional Centre	6	4	4
High Risk Management Correctional Centre	1	-	-
Junee Correctional Centre	1	-	-
Juvenile Justice Centre	1	-	-
Lismore Hospital	-	1	-
Liverpool Hospital	2	3	1
Long Bay Prison Hospital	42	38	43
Macquarie Hospital	7	9	7
Maitland Hospital	-	-	1
Metropolitan Remand and Reception Centre	28	19	23
Metropolitan Special Programs Centre	6	8	8
Mid North Coast Correctional Centre	-	-	1
Morisset Hospital	32	31	32
Nepean Hospital	1	-	2
Parklea Correctional Centre	-	-	2
Shellharbour	2	2	2
Silverwater Womens Correctional Centre	3	1	1
Sutherland Hospital	-	-	1
Wellington Correctional Centre	-	1	-
Windsor Correctional Cenre	-	-	1
Wyong	1	1	2
TOTAL	**387**	**393**	**422**

Table 21

Location of hearings held for forensic and correctional patients during 2011/12, 2012/13 and 2013/14

	2011/12	2012/2013	2013/14
Bathurst Correctional Centre	-	2	-
Bloomfield Hospital	3	-	39
Concord Hospital	-	2	-
Cumberland Hospital - Bunya Unit	94	88	83
Forensic Hospital	224	232	252
Goulburn Gaol	-	7	-
Long Bay Prison Hospital	142	147	181
Macquarie Hospital	11	15	14
Metropolitan Remand and Reception Centre	85	73	64
Morisset Hospital	69	65	69
Silverwater Womens Correctional Centre	3	-	-
Tribunal Premises	297	312	270
TOTAL	**928**	**943**	**972**

Table 22

Category of forensic and correctional patients as at 30 June 2013 and 30 June 2014

Category	**Male**		**Female**		**Total**	
Year	**June 13**	**June 14**	**June 13**	**June 14**	**June 13**	**June 14**
Not Guilty by Reason of Mental Illness	280	299	33	33	313	332
Fitness/Fitness Bail	25	28	2	4	27	32
Limiting Term	23	25	1	-	24	25
Correctional Patients	23	23	-	1	23	24
Forensic CTO	4	8	1	-	5	8
Norfolk Island NGMI	1	1	-	-	1	1
Total	**356**	**384**	**37**	**38**	**393**	**422**

Table 23

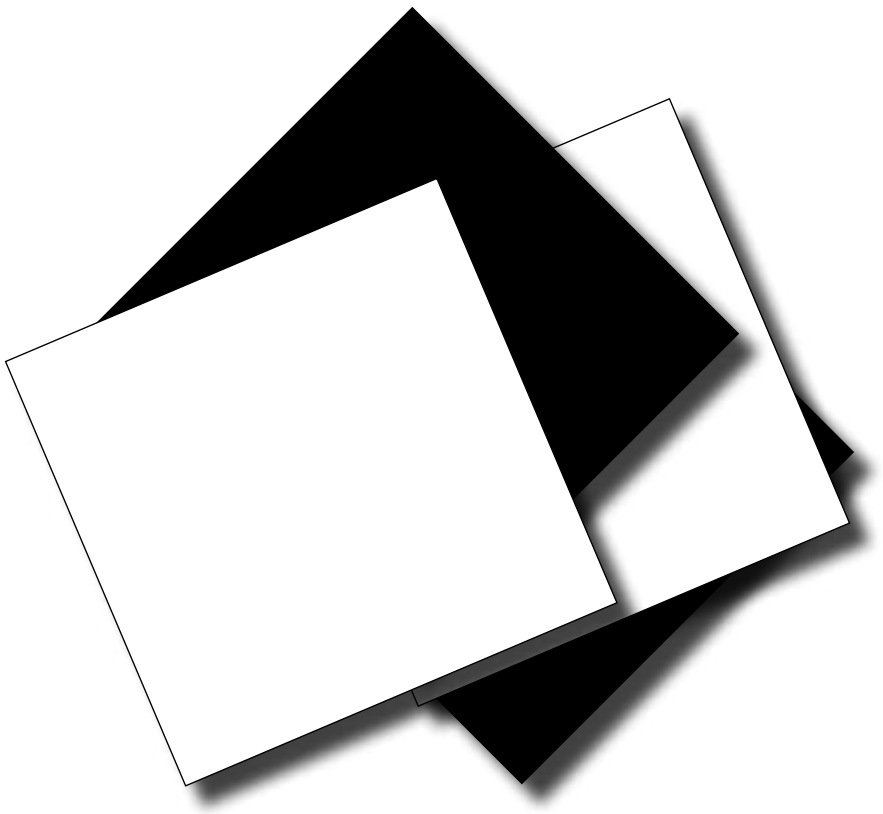
Number of forensic and correctional patients 1996 - 30 June 2014

Year	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
Forensic Patients	122	126	144	176	193	223	247	279	277	284	310	309	315	319	348	374	387	393	422

NOTE: Figures for 1996-2001 taken from MHRT Annual Reports as at 31 December of each year. Figures from 2002 - 2014 were taken as at 30 June of these years. Figures for 2009 - 2014 include correctional patients. Figures for 2011 - 2014 include one Norfolk Island forensic patient.

Mental Health
Review Tribunal

APPENDICES



Patient statistics required under MHA s147(2) concerning people taken to a mental health facility during the period July 2013 to June 2014

(1) s147(2)(a)

The number of persons taken to a mental health facility and the provisions of the Act under which they were so taken.

	Method of referal	*Admitted*	*Not Admitted*	*Total*
MHA90/MHA07				
s19	Certificate of Doctor	10854	264	11118
s22	Apprehension by Police	2175	1041	3216
s20	Ambulance Officer	908	303	1211
s142/s58	Breach Community Treatment Order	117	21	138
s23/s26	Request by primary carer/relative/friend	1134	-	1134
s25/s24	Order of Court	266	89	355
s23 via s19	Authorised Doctor's Certificate	251	9	260
Total Admissions		**15705**	**1727**	**17432**
Reclassified from Voluntary to Involuntary		1602	294	1896
TOTAL		**17307**	**2021**	**19328**

(2) s147(2)(b)

Persons were detained as mentally ill persons on 10978 occasions and as mentally disordered persons on 4292 occasions. 2037 persons were admitted as voluntary patients.

(3) s147(2)(c)

A total of 6232 mental health inquiries were commenced relating to 5130 individuals.

Outcome of mental health inquiries conducted 1 July 2013 - 30 June 2014

	MHRT
Adjourned	503
Discharge or deferred discharge	88
Reclassify from involuntary to voluntary	-
Involuntary patient order	5268
Community treatment order	360
Declined to deal with	13
TOTAL	**6232**

(4) s147(2)(d)

In 2013/14 of the 19328 persons taken involuntarily to a mental health facility or reclassified from voluntary to involuntary: 2021 were not admitted; 2037 people were admitted as a voluntary patient and 15270 were detained as either a mentally ill or mentally disordered person - a total of 17307 admissions (including 1602 of the 1896 people who were reclassified from voluntary to involuntary).

There were 6232 mental health inquiries commenced with 5268 involuntary patient orders made. Of these only 1201 patients remained in a mental health facility until the end of the involuntary patient order (which could be made for a maximum of three months) and were reviewed by the Tribunal. This means 4067 people were discharged from a mental health facility or reclassified to voluntary status prior to the end of their initial involuntary patient order.

The jurisdiction of the Tribunal as at 30 June 2014 as set out in the various Acts under which it operates is as follows:

Mental Health Act 2007 Matters

• Review of voluntary patients	s9
• Reviews of assessable persons - mental health inquiries	s34
• Initial review of involuntary patients	s37(1)(a)
• Review of involuntary patients during first year	s37(1)(b)
• Continued review of involuntary patients	s37(1)(c)
• Appeal against medical superintendent's refusal to discharge	s44
• Making of community treatment orders	s51
• Review of affected persons detained under a community treatment order	s63
• Variation of a community treatment order	s65
• Revocation of a community treatment order	s65
• Appeal against a Magistrate's community treatment order	s67
• Review of voluntary patient's capacity to give informed consent to ECT	s96(1)
• Application to administer ECT to an involuntary patient (including forensic patients) with or without consent	s96(2)
• Inspect ECT register	s97
• Review report of emergency surgery involuntary patient	s99(1)
• Review report of emergency surgery forensic patient	s99(2)
• Application to perform a surgical operation on an involuntary patient	s101(1)
• Application to perform a surgical operation on a voluntary patient or a forensic patient not suffering from a mental illness	s101(4)
• Application to carry out special medical treatment on an involuntary patient	s103(1)
• Application to carry out prescribed special medical treatment	s103(3)

NSW Trustee & Guardian Act 2009 Matters

• Consideration of capability to manage affairs at mental health inquiries	s44
• Consideration of capability of forensic patients to manage affairs	s45
• Orders for management	s 46
• Interim order for management	s47
• Review of interim orders for management	s48
• Revocation of order for management	s86

Mental Health (Forensic Provisions) Act 1990 Matters

• Determination of certain matters where person found unfit to be tried	s16
• Determination of certain matters where person given a limiting term	s24
• Initial review of persons found not guilty by reason of mental illness	s44
• Initial review of persons found unfit to be tried	s45
• Further reviews of forensic patients	s46(1)
• Review of forensic patients subject to forensic community treatment orders	s46(3)
• Application to extend the period of review for a forensic patient	s46(4)
• Application for a grant of leave of absence for a forensic patient	s49
• Application for transfer from a mental health facility to a correctional centre for a correctional patient	s57
• Limited review of persons awaiting transfer from a correctional centre to a mental health facility	s58
• Initial review of persons transferred from a correctional centre to a mental health facility	s59
• Further reviews of correctional patients	s61(1)
• Review of those persons (other than forensic patients) subject to a forensic community treatment order	s61(3)
• Application to extend the period of review for a correctional patient	s61(4)
• Application for a forensic community treatment order	s67
• Review of person following apprehension on an alleged breach of conditions of leave or release	s68(2)
• Requested investigation of person apprehended for a breach of a condition of leave or release	s69
• Application by victim of a patient for a non association or place restriction condition to be imposed on the leave or release of the patient	s76
• Appeal against Director-General's refusal to grant leave	s76F

Births, Deaths and Marriages Registration Act 1995 Matters

• Approval of change of name	s31D
• Appeal against refusal to change name	s31K

APPENDIX 3

Mental Health Review Tribunal Members as at 30 June 2014

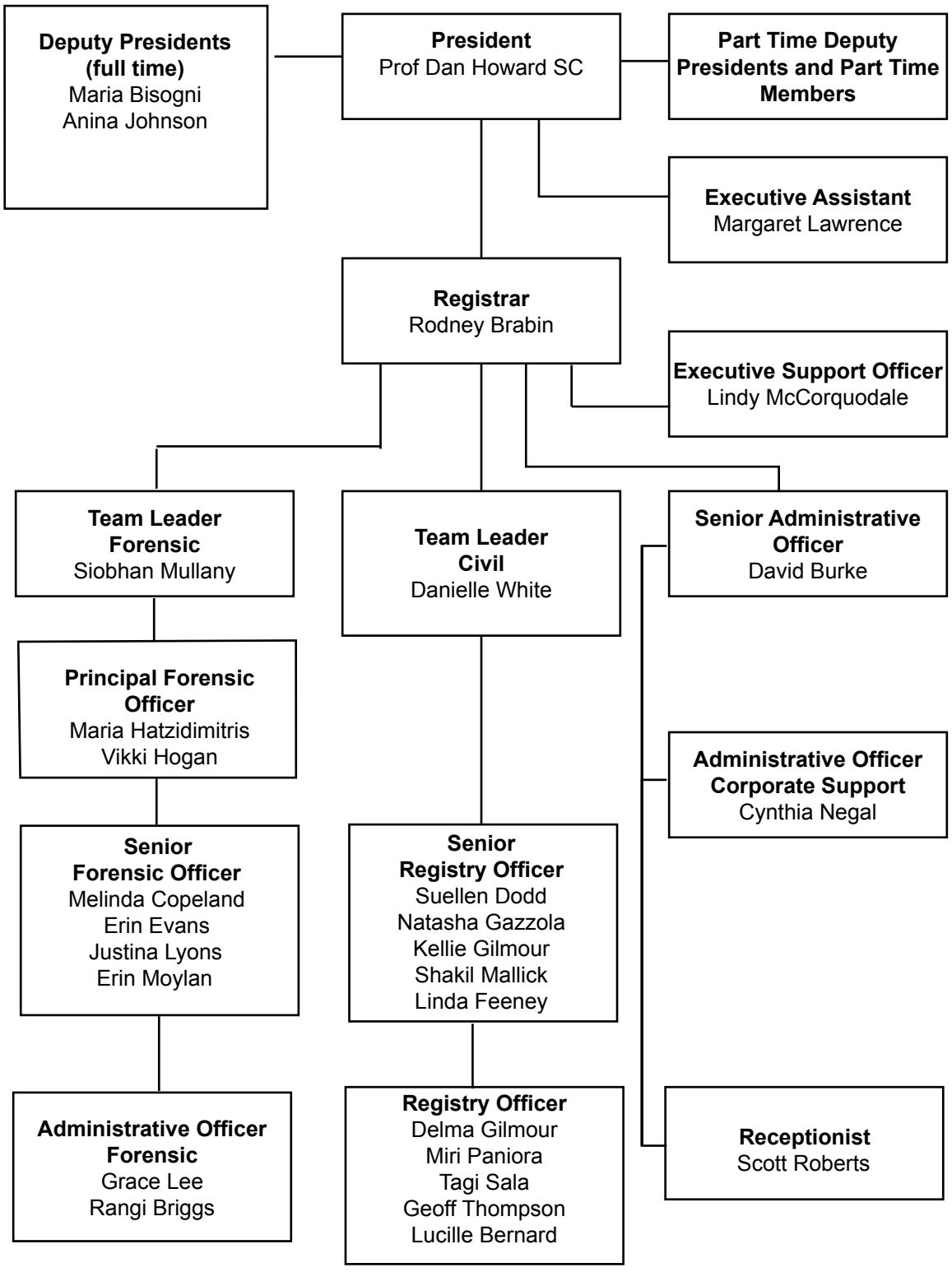
Full-Time Members	Professor Dan Howard SC (President)	Ms Maria Bisogni (Deputy President)	Ms Anina Johnson (Deputy President)
Part-Time Deputy Presidents	The Hon John Dowd AO QC The Hon Terry Buddin SC The Hon Hal Sperling QC The Hon Mark Marien	Mr Richard Gulley AM RFD Mr Geoffrey Graham The Hon Patricia Staunton AM	The Hon Ken Taylor RM RFD The Hon Helen Morgan Ms Mary Jerram

	Lawyers	**Psychiatrists**	**Other**
Part-Time Members	Ms Carol Abela	Dr Clive Allcock	Ms Lyn Anthony
	Ms Diane Barnetson	Dr Stephen Allnutt	Ms Elisabeth Barry
	Ms Rhonda Booby	Dr Josephine Anderson	Mr Peter Bazzana
	Mr Peter Braine	Dr Dinesh Arya	Mr Ivan L Beale
	Ms Catherine Carney	Dr Uldis Bardulis	Ms Diana Bell
	Ms Jennifer Conley	Assoc Prof John Basson	Ms Christine Bishop
	Ms Janice Connelly	Dr Jenny Bergen	Mr Peter Champion
	Mr Shane Cunningham	Dr Andrew Campbell	Mr Gerald Cheung
	Ms Jenny D'Arcy	Dr Raphael Chan	Ms Gillian Church
	Ms Linda Emery	Dr Shailja Chaturvedi	Ms Felicity Cox
	Ms Christine Fougere	Dr June Donsworth	Dr Leanne Craze
	Mr Phillip French	Dr Charles Doutney	Mr Michael Gerondis
	Ms Helen Gamble	Dr Michael Giuffrida	Mr John Hageman
	Ms Michelle Gardner	Dr Robert Gordon	Mr John Haigh
	Mr Anthony Giurissevich	Dr Adrienne Gould	Ms Corinne Henderson
	Ms Yvonne Grant	Prof James Greenwood	Ms Sunny Hong
	Mr Robert Green	Dr Jean Hollis	Ms Lynn Houlahan
	Ms Eraine Grotte	Dr Rosemary Howard	Ms Susan Johnston
	Mr David Hartstein	Dr Mary Jurek	Ms Janet Koussa
	Mr Hans Heilpern	Dr Peter Klug	Ms Rosemary Kusuma
	Mr John Hislop	Dr Karryn Koster	Ms Jenny Learmont AM
	Ms Barbara Hughes	Dr Dorothy Kral	Ms Robyn Lewis
	Ms Julie Hughes	Dr Lisa Lampe	Ms Leonie Manns
	Mr Michael Joseph SC	Dr Rob McMurdo	Dr Meredith Martin
	Mr Thomas Kelly	Dr Sheila Metcalf	Ms Sally McSwiggan
	Mr Dean Letcher	Dr Janelle Miller	Mr Shane Merritt
	Ms Monica MacRae	Dr Olav Nielssen	Ms Tony Ovadia
	Mr Michael Marshall	Dr Enrico Parmegiani	Mr Rob Ramjan
	Ms Carol McCaskie	Dr Martyn Patfield	Ms Felicity Reynolds
	Mr Lloyd McDermott	Dr Daniel Pellen	Ms Jacqueline Salmons
	Ms Miranda Nagy	Dr Geoffrey Rickarby	Mr Peter Santangelo
	Ms Anne Scahill	Dr Vanessa Rogers	Ms Robyn Shields
	Ms Tracy Sheedy	Dr Rajkumar Sadanand	Ms Alice Shires
	Mr Jim Simpson	Dr Satya Vir Singh	Assoc Prof Meg Smith
	Ms Rohan Squirchuk	Dr John Spencer	Dr Suzanne Stone
	Mr Bill Tearle	Dr Gregory Steele	Ms Bernadette Townsend
	Mr Herman Woltring	Dr Victor Storm	Ms Pamela Verrall
		Prof Christopher Tennant	Dr Ronald Witton
		Dr Paul Thiering	Prof Stephen Woods
		Dr Susan Thompson	
		Dr Yvonne White	
		Dr Rosalie Wilcox	
		Dr Rasiah Yuvarajan	

The Tribunal also notes its appreciation for the following members whose appointments ended during 2013/14: Ms Carolyn Huntsman, Dr William Lucas, Dr Peter Shea and Dr John Woodforde.

MENTAL HEALTH REVIEW TRIBUNAL

Organisational Structure and Staffing as at 30 June 2014



FINANCIAL SUMMARY

Expenditure 2013/14

Expenditure for 2013/14 was directed to the following areas:

Salaries and Wages	2,966,651
Goods and Services	*3,283,627
Equipment, repairs and maintenance	50,996
Depreciation	15,785
Expenditure	**6,317,059
Less Revenue	4,265

* Includes $2,832,432 payment of part-time member fees.

** Includes expenditure of $816,684 on the Mental Health Inquiries program.

FILE REVIEW OF HEARINGS INVOLVING APPLICATIONS FOR ADMINISTRATION OF ECT TO INVOLUNTARY PATIENTS UNDER 18 YEARS OF AGE FOR THE PERIOD 1/1/2007 TO 30/6/2013

The Study:

The Tribunal was assisted by one of its psychiatrist members in conducting a file review and analaysis of all files where applicaitons for Electroconvulsive Therapy (ECT) administration for young people under 18 years were made to the MHRT between 1/1/2007 and 30/6/2013. This was for quality assurance purposes and in the context of the current Review of the *Mental Health Act 2007* that raised for discussion the provisions relating to the administration of ECT to young persons.

The Tribunal considered whether the applications complied with the following three different guidelines relating to ECT for children and adolescents:

1. NSW Ministry of Health Minimum Standards of Practice in NSW,
2. RANZCP guidelines, and
3. the more detailed "Practice Parameter for use of ECT with Adolescents" (2004) from the American Academy of Child & Adolescent Psychiatry

The numbers involved:

Over 6.5 years the Tribunal has had 38 applications in respect of 22 young people, but removing adjourned applications that did not proceed, this came down to 34 applications for 21 young people.

There were two obvious outliers. (Outlier 1 was not included in the 'Summary of findings' below):

1. 11 year old in a paediatric ICU with life threatening Status Epilepticus, for whom ECT was a treatment of last resort (an extraordinarily rare situation).
2. 16-18 year old with very severe treatment resistant Schizophrenia for whom the Tribunal received multiple applications for ECT both prior to her turning 18 and after, over a two year period.

Summary of findings:

- All had a severe psychiatric illness, that complied with guidelines for indications, both in terms of diagnosis (Severe Mood Disorder - 57%, Schizophrenia/Psychosis - 43%), degree of severity, and lack of response/inability to tolerate alterenate treatments.
- There was only only client who was 15 years old, six who were 16 years and 14 who were 17 years of age, who had ECT approved. So no one under 15 years had ECT approved for a psychiatric condition and 97% were 16/17 years.
- The opinion of Child & Adolescent Psychiatrist was documented in 83% of cases. (Most that didn't were 17 years).
- In less than half of cases, a second opinion was documented, and in nearly all of those it was documented briefly, handwritten in hospital file notes and from a psychiatrist at same hospital.
- Baseline pre ECT psychometric testing was not documented in most cases (possibly because the young person was too ill to cooperate with this).
- Medical work up was not recorded in reports to the Tribunal in about half of applications (but it is most likely that it had been done and was verbally discussed at hearing).
- Nearly all clients were assessed as incapable of giving informed consent. Four were deemed capable - two gave consent in writing, two refused. Of the two who refused, the Tribunal approved ECT for one, and

two applications were refused for the other. These were the only applications refused in this series of cases. The Tribunal adjourned three applications - twice to allow more time for parents to get information/ discuss with treating team, and once to allow objecting parents to attend hearing.

- The client was present at hearing for 75% of applications and too ill to attend for 25%. A parent attended the hearing 82% of the time, and was documented as consenting 47%, opposing 15% and not recorded 38%.
- There was no legal representation in 32% of hearings (Note: recent changes by Legal Aid NSW should mean that legal representation should now be provided in more ECT applications).
- 62% of clients were in tertiary level Child & Adolescent Mental Health (CAMHU) units and 38% were in adult psychiatric wards (all were 17 years of age except for one 16 year old in a rural mental health facility, where the team had tried to transfer to CAMHU). Of those in adult wards 66% of these were in rural areas.
- The average number of ECTs approved per client, excluding the two outliers referred to above, was 12.5. However, in most cases, the Tribunal does not know how many treatments were actually administered as the hospitals have no reporting obligations in this regard.
- Overall applications complied with guidelines for accepted indications for ECT in this age group and all clients were severely ill. 95% were 16/17 years old and none under 15 years. The MHRT approved all except two applications for one patient, although adjourned on several occasions to allow more time for treating team to discuss ECT with parents and parental views were often not documented. Opinion of Child & Adolescent Psychiatrist was evident in 83% and second opinions much less frequently. These were rarely done rigorously. The issue of legal representation of these vulnerable patients may already have been addressed though recent changes to Legal Aid NSW policy – representation is especially important if there is no parent/support person for the client at the hearing.

Comments:

- This data may not capture all ECT done in NSW in this age group over this period. ECT may have been done voluntarily with the young person consenting for themselves, outside of the Tribunal approval process, but as we understand it, there is no central collating of information from ECT registers at mental health facilities, so details of this are unknown. It is likely that numbers would be very small, due to the slim chance of young people with a severe mental illness having capacity, but there is no oversight of this. If there are ongoing concerns about ECT use in young people, it may be helpful to ensure that comprehensive data is collected at a central point or by all ECT applications for under 18 year olds coming via the Tribunal.
- It could also be helpful for treating teams in NSW, if a more detailed guideline for ECT in young people was available, so there was a clear consensus/expectation about best practice eg in relation to second opinions, involvement of Child & Adolescent Psychiatrist, consent etc. In this audit of the Tribunal files, the Tribunal was not able to review the ECT protocols being used at the relevant facility, side effects or outcomes/efficacy of ECT.
- The use of ECT in people under 18 years is infrequent - over this period amounting to 0.9% of the Tribunal ECT hearings for all age groups and 1.1% of individuals having ECT hearings. These figures are consistent with the rates reported by Walter and Rey (1997) for NSW between 1990 -1996 (that study looked at patients under 19 years - about 1% of ECT treatments given to persons of all ages). The rate therefore appears to be essentially unchanged over 23 years.
- ECT is very rarely given to prepubertal children. Because of insufficient data, there are no clear recommendations for this age group. However there are reported case studies where ECT has been lifesaving in this age group.
- All guidelines indicate that consent requires specific attention, with explanation to patient and family. This is very important, and done well, can potentially reduce the fear, trauma and sense of loss of control

of adolescent and family. Suggestions in literature include detailed discussion with psychiatrist/treating team, written information, video explaining procedure, discussion with another family/ adolescent who has had ECT, visit to ECT suite. This was not always done well by treating teams.

- Assessment/consultation with a Child & Adolescent Psychiatrist is desirable and adolescents should not be treated in adult units wherever possible.
- The American Academy of Child & Adolescent Psychiatry Practice Parameter indicates that a formal and comprehensive second opinion from "a psychiatrist who is knowledgeable about ECT and not directly responsible for the patient" is best practice for every adolescent patient being considered for ECT. They specify that this should involve a review of diagnosis, confirmation of illness severity and treatment resistance, review of previous treatments, review of adequacy of workup and opinion about advisability of ECT. Second opinions in this series, where done were often not comprehensive and no typed report was available. This practice could be improved. However, the requirement for a second opinion in every case of ECT for an adolescent, is not in the NSW Health Guidelines, so is not currently considered mandatory. It is recommended in the NSW Health Guidelines that a second opinion be sought for maintenance ECT before continuing for longer than 12 months or 12 treatments, whichever comes first (not specifically for adolescents). The involvement of a Child & Adolescent Psychiatrist either as the treating doctor or in consultation is recommended.
- The American Academy of Child & Adolescent Psychiatry Practice Parameter also says that every adolescent must have a memory assessment before ECT, at treatment termination and post ECT (three -six months). RANZCP guidelines reiterate this "where possible". (It is not mentioned specifically in the ECT Minimum Standards of Practice in NSW section on Children and Adolescents).
- Support for adolescents in hearings needs to be considered - probably for all MHRT hearings not just ECT applications, especially where no parent/carer attends. Regular legal representation could assist.
- Information about medical work up and any memory/psychometric assessment, should be included in treating team reports to Tribunal.