



The Hon Carmel Tebbutt MP  
Minister for Health  
Minister for the Central Coast  
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 2009 to 30 June 2010, as required by section 147 of the Mental Health Act 2007.

Yours sincerely



Hon Greg James QC  
President

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## Contents

<b>1. PRESIDENT'S REPORT - 1 July 2009 to 30 June 2010</b>	<b>1</b>
<b>2. FORENSIC DIVISION REPORT</b>	<b>7</b>
<b>3. CIVIL DIVISION REPORT</b>	<b>11</b>
<b>4. REGISTRAR'S REPORT</b>	<b>14</b>
<b>5. STATISTICAL REVIEW</b>	<b>21</b>
5.1 Civil Jurisdiction	21
5.2 Financial Management	28
5.3 Forensic Jurisdiction	29
<b>6. APPENDICES</b>	<b>35</b>

# TABLES

	page
A. Total number of hearings for 1991 - 2009/10	15
1. Summary of statistics relating to the Tribunal's civil jurisdiction under the Mental Health Act 2007 for the period 1 July 2009 to 30 June 2010	21
2. Summary of statistics relating to the Tribunal's civil jurisdiction under the Mental Health Act 2007 for the periods July 2007 to June 2008, July 2008 to June 2009 and July 2009 to June 2010	22
3. Summary of outcomes for reviews of assessable persons at a mental health inquiry for the period 1 July 2009 to 30 June 2010	22
4. Flow chart showing progress of involuntary patients admitted during the period July 2009 to June 2010	23
5. Involuntary patients reviewed by the Tribunal under the Mental Health Act 2007 for the period 1 July 2009 to 30 June 2010	24
6. 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 period 2007/08, 2008/09 and 2009/2010	24
7. Community treatment orders for declared mental health facilities made by the Tribunal for the financial years 2007/08, 2008/09 and 2009/2010	25
8. Number of community counselling orders and community treatment orders made by the Tribunal and by Magistrates for the period 1997 - 2009/10	26
9. Summary of outcomes for applications for community treatment orders (s51) 2009/10	26
10. Tribunal determinations on ECT consent inquiries for voluntary patients for the period 2009/10	26
11. Tribunal determinations on ECT administration inquiries for patients for the periods 2007/08, 2008/09 and 2009/10	27
12. Summary of notifications received in relation to emergency surgery (s99) during the periods 2008/09 and 2009/10	27
13. Summary of outcomes for applications for consent to surgical procedures (s101) and special medical treatments (s103) for the period 2009/10	27
14. Summary of statistics relating to the Tribunal's jurisdiction under the NSW Trustee & Guardian Act 2009 for the period July 2009 to June 2010	28
15. Combined statistics for Tribunal reviews of forensic patients under the Mental Health (Criminal Procedure) Act 1990 and the Mental Health (Forensic Provisions) Act 1990 for 2008/09 and 2009/10	29
16. Determinations following reviews held under the Mental Health (Criminal Procedure) Act 1990 and the Mental Health (Forensic Provisions) Act 1990 for the period 2008/09 and 2009/10	30
17. Outcomes of reviews held under the Mental Health (Criminal Procedure) Act 1990 and the Mental Health (Forensic Provisions) Act 1990 for the period 2008/09 and 2009/10	31

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## TABLES

	page
18. Determinations of the Mental Health Review Tribunal as to fitness to stand trial following reviews held under the Mental Health (Criminal Procedure) Act 1990 and the Mental Health (Forensic Provisions) Act 1990 for the period 2008/09 and 2009/10	32
19. Location of forensic and correctional patients as at 30 June 2008, 30 June 2009 and 30 June 2010	33
20. Location of hearings held for forensic and correctional patients during 2008/09 and 2009/10	34
21. Category of forensic and correctional patients as at 30 June 2009 and 30 June 2010	34
22. Number of forensic patients 1992 - 30 June 2010	34

## APPENDICES

	page
1. Patient statistics required under Mental Health Act 2007 s147(s) concerning people taken to a mental health facility during the period July 2009 to June 2010	36
2. Tribunal's jurisdiction as at 30 June 2010	37-38
3. Mental Health Review Tribunal Members as at 30 June 2010	39
4. Tribunal organisational structure and staffing as at 30 June 2010	40
5. Financial Summary - Budget Allocation and Expenditure 2009/2010	41
6. Freedom of Information Act: Summary of Affairs of the Mental Health Review Tribunal as at 30 June 2010	42-43

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## MENTAL HEALTH REVIEW TRIBUNAL ANNUAL REPORT 2009-10

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

*The Tribunal has some 42 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, 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".*

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# 1. PRESIDENT'S REPORT - 1 July 2009 to 30 June 2010

The reform process described in the report for 2009 has continued during the past year. The Tribunal has continued to focus on the implementation of the reforms affecting civil patients under the Mental Health Act 2007 as well as the implementation of the reforms affected by changes now included in the Mental Health (Forensic Provisions) Act 1990. The Tribunal's general operations are reviewed in the reports of the Deputy Presidents, Registrar and Team Leaders. Certain matters however warrant a special note here.

## **MENTAL HEALTH INQUIRIES**

As mentioned in last year's Annual report, legislation was passed in late 2008 providing for the transfer of the mental health inquiry function from the magistrates to the Tribunal. Negotiations continued through most of 2009 between the Department of Health and the Department of Justice and Attorney General about this transfer and the funds that should be attached to it. An agreement was reached in September 2009 that \$400,000 would be transferred annually from the Department of Justice and Attorney General to Health for the Tribunal to undertake the mental health inquiries. It was also agreed that at the end of 12 months a review will be undertaken to determine the actual cost of carrying out this function and for further discussions to be held between the two Departments and Treasury. The Tribunal will await the outcome of the review but it has expressed concern throughout the negotiations that the amount transferred may be insufficient to fully fund the role.

The Mental Health Act 2007 provides for mental health inquiries to be conducted either in person or by way of audio visual link. Face to face mental health inquiries will be available at Concord and Cumberland mental health facilities due to the large number of patients that are admitted there. However, mental health inquiries at most other facilities will have to be conducted by video as there are not sufficient number of admissions at individual facilities or facilities close enough to each other to warrant the journeys involved in face to face hearings. Video link has been used by the Tribunal for over ten years effectively and was the subject of a report prepared for the Tribunal as long ago as 1998 by Ms Susan Johnson entitled "Telemedicine and Justice" which favourably reported on the conduct of hearings by video link. The appropriateness of Ms Johnson's conclusions have been reaffirmed during more than a decade of Tribunal hearings.

The inquiries will initially be conducted by a pilot group of legal members in order to enable the Tribunal to become more familiar with the issues that might be presented by such hearings and to be able to educate its members from the pilot group experience.

This significant change now means that the Tribunal has sole responsibility for the oversight of all involuntary patient care in NSW. A monitoring group, including representatives of mental health and consumer groups, has been set up to evaluate the operation of the inquiries. The Tribunal expects that its conduct of the inquiries will lead to improved oversight of patient care and more consistent standards from the outset of the involuntary patient process, particularly when considered in conjunction with the increased availability since November 2007 of appeals against refusals to discharge. These appeals can now be brought immediately after admission if discharge is refused. The Legal Aid Commission has agreed to have its lawyers attend to interview and advise patients from the week following their admission and to have them advise the Tribunal of any cases involving special attention. The upshot is that under the new regime there will be fewer adjournments but no patient should experience any delay in being discharged as no patient should be detained any longer than clinically necessary for safe and effective least restrictive treatment.

## **CTO STANDARDS**

Last year I reported that the Tribunal had been concerned to ensure that there are clear standards in relation to the care and treatment individuals should receive when they are under a CTO. Clear standards will make it easier for community mental health agencies to plan client care and train staff. It will also assist the Tribunal

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when considering applications for CTOs to ensure it has an appropriate expectation about the required standard of care although those standards have not yet been published and distributed. The Clinical Advisory Council discussed the issue at its December 2009 meeting and is establishing a working group to develop the standards. The Tribunal remains available to work with the Department of Health on the provision of a Policy Statement and the development of the necessary standards. During the reporting period the Tribunal updated and re-issued its Treatment Plan Guidelines and template.

### **ECT STANDARDS**

During the reporting year the Tribunal has assisted the Department of Health to develop a new ECT policy and guidelines setting out standards for the administration of ECT. The Clinical Advisory Council finalised a draft Policy Directive and submitted it for approval in May 2009. The Tribunal, of course, will remain the approving agency and will have regard to the criteria in the Act for granting its approval but the existence of the Policy Directive will mean that the Tribunal will be aware of accepted practices in the field when considering applications for ECT approval. Processes have also been developed by NSW Health to deal with the management of cases that are considered to lie outside usual clinical guidelines. It is proposed that such cases will be considered by an expert panel chaired by the Chief Psychiatrist.

### **EDUCATION STANDARDS**

The Tribunal has increasingly played a role in the training and education of facilities and in the upgrading of their standards both in respect to civil and forensic patients. Senior staff of the Tribunal, both the Deputy Presidents and I have addressed the doctors and staff at a number of facilities, as well as the Judges and the members of the NSW Bar Association. The Deputy Presidents and I have addressed also a number of consumer and carer groups. Further details of this are provided in the reports from the Forensic and Civil Divisions.

### **FORENSIC SYSTEM**

The first full year of operation of the new forensic provisions in the Mental Health (Forensic Provisions) Act 1990 has delivered a higher degree of accountability for the care and treatment of forensic patients and an ability for patients to progress through the mental health treatment system to achieve leave and release with safety for themselves and others. Patient care has been enhanced with additional places available in the Forensic Hospital which will provide a comprehensive range of clinical services on those wards which have opened. The new statutory requirement is for the Tribunal to be the body which under the Act must determine detention, care, treatment, leave and release on evidence presented at publicly accountable hearings. This will ensure objectivity and transparency.

Regrettably some of the elements of the new forensic mental health system have not yet been delivered and a range of other issues continues to affect implementation. I commented on some of these last year and they must be addressed quickly if the system is to achieve the best use of available specialist resources.

### **Bed lock and the Forensic Hospital**

When a criminal court orders that a person be detained after a finding of not guilty by reason of mental illness or after setting a limiting term, the person becomes a forensic patient. It is the order of the court that confers the authority to detain and treat such persons. Without that order and the continued authority of orders made by the Tribunal, patients would be detained and treated illegally. Commonly patients will be ordered to be detained at the screening units at MRRC or the Silverwater women's prison before being transferred to one of the specialist forensic mental health facilities. Under the Act it is for the Tribunal to determine the detention as well as the appropriate care and treatment but often the timing of any transfer depends on a suitable mental health bed becoming available in one of the facilities.



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The Act requires that forensic patients should receive appropriate care and treatment in an environment that is no more restrictive than necessary to deal with the risk they pose. Unless this principle is respected, there may be insufficient capacity within the system to manage the influx of new forensic patients from the courts each year and the needs of inmates who experience mental illness whilst serving their sentence.

Policies need to be developed, consistent with the statutory role of the Tribunal and the requirements of the legislation, to enable forensic patients to progress with the requisite statutory focus on care and treatment, not simply on detention. These policies cannot, consistent with the Act, be built on a one size fits all model. Different patients' clinical needs must be assessed early and met. A framework is being developed by NSW Health and the Tribunal has had a number of opportunities to comment on iterations of the draft.

Justice Health has considered developing a policy of requiring all forensic patients to be admitted to the Forensic Hospital before being considered for a medium secure forensic unit. Apparently Justice Health considers that full patient assessments can only be conducted in the Forensic Hospital irrespective of how much time the patient may have been receiving care from Justice Health staff either in the Prison Hospital or in one of the mental health pods in prison and that without a full assessment (which may take years) no movement to rehabilitation in a less secure facility is possible.

This approach by Justice Health would inevitably lead to the detaining of all forensic patients for a lengthy period in prison and/or referring them to spend a lengthy time in the high security Forensic Hospital for assessment irrespective of their individual needs. This does not accord with the Act and cannot be approved by the Tribunal.

This problem is aggravated by the fact that the Forensic Hospital is yet to open all beds and the timing for doing so remains unclear. The issue is particularly acute for forensic patients who are relatively well and at present have their priority for a bed in the hospital or a less secure facility deferred. As a result, they remain in prison without access to rehabilitation, which means that they are likely to deteriorate.

Consequently, in appropriate cases the Tribunal may order that some forensic patients move directly from prison to medium secure units rather than wait for a place in the Forensic Hospital.

### **Bed Lock and Care in Prison**

I reported last year that the Tribunal considers there would be significant benefits if the screening units at the MRRC and Silverwater were declared as mental health facilities, even if for limited purposes. The reasons for this continue to be relevant. The problem is that whilst there are two very good mental health screening units at the MRRC and Silverwater women's prison, the Long Bay Prison Hospital is the only declared mental health facility in the prison system and therefore the only place in prison where the mentally ill can be lawfully given involuntary hospital treatment without a specific order of the Tribunal. The Tribunal does not accept the mentally ill should be involuntarily treated in gaol, other than in the gaol hospital, unless they are under a management plan reviewed by the Tribunal as would occur with a forensic Community Treatment Order. Unfortunately, as reported below Justice Health has failed to implement the provisions allowing forensic Community Treatment Orders. It is a consequence of this that mentally ill prisoners, and forensic patients still in prison who refuse treatment or lack capacity to consent to it, have to wait in the screening units until a bed becomes available in the prison hospital before they can be lawfully treated. The benefits of declaring the screening units as mental health facilities, even if for limited purposes, would be significant including:

- Those prisoners who become mentally ill but respond quickly to anti psychotic medication could be given this in the screening units thereby reducing the number of patients who have to be held for lengthy periods pending availability of a bed at the Long Bay Hospital.
- It would reduce the strain on Long Bay Hospital posed by short term patients.

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- It would reduce the number of patient movements.
  - It would improve bed vacancy rates at the screening units and have the flow on of reducing delays in the capacity to accept prisoners held in police cells who require mental health assessment before going into the prison population.
  - It would facilitate the assessment of patients for forensic community treatment orders (CTOs).

### **Forensic Community Treatment Orders**

Regrettably, despite ongoing discussions with Justice Health little progress has been made on implementing the legislation providing for forensic Community Treatment Orders (CTOs). The Act since March 2009 has provided for forensic CTOs which can enable lawful treatment in correctional centres and thereby reduce demand on acute beds. Mentally ill prisoners who can obtain their medication under a CTO and who are required by it to take that medication can have the option to stay in prison rather than being transferred to hospital for treatment. This is often the preferable care model. Forensic CTOs offer an opportunity for treating teams, backed by the Tribunal, to engage with this group about compliance with treatment. Forensic CTOs also provide a clear lawful mechanism for compelling a person to take medication, allowing for a process of breaching them for refusal and if necessary having the medication involuntarily administered at a mental health facility. Forensic CTOs can also be carried into the community and assist persons to obtain parole and to have the benefit of a CTO and mental health support while on parole in the community. Although the Tribunal has been informed training of clinicians is underway, no forensic CTOs have been made in the reporting period.

### **The Cognitively Impaired**

Unfortunately, forensic and correctional patients with a cognitive impairment continue to receive less resources for care and rehabilitation than those with a mental illness in the forensic system. Particularly concerning is the lack of adequate psychological assessments and treatment for such patients in the correctional centres. Further, little provision is in place to enable such patients to move out of gaol before the expiry of a sentence or limiting term or to have the benefit of courses or a rehabilitation program either in gaol or in the community. To try to overcome some of the problems this group faces the Tribunal has established a multi agency committee which meets quarterly to coordinate responses to meet the needs of individuals in this group. Unfortunately, there is no secure facility, equivalent to the Forensic Hospital, nor medium security facility such as Bunya or Kestrel for the patients with a cognitive impairment. The Tribunal remains concerned about the capacity of the Community Justice Program through DADHC to offer sufficient placements for cognitively impaired forensic patients.

### **Lack of Protocols and Guidelines**

The new forensic legislation requires protocols to be entered into between NSW Health, Corrective Services and Juvenile Justice to allow for the transfer of inmates and patients and the sharing of information. Despite the passage of time Corrective Services has still not been able to agree on the protocols even though the provisions commenced on 1 March 2009. To date Corrective Services has asserted, notwithstanding the provisions of the Mental Health Act 2007, it is not satisfied that it has the legal capacity to transfer patients and this has made it difficult to finalise the protocols. Justice Health plans to treat acutely unwell correctional patients in the Forensic Hospital but it will not be possible to do so until the protocols are in place.

Similarly, except in the case of Victoria, there are no effective protocols in place at state level to enable forensic patients to be returned and treated in their home state outside of NSW. Interstate transfer is governed by mental health legislation and interstate agreements. Only NSW, Queensland and Victoria have legislation allowing the making of Interstate Forensic Agreements and only the NSW and Victorian legislation allows for the interstate transfer of forensic patients. NSW and Victoria are currently renegotiating their interstate agreement.

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## **Leave and Release**

The Tribunal regularly deals with applications from treating teams for leave and release of forensic patients. Treating teams would benefit from guidelines in this area and for the past two years the Tribunal has provided input into the drafting of guidelines. The continuing delay in publishing the guidelines is regrettable.

## **Indigenous and Culturally and Linguistically Diverse Patients**

Forensic patients and prisoners with a mental illness often suffer from isolation, particularly during periods of acute illness, and any cultural and or language barriers will exacerbate this isolation and limit recovery. Treating teams have limited access to interpreter services for communicating with patients for the purpose of assessments and the supply of such services should be a priority. Liaison with relevant Aboriginal and ethnic community representatives may also provide mechanisms for reducing the isolation some forensic patients experience.

## **LAW REFORM**

The NSW Law Reform Commission has published its discussion papers in respect of the process concerning forensic patients and people with a cognitive impairment. Those papers consist of some four consultation papers as follows:

- Consultation Paper 5 “People with cognitive and mental health impairments in the criminal justice system: and overview”.
- Consultation Paper 6 “People with cognitive and mental health impairments in the criminal justice system: criminal responsibility and consequences”.
- Consultation Paper 7 “People with cognitive and mental health impairments in the criminal justice system: diversion”.
- Consultation Paper 8 “People with cognitive and mental health impairments in the criminal justice system: forensic samples”.

These are available from the Commission or its website.

The Tribunal has actively cooperated with the Law Reform Commission in order to seek to achieve various of the reforms on which consultation has been sought. Many of these reforms have been thought to be long overdue since the Law Reform Commission reports of the 1970s and 80s. Questions to be considered include:

- redefining mental illness and cognitive impairment;
- whether personality disorder should be included in that definition;
- whether the Mental Health (Forensic Provisions) Act 1990 should allow courts a general power to have persons assessed;
- whether the court process should be reconsidered to require that the Court should consider issues of fitness at all stages of the process;
- whether the Presser standards should remain;
- what should be the role of the Mental Health Review Tribunal and the court;
- the application of the process to local courts;
- whether the committal hearing remains relevant in such cases;
- what should be done about the Special Hearing and the Limiting Term;
- whether the verdict of not guilty by reason of mental illness should be retained;
- whether the test should be reformulated;
- the availability of that defence in the local court;
- the provision of a mechanism for the Mental Health Review Tribunal to work with courts more closely when relevant orders are made;
- the possible redefinition of forensic patients;
- powers for courts to refer matters to the civil jurisdiction of the Tribunal; and,
- the extension of the section 32 and 33 diversion mechanism to matters in the higher courts.

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Many other questions are also being considered. The attention of readers is invited to the consultation papers including the particularly important proposals in Consultation Paper 7 concerning the prospects of diversion of persons from the justice system to the health system.

### **MEMBERS**

As foreshadowed last year the Tribunal implemented its new professional development and performance appraisal system in January 2010. This will assist the Tribunal to ensure that it maintains its own high standards.

The appraisal system is based on a set of competency standards and performance indicators drawing on the Tribunal's existing standards and from the "Competence Framework for Chairman and Members of Tribunals" (2002) and the "Fundamental Principles and Guidance for Appraisals in Tribunals and Model Scheme" (2003) published by the Judicial Studies Board (UK). This is consistent with the approach taken by other Australian Tribunals.

I extend a welcome to Mr Christopher Hogg Barrister who has joined the Tribunal this year.

I would also like to extend on behalf of the Tribunal and those it serves, a thank you to The Hon Terry Christie QC for his service and commitment.

### **PUBLICATIONS**

The Tribunal has for some years published a Civil Hearing Kit. The kit provides guidance to treating teams and others appearing before the Tribunal about the Tribunal's requirements for applications under the Mental Health Act 2007. The Kit was updated this year and is available on the Tribunal's website. A Forensic Hearing Kit is also being developed and will be available on the Tribunal's website for use by treating teams and clinicians.

### **PARTICULAR REPORTS**

Deputy President Bisogni in respect of Civil matters and Deputy President Feneley in respect of Forensic matters and their respective Team Leaders, will report more extensively on the operations of the Tribunal's Civil and Forensic jurisdictions and issues specific to each area. The Registrar's report contains a review of operations including an update on the Tribunal's administration and caseload.

### **MEMBERS AND STAFF**

I am deeply grateful to the members and staff of the Tribunal for the dedication and professionalism they have shown in performing so well the enormous and delicate duties our legislation requires of us. The statistics provided by the Registrar show the increased efficiency of the Tribunal's operation, the communications to me from Ministers, MPs, professionals and members of the public have been overwhelmingly complimentary. For all of us, overall, it has been a most energetic but good year.

Hon Greg James QC  
President

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# FORENSIC DIVISION REPORT

## Key Statistics

This report contains the first full year of operation following the commencement of the Mental Health (Forensic Provisions) Act 1990 on 1 March 2009.

The key reform implemented by this legislation was the creation of the Forensic Division of the Mental Health Review Tribunal. The Forensic Division replaces the previous system of executive decision making by the Governor-in-Council on the advice of the Minister for Health and is now the determinative authority in relation to the care, treatment and detention of forensic and correctional patients, and the leave and release of forensic patients, as well as the authority in relation to ordering the apprehension of forensic patients should they breach a condition of leave or release.

The Forensic Division experienced a 7% increase in the number of hearings during 2009/10 compared to 2008/9 (824 in 2009/10 compared to 771 in 2008/9). This increase is in part due to the increased flow of correctional patients through the Long Bay Prison Hospital, and additional hearings scheduled to enable forensic patients to be moved into the new facility.

In 2009/10, the Tribunal made 78 orders for a patient's transfer to another facility, compared to 27 orders made in 2008/9 by either the Minister, the Governor, or the Tribunal. However, as discussed in the President's report, there have been some difficulties with the flow of patients through the system due to both the delay in the Forensic Hospital becoming fully operational, and the policy view adopted by Justice Health. As a result, 25 of the 78 orders for transfer made in 2009/10 had not been acted on by the end of the reporting period. 21 of these were for the Forensic Hospital with patients having waited an average of three and a half months for placement by the end of the reporting period, and in six cases, the patients had been waiting over six months by the end of the reporting period.

The Tribunal has also experienced an increase in the number of new referrals from the Court following a finding of not guilty by reason of mental illness. 39 cases were referred in both 2009/10 and 2008/9, compared to less than half that number having been referred each year since 2003. This may represent either a true increase in the number of cases appearing before the Court, or may reflect a shift in the way legal representatives perceive the forensic mental health system in light of the amended legislation. Anecdotally, it was commonly reported that the defence of not guilty by reason of mental illness was unlikely to be used in any case other than those involving murder or serious violence due to the uncertainty of when and how the person would be eligible for release. The range of charges for which forensic patients are now being referred suggests that there is increased confidence in the system.

The hearing statistics also suggest that there has been an increase in the grant of leave to forensic patients during 2009/10 with the Tribunal granting leave in 87 matters compared to 27 cases in 2008/9. However, this is a misleading increase as under the previous legislation leave could also be granted by the Director-General of Health (or her delegate) and, in some instances, by the Medical Superintendent of the facility. Once the figures are adjusted for the difference between the two pieces of legislation, the leave granted in 2009/10 is comparable with the leave granted in 2008/9 (with the adjusted comparison being 72 cases in 2009/10 to 65 in 2008/9).

The Act also recognises the concerns registered victims may hold in relation to the grant of leave or conditional release of forensic patients. The new legislation therefore provides that registered victims may seek to have non association and/or place restriction conditions be placed on leave or conditional release. Such requests were received in four cases during 2009/10, and in all cases conditions restricting the movement of the patient and/or communication with the registered victim and their family were imposed.

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### **Release following the setting of a Limiting Term**

As discussed in the President's report, the Law Reform Commission currently has a reference looking at the structure of the regime relating to those found unfit to stand trial, including the Special Hearing process and its dispositions, including the limiting term.

At present, following the nomination of the limiting term the Court 'may make such order with respect to the custody of the person as the Court considers appropriate' under section 24 of the Mental Health (Forensic Provisions) Act 1990. Similarly, following the Tribunal's determination as to whether the person has a mental illness or a mental condition for which treatment is available in a mental health facility, the Court may make an order that the person be detained in a mental health facility or in any other place under section 27. As the making of orders for detention under either section is discretionary, it is possible for the Court to make no order for detention, with the person consequently being released into the community. This has occurred in three cases that the Tribunal is aware of over the past 18 months.

However, the release of persons subject to a limiting term occurs in the absence of a regime for release equivalent to that which exists following a finding of not guilty by reason of mental illness including the requirement for the Judge to be satisfied that the release would not seriously endanger the person or the public. In addition, those persons not ordered to be detained following the imposition of a limiting term do not fall into the definition of 'forensic patient' under the Act and therefore are not subject to ongoing review by the Tribunal.

The Tribunal has raised this issue with the judiciary, Crown Prosecutors, Public Defenders, and the Attorney-General over the past 12 to 18 months and has recommended that the Act be amended to ensure that if a judge sets a limiting term and then considers not detaining the accused, provisions similar to those applying to release decisions following a finding of not guilty by reason of mental illness would apply. Pending the completion of the Law Reform Commission's work and the implementation of the resultant legislation, it is essential that Judges are aware, when making the decision not to order detention under sections 24 and 27, that the person will not be a forensic patient and that the Tribunal has no power to review their case or impose conditions for their care, treatment, and control.

### **Internal and External Training**

The Forensic Division has continued to work with Justice Health, Area Health Services, Corrective Services NSW and other agencies regarding the practices and processes for the implementation of the Mental Health (Forensic Provisions) Act 1990.

The Forensic Division has run a series of education sessions concerning the new legislation and the practical implications of the amendments. Sessions have been held with staff of Justice Health, Area Health Services, Corrective Services and Ageing, Disability and Home Care. The Forensic Division has also held sessions with other profession groups working in the area including judicial officers, Crown Prosecutors, Public Defenders, and the Rural College of Psychiatrists.

The Forensic Division has also presented at a number of conferences regarding the change in the legislation including the Legal Aid conference, the Australian Psychological Society's NSW Forensic College conference, and the International Association of Forensic Mental Health Services conference.

The Tribunal reported in the last Annual Report that it was also revising its Procedural Note for treating teams to support this education program, and hoped to relaunch a Forensic Hearing Kit in 2009/10. This work has unfortunately been postponed due to the delay in the Forensic Guidelines being prepared by Justice Health and the Department of Health. It is hoped that those issues will be resolved, and both documents will be made available to treating teams in 2010/11.

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In addition to the external training detailed above, the Forensic Division has conducted a number of internal training sessions for staff as well as inductions for new members who will sit on forensic matters. The Forensic Division also held its first forensic focussed Professional Development session for members who sit on forensic matters during 2009/10 which also included presentations on the Forensic Hospital by A/Prof John Basson and risk assessment and management in the forensic mental health system by Dr Michael Giuffrida (Clinical Director of the Bunya Unit).

### **Research Forum**

Another change introduced by the Mental Health (Forensic Provisions) Act 1990 was allowing the Tribunal records to be utilised in research in accordance with health privacy principle 10(1)(f) under the Health Records and Information Privacy Act 2002. To facilitate and prioritise access to the wealth of information stored in Tribunal records, the Tribunal proposed a research forum whose key goals would include:

1. Promoting the development of an evidence-based body of knowledge regarding key forensic mental health issues in NSW;
2. Promoting Evidence-Based Policy Making; and
3. Developing research partnerships.

The inaugural meeting of the forum was held in March 2010 with representatives invited from key agencies working within the forensic mental health system.

The Tribunal is currently devising an internal governance structure to manage research requests and partnerships, as well as exploring avenues to undertake initial baseline work to ensure that the Tribunal's records are more accessible to researchers in the future.

### **Victims Register**

The Forensic Division also manages the Forensic Patient Victims Register. Part of the function of the register is to provide notifications to registered victims about a variety of matters. Registered victims may elect to be notified about Tribunal hearings, Tribunal decisions, orders made by the Director-General of Health concerning transfer between mental health facilities or emergency leave, or if the patient absconds/breaches their conditions of leave or release. Registered victims may also elect only to be notified when a significant change (such as leave or release) is being applied for at a Tribunal hearing.

Victim Services within the Department of Justice and the Attorney-General have initiated a number of reviews concerning victims of crime legislation and related services. As part of that process, a review has been conducted on the operation of the three victims registers held by the Tribunal, Corrective Services NSW, and Juvenile Justice. This review included a survey of registered victims experiences in using the registers, as well as consultation with the relevant agencies. The Tribunal is still awaiting the outcome from this review process.

The Tribunal reported in the last Annual Report that it was revising the information regarding the forensic mental health system provided to registered victims in light of legislative amendments and hoped to have a new information package available in the second half of 2009. However, due to the review that was initiated by Victim Services, the Tribunal has delayed the publication of a new information package to ensure that any changes resulting from that review can be accurately reflected in the documentation provided to victims.

In the interim, the Tribunal will continue to consult with representatives of victims concerning information provided to registered victims, and the role of registered victims in the review of forensic patients.

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**Interstate Forensic Patients**

New South Wales has entered into interstate agreements with Victoria and Queensland for the apprehension and return of forensic patients should they cross state lines. Under the agreement, should a forensic patient abscond, the patient will be apprehended by police and taken to and detained in a mental health facility before being transferred back to their state of origin.

Following the transfer of functions from FESU to the Mental Health Review Tribunal in 2008, the Tribunal became responsible for the facilitation of the distribution of notices of interstate apprehension orders issued by other states including the notification of police and local mental health facilities. It has become evident that this is not a simple notification process but often involves negotiating bed placements with NSW mental health facilities and trouble shooting issues between the New South Wales health service and the other state regarding arrangements for the forensic patient's return.

The interstate agreements are currently being reviewed by the Department of Health. As this role requires negotiations concerning the allocation of health resources for which the Tribunal has no responsibility the Tribunal has recommended that the responsibility for managing the interstate apprehension process should also be reviewed.

Since the Tribunal took over this function in 2008 it has received interstate apprehension orders for 16 patients who had absconded from Queensland to New South Wales. By comparison, over the same time period one patient absconded from New South Wales to Queensland and no patients have absconded from Victoria to New South Wales or from New South Wales to Victoria.

John Feneley  
Deputy President

Sarah Hanson  
Team Leader



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# CIVIL DIVISION REPORT

## **Mental health inquiries**

On 21 June 2010, the Tribunal commenced its new role in conducting mental health inquiries, a role that was formerly undertaken by magistrates.

The Tribunal has worked closely with the Department, Area Health Services and the Mental Health Advocacy Service to put into place the necessary infrastructure and processes to support this new role. The lead in time was particularly focussed on the provision of education sessions to part-time members, core staff and mental health facilities and other connected agencies. The Tribunal has now conducted mental health inquiries for a few months and on the current projections it would appear the Tribunal will be conducting in excess of 4000 mental health inquiries a year, representing a significant increase in case load. The transition to conducting mental health inquiries has been relatively smooth and this is in large part due to the Tribunal's active engagement and consultation with the key bodies affected by the change and the commitment of core staff who have absorbed the increased workload with characteristic efficiency, diligence and enthusiasm. The Tribunal owes a great debt to staff who have continued to deliver a very high standard of service, during a period of increased pressure and demand.

A User's Group, consisting of representatives from the main stakeholders being ARAFMI, NSWCAG, MHDAO, Legal Aid, MHCC, and PIAC has been set up with a first meeting scheduled for two months after the commencement of inquiries. This group will monitor the impact of the new system including consequences for patients and the mental health system generally. It is also anticipated that an external evaluation will be contracted out by the Department of Health after the new system has been in place for about 12 months.

## **NSW Trustee and Guardian Act 2009**

Another area of important legislative reform was the introduction of the NSW Trustee and Guardian Act on 1 July 2009, which effected the integration of the office of the Protective Commission and the Public Trustee.

Although the NSW Trustee and Guardian Act did not in substance change the role of the Protective Commissioner or the Public Trustee it did introduce the long awaited reform of removing from patients the onerous reverse onus provision, the deletion of which means that patients are no longer required to prove capacity if an application for an order is made, to prevent the making of an order. The reform is welcome as it goes some way to removing the presumption that those persons who are the subject of an application as a result of detention at a mental health facility lack capacity to manage their finances. However, as the Tribunal is still required to consider the issue of capacity at a mental health inquiry if an involuntary patient detention is made, further legislative reform is considered desirable to remove this discriminatory presumption. The Tribunal made oral and written submissions to the NSW Legislative Council Social Issues Committee in relation to an inquiry into substitute decision making for persons lacking capacity, requesting, amongst other things, the removal of the requirement that incapacity be considered at a mental health inquiry and instead, that all applications should be based on a perceived need.

Another significant reform with the introduction of the NSW Trustee and Guardianship Act 2009 was the introduction of the statement of general principles which mirror the principles of recovery and autonomy that underline both the MHA and the Guardianship Act so that persons exercising functions under the NSW Trustee and Guardianship Act are now duty bound as follows: to give paramount consideration to the welfare and interests of the protected person; to interfere minimally with a person's freedom of action; and to encourage as far as is possible self reliance and the aspiration to live a normal life in the community.

Tribunal members are required to have regard to these principles at hearings and it is expected that these principles will inform the approach and decision-making of the Tribunal.

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The new Act also introduced more flexibility in that it allows the Tribunal to make orders in relation to the whole or part of a person's estate.

### **Training and professional development of members**

The Tribunal continues to provide for professional development sessions to part-time members. A varied and interesting range of topics were covered, including the role of non-legal advocacy, a consumer's perspective of detention, treatment and discharge from a mental health facility, the diagnosis and treatment of the serious mental disorders, and reflections on mental health courts in North America.

The attendance at these sessions continues to be high and the Tribunal owes a debt of gratitude to those senior practitioners in mental health who have generously given their time and expertise to provide valuable ongoing education and training of our members.

The Tribunal has also distributed a number of practice directions and circulars to provide additional information and support for members and staff.

The Tribunal also set up an Education Committee with representation from each category of the part-time members to oversee the professional development program. The Committee met for the first time in March 2010 and it is anticipated that it will meet twice yearly.

The Tribunal also commenced its formal appraisal of part-time members in accordance with the competency standards considered relevant to the Tribunal's work. Members are asked to complete a self assessment form and are appraised by a presidential member during hearings. Feedback is then given to the member. The purpose of this process is to provide an objective evaluation of members' performances which are relevant to the re-appointment process but also enables members to identify their strengths and areas for improvement. In addition, the appraisals also provide an invaluable opportunity to identify training needs.

The legislative changes outlined above, have also led to the update of the Tribunal's Civil Hearing Kit and Member's Manual, both being valuable resources.

### **External training**

As has been the case for some years now the Tribunal has continued to initiate and respond to requests by external bodies for education and training in relation to the Tribunal's functions. The Tribunal has conducted extensive training for hospital and community based mental health staff with particular focus on mental health inquiries and standards for CTO applications. The Tribunal expanded resources for consumers, mental health workers and the general public with further development of information sheets being published on our website. The Tribunal is planning in the year ahead to make these information sheets available in the key community languages.

In the previous reporting year the Tribunal referred to its commitment to ensuring that there were uniform and accessible guidelines as to the standards of care and treatment of persons subject to a CTO should receive in the community. The Tribunal circulated a template and guidelines to achieve that end. It has been pleasing to see that there has been the wholesale uptake of the guidelines by the sector thus achieving generally a high standard of report in relation to such orders and achieving overall a consistent approach.

With so many changes to mental health laws in this State over the last three years treating teams are understandably keen to ensure that they are kept abreast of the changes. To this end the Tribunal has been part of an advisory group to the Institute of Psychiatry which is developing an online web based training package regarding the legislative framework in which mental health staff practice. In addition, the Tribunal is

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providing comment to the Institute in relation to its updated Guidebook. The Tribunal has worked closely with the MHCC to provide comment on its pamphlets.

The Tribunal has also had input into the development of the Department's ECT Standards which were launched at the ECT Workshop at Westmead Hospital on 25 March 2010. The Tribunal's President also gave a paper in relation to the Tribunal's role in ECT applications.

In addition, a paper was given at the NSW Legal Aid Commission Civil Law Conference on the role of the legal representation at Tribunal hearings which was well attended by members of the Advocacy Service and private practitioners.

### **Submissions**

The Tribunal provided a written submission in relation to the NSW Suicide Prevention Strategy. The Tribunal also prepared a detailed submission for the Legislative Council in relation to capacity and decision making.

### **Hearing statistics**

The civil division had a slight increase of hearings overall but with a notable decrease in CTO hearings which is likely to be attributable to the Tribunal's power to make orders for more than six months which it did in 11% of cases.

The rate of appeals against the authorised medical officer's refusal to discharge has increased by 28% from 199 to 255 and (as in the previous reporting year where there was an increase from 157 to 199) this appears to be a direct consequence of the introduction of an appeal right exercisable by persons from the date of detention as opposed to the position under the 1990 Act whereby appeals could only be made where a person was made an involuntary patient. However, there was a decrease in appeals against magistrate's orders, down from 13 in the previous year to eight. Of the eight orders made five appeals were dismissed by the Tribunal, while one matter was adjourned, one matter was withdrawn at the hearing and one order was revoked.

ECT applications in respect of involuntary patients have increased with 716 applications being made, an increase of 50 applications since 2008/09. The 2007 Act allows for determinations of more than 12 treatments if the Tribunal is satisfied that more are justified, having regard to the special circumstances of the case. In only 5.4% of cases were more than 12 treatments approved.

In relation to ECT for voluntary patients, where the Tribunal's role is limited to a determination as to the person's capacity to give an informed consent, the number of hearings increased from six to nine.

The Tribunal has changed the composition of its Civil Team with the commencement of the Tribunal undertaking Mental Health Inquiries. This change has resulted in an increased workload. To cope with the expansion of duties a number of new temporary appointments have been made. These new staff members have made a very valuable contribution.

### **Looking ahead**

In the coming year it is anticipated that the Tribunal will see a steady increase in the number of civil hearings. The Tribunal is in a good position to meet this challenge because of the planning and monitoring that is taking place. As always, the dedication and expertise of members and staff will be a vital part of the Tribunal's response.

Maria Bisogni  
Deputy President

Danielle White  
Team Leader

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# REGISTRAR'S REPORT

## REPORT CONTENT

As noted in the President's report, 2009/10 has been another busy and challenging year for the Tribunal. The focus of much of the year was on the implementation of the Tribunal's new jurisdiction to conduct mental health inquires (a role previously carried out by Magistrates).

There are a number of matters set out in s147 of the Act which are required to be included in the Report. Each of the following matters are reported on in Appendix 1 of this Report:

- 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,
- e) Any matter which the Minister may direct or which is prescribed by the Regulations.

So far, the Regulations make no provision for additional matters to be included nor has the Minister given any relevant direction.

## OPERATIONS

### Caseload

In 2009/10 the Tribunal conducted 9101 hearings. This was 349 more hearings than it conducted in 2008/09 (a 4% increase). This increase includes a small number of mental health inquires (43) conducted from 22 June 2010 when the Tribunal took over this role until the end of the financial year. The impact of this new jurisdiction will clearly have a greater impact for the next financial year and beyond. It is projected that the Tribunal will conduct in excess of 4,000 mental health inquires per annum.

The total number of hearings for the review of involuntary patients increased by 296 in 2009/10 to 2572 from 2276 in 2008/09 – a 13.1% increase. The increased number of such hearings was largely those related to the initial review of a person being detained on an involuntary patient order made by a Magistrate at a mental health inquiry. The Tribunal is required under s37(a) of the Act to review the case of each involuntary patient at the end of the patient's initial period of detention as a result of a mental health inquiry. The number of these reviews increased from 999 in 2008/09 to 1262 in 2009/10 – a 26.3% increase. The number of subsequent reviews of involuntary patient orders remained much the same as for the previous year.

The number of hearings to consider applications for Community Treatment Orders decreased by 151 from 4347 in 2008/09 to 4196 in 2009/10 (a 3.5% decrease). The actual number of Community Treatment Orders made by the Tribunal also decreased from 4058 in 2008/09 to 3956 in 2009/10 – a 2.5% decrease. Of the 3956 Community Treatment Orders made by the Tribunal 426 were for a period of more than six months (usually 12 months). This is 11% which is slightly lower than the 12.1% of such orders in 2008/09. Although since the introduction of the 2007 Mental Health Act 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 exceptional circumstances where a person has been subject to a series of Community Treatment Orders and is likely to need to continue on such an order for a longer period of time, or where the negative effect of the Tribunal's hearing on a person's mental health is such that a longer term order is appropriate.

There was an increase in the number of hearings held by the Forensic Division in 2009/10 compared the previous year (824 in 2009/10 compared to 771 in 2008/9). The impact in terms of number of hearings of the Mental Health (Forensic Provisions) Act 1990 which came into effect on 1 March 2009 is discussed further in the report from the Forensic Division.

Table A shows the number of hearings conducted each year since the Tribunal's first full year of operation in 1991 when it conducted a total of 2232 hearings.

<b>Table A</b>					
Total number of hearings 1991 - 2009/10					
	<i>Civil Patient Hearings</i>	<i>Financial Management Hearings</i>	<i>Forensic Patient Hearings</i>	<i>Totals per year</i>	<i>% Increase over previous year</i>
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%

In 2009/10 the Tribunal conducted:

	<b>2009/10</b>
Civil Patient hearings (for details see Table 3)	8084
Protected Estates Act hearings (for details see Tables 16 and 17)	193
Forensic Patient reviews (for details see Tables 18 - 27)	824
	9101

Details for each area of jurisdiction of the Tribunal are provided in the various statistical Tables contained in this report. The Tribunal has a regular roster for both its civil and forensic hearing panels. In addition to the hearings held at the Tribunal's premises in Gladesville in person hearings were conducted at 31 venues across the Sydney metropolitan area and regional New South Wales in 2009/10.

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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 its use of telephone and video-conference hearings where necessary and conducted hearings by telephone and/or video conference to 219 inpatient or community venues across New South Wales. In 2009/10, 3975 hearings were conducted in person (43.7%), 3574 by video (39.3%) and 1552 by telephone (17%). The numbers and percentages varied slightly from 2008/09, when 4195 hearings were conducted in person (47.9%), 2823 by video (32.3%) and 1734 by telephone (19.8%). The most significant change was a decrease in the number of hearings conducted in person and by telephone and a corresponding increase in the number of video conference hearings. The continued reduction in telephone hearings is a very pleasing direct consequence of the video conference project whereby the Tribunal facilitated the purchase and instillation of new video conference equipment at 10 major hospital sites in 2008. 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 (88.3%), most often for people in the community on an existing Community Treatment Order.

### **Mental Health Inquiries**

As mentioned in the President's report the Tribunal assumed to role of conducting mental health inquiries on 21 June 2010. The Tribunal has developed a two weekly schedule for conducting mental health inquiries at forty two inpatient mental health facilities around the state. Inquiries will be conducted on a fortnightly basis by video conference to most of these facilities however inquiries will be held in person and weekly at some of the major metropolitan facilities.

In implementing this new system the Tribunal had regard to the number of mental health inquiries that were previously adjourned by Magistrates. The Tribunal is of the view that many such adjournments could be avoided if the inquiry were held at a later stage in the person's admission after allowing sufficient time for the treating team to assess and treat the patient and develop a plan for his or her treatment and discharge. Consequently the Tribunal holds its mental health inquiries after a person has been detained for about two weeks.

The Tribunal will closely monitor this new system both in terms of its cost and any impact on patients and the mental health system. A monitoring group has been established with representatives from a number of the peak mental health bodies as well as Legal Aid, PIAC and NSW Health to assist in this process. It is also anticipated that an external evaluation will be contracted out by NSW Health after the new system has been in place for about 12 months.

### **Multicultural Policies and Services**

Due to the small size of the Tribunal it is not required to report under the Multicultural Policies and Services Program. However both the Mental Health Act 2007 and the Mental Health (Forensic Provisions) Act 1990 contain specific provisions designed to promote and protect the principles of access and equity.

Persons appearing before the Tribunal have a right under the Act to be assisted by an interpreter if they are unable to communicate adequately in English. During 2009/10 interpreters in 40 different languages were used in a total of 426 hearings. The most common languages were Vietnamese, Cantonese, Mandarin, Greek and Arabic. The Tribunal plans that during the next year it will arrange for some of its publications to be available from its website in other languages.

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. To date

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there has been no need for any forensic orders to be translated.

### **Representation and Attendance at hearings**

All persons appearing before the Tribunal have a right under s154 of the Act to be represented. Representation is usually provided through Legal Aid 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 Mental Health Advocacy Service has advised the Tribunal that they are not able to 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 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 on a means and merits test. Representation was provided in 33.4% of all hearings in the Tribunal's civil jurisdiction (see table 1) and 95.1% of all forensic hearings.

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 that they are aware of the application being made and of all 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 78.6% of all hearings. In forensic matters where there is a general requirement that the person attend unless excused from doing so by the Tribunal the rate was much higher at 97.3%.

### **Appeals**

Section 163 of the Mental Health Act 2007 and Section 77A of the Mental Health (Forensic Provisions) Act 1990 provide for a right of appeal against decisions of the Tribunal to the Supreme Court of NSW.

During 2009-10 four appeals were lodged with the Supreme Court. Two of these related to appeals against the making of Community Treatment Orders for civil patients. In one of these cases the appeal was allowed and the Tribunal's decision to make a CTO was set aside. In the other matter the appeal was discontinued as the Community Treatment Order was revoked by the Director of the community mental health facility responsible for implementing it.

The other two appeals related to Forensic patients. One of these was discontinued by the plaintiff while the other remains ongoing.

Three other appeals which had been lodged in previous years were also finalised during 2009/10. The first of these related to the ongoing detention of a long term involuntary patient in a mental health facility. In this matter the Court made a Community Treatment Order and discharged the person from the mental health facility. The second matter was an appeal by a forensic patient which was discontinued by the plaintiff. The final matter was an appeal against the making of a Community Treatment Order. This appeal was dismissed by the Court.

### **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, the provisions of the Act under which they were taken to hospital and admitted and the number of mental health inquiries.

The Regulations to the Mental Health Act 2007 stipulates that these details are collected by means of two forms which all inpatient mental health facilities are required to forward to the Tribunal with respect to each involuntary referral (Form 10) and mental health inquiry (Form 11).

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The collection and data entry of these returns from all in patient mental health facilities remains a huge workload for the Tribunal. Unfortunately, there are also compliance issues with some facilities being unreliable with submitting their returns. This could, in turn, have some affect on the reliability of the statistical data taken from these returns.

Information from this data is contained in Tables 3, 4 and 8 as well as in Appendix 1. As the Tribunal assumed responsibility for conducting mental health inquires from 22 June 2010 facilities will no longer be required to submit Form 11s as this data will be automatically collected by the Tribunal. The Mental Health Regulation 2007 has been amended accordingly.

### **Official Visitor Program**

The Official Visitor Program is an independent statutory program under the Mental Health Act reporting to the Minister for Health and the Minister Assisting the Minister for Health (Mental Health). The Program is headed by the Principal Official Visitor, Ms Jan Roberts and supported by two 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.

The Program was previously located at the Department's Head Office in North Sydney and received administrative support from the Mental Health and Drug and Alcohol Office. It was agreed that the independent role of the Program would be better supported if it was located outside the Department itself.

Although the Program is now 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.

The program is appreciative of the ongoing support and advice provided by the Mental Health and Drug and Alcohol Office in NSW Health.

### **Premises**

The Tribunal continues to conduct its business from our premises in the grounds of Gladesville Hospital. Renovations were carried out March – June 2010 to previously unused areas of the Tribunal's premises in preparation for taking over the conduct of mental health inquiries. Extensive remediation work was required to remove old lead based paint from this area before it could safely be renovated.

The renovations included commissioning and fitting out three new hearing rooms to be used for conducting mental health inquiries by video conference.

The Tribunal now has six hearing rooms, all fitted with video-conferencing facilities. 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.



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## **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. Nevertheless the Tribunal is frequently constrained by the limited resources and facilities available at mental health facilities and correctional centres. Some 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 ventilation. Essential resources such as telephones with speaker capacity are sometimes unavailable. The Tribunal continues to negotiate directly with venues about the provision of these facilities.

## **Community Education and Liaison**

During 2008/09 the Tribunal conducted a number of community education sessions to inpatient and community staff. These sessions were used to explain the role and jurisdiction of the Tribunal and the application of the Mental Health Act. The Tribunal was also involved in training for psychiatric registrars through the Institute of Psychiatry. A number of additional sessions are planned for July and August 2010 to explain the changes to the mental health inquiries system.

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 fourfold 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. This was only possible with the hard work and dedication of our staff.

In recognition of the increased workload the Tribunal was assisted by appointments to two temporary positions during 2006. These positions have continued and were supplemented in May 2008 when 4.4 additional staffing positions were approved. The need for these positions was identified as part of the Administrative Review to assist with the Tribunal's increased workload and to make provision for the additional responsibilities from the new Forensic legislation and Forensic Division. While these temporary positions have continued to be extended the Tribunal's attempts to have them made permanent have not been successful. This has resulted in a large number of staff acting in positions or being appointed to the Tribunal on a temporary basis.

The Tribunal's establishment was increased by two permanent positions in 2008 following the independent review of the operations of the Forensic Executive Support Unit (FESU) commissioned by Justice Health which recommended that a number of the functions then carried out by FESU would be transferred to the Tribunal along with the resources necessary to perform them. These functions included the management of the Forensic Patient Victims Register, management of the processing of Tribunal recommendations and related correspondence for the Minister, management of non compliance and breaches of conditions of leave or release and the apprehension of interstate forensic patients.

Two additional permanent positions were approved to support the mental health inquiries function. Recruitment for these positions was commenced in June 2010 and completed shortly thereafter.

Appendix 4 shows the organisational structure and staffing of the Tribunal as at 30 June 2010.

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### **Tribunal Members**

Appendix 3 provides a list of the members of the Tribunal as at 30 June 2010. The Tribunal currently has three full time members (a President and two full time Deputy Presidents) as well as three part time Deputy Presidents and 111 part time members. These members sit on a roster of hearings 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.

The Tribunal's part time membership reflects a sound gender balance with 53 female part time members and 58 male. There are a number of members who have indigenous or culturally diverse backgrounds. A number of our part time members bring a valuable consumer focus to the Tribunal's hearings and general operations.

The experience, expertise and dedication of these members is enormous. They are often required to attend and conduct hearings in very stressful circumstances at inpatient and community mental health facilities, correctional centers and other venues.

In 2008/09 the Tribunal continued its programme 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 attendance by members at these sessions. Topics covered in this period included: An update of the Forensic Hospital and forensic system: risk assessment and forensic patients; Mental Health Courts in Northern America; member performance appraisal; the role non legal advocacy; childhood and adolescent mental health issues; diagnosis of serious mental disorders; and experiences of a person with a mental illness. Sessions also included training on the Mental Health (Forensic Provisions) Act 1990 and amendments to the Mental Health Act 2007 in relation to mental health inquiries.

### **FINANCIAL REPORT**

The Tribunal recorded a budget surplus of \$43,301 for the 2008/09 financial year. See Appendix 5. This underspend was largely due to a delay in the approval to pass on an increase in the rates paid to part time members. The approval for the increase and backpay was received early in July 2010.

The Tribunal received a grant of \$400,000 being the agreed amount transferred for the Department of Justice and Attorney General to fund the mental health inquiries role. The majority of the funds for this year were expended on the renovation and fit out of the mental health inquires area.

The Tribunal is most appreciative of the support provided by the Minister and NSW Health to ensure the Tribunal is able 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**

I take this opportunity to thank the staff and members of the Tribunal for their continued flexibility, dedication and enthusiasm for the very important work that we do. The preparations for Tribunal's takeover of the mental health inquiries along with the other changes experienced over the last 12 months has made this a particularly challenging period for the Tribunal. The Tribunal's staff and members have met these challenges with much hard work and extraordinary commitment.

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 2009 to 30 June 2010**

Section of Act	Description of Review	Reviews (Including Adjudgments)			% Reviewed by Sex		Number Legally Represented	% Legally Represented
		M	F	Total	M	F		
s9	Review of voluntary patients	36	24	60	60	40	5	8.3
s34	Mental Health Inquiry	21	22	43	48.8	51.2	36	83.7
s37(1)(a)	Initial review of involuntary patients prior to expiry of magistrate's order	715	547	1262	56.7	43.2	1132	89.7
s37(1)(b)	3 monthly review of involuntary patients after initial 12 month period	405	248	653	62	38	588	90
s37(1)(c)	Continued review of involuntary patients after initial 12 month period	438	219	657	66.7	33.3	111	16.9
s44	Appeal against an authorised medical officer's refusal to discharge	137	118	255	53.7	46.3	138	54.1
s51	Community treatment orders	2663	1533	4196	63.5	36.5	525	12.5
s63	Review of affected persons detained under a community treatment order	7	3	10	70	30	9	90
s65	Revocation of a community treatment order	-	1	1	-	100	0	0
s65	Variation of a community treatment order	124	61	185	67	33	3	1.6
s67	Appeal against a Magistrate's community treatment order	3	5	8	37.5	62.5	3	37.5
s96(1)	Review of voluntary patient's capacity to give informed consent to ECT	4	5	9	44.4	55.6	1	11.1
s96(2)	Application to administer ECT to an involuntary patient with or without consent	261	455	716	36.5	63.5	148	20.7
s99	Review report of emergency surgery involuntary patient	2	2	4	50	50	0	0
s101	Application to perform a surgical operation	11	16	27	40.7	59.3	4	14.8
s103	Application to carry out special medical treatment	1	1	2	50	50	1	50
<b>TOTAL</b>		<b>4828</b>	<b>3260</b>	<b>8088</b>	<b>59.7</b>	<b>40.3</b>	<b>2704</b>	<b>33.4</b>

**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 July 2007 to June 2008, July 2008 to June 2009 and July 2009 to June 2010**

	2007/08	2008/09	2009/10
Reviews of assessable persons - Mental Health Inquiries	-	-	43
Reviews of persons detained in a mental health facility for involuntary treatment	2315	2276	2572
Appeal against authorised medical officer's refusal to discharge (s44)	157	199	255
Applications for orders for involuntary treatment in a community setting (s118/s51)	4995	4347	4196
Variation and Revocation of Community Treatment Orders (s65)	218	167	186
Review of those persons detained in a mental health facility following a breach of the Community Treatment Order (s63)	6	14	10
Appeal against a Magistrate's Community Treatment Order (s67)	3	13	8
Review of those in a mental health facility receiving voluntary treatment who have been in the facility for more than 12 months (s9)	52	59	60
Notice of Emergency Surgery (s99)	2	12	4
Consent to Surgical Operation (s101)	17	10	27
Consent to Special Medical Treatment (s103)	1	-	2
Review voluntary patient's capacity to consent to ECT (s96(1))	3	6	9
Application to administer ECT to an involuntary patient	660	666	716
<b>TOTALS</b>	<b>8429</b>	<b>7769</b>	<b>8088</b>

**Table 3**

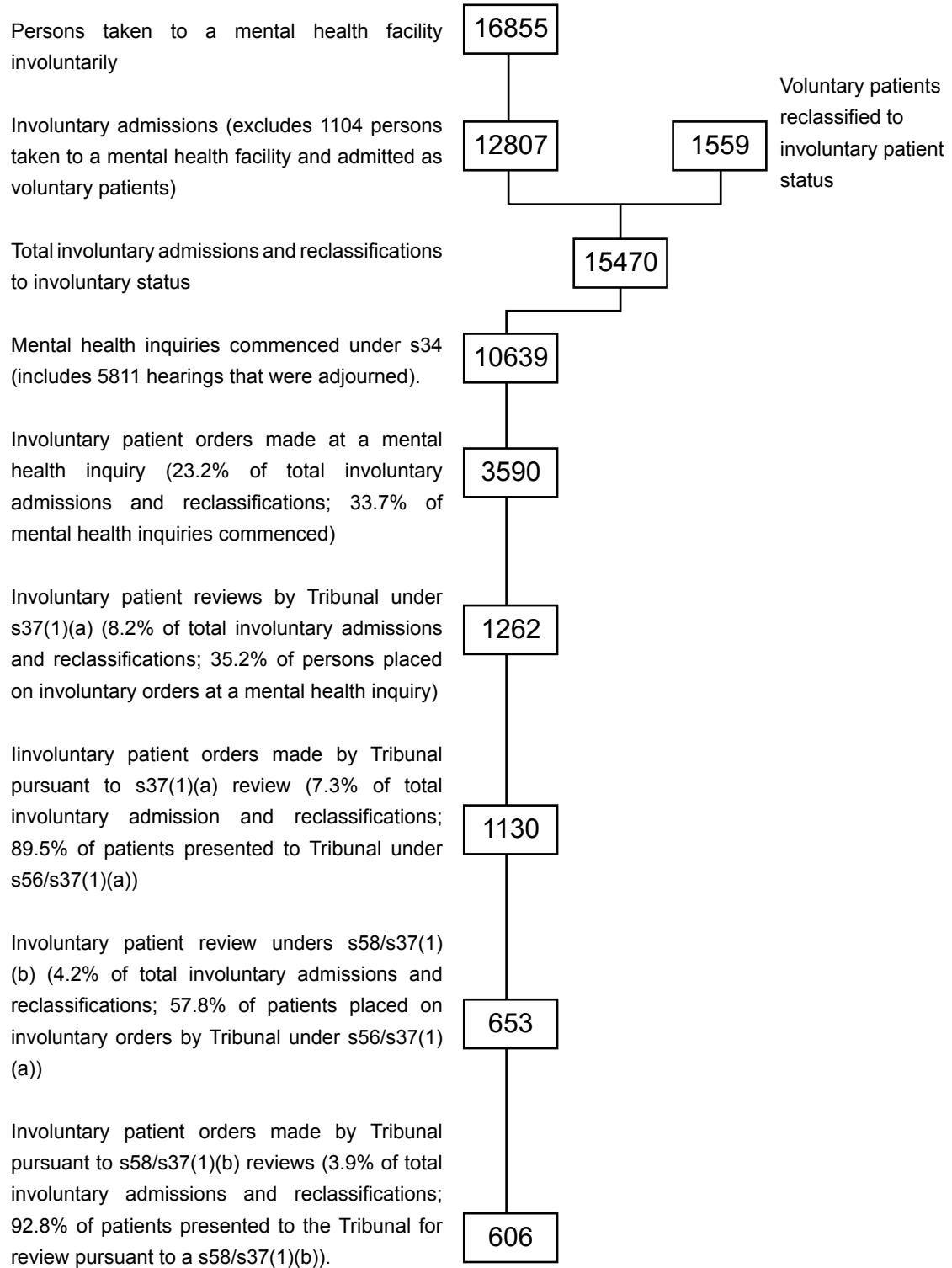
**Summary of outcomes for reviews of assessable persons at a mental health inquiry for the period 1 July 2009 to 30 June 2010**

	<i>M</i>	<i>F</i>	<i>T</i>	<i>Adjourn</i>	<i>Invol Patient Order</i>	<i>Discharge</i>	<i>Deferred Discharge</i>	<i>Discharge on CTO</i>	<i>Reclassified to Voluntary</i>	<i>Declined to deal with</i>
Magistrates 1/7/09-21/6/10	-	-	10596	5808	3563	102	-	806	317	-
MHRT 22/6/10 - 30/6/10	21	22	43	3	27	1	1	10	-	1
<b>TOTALS</b>			10639	5811	3590	103	1	816	317	1

**Note:** The Tribunal assumed the jurisdiction to conduct mental health inquiries from 21 June 2010.

**Table 4**

**Flow chart showing progress of involuntary patients admitted during the period July 2009 to June 2010**



<b>Table 5</b>									
<b>Involuntary patients reviewed by the Tribunal under the Mental Health Act 2007 for the period 1 July 2009 to 30 June 2010</b>									
		<i>M</i>	<i>F</i>	<i>T</i>	<i>Adjourn</i>	<i>Withdrawn No Jurisdiction</i>	<i>Discharge/ voluntary</i>	<i>Discharge on CTO</i>	<i>Continued detention as involuntary patient</i>
s37(1)(a)	Review prior to expiry magistrates order for detention as a result of a mental health enquiry	715	547	1262	112	1	15	4	1130
s37(1)(b)	Review at least once every 3 months during first 12 months person is an involuntary patient	405	248	653	38	-	8	1	606
s37(1)(c)	Review at least once every 6 months while person is an involuntary patient after first 12 months	438	219	657	35	-	-	1	621
<b>Total</b>		1558	1014	2572	185	1	23	6	2357

<b>Table 6</b>										
<b>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 period 2007/8, 2008/09 and 2009/10</b>										
	<i>M</i>	<i>F</i>	<i>T</i>	<i>Adjourned</i>	<i>Withdrawn no jurisdiction</i>	<i>Appeal Dismissed</i>	<i>Discharged</i>	<i>Dismissed and no further Appeal to be heard prior to next scheduled review</i>	<i>Reclass to Voluntary</i>	
Jul 07 - Jun 08	104	53	157	20	9	116	3	9	-	
Jul 08- Jun 09	105	94	199	16	12	144	12	15	-	
Jul 09 - Jun 10	137	118	255	27	14	192	3	18	1	

**Table 7****Community treatment orders for declared mental health facilities made by the Tribunal for the financial years 2007/08, 2008/09 and 2009/10**

<i>Health Care Agency</i>	<i>2007/08 Total CTOs</i>	<i>2008/9 Total CTOs</i>	<i>2009/10 Total CTOs</i>	<i>Health Care Agency</i>	<i>2007/8 Total CTOs</i>	<i>2008/9 Total CTOs</i>	<i>2009/10 Total CTOs</i>
Albury CMHS	26	17	21	James Fletcher Hospital	-	1	-
Auburn CHC	36	28	31	Kempsey CMHS	16	24	34
Bankstown MHS	152	109	116	Lake Illawarra Sector MHS	87	80	64
Bega Valley Counselling & MHS	10	12	3	Lake Macquarie MHS75	75	72	86
Blacktown	180	120	109	Leeton/Narrandera CHC	8	13	1
Blue Mountains MHS	86	86	87	Lismore MHOPS	51	39	49
Bondi Junction CHC	15	20	7	Lithgow MHS	11	-	-
Bowral CMHS	14	7	10	Liverpool MHS	115	102	101
Campbelltown MHS	161	141	110	Macquarie Area MHS	36	31	46
Camperdown	91	77	79	Manly Hospital & CMHS	114	90	94
Canterbury CMHS	88	100	116	Maroubra CMH	220	183	194
Central Coast AMHS	246	246	244	Marrickville CMHS	182	108	146
Clarence District HS	35	31	30	Merrylands CHC	91	99	77
Coffs Harbour MHOPS	100	81	61	Mid Western CMHS	33	24	39
Cooma MHS	15	12	8	Mudgee MHS	6	4	4
Cootamundra MHS	12	5	3	Newcastle MHS	89	66	80
Croydon	123	114	133	Northern Illawarra MHS	89	77	80
Deniliquin District MHS	8	5	4	Orange CHC	11	-	-
Dundas CHC	57	45	33	Orange C Res/Rehab Services	18	46	33
Eurobodalla CMHS	39	37	31	Parramatta	52	51	54
Fairfield MHS	138	134	154	Penrith MHS	101	84	75
Far West MHS	38	28	29	Port Macquarie CMHS	84	75	55
Glebe CMHS	5	-	-	Queanbeyan MHS	32	24	26
Goulburn CMHS	47	48	48	Redfern/Newtown CMHS	76	57	61
Griffith (Murrumbidgee) MHS	9	13	13	Royal North Shore H & CMHS	149	113	111
Hawkesbury MHS	15	23	34	Ryde Hospital & CMHS	126	106	97
Hills CMHC	48	45	33	Shoalhaven MHS	44	29	28
Hornsby Ku-ring-gai Hospital & CMHS	126	98	95	St George Div of Psychiatry & MH	217	207	201
Hunter	103	79	42	St Josephs Hospital CMAPPU	1	-	-
Hunter NE Mehi/McIntyre	21	21	17	Sutherland C Adult & Fam MHS	113	100	81
Hunter NE Peel	47	43	41	Taree CMHS	71	45	49
Hunter NE Tablelands	28	31	19	Temora	-	3	6
Hunter Valley HCA	38	25	30	Tumut	11	4	2
Illawarra Psychiatric Services	1	-	-	Tweed Heads	61	103	75
Inner City MHS	103	90	68	Wagga Wagga CMHS	63	43	35
				Young MHS	14	7	13

**Total Number of Community Treatment Orders 2007-8 4706\***  
**Total Number of Community Treatment Orders 2008-9 4058**  
**Total Number of Community Treatment Orders 2009-10 3956**

\*NB Figures in 2007-8 also include 15 Community Counselling Orders

**Table 8****Number of community counselling orders and community treatment orders made by the Tribunal and by Magistrates for the period 1997 to 2009/10**

	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2007/8	2008/9	2009/10
Magistrate CCOs	8	4	4	3	60	15	563	36	7	6	8	3	-	-
Tribunal CCOs	178	82	66	69	88	54	70	62	53	50	43	15	-	-
<b>Totals CCOs</b>	<b>186</b>	<b>86</b>	<b>70</b>	<b>72</b>	<b>148</b>	<b>69</b>	<b>133</b>	<b>98</b>	<b>60</b>	<b>56</b>	<b>51</b>	<b>18</b>	-	-

Magistrate CTOs	747	747	844	673	1289	563	1096	2056	1535	1579	1452	1315	997	806
Tribunal CTOs	2840	2059	2325	2509	2738	3166	3606	3930	4272	4611	4811	4691	4058	3966*
<b>Total CTOs</b>	<b>3587</b>	<b>2806</b>	<b>3169</b>	<b>3182</b>	<b>4027</b>	<b>3729</b>	<b>4702</b>	<b>5986</b>	<b>5807</b>	<b>6190</b>	<b>6263</b>	<b>6006</b>	<b>5055</b>	<b>4772</b>

Total MagistrateCCO/CTOs	755	751	848	676	1349	578	1159	2092	1542	1585	1460	1318	997	806
Total TribunalCCO/CTOs	3018	2141	2391	2578	2826	3220	3676	3992	4325	4661	4854	4706	4058	3966*
<b>Total CCO/CTOs made</b>	<b>3773</b>	<b>2892</b>	<b>3239</b>	<b>3254</b>	<b>4175</b>	<b>3798</b>	<b>4835</b>	<b>6084</b>	<b>5867</b>	<b>6256</b>	<b>6314</b>	<b>6024</b>	<b>5055</b>	<b>4772</b>

\* Includes 10 CTOs made by the Tribunal at a mental health inquiry

**Table 9****Summary of outcomes for applications for Community Treatment Orders (s51) 2009/10**

	M	F	Total	Adjourned	Withdrawn No Jurisdiction	Application Decline	CTO Made
Application for CTO for a person on an existing CTO	1390	781	2171	38	11	27	2095
Application for a CTO for a person detained in a mental health facility	663	426	1089	67	6	11	1005
Application for a CTO not detained or on a current CTO	610	326	936	49	7	24	856
<b>Totals</b>	<b>2663</b>	<b>1533</b>	<b>4196</b>	<b>154</b>	<b>24</b>	<b>62</b>	<b>3956</b>

**Table 10****Tribunal determinations on ECT consent inquiries for voluntary patients for period 2009/10**

Adjourned	2
Capable and has consented	2
Incapable of consent	5
<b>Total</b>	<b>9</b>



**Table 11****Tribunal determinations on ECT administration inquiries for patients for the periods 2007/08, 2008/09 and 2009/10**

Outcome	2007/8	2008/09	2009/10
Capable and has consented	49	37	46
Incapable of giving informed consent	2	-	1
ECT approved	566	562	608
ECT not approved	18	32	24
No jurisdiction/withdrawn	6	6	5
Adjourned	31	29	32
<b>Totals</b>	<b>672</b>	<b>666</b>	<b>716</b>

**Table 12****Summary of notifications received in relation to emergency surgery (s99) during the periods 2008/09 and 2009/10**

	<i>M</i>	<i>F</i>	<i>T</i>	<i>Lung</i>	<i>Pelvis/ Hip</i>	<i>Tissue/ Skin</i>	<i>Hernia</i>	<i>Caesar- ian</i>	<i>Thyroid</i>	<i>Gastro</i>	<i>Prostate/ Rectal</i>
2008/09	8	4	12	2	3	4	0	0	1	1	1
2009/10*	5	2	7	0	0	1	1	1	1	2	1

\* Includes emergency surgery for three forensic patients

**Table 13****Summary of outcomes for applications for consent to surgical procedures (s101) and special medical treatments (s103) for the period 2009/10**

	<i>M</i>	<i>F</i>	<i>T</i>	<i>Approved</i>	<i>Refused</i>	<i>Adjourned</i>
Surgical procedures*	14	16	30	24	3	3
Special medical treatment	1	1	2	2	0	0

\* Includes three applications for surgical procedures for forensic patients

## 5.2 FINANCIAL MANAGEMENT

**Table 14**

**Summary of statistics relating to the Tribunal's jurisdiction under the NSW Trustee & Guardian Act 2009 for the period July 2009 to June 2010**

Section of Act	Description of Reviews	Reviews			Adjourn-ments	With-drawn no jurisdiction	Order made	No Order made	Interim Order under s20	Revoca-tion Ap-proved	Revo-cation Declined	Legal Repres.
		M	F	T								
Sched 1 cl 9	Referred to Tribunal by Magistrate	1	1	2	-	-	-	1	1	-	-	2
s.46	On application to Tribunal for Order	76	54	130	25	5	83	21	6	-	-	112
s.48	Review of interim FM order	1	-	1	-	-	1	-	-	-	-	1
s.36	Revocation of Order	33	27	60	10	-	-	-	-	41	9	22
<b>Total</b>		<b>110</b>	<b>82</b>	<b>192</b>	<b>35</b>	<b>5</b>	<b>83</b>	<b>22</b>	<b>7</b>	<b>41</b>	<b>9</b>	<b>136</b>

**Note:** The Tribunal considered a forensic patients capability of managing his or her own affairs in 77 hearings. In 76 of these hearings no order for management was made. In one hearing an Interim Financial Management Order was made.

## 5.3 FORENSIC JURISDICTION

**Table 15**

**Combined statistics for Tribunal reviews of forensic patients under the Mental Health (Criminal Procedure) Act 1990 and the Mental Health (Forensic Provisions) Act 1990 for 2008/09 and 2009/10**

<i>Description of Review</i>	<i>2008/9 Reviews</i>			<i>2009/10 Reviews</i>		
	M	F	T	M	F	T
Review after finding of not guilty by reason of mental illness (s41/s44)	33	6	39	31	8	39
Review after detention or bail imposed under s17 MHCPA following finding of unfitness (s42(1)(a)/s45(1)(a)) <sup>1</sup>	-	-	-	-	-	-
Review after limiting term imposed following a special hearing (s42(1)(b)/s45(b))	9	-	9	3	-	3
Regular review of forensic patients (s43/s46(1))	533	54	587	535	66	601
Regular review of correctional patients (s61(1))	3	-	3	23	2	25
Regular review of forensic and correctional patients (s43/s46(1) and s61(1)) <sup>2</sup>	536	54	590	558	68	626
Review of a forensic patient following their apprehension due to an alleged breach of a condition of leave or release (s68(2)) <sup>3</sup>	1	0	1	3	0	3
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) <sup>3</sup>	3	0	3	6	0	6
Initial review of person transferred from prison to MHF (s46/s59)	51	12	63	77	5	82
Review of person awaiting transfer from prison (s54/s58)	3	1	4	17	-	17
Application for a forensic community treatment order (s67) <sup>3</sup>	2	0	2	-	-	-
Regular review of person subject to a forensic community treatment order and detained in a correctional centre (s61(s)) <sup>3</sup>	1	0	1	-	-	-
Appeal against decision of Director-General (s72/s76F)	-	-	-	-	-	-
Application for ECT (s96)	8	5	13	4	4	8
Application for surgical operation (s101)	-	-	-	3	-	3
Application for access to medical records (s156)	-	-	-	1	-	1
<b>Total</b>	<b>647</b>	<b>78</b>	<b>725</b>	<b>703</b>	<b>85</b>	<b>788</b>
<b>Determinations</b>						
Fitness s16	35	2	37	27	2	29
Following limiting term s24	9	-	9	7	-	7
<b>Total</b>	<b>44</b>	<b>2</b>	<b>46</b>	<b>34</b>	<b>2</b>	<b>36</b>
<b>Combined Total</b>	<b>691</b>	<b>80</b>	<b>771</b>	<b>737</b>	<b>87</b>	<b>824</b>

<sup>1</sup> On the Mental Health (Forensic Provisions) Act 1990 coming into effect on 1 March 2009, the requirement to review of those released on bail under s17 of the Act was removed.

<sup>2</sup> On the Mental Health (Forensic Provisions) Act 1990 coming into effect on 1 March 2009, those transferred from a correctional centre to a mental health facility while on remand or serving a sentence of imprisonment were no longer defined as forensic patients, but rather a separate category of 'correctional patient' was established.

<sup>3</sup> This provision only came into effect with the Mental Health (Forensic Provisions) Act 1990 on 1 March 2009.

**Table 16****Determinations following reviews held under the Mental Health (Criminal Procedure) Act 1990 and the Mental Health (Forensic Provisions) Act 1990 for the period 2008/09 and 2009/10**

	2008/9			2009/10		
	M	F	T	M	F	T
Forensic Community Treatment Order <sup>1</sup>	2	-	2	-	-	-
Variation to Forensic CTO <sup>1</sup>	1	-	1	-	-	-
Revocation of Forensic CTO <sup>1</sup>	-	-	-	-	-	-
Determination under s46/59 person IS a mentally ill person who should continue to be detained in a mental health facility	45	10	55	72	4	76
Determination under s46/59 person IS NOT a mental ill person who should continue to be detained in a mental health facility	1	-	1	3	-	3
Classification as an involuntary patient	4	1	5	7	1	8
Determination under s72/s76F appeal against Director-General's failure or refusal to grant leave allowed, leave granted	-	-	-	-	-	-
Adjournments	2	-	2	-	-	-
<b>Total</b>	<b>55</b>	<b>11</b>	<b>66</b>	<b>82</b>	<b>5</b>	<b>87</b>

<sup>1</sup> Forensic Community Treatment Orders were only introduced with the Mental Health (Forensic Provisions) Act 1990 on 1 March 2009

**Table 17**

**Outcomes of reviews held under the Mental Health (Criminal Procedure) Act 1990 and the Mental Health (Forensic Provisions) Act 1990 for the period 2008/09 and 2009/10**

	2008/09			2009/10		
	M	F	T	M	F	T
No change in conditions of detention <sup>4</sup>	287	31	318	319	29	348
Transfer to another facility	27	0	27	63	15	78
Grant of leave of absence	23	4	27	77	10	87 <sup>1</sup>
Revocation of leave of absence	0	0	0	1	0	1
Conditional release	12	1	13	10	0	10
No change to conditional release	130	15	145	131	15	146
Variation of conditions of release	14	1	15	24	4	28
Revocation of conditional release	2	0	2	6	0	6
Unconditional release	7	0	7	9	5	14
Non-association or place restriction on leave or release (s76)	3	0	3	4	0	4
Adjournments	36	7	43	36	3	39
Decision not forwarded/ completed due to change in circumstances	24	3	27	3	0	3
Recommendation not approved or not considered by the Minister/ Governor prior to 1 March 2009 <sup>2</sup>	54	5	59	-	-	-
<b>Total</b>	<b>619</b>	<b>67</b>	<b>686</b>	<b>683</b>	<b>81</b>	<b>764</b>

<sup>1</sup> Prior to 1 March 2009 leave could be granted by the Director-General's delegate, as well as being recommended by the Tribunal for approval by the Minister and Governor. 38 such orders were made by the Director-General's delegate from 1 June 2008 until 1 March 2009. Therefore, the total number of orders granting leave made during 2008/9 was 65. In addition, following the commencement of the *Mental Health (Forensic Provisions) Act 1990*, the Tribunal had to confirm leave within the grounds of mental health facilities that had previously been granted by medical superintendents. 15 of the 87 cases where leave was granted in 2009/10 fell into this category. Taking the leave previously granted by the Director-General's delegate and medical superintendents into account, the number of patients granted leave by the Tribunal in 2009/10 was comparable to the number of patients granted leave in 2008/9. (65 orders for leave in 2008/9; 87-15 = 72 orders for new leave being in 2009/10).

<sup>2</sup> These figures do not include those recommendations not approved or not considered prior to 1 March 2009 where there was no change to the forensic patient's detention or release proposed.

**Table 18**

**Determinations of the Mental Health Review Tribunal as to fitness to stand trial following reviews held under the Mental Health (Criminal Procedure) Act 1990 and the Mental Health (Forensic Provisions) Act 1990 for the period 2008/09 and 2009/10**

	2008/9			2008/9		
	M	F	T	M	F	T
S16 person WILL become fit to stand trial on the balance of probabilities within 12 months	4	-	4	5	-	5
S16 person WILL NOT become fit to stand trial on the balance of probabilities within 12 months	22	2	24	15	2	17
S24 person is mentally ill	4	-	4	2	-	2
S24 person is suffering from a mental condition and DOES object to being detained in a mental health facility	-	-	-	1	-	1
S24 person is suffering from a mental condition and DOES NOT object to being detained in a mental health facility	1	-	1	-	-	-
S24 person is neither mentally ill nor suffering from a mental condition	2	-	2	3	-	3
S42/45 person has not become fit to stand trial and will not become fit within 12 months	6	-	6	-	-	-
S44/47 person has become fit to stand trial	5	-	5	6	-	6
S44/47 person has not become fit to stand trial and will not become fit within 12 months	25	5	30	23	10	33
Adjournments	13	-	13	8	-	8
<b>TOTAL</b>	<b>82</b>	<b>7</b>	<b>89</b>	<b>63</b>	<b>12</b>	<b>75</b>

<b>Table 19</b>			
<b>Location of forensic and correctional patients as at 30 June 2008, 30 June 2009 and 30 June 2010</b>			
	<b>30 June 2008</b>	<b>30 June 2009</b>	<b>30 June 2010</b>
Bankstown	1	1	1
Bathurst	-	1	1
Cessnock Correctional Centre	1	1	-
Community	92	90	89
Concord (Rozelle) Hospital	5	7	4
Cumberland Hospital	41	38	39
Dilwynia Correctional Centre	-	1	-
Forensic Hospital	-	55	83
Grafton Correctional Centre	1	-	-
Goulburn Correctional Centre	3	4	1
Junee Correctional Centre	1	-	-
Juvenile Justice Centre	3	2	-
Kempsey Correctional Centre	1	-	-
Kenmore Hospital	3	3	2
Lismore	1	1	-
Lithgow Correction Centre	1	-	-
Long Bay Prison Hospital	79	34	41
Macquarie Hospital	8	7	7
Metropolitan Remand and Reception Centre	37	35	38
Metropolitan Special Programs Centre	2	4	6
Morisset Hospital	31	30	31
Parramatta Correctional Centre	-	-	1
Silverwater Womens Ccorrectional Centre	4	5	3
Wellington Correctional Centre	-	-	1
<b>TOTAL</b>	<b>315</b>	<b>319</b>	<b>348</b>

**Table 20****Location of hearings held for forensic and correctional patients during 2008/09 and 2009/10**

	2008/9	2009/10
Concord Hospital	9	8
Cumberland Hospital	103	86
Dilwynia Correctional Centre	1	-
Forensic Hospital	15	158
Goulburn Gaol	2	5
Kenmore Hospital	5	5
Long Bay Prison Hospital	185	139
Macquarie Hospital	19	9
Metropolitan Remand and Reception Centre	100	86
Morisset Hospital	73	68
Parklea PMS	2	-
Prince of Wales	2	-
Silverwater Womens Correctional Centre	10	8
Tribunal Premises	245	252
<b>TOTAL</b>	<b>771</b>	<b>824</b>

**Table 21****Category of forensic and correctional patients as at 30 June 2009 and 30 June 2010**

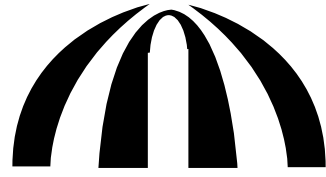
Category	Male		Female		Total	
	June 09	June 10	June 09	June 10	June 09	June 10
Not Guilty by Reason of Mental Illness	228	240	25	28	253	268
Fitness	17	13	2	2	19	15
Limiting Term	16	19	4	4	20	23
Correctional Patients	24	39	3	3	27	42
<b>Total</b>	<b>285</b>	<b>311</b>	<b>34</b>	<b>37</b>	<b>319</b>	<b>348</b>

**Table 22****Number of forensic patients 1992 - 30 June 2010**

Year	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
Forensic Patients	86	90	102	123	122	126	144	176	193	223	247	279	277	284	310	309	315	319	348

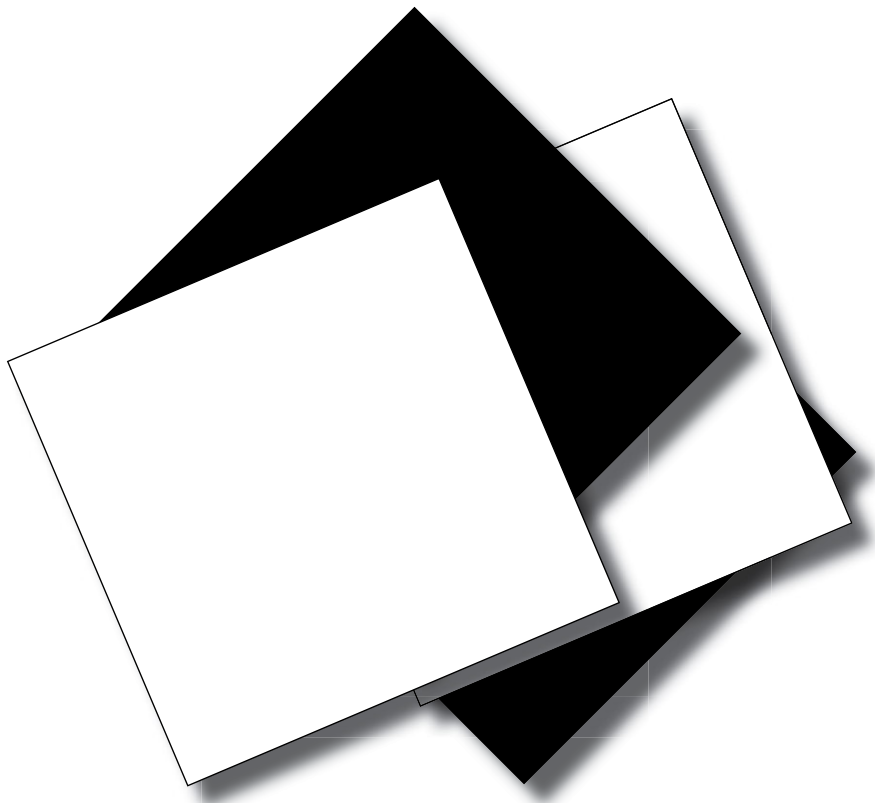
*NOTE: Figures for 1992-2001 taken from MHRT Annual Reports as at 31 December of each year. Figures from 2002 - 2010 were taken as at 30 June of these years. Figures for 2009 and 2010 include correctional patients.*





Mental Health  
Review Tribunal

# APPENDICES



## APPENDIX 1

### Patient statistics required under MHA s147(s) concerning people taken to a mental health facility during the period July 2009 to June 2010.

(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.

	<i>Method of referral</i>	<i>Admitted</i>	<i>Not Admitted</i>	<i>Total</i>
MHA90/MHA07				
s19	Certificate of Doctor	9393	224	9617
s22	Apprehension by Police	2536	889	3425
s20	Ambulance Officer	494	88	582
s142/s58	Breach Community Treatment Order	125	15	140
s23/s26	Request by primary carer/relative/friend	947	9	956
s25/s24	Order of Court	189	62	251
s23 via s19	Authorised Doctor's Certificate	227	1	228
<b>Total Admissions</b>		<b>13911</b>	<b>1288</b>	<b>15199</b>
Reclassified from Informal to Involuntary		1559	97	1656
<b>TOTAL</b>		<b>15470</b>	<b>1385</b>	<b>16855</b>

(2) s147(2)(b)

Persons were detained as mentally ill persons on 10670 occasions and as mentally disordered persons on 3696 occasions. 1104 persons were admitted as voluntary patients.

(3) s147(2)(c)

A total of 10639 mental health inquiries were commenced and 4828 of these inquiries were concluded.

### Outcome of mental health inquiries conducted by magistrates 1 July 2009 - 30 June 2010

	<b>Magistrate</b>	MHRT	Total
Adjourned	5808	3	5811
Discharge or deferred discharge	102	2	104
Reclassify from involuntary to voluntary	317	-	317
Involuntary patient order	3563	21	3596
Community treatment order	806	10	816
Declined to deal with	-	1	1
<b>TOTAL</b>	<b>10596</b>	<b>43</b>	<b>10639</b>

(4) s147(2)(d)

In 2009/10, 15470 persons were detained as involuntary patients. Of these, only 1262 remained detained in a mental health facility and were reviewed by the Tribunal on the expiry of the Magistrate's order (usually three months in length). Therefore, approximately 14208 persons were detained as involuntary patients for three months or less.

**The jurisdiction of the Tribunal as at 30 June 2010 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)

*Protected Estates Act 1983 Matters*

- Order for management s17,18,19
- Interim order for management s20
- Revocation of order for management s36

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*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

## Mental Health Review Tribunal Members as at 30 June 2010

<b>Full-Time Members</b>	The Hon Greg James QC (President)	Ms Maria Bisogni (Deputy President)	Mr John Feneley (Deputy President)
<b>Part-Time Deputy Presidents</b>	The Hon John Dowd AO QC The Hon Mahla Pearlman AO	Mr Richard Gully AM RFD	

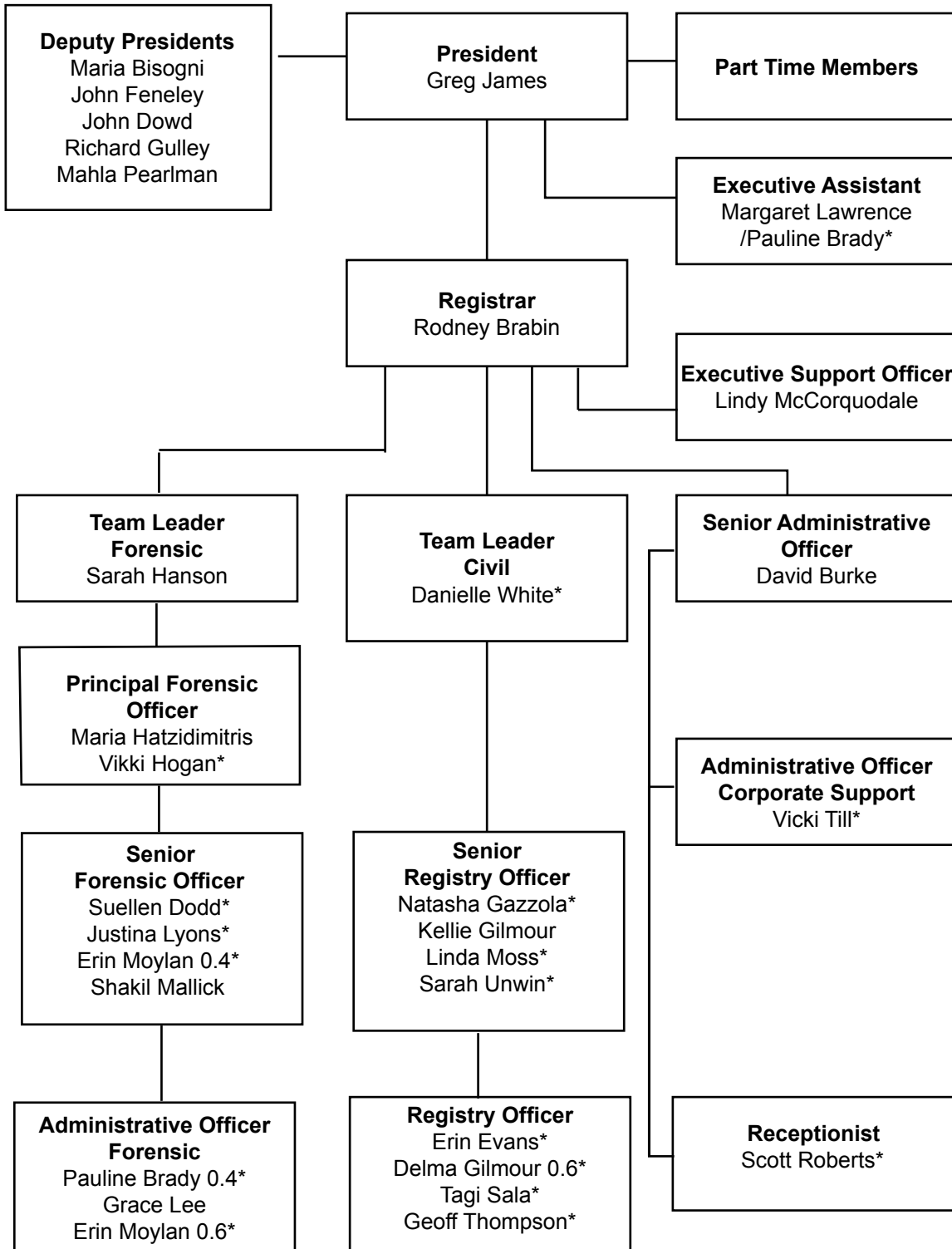
	<b>Lawyers</b>	<b>Psychiatrists</b>	<b>Other</b>
<b>Part-Time Members</b>	Ms Carol Abela	Dr Clive Allcock	Mr Stanley Alchin
	Ms Diane Barnetson	Dr Stephen Allnutt	Ms Lyn Anthony
	Mr Peter Braine	Dr Dinesh Arya	Ms Elisabeth Barry
	Ms Catherine Carney	Dr Jenny Bergen	Mr Peter Bazzana
	Ms Jenny D'Arcy	Dr Brian Boettcher	Mr Ivan L Beale
	Ms Linda Emery	Dr Barbara Burkitt	Ms Diana Bell
	Ms Helen Gamble	Dr Andrew Campbell	Ms Christine Bishop
	Mr Anthony Giurissevich	Dr Jonathan Carne	Mr Gerald Cheung
	Ms Yvonne Grant	Dr Shailja Chaturvedi	Ms Gillian Church
	Mr Robert Green	Dr June Donsworth	Dr Leanne Craze
	Ms Eraine Grotte	Dr Charles Doutney	Mr Phillip French
	Mr David Hartstein	Dr Michael Giuffrida	Ms Michelle Gardner
	Mr Hans Heilpern	Prof David Greenwood	Mr Michael Gerondis
	Ms Catherine Henry	Prof James Greenwood	Mr John Haigh
	Mr John Hislop	Dr Jean Hollis	Ms Sunny Hong
	Mr Christopher Hogg	Dr Rosemary Howard	Ms Lynn Houlahan
	Mr Daniel Howard	Dr Peter Klug	Ms Susan Johnston
	Ms Barbara Hughes	Dr Karryn Koster	Dr Timothy Keogh
	Ms Julie Hughes	Dr Dorothy Kral	Ms Janet Koussa
	Ms Carolyn Huntsman	Dr Lisa Lampe	Ms Rosemary Kusuma
	Mr Thomas Kelly	Dr William E Lucas	Mr Gordon Lambert
	Mr Dean Letcher	Dr Rob McMurdo	Ms Jenny Learmont
	Ms Monica MacRae	Dr Sheila Metcalf	Ms Leonie Manns
	Ms Carol McCaskie	Dr Janelle Miller	Dr Meredith Martin
	Mr Lloyd McDermott	Dr Olav Nielssen	Mr Shane Merritt
	Dr Yega Muthu	Dr Richard Normington	Ms Tony Ovadia
	Ms Elizabeth Olsson	Dr Geoffrey Rickarby	Mr Alan Owen
	Ms Anne Scahill	Dr Anthony Samuels	Mr Rob Ramjan
	The Hon Ken Shadbolt	Dr Peter Shea	Ms Felicity Reynolds
	Ms Tracy Sheedy	Dr John Spencer	Mr Andy Robertson
	Mr Jim Simpson	Prof Christopher Tennant	Ms Robyn Shields
Ms Rohan Squirchuk	Dr Paul Thiering	Ms Alice Shires	
Mr Bill Tearle	Dr Andrew Walker	Assoc Prof Meg Smith	
Mr Charles Vandervord	Dr Rosalie Wilcox	Dr Suzanne Stone	
The Hon Frank Walker QC	Dr Anthony Williams	Ms Bernadette Townsend	
	Dr John Woodforde	Ms Pamela Verrall	
	Dr Rasia Yuvarajan	Ms Anne Whaite	
		Dr Ronald Witton	
		Assoc Prof Stephen Woods	

The terms of the following members expired during 2008/09. Their contribution as members is acknowledged and appreciated.

<b>Lawyers</b>	<b>Psychiatrists</b>	<b>Other</b>
The Hon Terry Christie QC Mr Robin Handley (resigned)		

# MENTAL HEALTH REVIEW TRIBUNAL

## Organisational Structure and Staffing as at 30 June 2010



\* Acting or temporary appointment

**FINANCIAL SUMMARY****Budget Allocation and Expenditure 2009/2010**

The Tribunal ended the 2009/2010 financial year with a budget surplus of \$43,301. Expenditure during the year was directed to the following areas:

Tribunal Budget		\$4,860,636
Grant Received		*400,000
Revenue		<u>9,915</u>
		\$5,270,551
Salaries and Wages	2,542,619	
Goods and Services	2,304,287	
Equipment, repairs and maintenance	360,545	
Depreciation	<u>19,799</u>	
Expenditure	**5,227,250	<u>5,227,250</u>
Budget Surplus		\$ 43,301
		<u>                    </u>

\* Funds received from the Department of Justice & Attorney-General (DJAG) for the costs of the Mental Health Inquiries function transferred from DJAG to the Mental Health Review Tribunal.

\*\* Includes expenditure of \$381,672 on the Mental Health Inquiries program.

## FREEDOM OF INFORMATION

The provisions of the *Freedom of Information Act 1989* (hereafter FOI Act) do not apply to the judicial functions of the Tribunal (see sections 19(2)(a) and 19(2)(b)).

Parties to proceedings before the Tribunal, however, may obtain a copy of the record of the hearing proceedings to which they are a party. If the Tribunal is of the opinion that sufficient cause is shown to warrant the transcription or copy of the audio recording relating to the matter being provided, the President of the Tribunal may direct that a copy of the audio recording or transcription be made and copies also provided in certain other circumstances required by law.

The administrative and policy functions of the Tribunal are, however, covered by the FOI Act. The Tribunal received no applications under the FOI Act during 2009-10 that related to its administration or policy functions.

### ***FREEDOM OF INFORMATION ACT 1989, SECTION 14(1)B AND (3) SUMMARY OF AFFAIRS of the MENTAL HEALTH REVIEW TRIBUNAL***

***AS AT 30 JUNE 2010***

#### *INTRODUCTION*

The Mental Health Review Tribunal is a quasi-judicial body whose jurisdiction is cast in broad terms by the Mental Health Act 2007 and the Mental Health (Forensic Provisions) Act 1990 and related legislation covering some 42 areas. A summary of the Tribunal's full jurisdiction, its goals and objectives may be found in its Annual Report. The Mental Health Review Tribunal's office is located at

Buiding 40, Digby Road  
Gladesville Hospital  
GLADESVILLE NSW 2111  
(PO Box 2019, BORONIA PARK NSW 2111).  
Telephone: (02) 9816 5955  
Facsimile: (02) 9817 4543  
E-mail: [mhrt@doh.health.nsw.gov.au](mailto:mhrt@doh.health.nsw.gov.au)  
Website: [www.mhrt.nsw.gov.au](http://www.mhrt.nsw.gov.au)

#### *DESCRIPTION OF DOCUMENTS HELD BY TRIBUNAL*

##### *SOUND RECORDINGS*

- Pursuant to Section 159 of the Mental Health Act 2007 proceedings of the Tribunal are to be recorded. Accordingly, the Tribunal audio records hearings and these recordings are stored for a minimum of twelve months.
- The Tribunal can provide a copy of the audio recording, and may provide a transcript of a hearing under certain circumstances, (as outlined in the Tribunal's policy/practice note) upon payment of the prescribed fee.



## APPENDIX 6

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### COMPUTER DATA BASE

- The Tribunal maintains a computer database for both administrative purposes and in order to meet its statutory reporting obligations.

Access to the database is restricted due to the confidential nature of some of the information contained therein.

A brief description of the contents of the Tribunal database is provided below:-

#### 1. CIVIL PATIENT REGISTER

Contains details of all civil patients who have appeared before the Tribunal.

#### 2. CIVIL PATIENT REVIEWS

Contains details of the section(s) under which each civil patient review was held and the determination(s) made in each case.

#### 3. FORENSIC PATIENT REGISTER

Contains details of all forensic patients who have appeared before the Tribunal.

#### 4. FORENSIC PATIENT REVIEWS

Contains details of the section(s) under which each forensic patient review was held and the determination(s) made.

#### 5. FORMS 10 and 11 DATA COLLECTION

In accordance with clause 48 and 49 of the Mental Health Regulation 2007, mental health facilities are required to provide advice to the Tribunal of all people admitted to a mental health facility involuntarily, and those who are presented to a Magistrate pursuant to a mental health enquiry.

### PATIENT FILES

- The Tribunal currently maintains approximately 26,000 patient files for both Civil and Forensic matters. Files are identified by a patient's name and a file number. The file contains some information about each patient's clinical history, eg. copies of medical reports and details of each review.

### ADMINISTRATIVE FILES

- The Tribunal currently has 600 administrative files in existence. These relate to a wide range of procedural, policy and general matters.

### PUBLICATIONS

- The Tribunal publishes an Annual Report covering each financial year. The Tribunal also publishes ad hoc documents including practice notes, information brochures, hearing kits. The Tribunal also maintains a website [www.mhrt.nsw.gov.au](http://www.mhrt.nsw.gov.au) which contains these publications.

### REGISTERS

- Electronic Registers are maintained for forensic and administrative files, Form 10s and 11s and incoming mail.

### BOOKS

- The Tribunal maintains its own small reference library.