Mental Health
Review Tribunal

The Hon Kevin Humphries MP
Minister for Mental Health
Minister for Healthy Lifestyles
Minister for Western NSW
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 2010 to 30 June 2011, as required by section 147 of the Mental Health Act 2007.

Yours sincerely

Hon Greg James QC
President

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

The Tribunal has some 45 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".

PRESIDENT'S REPORT

The Tribunal has performed with great energy and diligence in the past year. Overall more than 110 members of the Tribunal, with the assistance of 28 staff, have conducted more than 13,500 civil and forensic hearings during the reporting period. The detail is contained in the Statistical Review section of this Report and is discussed in the Registrar's Report. Both the Forensic Division and the Civil Division also provide detailed reports, consequently here I will refer to some significant developments as well as to an overview of each Divisions work. Before doing so I should first thank all the members and staff for their conscientiousness, skill and dedication which have enabled so much to be done. Thanks should also go to the lawyers of the Mental Health Advocacy Service and to the Doctors and staff of the inpatient and community mental health facilities and the Community Forensic Mental Health Service (CFMHS) with whom we have worked so well.

MENTAL HEALTH COMMISSION

This reporting period has seen a change in Government and there have been a number of significant developments in the reporting period; most notably the NSW and Commonwealth Governments have each announced the establishment of Mental Health Commissions. At the state level the Tribunal has been involved in one of the working groups charged by the Minister for Mental Health, the Hon Kevin Humphries, to develop the model for the NSW Commission.

The NSW Commission is expected to produce better policies and accountability in the delivery of mental health services and with time, to allow Government to address the shortage of beds and community based services. The Commission is intended to review the way in which services are delivered to ensure that NSW adjusts its approach to meet changing circumstances and to provide a high standard of care and treatment for patients with dignity and respect in the future. It is also to be hoped that the Commission, the Ministry of Health, and the Tribunal will be able to foster research to enable the system to better achieve those objectives.

The Tribunal looks forward to working with the Commission and being able to share with it the Tribunal's direct insights into the mental health system gained from conducting thousands of hearings each year into voluntary and involuntary mental health treatment in NSW. With that in mind I wish to touch on a number of significant issues in the civil and forensic areas of the Tribunal's jurisdiction, some of which have been raised in previous Annual Reports.

THE FORENSIC SYSTEM

The Tribunal conducted 870 review hearings of the treatment of forensic and correctional patients in 2010/11. The hearings were conducted in prisons, forensic facilities, hospitals and in the community.

Correctional Patients

Correctional patients include those prisoners detained on remand or serving sentences in gaol. Justice Health research in 2009 revealed that 49% of prisoners had experienced some form of mental illness or mental condition with 17.5% taking psychiatric medication at the time of that research. Most of such prisoners are either on remand or serving short sentences. The Law Reform Commission is currently considering ways in which the justice system might better treat such patients and measures to divert more people with a mental illness and/or intellectual disability away from the prison system. Both the Attorney-General and the Minister for Mental Health have stated that this is seen as a priority area.

However, for the time being there remain large numbers of prisoners in prisons who require mental health treatment. Even with increased diversion from the Justice system it is likely that substantial numbers of people charged with offences will not be eligible for diversion and will continue to be detained in prison despite suffering mental illness. If these prisoners are to be treated as is required by proper health principles and Australia's obligations under various international instruments, they must receive treatment promptly, effectively and lawfully.

The Tribunal has previously expressed concern in its Annual Reports that there are insufficient mental health resources within prisons to adequately meet the demand for treatment. Most significantly there is only one declared mental health facility within the prison system which can provide involuntary treatment, namely Long Bay Prison Hospital (LBPH). The limited number of beds there are can only accommodate some of the most acute patients. The number of beds is simply insufficient to meet the demand. The situation is even worse for women as there are no dedicated mental health facility beds for women within the correctional system.

Consequently even acutely unwell prisoners who lack capacity to accept treatment or who are not voluntary patients, by the criteria applicable under the Mental Health Act 2007, and who are not admitted to the Prison Hospital must remain in their gaols or are held at the mental health screening units at the Metropolitan Remand and Reception Centre (MRRC) and Silverwater Women's prison until a bed becomes available at the hospital. In the reporting period the average waiting time for a bed at LBPH from the MRRC was over three weeks with some patients waiting up to three months.

The treating teams at the screening units do their very best but they are often unable to relieve the patients' distress because they are not legally authorised to give involuntary treatment, hence some necessary treatments are simply unavailable to patients in need.

The Act does provide for forensic Community Treatment Order to enable the less acute patients to be treated lawfully in their correctional setting, but an apparent reluctance to implement this important reform has seen very few applications for CTOs. In any event whilst the use of CTOs would reduce the problem it would not address the needs of those requiring acute care. This can only be achieved by having more declared mental health beds.

Justice Health has considered transferring prisoners to the Forensic Hospital for treatment, but this would see those prisoners competing with forensic patients for beds when there are already insufficient beds for forensic patients.

From the Tribunal's perspective the answer is to have more declared mental health facility beds within the prison system to meet the demand in a reasonable period of time. This could be achieved by declaring some beds within the existing screening units and ideally opening additional screening units with some declared beds in regional areas. In many cases a short admission to a bed within the screening unit would be sufficient to re-establish medication and stabilise the patient so that a return to the appropriate correctional setting, often with a CTO, will be appropriate.

Parole release planning

Unless there is adequate continuity of care between prison and the community, mentally ill prisoners will continue to cycle in and out of the prison system without their needs being addressed in either (See Case Study in the Forensic Division Report).

In addition failure to promptly address a prisoner's mental illness means that they are likely to remain in prison well beyond their non-parole date. It is not uncommon for a prisoner's automatic parole to be revoked in cases where they are not mentally stable or discharge arrangements with community mental health facilities have not been finalised. Better coordination between Community Offender Services, Justice Health treating teams and community mental health facilities can ensure timely release on parole and reduce the risk of the person's mental state deteriorating with the attendant risk of recidivism. This will also reduce the length of detention and the number of such patients in gaol.

Forensic Patients

The Forensic Patient system, designed to cater for those found not guilty by reason of mental illness or unfit for trial, notwithstanding the establishment of the Forensic Hospital and the new forensic mental health facility at Bloomfield, continues to experience difficulty meeting the demand for beds. Although Justice Health has declared that the quality of the care at the Forensic Hospital is world class, and has now substantially brought that Hospital on line, at the end of the reporting period there remain a substantial number of forensic patients in prison waiting for placement in the Forensic Hospital. Whilst the new forensic unit at Bloomfield Hospital has now commenced operation this has had limited impact as fewer beds than expected have been able to be opened due to staffing difficulties.

The Tribunal notes with interest the establishment of the new Forensic Mental Health Network and hopes that will improve bed flow through the forensic system and foster continuous improvement and best practice between the forensic facilities.

The Tribunal looks forward to engaging with the Network on significant issues affecting the care and treatment of forensic patients, particularly:

- A clearer system for flexible movement of patients into and out of the forensic mental health system
- Consistent policies and guidelines
- The ability to address the needs of special groups such as ATSI, NESB, the aged, and women.

Care for forensic patients with an intellectual disability or cognitive impairment

Whereas mentally ill forensic patients can now receive specialist care and detention within the new Forensic Hospital at the Long Bay Complex, there is no equivalent facility in NSW for those with an intellectual disability, acquired brain injury, cognitive disability or other disabling conditions. This means that such forensic patients are generally detained in the prison system which only has limited special placements and programs. The Law Reform Commission has embarked on investigating a possible response to the clear needs of such persons in its current Sentencing reference.

A common barrier to forensic patients with an intellectual disability being released into the community is the lack of an identified pathway or appropriate rehabilitation program. Release planning for these patients within prison instead tends to apply mental health models which are rarely appropriate.

There are limited community based housing and program options offered for people with an intellectual disability by Aging Disability and Home Care (ADHC) through programs such as the Criminal Justice Program. However, recent experience has shown that the existing facilities in this system cannot accommodate high risk forensic patients and so far no model to accommodate such persons has been developed, notwithstanding the Tribunal has been pointing out the inadequacy for over four years.

One of the problems in this area is the lack of clarity around which agency is responsible for the progress of a forensic patient with an intellectual disability or other cognitive impairment. Corrective Services accepts responsibility for detention in prison but acknowledges the limit of its rehabilitation services. Justice Health sees no role for itself unless the patient also has a mental illness. ADHC sees no role for itself until the person is to be released into the community and Commonwealth funding for accommodation in community facilities is generally unavailable. The Tribunal often finds itself trying to coordinate the activities of various agencies and to negotiate their roles to seek any progress for patients.

THE CIVIL SYSTEM

Appeals against refusal to discharge

There appears to be a consensus that NSW needs to improve the resourcing of community mental health services if it is to stop the cycling of mentally ill people in and out of hospital. This will understandably take time to achieve.

In the interim however, the prevailing dynamic within the mental health system is that people who experience acute episodes of mental illness, requiring them to have involuntary care in hospital, are not treated long enough to reduce the likelihood of relapse. This is more likely to be the case if the individual is aggressive and difficult to manage.

The Tribunal has been asked by Government to consider taking a role in examining refusals to treat or early discharges from mental health facilities with a view to allowing patients' family and carers, or the Police who have brought them to the facility, to obtain consideration of the patient receiving appropriate admission and treatment in hospital care.

On numerous occasions the public confidence in the mental health system has been shaken by a tragedy occurring after a patient has been refused admission or discharged prematurely from a facility. Although CTOs can now be made on an application from the community as well as from an inpatient mental health facility, on all too many of such occasions persons are discharged without CTOs being sought, so that unless the patient seeks voluntary treatment they remain untreated. It is most important that consideration be given to a suitable mechanism by which a person's human right to proper and adequate treatment, including in a facility, may be respected. The community and that person need to be protected against the possible consequences of illness.

Mental Health Inquiries

As appears in more detail in the Civil Division Report later, the Tribunal's new role in lieu of the Magistrates, conducting inquiries into possible orders for involuntary treatment of assessable persons has produced a much greater workload for members and staff. The overall numbers and trends have been closely monitored by a working group. During this first year of operation of the Mental Health Inquiries by the Tribunal a specialist panel of legal members has sat on these matters to ensure consistency of approach and an appropriate standard. The assistance of the Mental Health Advocacy Service cooperating with the facilities to provide legal clinics to such patients during their first week of detention for treatment must be acknowledged.

On a comparison between the statistics concerning Magistrates Inquiries, and the statistics relating to the Tribunal's inquiries, it becomes apparent the numbers are only dramatically different in respect of the number of adjournments. Under the old system adjournments for up to two weeks occurred in the overwhelming majority of cases such that in a majority of cases consideration on the merits as to whether a patient should or should not be made an involuntary patient either did not occur at all or those that were considered almost invariably had that consideration occur in the third or fourth week of the patient's stay in the hospital. The present system coupled with the new right of appeal allows time for diagnosis and stabilisation, legal advice and proper preparation for the hearing and affirms patients' rights. The Mental Health Act, 2007, passed after a decade of consultation changed the focus of mental health care in NSW from a reliance on detention to obviate risk, to a focus on, and a requirement for, treatment, where possible in the community and in all cases, in the least restrictive safe and effective regime. The proper application of the new principles requires patients to have a sufficient therapeutic opportunity for treatment with as little legal intervention as possible. Patients, their carers, their lawyers and their clinicians can now bring on an inquiry as early as is needed and invoke the right of appeal from a refusal to discharge which is now available immediately on or after admission.

Unsurprisingly, complementing the hearing of inquiries has been an increase in such appeals to the Tribunal which has enabled patients to have their admission and detention considered by full Tribunal panels (comprising a psychiatrist and other suitably qualified member as well as the lawyer member). Although the number of appeals is much greater than in previous years, the incidence of successful appeals has however not changed significantly.

STAFFING

In the Registrar's Report particular mention is made of the change in positions on the staff of the Tribunal. Once again the Tribunal staff have worked under a considerable load in order to cope with the overall and increased Tribunal's functions. The Tribunal has been unable to secure a number of temporary positions as permanent, which has often led to the staff having to cope in temporary positions. Two additional positions were provided in 2010 to allow for the Mental Health Inquiries function, but the Tribunal plainly requires additional staff and the staff are entitled to security of employment.

MEMBERSHIP NEW & RETIRED

During the year three part time Tribunal members resigned from their appointment to the Tribunal. I would like to extend the deepest gratitude to Judge Elizabeth Olsson SC who left us on her appointment to the District Court and Dr Richard Normington, for their contribution as part time members but particularly to Mr Stan Alchin OAM who served as a member of the Tribunal for more than 15 years.

I would also like to welcome Ms Corinne Henderson and Dr Susan Thompson who joined the Tribunal as part time members during the year and the Hon Ken Taylor AM, RDF who has been appointed as a part time Deputy President.

At the commencement of this report, I thanked the members and staff; here I repeat that the Tribunal is deeply grateful to its staff, its members and to those from the Ministry of Health, the Department of Attorney-General and Justice and the other agencies who have worked with it.

Hon Greg James QC
President

FORENSIC DIVISION REPORT

Key Statistics

This report provides the first year on year comparison of orders made by the Tribunal regarding the care, treatment, detention and release of forensic patients 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. The Tribunal 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 5.6% increase in the number of hearings during 2010/11 compared to 2009/10 (870 in 2010/11 compared to 824 in 2009/10). This increase was in part due to an increase in the number of inmates awaiting transfer to a mental health facility for treatment and additional hearings scheduled to enable forensic patients to be transferred to the new facilities of the Forensic Hospital and Bloomfield Hospital.

In 2010/11, the Tribunal made 93 orders for a patient's transfer to another facility, compared to 78 orders made in 2009/10. This largely reflects the increased capacity within the forensic mental health system, with the opening of further beds in the Forensic Hospital, as well as the partial opening of the forensic unit at Bloomfield Hospital.

While the opening of these beds has seen some increased movement of patients, it remains the case that forensic patients are generally housed in correctional centres following the Court's finding of not guilty by reason of mental illness, rather than being able to access a placement in an appropriate mental health facility. As at 30 June 2011, there remained 19 forensic patients in correctional centres awaiting placement in the Forensic Hospital. Three of these patients had been waiting more than twelve months for a placement to become available, and a further six patients had been waiting more than six months. As mentioned in the President's report, the Tribunal is hopeful that the establishment of the new Forensic Mental Health Network will see an improvement in the flow of patients through the system.

Increased Case Management

One of the benefits of the Tribunal becoming the determinative authority in relation to forensic patients was that it enabled the Tribunal to become more responsive to changes in a forensic patient's care and treatment needs. This has seen the Forensic Division develop a closer case management approach whereby it tracks key issues between Tribunal hearings as the need arises.

One of the mechanisms utilised under this approach is the ability of the Tribunal to issue an order for apprehension rather than relying on the Tribunal's power to revoke an order for leave or release, which requires a full Tribunal hearing. An apprehension order may be issued when the President of the Tribunal believes that a forensic patient may have breached a condition of the grant of leave or release, or that a forensic patient's condition may have deteriorated such that they are at risk of causing serious harm to himself or herself or to any member of the public because of their mental condition. The consequence of issuing an order is that the patient is taken to a mental health facility for a thorough assessment, following which they are reviewed by the Tribunal to consider the events leading to the issuing of the order, and the appropriateness of the continuation of leave or release. This effectively acts as an early intervention measure by temporarily suspending the forensic patient's leave or release to ensure that appropriate assessments occur in a timely fashion.

This change of approach is reflected in the 2010/11 statistics with an increase in the number of hearings following an apprehension order being issued (10 in 2010/11 compared to 3 in 2009/10), and a decrease in the number of revocations of leave and release (2 in 2010/11 compared to 7 in 2009/10).

Internal and External Training

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

The Forensic Division has run a series of education sessions concerning the legislation and related Tribunal procedures. Sessions have been held with staff of Justice Health, key forensic mental health facilities, Local Health Districts, Corrective Services, and Probation and Parole Services. The Forensic Division has also held sessions with other professional groups working in the area including Legal Aid.

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 has also developed regular information and training sessions for Presidential members, which has included a presentation from the Community Justice Program run by Ageing, Disability and Home Care.

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

As a first step, the Tribunal has now established the Forensic Patient Data Base Enhancement Project with a governance group comprised of Tribunal members and staff. This project has a dual purpose of encouraging research utilising the Tribunal's forensic record, and improving access by developing a comprehensive electronic database of key variables drawn from the Tribunal's records.

Two pieces of research are currently underway with graduate students from Macquarie University and the University of New South Wales looking at the quality and substance of neuropsychological reports for those found unfit to be tried and the factors predicting community outcomes of people found not guilty due to mental illness.

Submissions

In addition to the contribution the Tribunal made to the reviews of the Victim's Registers and Interstate Agreements as detailed below, the Tribunal also made submissions in other key areas affecting the care, treatment and supervision of forensic and correctional patients.

In particular, as noted in the President's report, the Tribunal has been co-operating with the Law Reform Commission in respect of its current reference concerning forensic patients and people with a cognitive impairment. The Tribunal has met with representatives of the Law Reform Commission to express its support for an appropriate regime to be developed recognising the express needs of those entering the criminal justice system who have a cognitive impairment and in particular to extend the diversion options available in both the local and superior courts.

As well as working with the Mental Health and Drug and Alcohol Office concerning the operation of the Child Protection (Offenders Registration) Act 2000 in relation to forensic patients, the Tribunal also provided submissions to the Mental Health and Drug and Alcohol Office regarding the development of the Strategic Framework for the NSW Forensic Mental Health System, which provides a guide for the future development and co-ordination of forensic mental health services across the state.

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.

As reported in 2009/10, Victim Services within the Department of Attorney-General and Justice 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.

The Tribunal is now working with the other agencies to implement the recommendations of that review including developing policies and procedures to simplify the registration process and developing a Memorandum of Understanding to provide consistency across the registers as far as possible, having regard to the different legislation affecting the role of each register.

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. 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.

Interstate Forensic Patients

In the last Annual Report the Tribunal noted that the Ministry of Health was reviewing the interstate agreements with Victoria and Queensland for the apprehension and return of forensic patients should they cross state lines. The Tribunal understands that these reviews have not yet been finalised. However, under the current agreements, 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. The Tribunal currently has responsibility 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. In the reporting period the Tribunal received 11 such orders from Queensland in relation to 6 patients. No interstate apprehension orders were received from Victoria.

The Mental Health Act 2007 also allows New South Wales to enter into arrangements with other states to allow for the transfer of detained forensic patients. The Tribunal understood that the Ministry of Health had entered into negotiations with Victoria to develop the first such agreement during 2010/11. As far as the Tribunal understands, no agreement has yet been finalised.

The Tribunal would support the establishment of interstate agreements to allow for forensic patients to return to their home states so that they are able to receive support from their family and friends. While the importance of support structures in the recovery and rehabilitation of persons with a mental illness has been well documented, this is particularly important for people of Aboriginal and Torres Strait Islander heritage. The Tribunal has identified a number of forensic patients who would be eligible for such a scheme not only with Victoria but also Queensland, Tasmania, and Western Australia. It is therefore hoped that once the Victorian agreement has been approved, then further interstate agreements can be entered into with other states so that forensic patients can be returned to their state of origin.

Case Study

Prisoners with a mental illness

Mr F is a 33 year old man who has been known to mental health services since the 1990's. He has had multiple admissions to mental health facilities, and has also been managed in the community on Community Treatment Orders.

Mr F served his first custodial sentence in 2001. Since then, he has been incarcerated approximately seventeen times in relation to offences ranging from shoplifting and possession of stolen goods to robbery and assault. Since 2006, Mr F has generally been brought back to prison within a month of his release. While in prison, Mr F has routinely required treatment for his mental illness. Although well known to clinicians within the Justice system, there have often been barriers to ensuring Mr F's ongoing treatment in the community. These include:

- diversion under s33 of the Mental Health (Forensic Provisions) Act 1990 proved ineffective due to Mr F being assessed by the mental health facility as not being a mentally ill person;
- refusal of community mental health services to accept Mr F as a patient citing his previous management issues in the community context; and
- short (and on occasion no) notice of release date which has limited the ability of clinicians to negotiate with community services.

It is clear that Mr F's effective treatment has been frustrated by the fact that he is neither in the community nor prison long enough to stabilise his mental state or engage him in the treatment process.

This case highlights the negative impact on both the individual patient and ultimately the wider community (through the person's ongoing criminal behaviour) when continuity of care is not achieved between the prison system and the community.

John Feneley
Deputy President

Sarah Hanson
Team Leader

CIVIL DIVISION REPORT

Hearing Statistics

The most challenging aspect of the Tribunal's work this year from the Civil Division's perspective has been the management of mental health inquires, which contributed to a staggering 43.4% hearing load increase from the previous year. Amendments in late 2008 to the Mental Health Act of 2007 transferred the conduct of mental health inquiries from magistrates to single legal members of the Tribunal and they commenced on 21 June 2010. The increased administrative workload has been managed with the addition of two staff members to the civil team.

After a full year of inquiries trends are evident with 78.5% of hearings resulting in involuntary patient orders; community treatment orders were made in 12.7% of cases; discharge or deferred discharge in 1.4% of cases; and adjournments occurred in 7.1% of cases. The Tribunal declined to deal with .3% of cases. In the previous year, magistrates had adjourned 54.8% of inquiries, with some matters adjourned more than once. The Tribunal's comparatively low adjournment rate is pleasing. In assuming this new role, the Tribunal was keen to ensure that assessable persons have their matters concluded on their first appearance and this has been achieved in the vast majority of cases. By implementing a timetable for assessable persons to be placed on an inquiries hearing list two weeks after their admission, treating teams now have the necessary opportunity to assess patients and to provide care and treatment. In appropriate cases where there has been a good response, discharge occurs without the patient having to be brought before a hearing. Treating teams are also now in a better position to develop treatment plans for ongoing care or discharge.

Persons wishing to challenge their detention now have the right to request discharge by an authorised medical officer immediately after admission and if that is refused or not dealt with within three days, a right of appeal lies to the Tribunal which provides an early hearing before a full panel of lawyer, psychiatrist and other suitably qualified member. The right of appeal was vigorously exercised this year, with the Tribunal hearing 608 such appeals, as compared with 255 in the previous year. In 80.4% of cases the appeals were dismissed and orders for discharge were made in 4.1% of cases. Where the appeal is made by a person awaiting a mental health inquiry, both hearings are combined and may be brought forward with the great majority being heard by the Tribunal within a matter of days.

The making of initial Involuntary Patient Orders at inquiries has had a flow on effect in relation to involuntary patient review hearings, resulting in a 28.6% decrease from 1262 to 901.

Community Treatment Order applications increased marginally from last year with a 4.4 % increase or 184 more applications (i.e. from 4196 to 4380) with 3956 orders being made. Combined with the 566 orders made at a mental health inquiry a total of 4694 Community Treatment Orders were made. Orders for more than 12 months were only made in 11% of cases. Such orders can only be made under the Act when appropriate.

ECT applications for involuntary patients have reduced marginally with 680 applications this year (compared with 716 in the previous year), and only five applications for voluntary patients as compared with nine in the previous year. The Tribunal's role in relation to voluntary patients in respect of ECT is limited to determining whether the patient is able to give informed consent to treatment if there is uncertainty as to whether the patient has capacity to consent. Where patients are found to have capacity, ECT may proceed. If the Tribunal determines that the patient lacks capacity, the treatment must not proceed.

There were nine applications for surgery and no applications for special medical treatment during the reporting period.

Under the NSW Trustee and Guardian Act 2009 the Tribunal considered 183 requests for a financial management order, only one of which was for a forensic patient. Interested parties were responsible for 127 applications and the remaining 61 were considered at mental health inquiries. The Tribunal made 102 orders in total, including three interim orders under that Act. There were 29 applications for revocation of financial management orders and revocation was approved in 23 cases. The Tribunal may revoke an order only if the subject person can demonstrate capacity to manage their financial affairs.

Mental Health Inquiries

During the reporting year, close attention has been paid to the operation of mental health inquiries and the Tribunal has sought to engage with mental health professionals, the Department and its own members, to ensure that there is compliance with the legal and procedural requirements for hearings. The Tribunal embarked on an extensive education program for mental health professionals providing information, training and guidance as to the Tribunal's expectations in terms of compliance with the formal requirements, the preparation of reports, and the presentation of cases at hearings. Emphasis has been placed on the need to ensure that written reports are prepared in sufficient time to allow effective legal representation of patients at hearings.

Last year the Tribunal set up a Mental Health Inquiries Monitoring Group. The main stakeholders being representatives the Association of Relatives And Friends of the Mentally Ill (ARAFMI), NSW Consumer Advisory Group, the Legal Aid Commission, the Mental Health Co-ordinating Council (MHCC), Public Interest Advocacy Centre (PIAC), the Official Visitors Program, and the Mental Health and Drug and Alcohol Office (MHDAO) of the Ministry of Health to monitor the conduct of inquiries. The group met on three occasions during the reporting period and some refinement of the mental health inquiry process has occurred following the group's input and also feedback from the Tribunal members. The feedback from the monitoring group has been generally favourable and supports the Tribunal's view that the hearings are patient focussed and adhere to the rules of procedural fairness. The Tribunal is grateful for the valuable input of the participants of the Monitoring Group who have provided constructive and thoughtful feedback.

The Tribunal supported a Ministry of Health funded project to have the patient Statement of Rights translated into the main community languages. The Statement of Rights must be provided to all persons admitted to a mental health facility. The translated versions are now available at all mental health facilities.

Patients at mental health facilities have the benefit of mental health clinics run by Legal Aid lawyers who attend most facilities on a regular basis and are available to advise all patients shortly after admission so as to ensure that patients are fully aware of their rights, including the right to request discharge from the authorised medical officer and in the event of a refusal to discharge or a failure to deal with the request within three working days, to facilitate the right of appeal to the Tribunal.

The availability of three video hearing rooms ensures that the Tribunal can conduct inquiries at 42 geographically diverse mental health facilities across the state and at a number of different facilities on the one day.

In addition, face to face hearings now take place at venues where the number of inquiries warrants it. These include: the Mater and John Hunter Mental Health facilities in Newcastle; Bankstown, Concord, Cumberland, Liverpool, St Vincent's, Prince of Wales, Westmead, St George and Royal Prince Alfred Hospital's in the Sydney metropolitan area; as well as Shellharbour and Wollongong hospitals in the Illawarra area. It is intended that from July 2011 the Tribunal will also conduct face to face hearings at Campbelltown Hospital. A greater percentage of hearings are conducted face to face than was originally envisaged when the inquiries role was originally transferred to the Tribunal from the magistrates.

Audio visual link is necessary to enable the Tribunal the necessary flexibility to conduct the majority of inquiries. The Tribunal's experience is that there is widespread acceptance and satisfaction with this hearing mode. Tribunal members have also been flexible in attending venues in person for one off requests in cases where the assessable person has been unable to be brought to a video conference hearing.

As was foreshadowed in last year's Annual Report the Mental Health Drug & Alcohol Office (MHDAO) has commissioned an external evaluation of mental health inquiries with the successful tender going to Communio Pty Ltd, which has commenced a broad ranging consultation with key stakeholders, including consumers and their carers to elicit their views and responses to the inquiries. The final report is expected to be completed by late November 2011 and will be the subject of report and comment in the next year's Annual Report.

The transition to the Tribunal conducting mental health inquiries although giving the Tribunal a major new role, has occurred with relative smoothness and the Tribunal is indebted to the co-operation and engagement of mental health professionals, the Mental Health Advocacy Service, the Tribunal's dedicated members and excellent administrative support staff whose dedication and professionalism have been remarkable.

Training and Professional Development of Members

The Tribunal continues to provide a professional development program to part-time members. Since early 2010 the program has been supported by an Education Committee, which had its first meeting in March 2010 with representation from each category of the part-time members and whose role is to guide and enhance the development program.

The year's program included a "Back to Basics" session devoted to lawyer members with an emphasis on revising the key areas of the Tribunal's jurisdiction, including the conduct of mental health inquiries, in the context of the objects and principles of care and treatment as provided for in the Mental Health Act 2007 and principles of procedural fairness. Apart from providing revision of the key areas of the Tribunal's jurisdiction such sessions are important to ensure, as far as is possible, that there is consistency in approach and decision making. A session was devoted to the use of interpreters in hearings. In addition, Natasha Ginsey, a researcher from the Faculty of Pharmacy at Sydney University presented a paper on the use of polypharmacy and psychotropic medication in the CTO population of NSW, based on an evaluation of Tribunal data. Another session was devoted to an exposition of the more common mental health illnesses, their diagnosis and treatments. These sessions are a core component of the professional development of members and continue to be well attended.

The Education Committee has settled on a comprehensive topic list for the coming year with future sessions to be devoted to issues of risk and the risk assessment of civil patients, capacity to consent to treatment and the role of legal advocates in Tribunal hearings. The Tribunal is grateful to the professional development committee who very generously give their time and bring a wealth of experience to meetings.

In addition to the Tribunal distributing practice directions, circulars and letters to provide information and support to our members the presidential members are also readily available on a day-to-day basis to take inquiries from members and other parties involved in the Tribunal process.

External Training

The Tribunal has responded to a large number of requests to provide education and training to external agencies in relation to the Tribunal's role and its functions. The increased demand is in no doubt related to the Tribunal's acquisition of its new role in respect of mental health inquiries. There is good anecdotal evidence to suggest that the quality and standard of reports at hearing has improved. The Tribunal considers that one of the major reasons for this improvement is the external training that has been provided.

Key to the success of any hearing day is the necessary liaison work undertaken by Tribunal Liaison Clerks at mental health facilities. In the spirit of improving and building on these important relationships, the Tribunal conducted a "Meet and Greet" session with clerks on 21 March, 2011. The session was well attended and provided an opportunity for the Tribunal to convey information designed to continually improve and enhance the hearing process.

Submissions

The Tribunal provided the Mental Health Drug and Alcohol Office its third submission in respect of their draft report "Showcase of Innovation in Suicide Prevention" and expressed support for the development of State guidelines and principles as part of an effective suicide strategy, emphasising the desirability for national and international best practice to be identified. The Tribunal also submitted that an evidence based approach and continuing research were necessary in developing a best practice response. The Tribunal further emphasised the need for the strategy to be co-ordinated so as to provide an effective response for government and non-government sectors, institutions and the general community and at the same time ensuring that whilst projects are properly targeted to vulnerable groups that duplication and waste should be avoided. The Tribunal emphasised the importance of ensuring that any effective strategy requires the input of adequate resources so that any strategy can be properly implemented.

Student Placement

The Civil and Forensic Divisions of the Tribunal has now for many years supervised law students on placements at the Tribunal. This year the Tribunal supervised a student from Sydney University who was involved in a project of reviewing long term involuntary patients with a view to identifying whether there were any institutional barriers to discharge into the community. This area of research was topical in light of the Ombudsman's interest in this matter as described below.

The Forensic Division also hosted a student who developed an internal spreadsheet identifying case law relevant to the work of the Mental Health Review Tribunal. This document provides a ready tool for Tribunal members and staff to access as and when interpretation issues arise.

Ombudsman's Inquiry

In June 2011, the NSW Ombudsman initiated an inquiry pursuant to the Community Services (Complaints, Review and Monitoring) Act 1993 to consider the role and responsibilities of Ageing, Disability, and Homecare (ADHC) and NSW Health in the provision of services to involuntary patients who have not been discharged due to a lack of community support.

The Tribunal has been included in the Inquiry Reference Group which has convened to provide expert advice on issues related to access for mental health inpatients to support and accommodation services. Membership of the Group includes representatives from ADHC, NSW Health, Housing NSW, the Mental Health Official Visitors Program, the Office of the Public Guardian, the NSW Consumers' Advisory Group, the Mental Health Coordinating Council and Associate Professor Julian Trollor, Chair of Intellectual Disability and Mental Health, University of New South Wales.

An aspect of the inquiry is the audit of MHRT files to collect data and information about the placement options for long term involuntary patients. The audit commenced in July 2011 and will be completed prior to the end of the year.

Looking ahead

This past year has been a time of significant change for the Tribunal and the challenge of absorbing a great increase in hearings with minimal staff increases. Few disruptions have occurred to the Tribunal's work in large part because of the professional and outstanding work of support staff and Tribunal members. The Tribunal's aim is to drive continuous improvement of its processes and ensure that persons subject to mental health laws of this State receive the best possible care in the least restrictive environment with as little interference as possible in their autonomy and in a fashion that promotes their recovery and reintegration into community life, wherever possible. The Tribunal is confident that it is progressing well in achieving that goal.

Maria Bisogni
Deputy President

Danielle White
Team Leader

REGISTRAR'S REPORT

REPORT CONTENT AND PERIOD

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

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

a) The number of persons taken to mental health facilities and the provisions of the Act under which they were so taken,
b) The number of persons detained as mentally ill persons or mentally disordered persons,
c) The number of persons in respect of whom a mental health inquiry was held,
d) The number of persons detained as involuntary patients for three months or less and the number of persons otherwise detained as involuntary patients,
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.

Additionally to the statutory requirements I report on the following:

OPERATIONS

Caseload

In 2010/11 the Tribunal conducted 13504 hearings including 4447 mental health inquiries. This was 4403 more hearings than it conducted in 2009/10 (a 43.4% increase). Excluding mental health inquires the number of hearings conducted remained relatively stable although there was a slight increase in the number of forensic hearings (46 or 5.6%) and a slight decrease in the number of civil hearings (118 or 1.5%).

This was the first full year of the Tribunal's jurisdiction to conduct mental health inquiries under s34 of the Act. Until 21 June 2010 this role had been carried out by Magistrates. The Tribunal held 4447 mental health inquiries during 2010/11. Of these, 3489 (78.5%) resulted in an involuntary patient order being made. Community Treatment Orders were made on 566 occasions (12.6%). A total of 63 orders were made for the patient to be discharged or for deferred discharge (1.4%).

The total number of hearings for the review of involuntary patients decreased by 510 in 2010/11 to 2062 from 2572 in 2009/10 – a 19.8% decrease. The reduced numbers of such hearings were largely due to a reduction in the initial reviews of persons ordered to be detained on an involuntary patient order made at a mental health inquiry. Under s37 (1) (a) of the Act the case of each involuntary patient must be reviewed on or before the end of the patient's initial period of detention ordered at a mental health inquiry. The number of these reviews decreased from 1262 in 2009/10 to 901 in 2010/11 – a 28.6% decrease. The number of subsequent reviews of involuntary patient orders also decreased from the previous year.

There was a significant increase in the number of hearings of appeals under s44 of the Act against an authorised medical officer's refusal to discharge a patient. These increased from 255 in 2009/10 to 608 in 2010/11 (an increase of 138%). Of these appeals 489 were dismissed (80.4%). The patient was ordered to be discharged on 25 occasions (4.1%).

The number of hearings to consider applications for Community Treatment Orders increased by 184 from 4196 in 2009/10 to 4380 in 2010/11 (a 4.4% increase). These hearings related to 3028 individual patients. Excluding those made at a mental health inquiry (566) the number of Community Treatment Orders made by the Tribunal increased from 3956 in 2009/10 to 4128 in 2010/11 – a 5.8% increase.

Including those made at a mental health inquiry there were 4694 Community Treatment Orders made by the Tribunal. Of these 514 were for a period of more than six months (usually 12 months). This is 11% which is same percentage of such orders in 2009/10. 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, and 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 2010/11 compared to the previous year (870 in 2010/11 compared to 824 in 2009/10 – a 5.6% increase). The impact and reasons for this are 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.

Table A

Total number of hearings 1991 - 2010/11

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

In 20010/11 the Tribunal conducted:

	2010/11
Civil Patient hearings (for details see Tables 1-14)	12413
Financial Management hearings (for details see Table 15)	221
Forensic Patient reviews (for details see Tables 16 - 23)	870
	13504

Details for each area of jurisdiction of the Tribunal are provided in the various statistical Tables contained later 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 33 venues across the Sydney metropolitan area and regional New South Wales in 2010/11. 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 230 inpatient or community venues across New South Wales. In 2010/11, 5084 hearings and mental health inquiries were conducted in person (37.6%), 7101 by video (52.6%) and 1319 by telephone (9.8%). The numbers and percentages differ quite significantly from previous years due to the impact of mental health inquiries which can only be conducted in person or by video i.e. not by telephone.

If mental health inquiries are excluded from the figures then 3502 hearings were conducted in person (38.7%), 4236 by video (46.8%) and 1319 by telephone (14.6%). These numbers and percentages varied slightly from 2009/10 when 3975 hearings were conducted in person (43.7%), 3574 by video (39.3%) and 1552 by telephone (17%) and show a continued trend of decrease in the number of hearings conducted in person and by telephone and a corresponding increase in the number of video conference hearings as more and more facilities have access to video conference equipment. The continued reduction in telephone hearings is particularly pleasing as telephone hearings are only used where an in person hearing is not practicable and where no video conference facilities are available. The vast majority of telephone hearings related to Community Treatment Orders (87%), most often for people in the community on an existing Community Treatment Order (59.8%).

Number of Clients

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

As at 30 June 2011 there were 1043 people for whom the Tribunal had made an involuntary patient order either at a mental health inquiry or at a subsequent review. However it should be noted that a number of these patients may in fact have been discharged or reclassified since the making of this order without reference to the Tribunal. There were 68 individuals who had been voluntary patients for more than 12 months and had been reviewed by the Tribunal – again a number of these may have been discharged or reclassified since the Tribunal review. See Table 5 for further details including a summary of the facilities in which these individuals were detained/admitted.

In terms of Community Treatment Orders, as at 30 June 2011 there were 2543 individuals subject to CTOs

made by the Tribunal. While a small number of these orders may have been revoked by the Director of the Health Care Agency responsible for implementing the order, this should be a fairly accurate count on the number of people subject to a CTO at that point in time.

Mental Health Inquiries

As previously mentioned the Tribunal assumed the role of conducting mental health inquiries on 21 June 2010. The Tribunal developed a two weekly schedule for conducting mental health inquiries at 42 inpatient mental health facilities around the state. For the first six months of the year inquiries were conducted on a fortnightly basis by video conference to most of these facilities. The exceptions to this were Concord and Cumberland hospitals where having regard to the number of inquires required by these two large facilities inquiries were held weekly and in person. The facilities are required to present the patient to an inquiry "as soon as practicable" after meeting various statutory requirements for the Tribunal to determine if the patient should continue to be detained as the subject of an involuntary patient order, discharged on a Community Treatment Order or otherwise discharged from the facility. This can only be done on provision to the Tribunal of proper information which includes a proper patient assessment. This takes some time to conduct properly.

Based on our first six months experience the Tribunal was from January 2011 able to increase the number of facilities where mental health inquiries were regularly conducted in person to include: The Mater and John Hunter mental health facilities in Newcastle, Bankstown, Liverpool, St Vincent's, Prince of Wales, Westmead, St George and Royal Prince Alfred in the Sydney metropolitan area, along with Shellharbour and Wollongong in the Illawarra area. From July 2011 mental health inquiries will also be conducted in person at Campbelltown Hospital. The decision to conduct in person mental health inquires at these facilities was based on the number of inquires regularly required at each facility as well as the feasibility of the inquiries being able to be conducted in person. Inquiries continue to be conducted by video to all other facilities. The above changes had a significant impact on the percentages of inquires conducted in person or by video between the first and send half of the year. During July – December 2010, 75.5% of inquires were held by video and 24.5% in person. During January – June 2011 53.2% were held by video and 46.8% in person. Over the full 12 month period July 2010 – June 2011 64.4% were held by video and 35.6% in person.

In implementing this new system the Tribunal had regard to the number of mental health inquiries that were previously adjourned by Magistrates. Of the 10596 inquiries commenced by Magistrates in 2009/10 5808 were adjourned (54.8%). The Tribunal believed that many such adjournments were of no value to achieve the statutory purpose for mental health inquiries and could be avoided if the inquiry were held at a stage in the person's admission allowing sufficient time for the treating team to assess and treat the patient and develop a plan for his or her treatment and discharge as the Act requires. Consequently, unless a request is made for an earlier hearing, the Tribunal generally holds its mental health inquiries after a person has been detained for about 2 weeks. Of the 4447 mental health inquiries commenced by the Tribunal in 2010/11 only 315 were adjourned (7.1%).

Treating teams are able to present patients earlier for a mental health inquiry particularly if it is proposed that the patient be discharged on a Community Treatment Order or if a hearing is required to consider an appeal or an application for ECT in relation to the patient. In 2010/11, 3.2% of initial mental health inquiries were held during the first week of a person's detention, 16.5% during the second week, 48.5% in week three and 29.3% in the person's fourth week of detention. In a small proportion of cases (2.7%) the inquiry was commenced sometime after four weeks, each such case was investigated by the Tribunal and followed up with the facility involved where appropriate - many of these cases related to the period of changeover from the Magistrates to the Tribunal conducting inquiries or from over the Christmas period. There were also a number of cases where patients were AWOL, on leave or too unwell to be presented when they were due. The Tribunal followed up with Medical Superintendents of relevant mental health facilities where concern was raised about delays in presenting particular patients.

The Tribunal will continue to 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 the Ministry of Health, now known as Ministry for Health to assist in this process. This monitoring group has met three times during the reporting period and provided valuable feedback to the Tribunal. An external evaluation has been contracted out by the Ministry of Health, with a report expected to be available late November 2011.

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. Members of the Tribunal include consumers and persons from various ethnic origins or backgrounds including Aboriginal and Torres Straight Islanders.

Persons appearing before the Tribunal have a right under the Act to be assisted by an interpreter if they are unable to communicate adequately in English. During 2009/10 interpreters in 49 different languages were used in a total of 547 hearings. This is 121 more hearings involving an interpreter than in 2009/10 – a 28.4% increase. Consistent with previous years the most common languages continue to be Vietnamese, Cantonese, Mandarin, Greek and Arabic.

As part of the Tribunal's ongoing professional development programme for our members a training session was conducted in December 2010 on the use of interpreters in Tribunal hearings.

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. During 2010/11 six forensic orders were translated.

Representation and Attendance at Hearings

All persons appearing before the Tribunal have a right under s154 of the Act to be represented not withstanding their mental health issues. 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 automatically able to provide representation for all categories of matters heard by the Tribunal. In addition to all forensic cases representation through the MHAS is usually provided for all mental health inquiries and reviews of involuntary patients during the first 12 months of detention; appeals against an authorised medical officer's refusal to discharge a patient and all applications for financial management orders. Representation is also provided for some applications for Community Treatment Orders and some applications for revocation of financial management orders, however this may be on a means and merits test. Including mental health inquiries representation was provided in 61% of all hearings in the Tribunal's civil jurisdiction (see table 1) and 95.7% of all forensic hearings. The Legal Aid Commission is currently considering expanding representation to include ECT inquiries, particularly those held before an involuntary patient order has been made at a mental health inquiry.

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 85.6% of all hearings – this is an increase from 78.6% in 2009/10, however the percentage is influenced by the inclusion

where there is a general requirement that the person attend unless excused from doing so by the Tribunal the rate was much higher at 95.7%.

Appeals

Section 163 of the Mental Health Act 2007 and Section 77A of the Mental Health (Forensic Provisions) Act 1990 provide for appeals by leave against decisions of the Tribunal to be brought to the Supreme Court of NSW.

During 2010-11 seven appeals were lodged with the Supreme Court. The one successful appeal was against a Tribunal determination of a hospital application for the Tribunal to authorise the administration of a course of ECT to an involuntary patient. This appeal was upheld and the Tribunal's decision was set aside.

Three appeals were against the making of Community Treatment Orders (CTO) for civil patients. Two of these appeals were dismissed by the Court as the CTO had expired in one case and the other was revoked by the Director of the Health Care Agency responsible for the implementation of the other. The third remained ongoing as at 30 June 2011 although the CTO in this matter has also been revoked by the Director of the Health Care Agency.

One appeal was against the making of a CTO and a Financial Management Order. The appeal against the Financial Management Order remains ongoing although the CTO has been revoked by the Director of the Health Care Agency.

An action was lodged against the Tribunal for asserted professional negligence. This case was struck out by the Court as no cause of action was shown.

The only other outstanding appeal relates to a Forensic patient and remains ongoing. However an earlier appeal lodged in March 2010 by the same patient was finalised in November 2010. In this matter the Court refused the application for leave to appeal and made an order for 'costs' against the plaintiff recoverable from the plaintiff's tutor.

Government Information (Public Assess) Act 2009

Applications for access to information from the Tribunal under the Government Information (Public Access) Act 200 (GIPA ACT) are made through the Right to Information Officer at the NSW Ministry of Health. However, information relating to the judicial functions of the Tribunal is 'excluded information' under the GIPA Act and as such is generally not disclosed.

Parties to proceedings may in certain cases obtain a copy of the record of the hearing to which they were a party. If of the opinion that sufficient cause is shown the President may direct that a copy of the audio recording or transcription of a hearing be made and copies provided to a party to those proceedings.

The administrative and policy functions of the Tribunal are, however, covered by the GIPA Act. During 2010/11 one application was received by NSW Health for disclosure of information from one of the Tribunal's administrative files.

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

The Tribunal is required under the Act to collect information concerning the number of involuntary referrals, and the provisions of the Act under which the patients were taken to hospital and admitted or released. The Regulations to the Mental Health Act 2007 stipulate 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).

In previous years information was also provided to the Tribunal about the number of mental health inquiries conducted by Magistrates. However this last requirement was removed when the Tribunal assumed responsibility for conducting the mental health inquiries.

Information from this data is contained in Tables 4 and 9 as well as in Appendix 1.

Official Visitor Program

The Official Visitor Program is an independent statutory program under the Mental Health Act 2007 reporting to the Minister for Health and the Minister for Mental Health. The Program is headed by the Principal Official Visitor, Ms Jan Roberts, and supported by two permanent and one temporary staff positions. In March 2008 the Official Visitor Program relocated to share premises with the Tribunal at Gladesville and became administravely 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 the Ministry of Health.

Premises

The Tribunal continues to conducts 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. 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.

Venues

Regular liaison with hearing venues is essential for the smooth running of the Tribunal's hearings. Venue coordinators or Tribunal Liaison Clerks at each site provide invaluable assistance in the scheduling of matters; collation of evidence and other relevant information for the panels; contacting family members and advocates for the hearing; and supporting the work of the Tribunal on the day. This role is particularly important in ensuring that all the necessary notifications have occurred and correct documentation is available for mental health inquiries. The Tribuinal is very appreciative of the support provided to the Tribunal by these Tribunal Liaison Clerks. As reported in the Civil Division report the Tribunal hosted a meeting of Tribunal Liaison Clerks in March 2011 with approximately 40 staff from various mental health facilities.

This was a great opportunity for the Tribunal to show its appreciation of the work carried out by these staff as well as to discuss key issues and procedures particularly relating to mental health inquires and the Tribunal's civil jurisdiction.

The Tribunal continues to be constrained by the limited resources and facilities available at some mental health facilities and correctional centres. Many venues do not have an appropriate waiting area for family members and patients prior to their hearing. There are safety and security concerns at a number of venues, with panels utilising hearing rooms without adequate points of access or ventilation. Essential resources such as telephones with speaker capacity are sometimes unavailable in some venues. Staff at venues are not always familiar with the videoconferencing equipment used to conduct hearings or the help desk or support arrangements in place to deal with problems with this equipment. The Tribunal continues to negotiate with particular venues about the provision of these facilities.

Community Education and Liaison

During 2010/11 the Tribunal conducted a number of community education sessions to inpatient and community staff at various facilities across the State. These sessions were used to explain the role and jurisdiction of the Tribunal and the application of the Mental Health Act. A number of specific sessions were conducted relating to the changes to mental health inquiries system. The Tribunal was also involved in training for psychiatric registrars through the Institute of Psychiatry.

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 has only been possible thanks to 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 decisions and related correspondence, management of non compliance and breeches of conditions of leave or release and the apprehension of interstate forensic patients.

Two additional permanent positions were approved in 2010 to support the mental health inquiries function.

Appendix 4 shows the organisational structure and staffing of the Tribunal as at 30 June 2011.

Tribunal Members

Appendix 3 provides a list of the members of the Tribunal as at 30 June 20011. 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 55 female part time members and 56 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 Tribunal is supported by a large number of dedicated and skilled members who bring a vast and varied array of talents and perspectives to their tasks. The experience, expertise and dedication of these members are 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 2010/11 the Tribunal continued its program of regular professional development sessions for its members. These sessions involve presentations from Tribunal members and staff as well as guest speakers. The sessions are conducted out of hours and no payment is made for members' attendance. The Tribunal is encouraged and appreciative of the high rate of attendance by members at these sessions. Topics covered in this period included: mental health inquiries and appeals; issues concerning victims, families and legal representatives and the use of interpreters; member performance appraisal; an update on cannabis and its impact on mental illness; research on the prescription of medications as part of Community Treatment Orders and an update on current diagnosis, terminology and treatments. Specific training sessions were also conducted for presidential members involved in forensic hearings.

An important component of striving to maintain the high standards of Tribunal members is the formal appraisal of members, a process which commenced last year. The Tribunal's full time presidential members have been involved in the ongoing appraisal of part time members. Whilst the aim of the initiative is to ensure that Tribunal members are of the highest standard, the appraisal mechanism also provides the Tribunal with additional opportunities to identify training needs or gaps in service.

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

The appraisal of members will occur at least once during each term of appointment and involve the member completing a self appraisal form, which is used as a basis of discussion with the appraiser. This is followed by a hearing observation against the agreed standards and results in a report to the President which is signed by the Appraiser and the member. The appraisal is a relevant consideration in the reappointment process.

FINANCIAL REPORT

The Tribunal recorded a budget deficit of $664,931 for the 2010/11 financial year. See Appendix 5. This is in stark contrast to previous recent years when the Tribunal has recorded a minor surplus.

The budget deficit this year is a consequence of a change in the process of funding for the Tribunal. In previous years the Tribunal received an initial allocation based on an historical budget. This allocation was

then ‘topped up’ by way of supplementation from the Mental Health Drug and Alcohol Office (MHDAO) to provide funding for temporary positions and to fund increased Tribunal activity. This supplementation was not provided this year on the basis that the newly established Mental Health Commission will review the Tribunal’s budget and subsequently allocate sufficient budget for its operation.

The Tribunal received a $400,000 ‘Treasury Adjustment’ being the agreed amount transferred from the Department of Attorney-General and Justice to fund the mental health inquiries role. The actual expenditure related to this role for the financial year was approximately $627,000. This included $102,000 being the cost of additional three member tribunal panels required to deal with the increased number of appeals lodged by patients against an authorised medical officer’s refusal to discharge.

The Tribunal is most appreciative of the support provided by the Minister and the Ministry of 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 would like to thank the staff and members of the Tribunal for their continued hard work and commitment to the very important work that we do. I would also like to thank those staff in the inpatient and community based mental health facilities with whom the Tribunal has had contact over the last 12 months. The successful changeover to the new mental health inquiries system would not have been possible without their co-operation and support.

Rodney Brabin
Registrar

5. STATISTICAL REVIEW

5.1 CIVIL JURISDICTION

Table 1

Summary of statistics relating to the Tribunal's civil jurisdiction under the Mental Health Act 2007 for the period 1 July 2010 to 30 June 2011

Section of Act	*Description of Review*	*Hearings (Including Adjournments)*			*% Reviewed by Sex*		*Legally Represented*	*Client Attended*
		M	*F*	*Total*	*M*	*F*		
s9	Review of voluntary patients	46	29	75	61	39	19 (25%)	75 (100%)
s34	Mental Health Inquiry	2477	1970	4447	56	44	4255 (96%)	4312 (97%)
s37(1)(a)	Initial review of involuntary patients prior to expiry of magistrate's order	477	424	901	53	47	700 (78%)	834 (92.6%)
s37(1)(b)	3 monthly review of involuntary patients after initial 12 month period	332	211	543	61	39	414 (76%)	496 (91.3%)
s37(1)(c)	Continued review of involuntary patients after initial 12 month period	388	230	618	63	37	187 (30%)	566 (91.6%)
s44	Appeal against an authorised medical officer's refusal to discharge	336	272	608	55	45	447 (74%)	568 (93.4%)
s51	Community treatment orders	2877	1503	4380	66	34	1254 (29%)	3142 (71.7%)
s63	Review of affected persons detained under a community treatment order	11	-	11	100	-	8 (73%)	7 (63.6%)
s65	Revocation of a community treatment order	2	2	4	50	50	3 (75%)	4 (100%)
s65	Variation of a community treatment order	92	38	130	71	29	9 (7%)	8 (6.2%)
s67	Appeal against a Magistrate's community treatment order	2	-	2	100	-	1 (50%)	2 (100%)
s96(1)	Review of voluntary patient's capacity to give informed consent to ECT	3	2	5	60	40	- (0%)	5 (100%)
s96(2)	Application to administer ECT to an involuntary patient with or without consent	261	419	680	38	62	256 (38%)	597 (87.8%)
s99	Review report of emergency surgery involuntary patient	1	1	2	50	50	-	- (0%)
s101	Application to perform a surgical operation	2	7	9	22	78	4 (44%)	7 (77.8%)
s103	Application to carry out special medical treatment	-	-	-	-	-	-	-
TOTAL		**7307**	**5108**	**12415**	**59**	**41**	**7557 (61%)**	**10623 (85.6%)**

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 2008/09, 2009/10 and 2010/11

	2008/09	*2009/10*	*20010/11*
Reviews of assessable persons - Mental Health Inquiries	-	43	4447
Reviews of persons detained in a mental health facility for involuntary treatment	2276	2572	2062
Appeal against authorised medical officer's refusal to discharge (s44)	199	255	608
Applications for orders for involuntary treatment in a community setting (s118/s51)	4347	4196	4380
Variation and Revocation of Community Treatment Orders (s65)	167	186	134
Review of those persons detained in a mental health facility following a breach of the Community Treatment Order (s63)	14	10	11
Appeal against a Magistrate's Community Treatment Order (s67)	13	8	2
Review of those in a mental health facility receiving voluntary treatment who have been in the facility for more than 12 months (s9)	59	60	75
Notice of Emergency Surgery (s99)	12	4	2
Consent to Surgical Operation (s101)	10	27	9
Consent to Special Medical Treatment (s103)	-	2	-
Review voluntary patient's capacity to consent to ECT (s96(1))	6	9	5
Application to administer ECT to an involuntary patient	666	716	680
TOTALS	**7769**	**8088**	**12415**

Table 3

Summary of outcomes for reviews of assessable persons at a mental health inquiry for the period 1 July 2010 to 30 June 2011

M	*F*	*T*	*Adjourn*	*Invol Patient Order*	*Discharge*	*Deferred Discharge*	*Discharge on CTO*	*Discharge to Primary Carer*	*Declined to deal with*
2477	1970	4447*	315	3489	30	24	566	9	14

Note: * These determinations related to 3797 individuals.

Table 4

Flow chart showing progress of involuntary patients admitted during the period July 2010 to June 2011

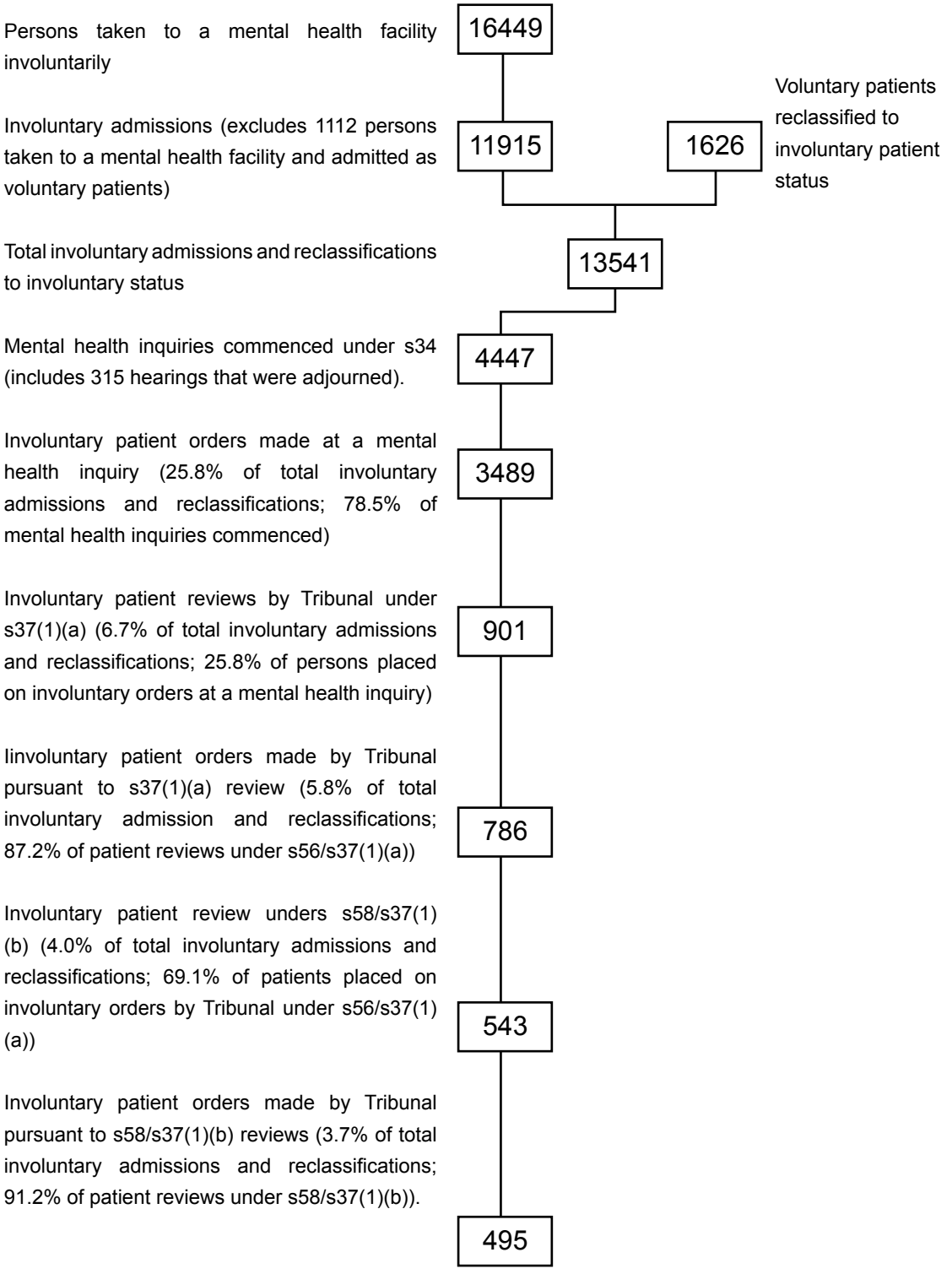

Table 5

Summary of patients subject to Involuntary patient orders or voluntary patient review as at 30 June 2011

Hospital	*s34*	*s37(1)a*	*s37(1)b*	*s37(1)c*	*Total Involuntary*	*Voluntary*	*Total*
Albury	2	1	0	0	3		3
Bankstown	13	7	1	0	21		21
Blacktown	9	5	3	1	18		18
Bloomfield	8	7	13	17	45	20	65
Blue Mountains	6	2	2	0	10		10
Braeside	3	1	0	0	4		4
Campbelltown	12	5	0	0	17		17
Coffs Harbour	8	4	2	0	14		14
Concord	36	22	17	28	103	2	105
Cumberland	36	18	26	69	149	20	169
Dubbo	7	2	0	0	9		9
Forensic Hospital	0	0	6	3	9		9
Gosford	13	2	0	0	15		15
Goulburn	8	1	2	1	12		12
Greenwich	7	1	0	1	9		9
Hornsby	11	5	1	1	18		18
Kenmore	6	1	1	9	17	9	26
Lismore	6	3	1	0	10		10
Liverpool	12	5	1	0	18		18
Macquarie	9	10	16	133	168	7	175
Maitland	7	4	1	3	15		15
Manly	10	1	0	1	12		12
Mater MHC	28	9	9	7	53		53
Morisset	3	0	9	45	57	5	62
Nepean	10	6	0	0	16		16
Prince of Wales	24	6	3	0	33	1	34
Port Macquarie	6	0	3	0	9		9
Royal North Shore	3	7	2	1	13		13
Royal Prince Alfred	5	7	0	0	12		12
Shellharbour	10	7	0	0	17	4	21
St George	8	6	2	2	18		18
St Joseph's	3	2	0	0	5		5
St Vincent's	16	0	2	0	18		18
Sutherland	14	4	3	0	21		21
Tamworth	7	1	2	0	10		10
Taree	0	2	0	0	2		2
Tweed Heads	10	1	2	0	13		13
Wagga	7	5	0	0	12		12
Westmead Adult Psych	6	2	1	0	9		9
Westmead Childrens	2	0	1	0	3		3
Westmead Psycho Geriatric	3				3		3
Wollongong	8	2	1	0	11		11
Wyong	6	6	0	0	12		12
Total	408	180	133	322	1043	68	1111

Table 6

Involuntary patients reviewed by the Tribunal under the Mental Health Act 2007 for the period 1 July 2010 to 30 June 2011

		M	*F*	*T*	*Adjourn*	*Withdrawn No Jurisdic-tion*	*Discharge/ voluntary*	*Discharge on CTO*	*Continued detention as involuntary patient*
s37(1)(a)	Review prior to expiry magistrates order for detention as a result of a mental health enquiry	477	424	901	84	1	26	4	786
s37(1)(b)	Review at least once every 3 months during first 12 months person is an involuntary patient	332	211	543	35	2	9	2	495
s37(1)(c)	Review at least once every 6 months while person is an involuntary patient after first 12 months	388	230	618	26	-	2	2	588
Total		1197	865	2062	145	3	37	8	1869

Note: The 901 reviews under s37(1)(a) related to 822 individuals
The 332 reviews under s37(1)(b) related to 308 individuals
The 388 reviews under s37(1)(c) related to 360 individuals
The total of 2062 reviews under s37(1) related to 1239 individuals

Table 7

Summary of outcomes of appeals by patients against an authorised medical officer's refusal of or failure to determine a request for discharge (s44) during the periods 2007/8, 2008/9, 2009/10 and 2010/11

	M	F	T	Adjourned	Withdrawn no jurisdiction	Appeal Dismissed	Discharged	Dismissed and no further Appeal to be heard prior to next scheduled review	Reclass to Voluntary
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
Jun 10 - Jul 11	336	272	608*	50	43	471	25	18	1

Note: * These determinations related to 507 individudals

Table 8

Community Treatment Orders for declared mental health facilities made by the Tribunal for the periods 2008/09, 2009/10 and 2010/11

Health Care Agency	*2008/09 Total CTOs*	*2009/10 Total CTOs*	*2010/11 Total CTOs*	*Health Care Agency*	*2008/9 Total CTOs*	*2009/10 Total CTOs*	*2010/11 Total CTOs*
Albury CMHS	17	21	19	James Fletcher Hospital	1	-	1
Auburn CHC	28	31	38	Kempsey CMHS	24	34	34
Bankstown MHS	109	116	148	Lake Illawarra Sector MHS	80	64	80
Bega Valley Counselling & MHS	12	3	17	Lake Macquarie MHS75	72	86	96
Blacktown	120	109	147	Leeton/Narrandera CHC	13	1	7
Blue Mountains MHS	86	87	90	Lismore MHOPS	39	49	89
Bondi Junction CHC	20	7	9	Liverpool MHS	102	101	96
Bowral CMHS	7	10	21	Macquarie Area MHS	31	46	42
Campbelltown MHS	141	110	166	Manly Hospital & CMHS	90	94	121
Camperdown	77	79	99	Maroubra CMH	183	194	202
Canterbury CMHS	100	116	125	Marrickville CMHS	108	146	155
Central Coast AMHS	246	244	297	Merrylands CHC	99	77	97
Clarence District HS	31	30	33	Mid Western CMHS	24	39	75
Coffs Harbour MHOPS	81	61	85	Mudgee MHS	4	4	9
Cooma MHS	12	8	9	Newcastle MHS	66	80	100
Cootamundra MHS	5	3	2	Northern Illawarra MHS	77	80	102
Croydon	114	133	122	Orange C Res/Rehab Services	46	33	33
Deniliquin District MHS	5	4	11	Parramatta	51	54	82
Dundas CHC	45	33	32	Penrith MHS	84	75	97
Eurobodalla CMHS	37	31	23	Port Macquarie CMHS	75	55	74
Fairfield MHS	134	154	138	Queanbeyan MHS	24	26	36
Far West MHS	28	29	42	Redfern CMHS	57	61	59
Goulburn CMHS	48	48	41	Royal North Shore H & CMHS	113	111	136
Griffith (Murrumbidgee) MHS	13	13	14	Ryde Hospital & CMHS	106	97	109
Hawkesbury MHS	23	34	32	Shoalhaven MHS	29	28	45
Hills CMHC	45	33	51	St George Div of Psychiatry & MH	207	201	221
Hornsby Ku-ring-gai Hospital & CMHS	98	95	103	Sutherland C Adult & Family MHS	100	81	91
Hunter	79	42	32	Taree CMHS	45	49	63
Hunter NE Mehi/McIntyre	21	17	20	Temora	3	6	9
Hunter NE Peel	43	41	26	Tumut	4	2	3
Hunter NE Tablelands	31	19	17	Tweed Heads	103	75	105
Hunter Valley HCA	25	30	44	Wagga Wagga CMHS	43	35	45
Inner City MHS	90	68	95	Young MHS	7	13	12

Total Number of Community Treatment Orders 2008-9 4058
Total Number of Community Treatment Orders 2009-10 3956
Total Number of Community Treatment Orders 2010-11 4694*

* Includes 566 Community Treatment Orders made at mental health inquiries.

Table 9

Number of Community Counselling Orders and Community Treatment Orders made by the Tribunal and by Magistrates for the period 1998 to 2010/11

	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2007/8	2008/9	2009/10	2010/11
Magistrate CCOs	4	4	3	60	15	563	36	7	6	8	3	-	-	-
Tribunal CCOs	82	66	69	88	54	70	62	53	50	43	15	-	-	-
Totals CCOs	**86**	**70**	**72**	**148**	**69**	**133**	**98**	**60**	**56**	**51**	**18**	**-**	**-**	**-**
Magistrate CTOs	747	844	673	1289	563	1096	2056	1535	1579	1452	1315	997	806	-
Tribunal CTOs	2059	2325	2509	2738	3166	3606	3930	4272	4611	4811	4691	4058	3966	4128
Total CTOs	**2806**	**3169**	**3182**	**4027**	**3729**	**4702**	**5986**	**5807**	**6190**	**6263**	**6006**	**5055**	**4772**	**4128**
Total MagistrateCCO/ CTOs	751	848	676	1349	578	1159	2092	1542	1585	1460	1318	997	806	-
Mental Health Inquiry CTOs													10	566
Total TribunalCCO/ CTOs	2141	2391	2578	2826	3220	3676	3992	4325	4661	4854	4706	4058	3956	4128
Total CCO/CTOs made	**2892**	**3239**	**3254**	**4175**	**3798**	**4835**	**6084**	**5867**	**6256**	**6314**	**6024**	**5055**	**4772**	**4694**

Table 10

Summary of outcomes for applications for Community Treatment Orders (s51) 2010/11

	M	F	Total	Adjourned	Withdrawn No Jurisdiction	Application Decline	CTO Made
Application for CTO for a person on an existing CTO	1418	741	2159	34	8	18	2099
Application for a CTO for a person detained in a mental health facility	785	471	1256	74	11	16	1155
Application for a CTO not detained or on a current CTO	674	291	965	55	16	20	874
Totals	**2877**	**1503**	**4380***	**163**	**35**	**54**	**4128**

Note: * These determinations related to 3028 individuals

Table 11

Tribunal determinations of ECT consent inquiries for voluntary patients for period 2010/11

Withdrawn at hearing	1
Capable and has consented	1
Incapable of consent	3
Total	**5**

Table 12

Tribunal determinations of ECT administration inquiries for civil patients for the periods 2007/08, 2008/09, 2009/10 and 2010/11

Outcome	2007/8	2008/09	2009/10	2010/11
Capable and has consented	49	37	46	28
Incapable of giving informed consent	2	-	1	-
ECT approved	566	562	608	584
ECT not approved	18	32	24	23
No jurisdiction/withdrawn	6	6	5	7
Adjourned	31	29	32	38
Totals	**672**	**666**	**716**	**680***

Note: * These determinations related to 221 individual patients

Table 13

Summary of notifications received in relation to emergency surgery (s99) during the periods 2008/09, 2009/10 and 2010/11

	M	*F*	*T*	*Lung/ Heart*	*Pelvis/ Hip/Leg*	*Tissue/ Skin*	*Hernia*	*Caesar-ian*	*Thyroid*	*Gastro*	*Prostate/ Rectal*
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
2010/11	1	1	2	1	1	0	0	0	0	0	0

Note: * Includes emergency surgery for three forensic patients

Table 14

Summary of outcomes for applications for consent to surgical procedures (s101) and special medical treatments (s103) for the period 2010/11

	M	*F*	*T*	*Approved*	*Refused*	*Adjourned*	*No Jurisdiction*
Surgical procedures	2	7	9	7	-	1	1
Special medical treatment	-	-	-	-	-	-	-

5.2 FINANCIAL MANAGEMENT

Table 15

Summary of statistics relating to the Tribunal's jurisdiction under the NSW Trustee & Guardian Act 2009 for the period July 2010 to June 2011

Section of Act	*Description of Reviews*	*Reviews*			*Adjourn-ments*	*With-drawn no jurisdic-tion*	*Order made*	*No Order made*	*Interim Order under s20*	*Revoca-tion Ap-proved*	*Revo-cation Declined*	*Legal Repres.*
		M	*F*	*T*								
s44	At a Mental Health Inquiry	33	28	61	14	3	27	12	5	-	-	58
s45	Forensic patients	1	-	1	-	-	1	-	-	-	-	-`
s46	On application to Tribunal for Order	44	83	127	20	7	71	22	7	-	-	94
s48	Review of interim FM order	2	2	4	-	-	3	1	-	-	-	4
s88	Revocation of Order	21	8	29	2	1	-	-	-	23	3	10
Total		**101**	**121**	**222**	**36**	**11**	**102**	**35**	**12**	**23**	**3**	**166**

5.3 FORENSIC JURISDICTION

Table 16

Combined statistics for Tribunal reviews of forensic patients under the Mental Health (Forensic Provisions) Act 1990 for 2009/10 and 2010/11

Description of Review	***2009/10 Reviews***			***2010/11 Reviews***		
	M	F	T	M	F	T
Review after finding of not guilty by reason of mental illness (s44)	31	8	39	23	1	24
Review after detention or bail imposed under s17 MHCPA following finding of unfitness (s45(1)(a))	-	-	-	-	-	-
Review after limiting term imposed following a special hearing (s45(b))	3	-	3	-	-	-
Regular review of forensic patients (s46(1))	535	66	601	552	63	615
Regular review of correctional patients (s61(1))	23	2	25	25	6	31
Review of a forensic patient following their apprehension due to an alleged breach of a condition of leave or release (s68(2))	3	0	3	8	2	10
Application by a victim of a forensic patient for the imposition of a non contact or place restriction condition on the leave or release of the forensic patient (s76)	6	0	6	11	0	11
Initial review of person transferred from prison to MHF (s59)	77	5	82	64	9	73
Review of person awaiting transfer from prison (s58)	17	-	17	34	11	45
Application for a forensic community treatment order (s67)	-	-	-	4	0	4
Regular review of person subject to a forensic community treatment order and detained in a correctional centre (s61(s))	-	-	-	-	-	-
Appeal against decision of Director-General (s76F)	-	-	-	-	-	-
Application for ECT (s96)[1]	4	4	8	5	7	12
Application for surgical operation (s101)	3	-	3	-	-	-
Application for access to medical records (s156)	1	-	1	-	-	-
Total	**703**	**85**	**788**	**726**	**99**	**825**
Determinations						
Fitness s16	27	2	29	38	2	40
Following limiting term s24	7	-	7	5	-	5
Total	**34**	**2**	**36**	**43**	**2**	**45**
Combined Total	**737**	**87**	**824**	**769**	**101**	**870**

[1] The Tribunal approved the administration of ECT on 7 occasions and found that the person was capable and had given their own consent on 5 occasions.

Table 17

Determinations following reviews held under the Mental Health (Forensic Provisions) Act 1990 for the periods 2009/10 and 2010/11

	2009/10			2010/11		
	M	F	T	M	F	T
Forensic Community Treatment Order	-	-	-	3	-	3
Variation to Forensic CTO	-	-	-	-	-	-
Revocation of Forensic CTO	-	-	-	-	-	-
Determination under s 59 person IS a mentally ill person who should continue to be detained in a mental health facility	72	4	76	57	7	64
Determination under s 59 person IS NOT a mentally ill person who should continue to be detained in a mental health facility	3	-	3	2	1	3
Classification as an involuntary patient	7	1	8	11	5	16
Determination under s76F appeal against Director-General's failure or refusal to grant leave allowed, leave granted	-	-	-	-	-	-
Adjournments	-	-	-	1	-	1
Total	82	5	87	74	13	87

Table 18

Outcomes of reviews held under the Mental Health (Forensic Provisions) Act 1990 for the periods 2009/10 and 2010/11

	2009/10			2010/11		
	M	F	T	M	F	T
No change in conditions of detention	319	29	348	372	43	415
Transfer to another facility	63	15	78	82	11	93
Revocation of order for transfer to a mental health facility	-	-	-	2	1	3
Grant of leave of absence	77	10	87	52	9	61
Revocation of leave of absence	1	0	1	-	-	-
Conditional release	10	0	10	13	1	14
No change to conditional release	131	15	146	124	11	135
Variation of conditions of release	24	4	28	27	2	29
Revocation of conditional release	6	0	6	1	1	2
Unconditional release	9	5	14	9	2	11
Non-association or place restriction on leave or release (s76)	4	0	4	9	-	9
Extend review period to 12 months[1]	13	3	16	21	4	25
Adjournments	36	3	39	16	4	20
Decision not forwarded/completed due to change in circumstances	3	0	3	6	2	8
Total	**683**	**81**	**764**	**734**	**91**	**825**

[1] Under s 46(5)(b) the Tribunal may extend the review period of forensic and correctional patients from 6 months up to 12 months if it is satisfied that there are reasonable grounds to do so or that an earlier review is not required because:

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

Table 19

Determinations of the Mental Health Review Tribunal as to fitness to stand trial following reviews held under the Mental Health (Forensic Provisions) Act 1990 for the periods 2009/10 and 2010/11

	2009/10			2010/11		
	M	**F**	**T**	**M**	**F**	**T**
S16 person WILL become fit to stand trial on the balance of probabilities within 12 months	5	-	5	4	-	4
S16 person WILL NOT become fit to stand trial on the balance of probabilities within 12 months	15	2	17	29	2	31
S24 person is mentally ill	2	-	2	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	3	-	3	2	-	2
S45 person has not become fit to stand trial and will not become fit within 12 months	-	-	-	-	-	-
S47 person has become fit to stand trial	6	-	6	6	-	6
S47 person has not become fit to stand trial and will not become fit within 12 months	23	10	33	36	3	39
Adjournments	8	-	8	5	-	5
TOTAL	**63**	**12**	**75**	**85**	**5**	**90**

Table 20			
Location of forensic and correctional patients as at 30 June 2009, 30 June 2010 and 30 June 2011			
	30 June 2009	**30 June 2010**	**30 June 2011**
Bankstown	1	1	1
Bathurst	1	1	-
Bloomfield	-	-	5
Cessnock Correctional Centre	1	-	-
Community	90	89	98
Concord (Rozelle) Hospital	7	4	5
Cumberland Hospital	38	39	36
Dilwynia Correctional Centre	1	-	-
Forensic Hospital	55	83	98
Goulburn Correctional Centre	4	1	3
Junee Correctional Centre	-	-	2
Juvenile Justice Centre	2	-	1
Kenmore Hospital	3	2	1
Lismore	1	-	-
Lithgow Correctional Centre	-	-	1
Long Bay Prison Hospital	34	41	37
Macquarie Hospital	7	7	10
Metropolitan Remand and Reception Centre	35	38	36
Metropolitan Special Programs Centre	4	6	5
Morisset Hospital	30	31	30
Parklea Correctional Centre	-	-	1
Parramatta Correctional Centre	-	1	-
Silverwater Womens Correctional Centre	5	3	4
Wellington Correctional Centre	-	1	-
TOTAL	**319**	**348**	**374**

Table 21

Location of hearings held for forensic and correctional patients during 2008/09, 2009/10 and 2010/11

	2008/9	2009/10	2010/11
Concord Hospital	9	8	13
Cumberland Hospital - Bunya Unit	103	86	86
Dilwynia Correctional Centre	1	-	-
Forensic Hospital	15	158	199
Goulburn Gaol	2	5	-
Kenmore Hospital	5	5	-
Long Bay Prison Hospital	185	139	134
Macquarie Hospital	19	9	11
Metropolitan Remand and Reception Centre	100	86	90
Morisset Hospital	73	68	73
Parklea Correctional Centre	2	-	-
Prince of Wales	2	-	-
Silverwater Womens Correctional Centre	10	8	4
Tribunal Premises	245	252	260
TOTAL	**771**	**824**	**870**

Table 22

Category of forensic and correctional patients as at 30 June 2010 and 30 June 2011

Category	**Male**		**Female**		**Total**	
Year	**June 10**	**June 11**	**June 10**	**June 11**	**June 10**	**June 11**
Not Guilty by Reason of Mental Illness	240	249	28	28	268	277
Fitness	13	27	2	2	15	29
Limiting Term	19	20	4	5	23	25
Correctional Patients	39	34	3	8	42	42
Forensic CTO	-	1	-	-	-	1
Total	**311**	**331**	**37**	**43**	**348**	**374**

Table 23

Number of forensic patients 1993 - 30 June 2011

Year	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011
Forensic Patients	90	102	123	122	126	144	176	193	223	247	279	277	284	310	309	315	319	348	374

NOTE: Figures for 1993-2001 taken from MHRT Annual Reports as at 31 December of each year. Figures from 2002 - 2011 were taken as at 30 June of these years. Figures for 2009, 2010 and 2011 include correctional patients.

Mental Health
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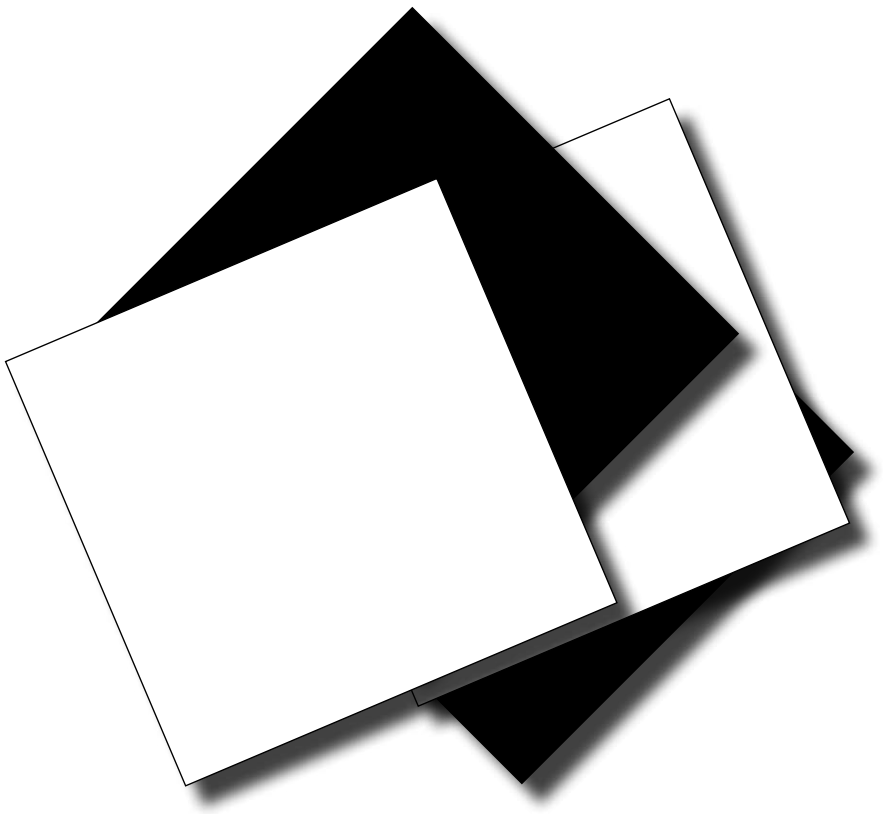
APPENDICES



Patient statistics required under MHA s147(2) concerning people taken to a mental health facility during the period July 2010 to June 2011.

(1) s147(2)(a)

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

	Method of referal	*Admitted*	*Not Admitted*	*Total*
MHA90/MHA07				
s19	Certificate of Doctor	8656	196	8852
s22	Apprehension by Police	2293	940	3233
s20	Ambulance Officer	669	301	970
s142/s58	Breach Community Treatment Order	117	19	136
s23/s26	Request by primary carer/relative/friend	974	3	977
s25/s24	Order of Court	172	80	252
s23 via s19	Authorised Doctor's Certificate	146	-	146
Total Admissions		**13027**	**1539**	**14566**
Reclassified from Voluntary to Involuntary		1626	257	1883
TOTAL		**14653**	**1796**	**16449**

(2) s147(2)(b)

Persons were detained as mentally ill persons on 9908 occasions and as mentally disordered persons on 3633 occasions. 1112 persons were admitted as voluntary patients.

(3) s147(2)(c)

A total of 4447 mental health inquiries were commenced relating to 3797 individuals.

Outcome of mental health inquiries conducted 1 July 2010 - 30 June 2011

	MHRT
Adjourned	315
Discharge or deferred discharge	63
Reclassify from involuntary to voluntary	-
Involuntary patient order	3489
Community treatment order	566
Declined to deal with	14
TOTAL	**4447**

(4) s147(2)(d)

In 2010/11 of the 16449 persons taken involuntarily to a mental health facility, 1112 people were admitted as a voluntary patient; 11915 were detained involuntarily and 1626 reclassified from voluntary to involuntary - a total of 13541 involuntary admissions and reclassifications to involuntary status during 2010/11.

There were 4447 mental health inquiries commenced with 3489 involuntary patient orders made. Of these only 901 patients remained in a mental health facility until the end of the involuntary patient order (which could be made for a maximum of three months) and were reviewed by the Tribunal. This means 2588 people were discharged from a mental health facility or reclassified to voluntary status prior to the end of their initial involuntary patient order.

The jurisdiction of the Tribunal as at 30 June 2011 as set out in the various Acts under which it operates is as follows:

Mental Health Act 2007 Matters

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

NSW Trustee & Guardian Act 2009 Matters

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

Mental Health (Forensic Provisions) Act 1990 Matters

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

APPENDIX 3

Mental Health Review Tribunal Members as at 30 June 2011

Full-Time Members	The Hon Greg James QC (President)	Ms Maria Bisogni (Deputy President)	Mr John Feneley (Deputy President)
Part-Time Deputy Presidents	The Hon John Dowd AO QC The Hon Mahla Pearlman AO	Mr Richard Gulley AM RFD	The Hon Ken Taylor RM RFD

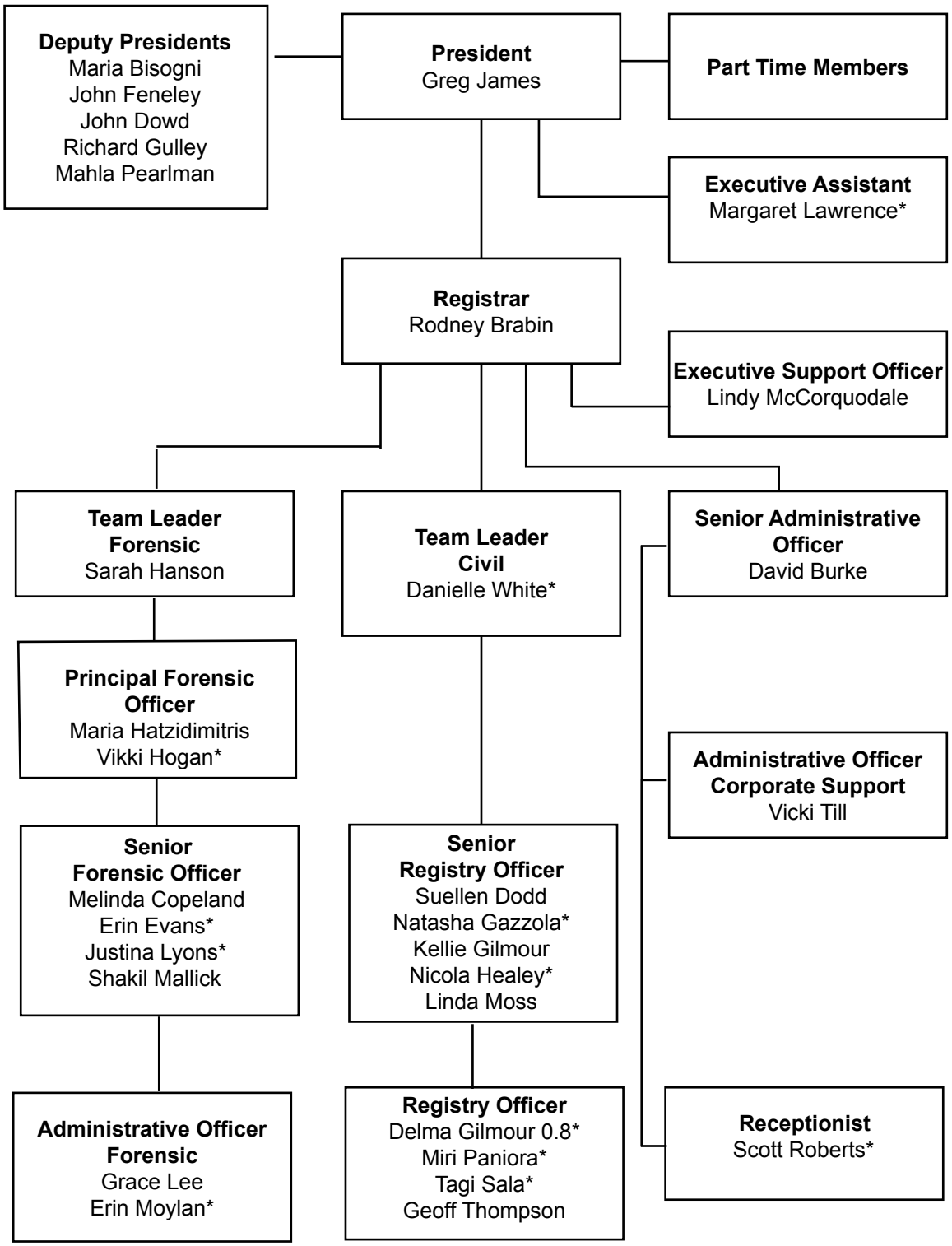
	Lawyers	**Psychiatrists**	**Other**
Part-Time Members	Ms Carol Abela	Dr Clive Allcock	Ms Lyn Anthony
	Ms Diane Barnetson	Dr Stephen Allnutt	Ms Elisabeth Barry
	Mr Peter Braine	Dr Dinesh Arya	Mr Peter Bazzana
	Ms Catherine Carney	Dr Jenny Bergen	Mr Ivan L Beale
	Ms Jenny D'Arcy	Dr Brian Boettcher	Ms Diana Bell
	Ms Linda Emery	Dr Barbara Burkitt	Ms Christine Bishop
	Ms Helen Gamble	Dr Andrew Campbell	Mr Gerald Cheung
	Mr Anthony Giurissevich	Dr Jonathan Carne	Ms Gillian Church
	Ms Yvonne Grant	Dr Shailja Chaturvedi	Dr Leanne Craze
	Mr Robert Green	Dr June Donsworth	Mr Phillip French
	Ms Eraine Grotte	Dr Charles Doutney	Ms Michelle Gardner
	Mr David Hartstein	Dr Michael Giuffrida	Mr Michael Gerondis
	Mr Hans Heilpern	Prof David Greenberg	Mr John Haigh
	Ms Catherine Henry	Prof James Greenwood	Ms Corinne Henderson
	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 Geoffrey Rickarby	Ms Tony Ovadia
	Ms Anne Scahill	Dr Anthony Samuels	Mr Alan Owen
	The Hon Ken Shadbolt	Dr Peter Shea	Mr Rob Ramjan
	Ms Tracy Sheedy	Dr John Spencer	Ms Felicity Reynolds
	Mr Jim Simpson	Prof Christopher Tennant	Mr Andy Robertson
	Ms Rohan Squirchuk	Dr Paul Thiering	Ms Robyn Shields
	Mr Bill Tearle	Dr Susan Thompson	Ms Alice Shires
	Mr Charles Vandervord	Dr Andrew Walker	Assoc Prof Meg Smith
	The Hon Frank Walker QC	Dr Rosalie Wilcox	Dr Suzanne Stone
	Mr Herman Woltring	Dr Anthony Williams	Ms Bernadette Townsend
		Dr John Woodforde	Ms Pamela Verrall
		Dr Rasiah Yuvarajan	Ms Anne Whaite
			Dr Ronald Witton
			Assoc Prof Stephen Woods

The terms of the following members expired during 2010/11. Their contribution as members is acknowledged and appreciated.

Lawyers	**Psychiatrists**	**Other**
Ms Elizabeth Olsson (resigned)	Dr Richard Normington (resigned)	Mr Stan Alchin (resigned)

MENTAL HEALTH REVIEW TRIBUNAL

Organisational Structure and Staffing as at 30 June 2011



*** Acting or temporary appointment**

FINANCIAL SUMMARY

Budget Allocation and Expenditure 2010/11

The Tribunal ended the 2010/2011 financial year with a budget deficit of $664,931. Expenditure during the year was directed to the following areas:

Tribunal Budget		*$4,930,697
Revenue		11,455
		$4,942,152
Salaries and Wages	2,748,833	
Goods and Services	2,808,960	
Equipment, repairs and maintenance	34,931	
Depreciation	14,359	
Expenditure	**5,607,083	5,607,083
Budget Deficit		$ -664,931

* Includes $400,000 Treasury adjustment for the costs of the Mental Health Inquiries function transferred from DJAG to the Mental Health Review Tribunal.

** Includes expenditure of $627,195 on the Mental Health Inquiries program.