Mental Health Review Tribunal

2016/17

Annual Report

Mental Health
Review Tribunal

The Hon Tanya Davies MP
Minister for Mental Health
Parliament House
Macquarie Street
SYDNEY NSW 2000

16 October 2017

Dear Minister

I enclose the Annual Report of the Mental Health Review Tribunal for the period from 1 July 2016 to 30 June 2017, as required by section 147 of the *Mental Health Act 2007*.

Yours sincerely

His Honour Judge Richard Cogswell SC
PRESIDENT

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THE VALUES WE BRING TO OUR WORK

The Mental Health Review Tribunal is an independent Tribunal that plays an important role in safeguarding the civil liberties of persons under the Mental Health Act, 2007 and in ensuring that people living with mental illness receive the least restrictive care that is consistent with safe and effective care. In exercising its functions and its jurisdiction under the law, the Tribunal adopts the following values:

- *Our independence as a decision maker is paramount and our decisions shall at all times be arrived at independently and free from improper influence;*
- *We acknowledge the importance of the objects of, and principles for care and treatment contained in, the Mental Health Act, 2007 and of our role in promoting and giving effect to those objects and principles;*
- *We acknowledge and respect the dignity, autonomy, diversity and individuality of those whose matters we hear and determine, and our important role in protecting their civil liberties;*
- *Procedural fairness is to be accorded to all persons with matters before the Tribunal;*
- *Courtesy and respect are to be extended at all times to all persons that we deal with;*
- *We acknowledge the importance of our procedures being transparent to the public;*
- *We acknowledge the importance of open justice and also the need to balance this with considerations of individual privacy and confidentiality where appropriate;*
- *Our work is specialised and requires a high level of professional competence as well as ongoing training, education and development for members and staff;*
- *We value our members and staff and will continually strive to maintain a supportive, efficient and enjoyable working environment where the dignity and the views of all are respected and where appropriate development opportunities are available;*
- *As a key stakeholder in the mental health system in New South Wales we shall, where appropriate, seek to promote, and to engage collaboratively with other stakeholders and agencies in promoting, the ongoing improvement of mental health services in New South Wales.*

THE WORK THAT WE DO

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

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

PRESIDENT'S REPORT

Important preliminaries

Again this year, I begin with my staff. I am proud to lead such a dedicated and hard working team. They also seem to enjoy working here. As I tell my staff, what we do here is important public sector work that contributes to the human condition and is of a high public interest. The Tribunal's staff serve the State very well in discharging their responsibilities.

I am enormously supported by my Executive – Deputy Presidents Maria Bisogni and Anina Johnson and Registrar Rodney Brabin – as well as my Executive Assistant Margie Lawrence. We have had challenges this year (more below). My confidence and effectiveness as a President are underpinned by an Executive that offers me integrity, intellectual rigour, legal expertise and a grasp of important policy considerations.

I will add something here about our part-time members. We have about 140 of them. I sit with them regularly of course but I also make a point of joining them at the lunch break two or three days a week here on the campus at Gladesville. (Cornucopia Café is a wonderful example of a not-for-profit supported employment programme that makes a very practical and important contribution in the mental health sector.) The part-time members bring a wide range of skills and, from their own professional and personal lives, the deep and relevant experience needed for this important work. They too are very committed, take their responsibilities seriously and provide a great service to the State and its more vulnerable citizens

Whilst on the topic, I might add that our part-time members have not had an increase in their remuneration since 2010. This is unacceptable and undervalues them. My predecessor Dan Howard, as well as our Registrar Rodney Brabin and I have all put in submissions over a couple of years. We are now awaiting a "new framework for board remuneration and governance" being developed by Treasury. It is due late this year and will need to be approved by the Government. We can only hope that, in all fairness, the significance of our members' contributions to this important public sector work, along with their dedication and commitment to the task, will become reflected in their remuneration.

I enjoy candid and fruitful relations with the senior officers of other agencies working in the same field. We meet regularly and communicate frankly. As Chris Puplick – Chair of the Board of Justice Health & Forensic Mental Health Network – said recently on one such occasion, we share the same goals.

Our forensic work is far smaller in volume than our civil work. But our forensic work attracts far more public attention. My report this year reflects that.

Media attention

Earlier this year the Tribunal attracted attention from the media about the release of forensic patients. What was lacking in this attention was an appreciation of the long and careful work that goes into bringing a fellow human being from the state of serious illness that was found to accompany an often horrendous act of violence to a slow and sustained recovery of their wellness and human potential. Similarly, there was a lack of appreciation of the process of dealing with a fellow human being whose mental condition (not illness) is such that they have little control over their actions and, when confronted by the consequences of those actions (arraignment in court), have little idea of what is happening and why they are facing a judge.

These people and what will happen to them are what the Tribunal is charged with overseeing. It is a challenge for any society and this State has taken it on by establishing and empowering the Mental Health Review Tribunal. The Tribunal's work involves testing and assessment of evidence as well as discussion and discernment amongst panel members. They each bring their own expertise (psychiatrist, lawyer and other suitably qualified or experienced person). Then there is the important process of balancing the tension between the right of

people living with illness or disability to re-enter society and the protection of the rest of the community against risks such people may still pose. Often in this mix are the understandably raw pain and fear of victims who have lost a loved one to a homicide committed by an unwell person.

This could all be dealt with bluntly and brutally by simply locking up our more vulnerable members and not releasing them. But that in a way fails to acknowledge our own humanity and vulnerability and potential to change. It is not the way this State has chosen. How a society deals with its most vulnerable, especially those who have seriously contravened its laws and inflicted suffering on others, is one measure of its own health as a human community.

Having said that, I will make two observations about the media attention we received. First, it is a sign of a robust and healthy polity that public institutions and decisions are examined and criticised. The Tribunal is such an institution and we should be exposed to the scrutiny not only of Parliament and Ministers of State but also the press. Such scrutiny can uncover processes that are not working as well as they should or people affected by its determinations whose complaints may not have been fully appreciated or aired. In this case, the atention has prompted a renewed public interest in our forensic work and an official Review of that work ordered by the Minister. This is good for our own institutional health.

Secondly, I was stung by the references to the “secretive” nature of our Tribunal. I have been a judge for 10 years and have sat in open court almost all of that time. (There are statutory exceptions when the court must be closed and occasional requests for a discretionary closure.) Once again, it is healthy for a process involving the administration of justice, determination of rights and liabilities and imposition of punishment to occur in public view. Members of the public come to understand and appreciate the processes at work and those of us who partake in it are more conscious of factors such as integrity, decorum, intellectual honesty, reasonable procedures and understandable and articulated results.

The fact of the matter - it is in our statute - is that our hearings are not secretive but open to the public. Commendably, New South Wales is one of the few Australian mental health jurisdictions where this is so. Again, however, there is an inherent tension. We are dealing with people’s very personal and private matters. None of us wants our doctors discussing our ailments in public, especially in the sensitive area of our mental health. The Tribunal sees and assesses a lot of historical, medical and psychological material about public patients. On the other hand, the people we review are subject to the compulsion of the State because of their own compromised wellbeing or the wellbeing of others. They are detained as forensic patients or as involuntary civil patients and are treated or controlled in ways they may not choose themselves. Like the rest of us, they would like to do what they choose when and where they choose. But they can’t because of the powers the Tribunal exercises over their lives. It is a very healthy thing that the exercise of such power should occur publicly and that the processes are seen to be attended by the same qualities of integrity, decorum and intellectual honesty with reasonable and understandable procedures and articulated results.

Getting back to our reported “secretive” Tribunal, that is obviously a perception held by some. I can see where it is coming from. Information and parties are protected by our statute. It and they usually cannot be identified or published. A member of the public (including members of the press and victims) can sit in on a Tribunal hearing but usually not report outside anything about what and whom they see or hear inside. I am not criticising that. It is the balance that Parliament has struck. Unlike many people appearing before the courts, a person before the Mental Health Review Tribunal is there in the first place because they are in some way compromised in their mental health and vulnerable. They are protected by an open public process but also from the public identification of them and their private health information.

Apart from the official Review that the press can justifiably claim some credit for, it may not be aware that it can claim credit for a tweaking of our website that I directed to emphasise - and encourage appreciation of - the public nature of our hearings.

The Review

Our "Reviewer", the Honourable Anthony Whealy QC, has been appointed. His review of the Tribunal's forensic work has started. The terms of reference touch on some of the challenging areas I have referred to: balancing community safety, victims' interests and the needs of forensic patients; victim engagement; publication of patients' names. It will also look at our member recruitment. As I have consistently emphasised, we regard a review as healthy for us. We welcome and will of course cooperate with it. We are part of a robust democracy with a free press and a review by an experienced retired Supreme Court judge is a measured and effective response to what the media may regard as issues of concern. We are not above criticism or suggestions for improvement.

We may well be asked or directed to change some of our practices and procedures or our operating law may be changed. We may have to change in ways we prefer not to. But we are a public agency charged with responsibility for a very public issue. The processes leading to the Review have been robust: a free press, Ministerial oversight by an elected member of Parliament and a review by a clearly independent and detached reviewer.

Forensic patients in Correctional Centres

It has come to the Tribunal's attention that some forensic patients are finding themselves sharing cells with two or three sentenced or remanded prisoners. There are two important observations to be made about that. First, it is unlikely to contribute to the recovery of their mental health; indeed there is a significant risk of the patient's mental health deteriorating in those circumstances. The second is that treating patients that way is more consistent with them being regarded as prisoners than as patients. Prison is an extreme measure reserved for persons charged with or convicted of serious crimes who pose an unacceptable risk in the community. It is not the place for persons with mental illnesses or mental conditions whose care, treatment and control (for the safety of them and the public) are a State responsibility.

Persons found not guilty of an offence by reason of mental illness are not guilty of the crime. They should not be treated as prisoners. But they can remain at risk to themselves and others, so coercive intervention is required by the State. In the case of persons who are unfit for trial and undergo a special hearing, the finding by the Court is "that on the limited evidence available, the accused person committed the offence charged" but such a verdict "constitutes a qualified finding of guilt and does not constitute a basis in law for any conviction for the offence to which the finding relates". Again, such persons need to be regarded as compulsory patients of the State for their own care and protection and the safety of others. This distinction is fundamental and must be recognised through the institutions which hold them and the circumstances in which they are held within those institutions.

Mental Health of Prisoners

It is hardly surprising that a large number of prison inmates will suffer from mental health problems. A violent or abusive background may be relevant to the crime they committed resulting in their prison sentence. The very fact of a sentence and being taken into custody for its duration is likely, of course, to bring on a reaction of anxiety and depression. The recent Mental Health Commission Report "Towards a just system: Mental illness and cognitive impairment in the criminal justice system" recognised this obvious fact. It suggested that mental illness and cognitive impairment among prisoners is so high that it should be assumed as the norm rather than the exception.

In other words, a readily identifiable and indeed physically confined cohort of people in need of mental health attention are prisoners. Prison time seems to be an obvious and ideal opportunity to offer (not compel) interventions in a person's life that may bring insight, understanding, recovery and change from old behaviours that have brought that person to such an extreme predicament.

It is a long recognised aim of sentencing to rehabilitate the offender. Rehabilitation can be in various forms, including courses that promote personal development and insight or vocational skills. But so far as the Tribunal is concerned, a lot of rehabilitation can occur through the intervention of a skilled counsellor such as a psychiatrist, psychologist or social worker.

The Tribunal's work exposes a serious lack of such resources in prisons. An investment in such counselling services on a large scale to prisoners has the potential to send people out with a better understanding of themselves and what has brought them to where they are and the value of such services continuing when they are in the community. A justice reinvestment initiative of a generous availability of counselling services to prisoners could contribute to their wellbeing, reduce the likelihood of reoffending and serve as a further safeguard for the community.

This is relevant to the Tribunal's work because it would expose at an earlier stage people with serious mental illnesses or conditions that can be either treated so that the Tribunal's intervention is not needed or provide an earlier opportunity of referral to the Tribunal for management (for example, by a forensic community treatment order) and review of that prisoner's mental wellbeing.

Delays in implementing orders

There have been instances of delays in implementing MHRT orders regarding forensic patients. Sometimes the delays were caused by hospital administrators "sitting" on a decision while they seek legal advice rather than implementing the decision. The decisions might have been opposed by the Minister or might be regarded as controversial.

It is important in this instance to emphasise the independent decision making power of the Tribunal. It is not for hospitals or institutions to second-guess the Tribunal's decisions. For reasons accepted by the NSW Parliament, the Minister is no longer the final decision-maker about forensic patients. The Tribunal is vested with that power and exercises it after a hearing during which differing views, including the Minister's, may be canvassed. It is then the Tribunal's responsibility to make a decision. Its decisions can be reviewed on appeal.

Resourcing the community mental health system

There is an aspect of funding community mental health which the Mental Health Review Tribunal is in a particular position to comment on. If community mental health is under- resourced then there will be cases where patients are not adequately supported and will risk becoming involuntary patients. But they can also find themselves coming into contact with the criminal justice system because of their deteriorating mental health. In other words, they commit acts of violence, are charged by the police, found unfit for trial or not guilty by reason of mental illness and then come to the Tribunal's attention as forensic patients. It is obvious – but needs to be stated plainly – that adequate resourcing of community mental health services can make a significant contribution to the reduction of acts of violence, including homicide, in the community. It is a far more wholesome and less costly way of protecting the community.

Patient focused hearings and education

Everyone is busy doing good work and engaging in worthy causes. Of course this is a generalisation but it can affect our focus. We all want to be efficient. (The Tribunal is, thanks to its staff and especially its Registrar, Rodney Brabin.) Some cases dealt with by clinicians will demand more of their time and attention than others. There are expectations of clinicians covering the breadth of their professional work, not just what they contribute to the Tribunal's proceedings.

I make these remarks as a context for two points. One is an idea of patient focused hearings that Deputy President Maria Bisogni has been developing for some years. This means hearings would attempt to focus more on listening to the patient and encouraging recovery. This happens already of course. (Promotion of patients' recovery is an object of the Mental Health Act.) But getting through a hearing list efficiently and other professional commitments and demands can affect everyone's approach. They can conspire to draw our attention away from the patient before us. Hence Maria has taken on the challenge of encouraging this shift in emphasis.

The second remark is to acknowledge the efforts of Deputy Presidents Maria Bisogni and Anina Johnson (as well as Team Leaders Danielle White and Siobhan Mullany) in their regular presentations to mental health facilities and community groups. We can't expect clinicians to know all about us and what we do. We are one item on their professional plate. So it is important that we do as much as we can to explain our role and provide information on our powers and procedures. This is the work Maria, Anina, Danielle and Siobhan undertake regularly across the State and beyond.

Conclusion

So our work proceeds. We are very busy but this is accompanied by great efficiency. All of us – staff and members – are committed to this important public sector work that we undertake. We don't expect to be immune from criticism. We are not perfect but we are aware that our decisions affect a lot of people's lives. That drives the attention we give to our work.

His Honour Judge Richard Cogswell SC
President
20/09/2017

FORENSIC DIVISION REPORT

The work of the Forensic Division of the Tribunal will come under particular focus in the final six months of 2017, with a review of the operation of the Tribunal in respect of forensic patients to be conducted by the Hon Anthony Whealy QC at the request of Minister Davies.

As President Cogswell has said, the Tribunal welcomes scrutiny of its work, which brings a review by fresh eyes and the opportunity for fresh ideas.

Forensic patients and their whereabouts

As at 30 June 2017, there were 566 forensic and correctional patients in NSW, an increase of 21% from 2015-2016 (see Table 33). Of the 425 forensic patients, about 35% live in the community under conditions of release approved by the Tribunal. About 50% of the forensic patients are detained in a mental health facility and about 15% remain in custody.

Lengthy waits in custody for mental health beds

The lack of forensic mental health beds remains a significant concern. The impact of this is most acutely felt by the forensic patients who wait over a year for admission to the Forensic Hospital, after their court proceedings have concluded.

As at 30 June, the forensic patient who has waited the longest for admission to the Forensic Hospital had spent 3½ years in custody. This included a wait of nearly two years since the court concluded that he was not guilty of an offence by reason of mental illness. Eighteen patients have been waiting in custody for more than two years for admission to the Forensic Hospital.

On one occasion in the last financial year, a forensic patient in breach of his conditional release was returned to custody because a high secure mental health bed was not available at short notice. He remains in a custodial setting for nine months to date.

Forensic Case Study 1

In his middle age, Mr A began to experience sleeplessness and depression. He was admitted to a mental health unit, and discharged with medication. His symptoms continued, and he began to believe that his family were poisoning him. He refused to eat food prepared by his family and became aggressive towards them. Mr A would not take the prescribed medication, because he believed that this too was poisoned. His family took him to hospital on two further occasions. One month after his last discharge from a mental health facility, he killed a family member.

Mr A was taken to custody on remand. He remains there, two and a half years later, even though the Court has found him not guilty by reason of mental illness of the offence with which he was charged. Mr A continues to wait for a bed to become available in the Forensic Hospital.

Mr A is now taking regular antipsychotic medications. He experiences overwhelming grief and shame at what has occurred and he has made several serious attempts on his own life.

Access to intensive psychological treatments and other therapeutic programs is not available in a custodial setting. Mr A is likely to wait at least another six months before he is admitted to the Forensic Hosptial. There is no doubt that a custodial setting is making Mr A's mental health worse.

Those who have been found not guilty of committing an offence because of a mental illness have not been convicted. They are not serving a sentence. They are only eligible to begin to access the community once the Tribunal is satisfied that neither they nor the public would be serious endangered if community access is granted. It is difficult for a forensic patient to satisfy this test if the patient has not engaged in a rehabilitation program. Unfortunately, there is limited (or no) access to appropriate programs in custody. Therefore, whilst in custody, forensic patients are treading water. They have no end to their detention in sight. The Tribunal hears regularly about the difficulty of maintaining hope in this context.

The issue of the lengthy detention of forensic patients in custody has been one part of the important work by the NSW Mental Health Commissioner, whose report "Toward a just system: Mental illness and cognitive impairment in the criminal justice system" was launched in July 2017. The Tribunal supports the recommendations in that report.

Time limited orders

As at 30 June 2017, there were 25 forensic patients waiting in custody for an admission to the Forensic Hospital. This is up from 20 patients in the same situation last year.

In addition, there were 17 patients assessed as ready to leave the Forensic Hospital and move to a bed in one of the medium or low secure forensic units at the Cumberland, Bloomfield, Morisset or Concord Hospitals. Last year at the same time, there were 10 patients waiting. This is despite the fact that in the last year, Concord Hospital has committed seven beds for forensic patients.

It is widely agreed that forensic patients should not be detained in a custodial setting. The Tribunal attempts to be as accommodating as appropriate to the resource difficulties of the Justice Health and Forensic Mental Health Network (JHFMHN). However, ultimately the Tribunal has a statutory responsibility to fulfil, having regards in particular to the principles set out in s68 of the *Mental Health Act 2007*.

The Tribunal continues to consider making orders that forensic patients be moved within a specified time frame, if the forensic patient has been waiting more than 12 months for a place at the Forensic Hospital. Only one such order was made in the last financial year.

NSW Forensic Mental Health Strategic Plan

Issues of how to best accommodate the increasing numbers of forensic patients requires a well thought out approach. In last year's Annual Report, the Tribunal welcomed the development of the NSW Forensic Mental Health Strategic Plan. The Tribunal urges the Ministry of Health to complete the plan and seek government support for its implementation.

Limiting term patients

Forensic patients who are subject to a limiting term generally have a mental condition rather than a mental illness. The kinds of conditions which may mean that a person is unfit to stand trial include acquired brain injuries, intellectual disability, dementia, severe epilepsy or others conditions leading to a cognitive impairment. As a result, those forensic patients who have a limiting term nominated often require a different kind of care pathway from those living with a mental illness.

The Tribunal continues to work with the JHFMHN, Family and Community Services (Ageing, Disability and Homecare) and Corrective Services NSW to develop a process for bringing appropriate leave and conditional release applications before the Tribunal.

In the last year, there have been eight conditional release applications granted for forensic patients who have a limiting term nominated. In the previous financial year only three such applications were granted.

These increased numbers reflect the hard work of all involved in this area to find appropriate accommodation and supports in the community that allow for the safe conditional release of people who do not have a primary diagnosis of a major mental illness.

It is hoped that access to National Disability Insurance Scheme (NDIS) funding may assist forensic patients in this situation in the future.

The roll out of the NDIS

The NDIS has the potential to offer real advantages for people living with significant psychosocial disabilities, including forensic patients. The focus on functional issues, rather than diagnostic concerns, allows for those with a complex mix of physical, cognitive and mental health difficulties to receive the support that is needed.

The Tribunal is hopeful that the NDIS will fund supports for those who currently fall in the gaps between services provided by the NSW government. This includes forensic patients with acquired brain injuries, cognitive impairments or with complex medical conditions such as epilepsy.

However, the Tribunal understands that the NDIS will not pay for general health care, criminogenic needs, or assistance for people to comply with the requirements of their Tribunal orders. Nor will the NDIS be likely to fund nor provide supervision and oversight of community service providers to ensure that they are providing appropriate forensic services.

These are vital services that allow for a forensic patient to be safely placed (and continue to reside) in the community. The question of who will pay for these services when the Community Justice Program (CJP) is disbanded needs to be resolved.

Forensic Case Study 2

Mr B is a man with an intellectual disability and a mental illness. He has been conditionally released to reside in accommodation provided by a non-government organisation under contract with the Community Justice Program. He is subject to strict conditions imposed by the Tribunal that include a requirement that he remain within sight of workers whenever he is not at the accommodation.

The Tribunal was advised by the residential service provider of that Mr B had a number of unauthorised items, including some marijuana, a computer and cigarette lighters, in his room. A mental state assessment and urine drug screen were promptly arranged. CJP assessed the background to this event, including supervision failures. It provided the Tribunal with advice on the risks that arose from the incident (noting that the risks were not acute and the urine drug screen was negative). CJP confirmed that the accommodation service provider was well aware of the line of sight obligations, but that a different NGO which took Mr B to activities twice a week, did not fully appreciate the obligation. This second NGO is not contracted by CJP. Rather the services are funded by the NDIS. CJP liaised with the community mental health case manager to ensure that the second NGO was aware of Mr B's conditions of release. The Tribunal was provided with a detailed report on the follow up actions, which satisfied it in that a s68 order requiring Mr B's apprehension was not needed in this instance.

The involvement of the CJP in assessing issues of risk and in overseeing the work of NGO service providers has helped to maintain the safety of the public whilst Mr B remains in this community placement. This work would not be funded by the NDIS.

It is worth remembering that there are social and economic costs to the community when a person is returned to custody. The Mental Health Commission report "Toward a just system" uses work undertaken by PwC created a case study of a young man Roy. That case study is a good illustration of the costs of not investing in community services to support those who have a mental illness/cognitive impairment and involvement in the criminal justice system.

There is a need to urgently determine how risk assessments and oversight for those without a mental illness will work once the NDIS is fully operational. The Tribunal has been pleased to be involved in a collaborative effort led by the Department of Premier and Cabinet to answer these pressing questions.

Law reform ongoing delays

As the Tribunal noted in last year's Annual Report, the Tribunal is concerned by the delay in responding to the Law Reform Commission's (LRC) reports No 135 and 138 (concerning the criminal law and procedure applying to people with cognitive and mental health impairments). These reports were handed down in 2012 and 2013 and identify some significant deficiencies in the structure of the *Mental Health (Forensic Provisions) Act 1990*. There are also other procedural issues and legislative ambiguities which the Tribunal wishes to clarify, but which are not given any priority until there is a response to the LRC report. Progress on these reforms deserves priority.

Interstate Forensic Patients

Proximity to family, community and cultural ties is often a critical aspect of a patient's recovery. The importance of family and country is particularly important for Aboriginal and Torres Strait Islander patients. The Tribunal has identified a number of forensic patients who would be appropriate candidates for an interstate transfer but these transfers cannot be progressed as there are no interstate agreements in place with the relevant States or Territories.

The Tribunal has ordered conditional release for a small number of forensic patients to reside interstate, particularly if their primary supports are in another State. However these arrangements rely on the good will of the interstate and NSW clinicians involved in the care arrangements.

If a NSW forensic patient's mental state deteriorates whilst on conditional release interstate, the person's management is complicated by the fact that an order for apprehension under s68 can only require their detention in a NSW facility. This means that a decision to order a patient's apprehension and detention involves significant disruption to community living arrangements. Discharge back to the community is also compromised. This is another disincentive to conditionally releasing forensic patients to live interstate.

A successful transition to the community is easier when family support is readily available. Intergovernmental arrangements for the interstate transfer of forensic patients would benefit all States. The Tribunal participated in the Commonwealth's Law, Crime and Community Safety Council (LCCSC) working group on forensic patients under the jurisdictions of the Commonwealth, states and territories. This was an interstate, interagency working group considering both overarching principles and practical measures to facilitate interstate transfer of forensic patients' care. The Tribunal encourages the government to pursue this work.

Correctional Patients and Forensic Community Treatment Orders

There has been a significant increase in the number of hearings for those needing mental health treatment in custody.

There continues to be an increased uptake of community treatment orders which operate to require mental health treatment for those in custody and those preparing to leave custody. In 2015/16, 56 forensic community treatment order hearings were held, whilst in 2016/17 there were 122 such hearings.

If the person who is subject to a community treatment order remains in custody, a review must be held every three months. There were 59 forensic community treatment order reviews in 2016/17 whilst in 2015/16 there were 10. The Tribunal considers that these mandatory three monthly reviews are no longer needed as a safeguard and has recommended that the legislation be amended to remove the requirement for them.

The Tribunal is required by s58 of the *Mental Health (Forensic Provisions) Act 1990* to review an inmate who has been ordered to be transferred to a mental health facility for treatment, but is still waiting for transfer after 14 days. In 2015/16 the Tribunal conducted 11 hearings under s58. In 2016/17, there were 24 hearings. The increase in s58 reviews reflects the increase in the numbers of people in custody (in June 2017 there were 13,092 people in custody - BOCSAR). This has also stretched the availability of the mental health services that are provided by the Justice Health and the Forensic Mental Health Network.

Increased Workload in the Forensic Division

This financial year, there were 1342 forensic hearings, compared with 1186 in 2015/16. The increase in the number and complexity of hearings has resulted in a significant increase in the workload of Tribunal staff.

To date, this workload has been absorbed into staff's already busy schedules. However, it is likely that additional staff will be needed in the next financial year to assist with scheduling the increasing numbers of hearings.

Research and Presentations

The Deputy President and staff of the Forensic Division continue to be involved in formal and informal presentations on the work of the Tribunal. In the last year, Deputy President Anina Johnson has given presentations at the Australian and New Zealand Forensic Science Society, the Second International Conference on Non-Adversarial Justice and the 2016 National Forensic Mental Health Conference. Deputy President Johnson and Team Leader Siobhan Mullany have also presented at a number of law firms, mental health facilities, community mental health services, victims advocacy groups and to the Community Justice Program.

The Tribunal has been involved in a long running research project being conducted through the University of NSW and funded by the Mental Health Commission. This involved the collection of 250 items of data from each of 500 forensic patients' files maintained by the Tribunal over a 25 year period. Most of the data has been collected in the last 12 months. The database will now be linked to longitudinal administrative health and criminal justice datasets. The Commission will also fund analysis using this dataset which will provide important evidence about the care pathways and outcomes for forensic patients in NSW.

The Tribunal remains an active partner in the successful National Health and Medical Research Council (NHMRC) Partnership Project "Improving the Mental Health Outcomes of People with Intellectual Disability". The project aims to improve mental health outcomes for people with intellectual disability. The key messages from this research will be shared with health departments, clinical directors and chief psychiatrists in all States through a national roadshow, as well as a national roundtable.

Victims

The Forensic Division continues to manage the Forensic Patient Victims Register, through which it notifies victims of upcoming hearings, facilitates their attendance at hearings, and advises the outcomes of those hearings.

In 2016/17, the Tribunal conducted a review of its written information for victims, with the aim of ensuring that it is current and easy to understand. Further reviews of the written information to victims will be undertaken once the Forensic Review being conducted by Mr Whealy QC has made its recommendations.

In the past financial year, the Tribunal has also been advocating for the establishment of a specialist unit to support the victims of forensic patient's actions, which would be similar to the Queensland Health Victims Support Service. The service would offer victims: supportive counselling, help in navigating the criminal

justice system, information and support to understand the forensic mental health system, assistance with drafting submissions to the Tribunal and referrals to obtaining practical assistance and additional support services to help victims in their recovery. The Tribunal considers that this unit would be appropriately established within Victims Services NSW.

The Tribunal has discussed this idea with the Minister for Mental Health, the Attorney General, the Commissioner of Victims Rights and staff from various agencies. It is pleasing that this proposal has received strong support.

The Tribunal has continued to advocate for the right to make a victim impact statement where an accused person is dealt with under the *Mental Health (Forensic Provisions) Act 1990*. This was a recommendation of the Law Reform Commission in 2013 in Report 138: recommendation 8.4.

The Tribunal meets regularly with representatives from victim support groups and is a member of the Victims of Crime Interagency Forum.

Thanks

In challenging times, the Forensic Division has maintained its positive working relationships with key stakeholders including the Ministry of Health, Ministry of Justice, the Justice and Forensic Mental Health Network, Legal Aid NSW, Corrective Services NSW, Premier and Cabinet, Family and Community Services and victims' organisations. The Tribunal values the strong working relationships that it has with the many stakeholders in this area.

We thank the members and staff of the Forensic Division for their careful and compassionate approach to their work.

Anina Johnson	Siobhan Mullany
Deputy President	Team Leader

CIVIL DIVISION REPORT

Recruitment and recovery

As has been the case for many years now the Tribunal has in the reporting year experienced an increase in its overall hearing load. Most of the increase in this period related to forensic hearings while civil hearings remained largely steady. During this period, there have also been many changes and challenges in the civil jurisdiction.

On 31 August 2016, 33 highly skilled professionals were appointed as Tribunal members, with many commencing their sitting as members in the last quarter of 2016, after a period of induction and co-sitting with more experienced members. As is the case with our existing members, they bring great skill and commitment, and a wide range of experience.

There were important changes to the *Mental Health Act 2007* (the Act) in 2015, which requires clinicians to do all they reasonably can to obtain a consumer's consent to treatment and recovery plans; and if capacity is lacking, providing support to consumers in understanding those plans. In addition, the role of carers was expanded, by allowing for the nomination of up to two designated carers and the creation of a new category of carer, the 'principal care provider'. Unlike designated carers who are nominated by the consumer, the principal care provider (defined as someone who provides primary support) is identified by clinicians, and they too, must be advised of specified events concerning the consumer, including being consulted about: discharge/recovery plans; applications for Community Treatment Orders (CTOs) or decisions to revoke or not renew them; and decisions to detain or discharge.

Consistent with this person-centred approach, the Tribunal in its hearings seeks to explore the views and wishes of consumers and carers about treatment and care plans. There are tensions in this exercise. The right to determine one's treatment needs to be balanced with the best care, which accords with professionally accepted standards and protects the consumer and/or the public from serious harm.

As noted in last year's report, the 'challenge' for the Tribunal is to approach its hearings in a way that is trauma informed and promotes the consumer's recovery in the context of hearings which are about involuntary care and treatment. The Tribunal is trying to meet this challenge in many ways: by training its members about the principles of recovery and trauma informed care and how they might be applied in its hearings; and by giving consumers a voice and valuing their views and insights.

Over a year ago the Tribunal devised a 'Client Form' to give consumers another avenue to express their views. The Tribunal also made a DVD of what it is like to attend a Tribunal hearing. Unfortunately, neither is widely utilised, despite posters in mental health facilities publicising them. The Tribunal has recently rewritten to all mental health facilities promoting the Client Form and the DVD, as well as bringing them to the attention of consumer peer workers, carers and clinicians.

How well the Tribunal undertakes a person-centred approach has not been assessed, although the anecdotal feedback from peer workers, carers and consumers is that generally hearings are conducted in a spirit that is respectful and affirming of the rights of consumers and carers. The Tribunal would welcome a more formal appraisal of its work by all participants. A user satisfaction survey might inform what, if anything needs to be improved and this issue is something that we will explore in the coming year.

The first case study is a good example of the Tribunal taking measures to actively involve consumers in their hearings.

Civil Case Study 1 - Participation

Mr R is an elderly patient who has been detained in a medium secure mental health facility since 2012. He is also profoundly deaf and since his admission to hospital has not been able to participate in his Tribunal hearings. At the involuntary patient review hearing the Tribunal was advised that staff communicate with Mr R by shouting. Mr R has had expensive hearing aids which he has thrown away.

The Tribunal adjourned the hearing for a month on the basis that it would be procedurally unfair to proceed with the hearing; and recommended that Mr R have a hearing wand and a lawyer at the resumed hearing. The mental health facility did not have a hearing wand.

The Tribunal purchased a 'personal amplifier' a superior device that had superseded hearing wands. At the resumed hearing Mr R agreed to wear the amplifier; his lawyer could obtain Mr R's instructions; Mr R was able to interact with the treating team and he happily participated in his hearing. The latter was something that he had not done in his five years at the facility.

The Tribunal was advised that Mr R had a large amount of savings. The Tribunal wrote to the Medical Superintendent requesting that a hearing amplifier be purchased for Mr R, as it would not only allow him to interact with others at the facility but also would allow him to watch television. A report by his key worker in the cottages confirmed that the amplifier was purchased which allowed Mr R to communicate and his interactions with staff had improved. There was a noticeable improvement in his mood and Mr R returned to his art and began to attend the Art Group which he had ceased many years ago. Around the same time his NDIS funding was approved which allowed an NGO, New Horizons, to take him out on outings. His quality of life had noticeably improved.

Law Reform

The amendments to the Act referred to above have been in operation for well over a year. Our anecdotal experience is that the new role of 'principal care provider' is not well understood or applied, with the result that carers may still feel somewhat excluded. This is apparent at Tribunal mental health inquiries where principal care providers are often not notified of hearings, because clinicians are not aware of their obligations to do so. This observation was resoundingly confirmed by many carers at the Carers Forum hosted by the Mental Health Commission in June 2017.

This lack of involvement is concerning as carers often have important information about consumers that might be relevant to care and treatment and discharge decisions. Carers may also have information relevant to decisions of the Tribunal. Training about the role of carers and their rights needs to be prioritised if the recent legislative changes are to have any significant impact. The Tribunal has also put together a summary of carer rights that will soon be posted on the Tribunal's website. The Tribunal will continue to feedback our experiences to the Mental Health Commission and the Ministry.

There were no major changes to the Act in the reporting period. However, in October 2016 the Tribunal changed its practice in relation to the attendance of patients at involuntary reviews and ECT hearings. In summary, the Tribunal required that such patients must attend the hearing for the Tribunal to proceed. This meant that patients had to attend in person or by video conference or in cases where neither was possible due to the acuity of their condition, by telephone. This had caused some very unwell patients, some distress. A directive was issued by the President setting out the new requirement. Because of the difficulty of requiring attendance when patients are very unwell which cannot be resolved by an adjournment (e.g. when ECT is lifesaving treatment and therefore urgent), the Tribunal has recommended that the Act be amended, to allow for their non-attendance in defined circumstances. We understand that this change (with certain safeguards) is being considered for legislative amendment next year.

The Tribunal also issued a practice direction to allow legal representatives access to the medical records of consumers who have matters before the Tribunal.

Key statistics

Statistics relating to each head of jurisdiction in the civil division have remained largely stable for the last few years. As noted in the Registrar's report, this year there was an overall increase in hearings by 0.8%, with most of this being attributed to an increase in forensic hearings. Of the 18,098 Tribunal hearings that took place, 16,589 were for civil patient hearings and 169 were financial management order hearings. Civil hearings account for almost 92% of Tribunal work.

There was a marginal decrease in mental health inquiries of 1.9% from the previous year, being 30 fewer hearings (total of 6,757). There was a small increase in Involuntary Patient Review Hearings from 2,695 in the previous year to 2,725 (up 1.1% or 30 hearings). The number of hearings to consider applications for Community Treatment Orders (CTOs) decreased slightly by 26 (or 0.5%) to 5,331 this year. The CTO determinations made were for a total of 3,561 consumers.

Appeals against the authorised medical officer's refusal to discharge a patient increased slightly from 641 in the previous year to 690. The majority (554 or 80.39%) were dismissed and 16 patients were discharged, representing 2.3% and one patient was reclassified as a voluntary patient.

There were 723 hearings to consider applications for the administration of ECT in relation to involuntary patients (this includes forensic patients) and it was approved in 610 cases (or 84.4% and not approved in 13 cases (or 1.8%). In 25 hearings, the Tribunal found that the patient had capacity and had given consent to ECT.

Under the *NSW Trustee and Guardian Act 2009*, the Tribunal conducted 169 hearings for financial management orders (up from 168 in 2015/16). Interested parties were responsible for 81 applications for a financial management order and 32 were considered at mental health inquiries. The Tribunal made 62 financial management orders. There were four reviews of interim financial management orders. There were 52 applications for the revocation of financial management orders, an increase of two from the previous year. The Tribunal revoked 30 of the orders.

Oversight of care and treatment

As has been the case now for many years, members continue to refer individual cases or systemic issues of concern to the Executive. As noted in previous Annual Reports, a perennial issue raised by members has been the lack of appropriate accommodation and support for long term patients with complex needs. Such cases may involve the Tribunal raising concerns with the relevant agencies seeking a response, and/or convening the parties at a hearing to try to bring about a resolution. Wider systems issues may be brought to the attention of the Ministry, the Mental Health Commission, and in appropriate cases, the Official Visitors. It is often necessary to involve several agencies such as, ADHC (Ageing Disability and Homecare), the NSW Public Guardian, the Mental Health Advocacy Service, and increasingly the National Disability Insurance Agency (NDIA).

We are pleased to report that a relatively new project, the Pathways to Community Living Imitative (PCLI) is taking on the challenge of finding appropriate placements for long term consumers whose needs would be more appropriately met outside a mental health facility. The PCLI commenced in 2014 as part of the Strategic Plan for Mental Health in New South Wales 2014 - 2024 and it aligns with major recommendations of the New South Wales Mental Health Commission's Living Well Strategic Plan Report. The PCLI assesses consumers with enduring mental illnesses, who have been in hospital for over one year in acute inpatient units and non-acute inpatient units. Some 380 patients have been identified for transition, including the 95 individuals identified in the New South Wales Ombudsman's Report of 2012 as persons with complex needs who should be in the community, but for the lack of resources.

The Tribunal welcomes this very worthwhile project which by early 2017 had transitioned 58 long stay patients out of mental health facilities into mental health, and into generalist aged care facilities. The project shows what can be achieved when agencies work in a recovery framework. At a PCLI Dialogue Day held in Orange in May 2017 there were remarkable accounts of long term consumers who had been transitioned to more appropriate settings and whose quality of life had improved as a result.

Civil Case Study 2 concerns the inappropriate placement of a voluntary patient in a mental health facility that was referred to the Tribunal by the Official Visitor's Program.

Civil Case Study 2 - Tribunal Review

Ms Y is 49 years old and has a history of schizo-affective disorder and developmental delay with an estimated functional age of less than three years and multiple physical health problems. Ms Y had been living in the community with her father in a stable mental state, as her father ensured that Ms Y took her medication. However, due to her father's declining health he was no longer able to care for Ms Y and she was admitted to a mental health facility, initially as a mentally ill person after a period of behavioural disturbance. Some weeks later she was admitted by her sister and guardian as a voluntary patient.

By the time Ms Y came to the Tribunal's attention she had spent over 260 days in a mental health facility. Despite the involvement of many agencies, including ADHC, Persons with a Disability (PWD) and the Hospital's social worker, efforts to move Ms Y to a high level of supported living in an environment fit for her high and complex needs was challenging. Despite 13 referrals to NDIS disability accommodation providers, it was difficult to find vacancies for Ms Y's high support needs; and as Ms Y's NDIA plan was based on her circumstances when she was residing with her father, and the NDIA was refusing to review her plan earlier despite her changed circumstances.

Ms Y was exposed to illicit drug use and subject to verbal and physical assaults due to her repeated vocal and disinhibited behaviour, and has difficulty expressing herself using language. Despite efforts to protect Ms Y staff were unable to meet her complex needs and the Official Visitors assessed Ms Y to be at high risk of harm. Ms Y's case was referred to the Deputy Ombudsman and Community and Disability Services Commissioner.

The Tribunal was alerted to Ms Y's circumstances by the Official Visitor Program and set down an early review of her voluntary patient order. The Tribunal also wrote to all stakeholders and asked the NDIA to urgently review Ms Y's plan. The Tribunal was advised a day before its scheduled review that Ms Y's funding issue had been resolved and that she was being transferred to high support accommodation.

External training and liaison

As has been the case for many years now, the Tribunal has continued to deliver education and training sessions to both community and hospital based mental health facilities.

Deputy President, Maria Bisogni gave papers at the following events: the Being Consumer Worker's Forum; Like Minds Seven Hills; the Mental Health Commission's Workers Forum; The PCLI - Dialogue Day at Orange; and participated in the Law Society's Elder Law Mediation Seminar; NCAT (the Guardianship Division) and training of clinicians at Cumberland and Bankstown Hospitals.

Ms Danielle White, the Civil Team Leader, is involved with a volunteer working group at Cumberland Hospital, whose aim is to have volunteers support family and friends of patients attending Tribunal hearings. Ms White also gave a paper to volunteer carers in September 2016 about the Act and the Tribunal's jurisdiction to assist them in better understanding the Tribunal's role.

The Tribunal attends quarterly meetings with the Mental Health Commissioner with the aim of advising of systemic issues and identifying common areas to work on together.

Research project

Westmead Children's Hospital is currently undertaking a children's research project, involving two streams. One is a retrospective study over a five year period aimed at reviewing the records of children who appeared before the Tribunal. It is hoped that the research will give an insight into the complexity of the patients treated at the hospital. The findings may change practice and improve patient outcomes. The second is a longer ongoing and prospective study of children who are detained as compared to a cohort who are not detained under the Act and has a strong therapeutic jurisprudential and forensic psychiatry emphasis.

Submissions/Reports

A second submission was made to the NSW Law Reform Commission's Review of the Guardianship Act 1987, following on from a preliminary submission made on 21 March 2016. The main purpose of the review is to explore whether supported decision making should be introduced as a major concept in the Guardianship Act. The Tribunal has made submissions about the interaction of its governing legislation and the Guardianship Act. There is some overlap in relation to medical treatments which can be confusing. The Tribunal would welcome some legislative clarification. In the meantime, the Tribunal has worked on a medical consent table that sets out the applicable legislation. That table is now posted on the Tribunal's website.

An acknowledgement of members and staff

The many challenges of the past year have been met with the usual dedication, passion and commitment of the Tribunal's core staff and part time members.

Maria Bisogni	Danielle White
Deputy President	Team Leader

REGISTRAR'S REPORT

This has been another busy and challenging year for the Tribunal with the consolidation of the amendments to the *Mental Health Act 2007* (the Act) which came into effect on 31 August 2015 and finalisation of the major recruitment action for part time members commenced during the first half of 2016. This recruitment action resulted in the appointed of 33 new part time members on 31 August 2016.

The total number of hearings conducted by the Tribunal increased by 0.8% from 17,950 hearings in 201/516 to 18,098 in 2016/17 (148 additional hearings). This means that there has been an almost doubling (99%) of the number of hearings conducted by the Tribunal since June 2010 when the Tribunal assumed the responsibility for conducting mental health inquiries. Further details about this increase are discussed below.

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

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

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

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

Caseload

In 2016/17 the Tribunal conducted 18,098 hearings including 6,757 mental health inquiries. This 148 more hearings represent a 0.82% increase in the total number of hearings compared to 2015/16. The number of hearings conducted in the Tribunal's civil jurisdiction remained relatively the same, with the increase in hearings being in relation to the review of forensic patients where there were 154 additional hearings conducted in 2016/17 – an increase of 13%. Combined with an increase of 16.6% in 2015/16, the number of forensic hearings has increased by 31.8% in two years (323 additional forensic hearings).

2016/17

Civil Patient hearings (for details see Tables 1-14) (* includes 6757 mental health inquiries)	*16589
Financial Management hearings (for details see Table 15)	169
Forensic Patient reviews (for details see Tables 16 - 33)	1340
	18098

Details for each area of jurisdiction of the Tribunal are provided in the various statistical Tables contained later in this Report.

Table A shows the number of hearings conducted each year since the Tribunal's first full year of operation in 1991 when 2,232 hearings were conducted.

Table A					
Total number of hearings 1991 - 2016/17					
	Civil Patient Hearings	*Financial Management Hearings*	*Forensic Patient Hearings*	*Totals per year*	*% Increase over previous year*
1991	1986	61	185	2232	%
1992	2252	104	239	2595	+16.26%
1993	2447	119	278	2844	+9.60%
1994	2872	131	307	3310	+16.39%
1995	3495	129	282	3906	+18.01%
1996	4461	161	294	4916	+25.86%
1997	5484	183	346	6013	+22.31%
1998	4657	250	364	5271	-12.34%
1999	5187	254	390	5831	+10.62%
2000	5396	219	422	6037	+3.48%
2001	6151	304	481	6936	+14.8%
2002	6857	272	484	7613	+9.8%
2003	7787	309	523	8619	+13.2%
2004	8344	331	514	9189	+6.6%
2005	8594	293	502	9389	+2.2%
2006	9522	361	622	10505	+11.9%
2007	8529	363	723	9615	-8.5%
2007-08	8440	313	764	9517	N/A
2008-09	7757	224	771	8752	-8.1%
2009-10	8084	193	824	9101	+4.0%
2010-11	12413	221	870	13504	+43.4%
2011-12	13501	219	928	14648	+8.5%
2012-13	15510	225	943	16678	+13.9%
2013-14	15416	191	972	16579	-0.6%
2014-15	16035	170	1017	17222	+3.9%
2015-16	16596	168	1186	17950	+4.2%
2016-17	16589	169	1340	18098	+0.8%

Mental health inquiries

This was the seventh full year of the Tribunal's jurisdiction to conduct mental health inquiries under s34 of the Act. Until 21 June 2010 this role had been carried out by Magistrates. During 2016/17 the Tribunal held 6,757 mental health inquiries – 130 less than the previous year (a 1.9% decrease). These mental health inquiries related to 5490 individual patients.

Of the mental health inquiries conducted in 2016/17, 5,640 (83.5%) resulted in an involuntary patient order being made. This percentage is slightly higher than in 2015/16 (82.1%) and quite a bit higher than the 79.3% in 2011/12 when changes were made to the timing of mental health inquiries and could reflect the shorter period for which patients have received treatment when presented for an inquiry at an earlier stage.

There was a small increase in the percentage of Community Treatment Orders made at a mental health inquiry during 2016/17 – 6.4% (362) compared to 2015/16 – 4.9% (336), 2014/15 – 5.1% (336), 2013/14 - 5.8% (360) and to 2012/13 - 5.4% (339) but this is still significant lower than in 2011/12 – 11.8% (581). This

is again a possible consequence of the earlier presentation of patients for a mental health inquiry in that there is less time for a person's condition to stabilise and for an appropriate Community Treatment Plan to be developed. Fourteen (14) of the Community Treatment Orders made at a mental health inquiry had the discharge from the mental health facility deferred for up to 14 days. This was provided for as one of the 2015 amendments to the Act and allows for proper discharge arrangements to be made or finalised following the making of a Community Treatment Order.

A total of 56 orders were made at a mental health inquiry for the patient to be discharged or for deferred discharge (0.8%). This included nine patients who were discharged into the care of their designated carer, four of which had the discharge deferred for up to 14 days.

There was a slight decrease in the number of mental health inquires that were adjourned – 657 (9.7%) in 2016/17 compared to 787 (11.4%) in 2015/16.

See Table 3.

In 2016/17, 15.9% of initial mental health inquiries were commenced during the first week of a person's detention (compared to 16.6% in 2015/16,15% in 2014/15, 16% in 2013/14, 15.1% in 2012/13 and 5.5% in 2011/12), 57.3% during the second week (58.6% in 2015/16, 58.1% in 2014/15, 56.8% on 2013/14, 56.9% in 2012/13 and 22.2% in 2011/12), 26.1% in week three (24.3% in 2015/16, 26% in 2014/15, 26.5% in 2013/14, 36.6% in 2012/13 and 45.1% in 2011/12) and 0.6% in the persons fourth week of detention (0.6% in 2015/16, 0.7% in 2014/15, 0.4% in 2013/14, 1.2% in 2012/13 and 26.5% in 2011/12).

In a small proportion of cases, 0.1%, the inquiry was commenced sometime after four weeks (0.2% in 2015/16, 0.2% in 2014/15, 0.3% in 2013/14, 0.2% in 2012/13 and 0.8% in 2011/12). Each such case was investigated by the Tribunal and where appropriate followed up with the facility involved. Many of these cases involved patients who were AWOL; on approved leave; or were receiving medical treatment or too unwell to be presented for a mental health inquiry at the time they were due.

Involuntary patient reviews

The total number of hearings for the review of involuntary patients under s37(1) of the Act increased by 30 in 2016/17 to 2725 from 2695 in 2015/16 – a 1.1% increase. These reviews related to 2153 individual patients.

The Tribunal is required to review the case of each involuntary patient on or before the end of the patient's initial period of detention ordered at a mental health inquiry s37(1)(a), then at least once every three months for the first 12 months that the person is an involuntary patient s37(1)(b), and then at least every six months while the person continues to be detained as an involuntary patient s37(1)(c). The number of initial reviews under s37(1)(a) increased by 55 (4.6%) and under s37(1)(c) by 27 (5.2%) while the number of reviews under s37(1)(b) decreased by 55 (8.6%).

See Table 6.

Appeals against a refusal to discharge

The number of hearings held under s44 of the Act to consider an appeal against an authorised medical officer's refusal to discharge a patient increase by 49 to 690 in 2016/17 compared to 641 in 2015/16 – a 7.6% increase. These appeals related to 530 individual patients.

Of the appeal hearings conducted in 2016/17 554 were dismissed (80.4%). Of these 21 appeals were dismissed and an order made that there be no further right of appeal before the next review by the Tribunal.

The patient was ordered to be discharged on 16 occasions (2.3%) and one patient was reclassified as a voluntary patient. The remaining 119 appeals were either adjourned, withdrawn or the Tribunal had no jurisdiction to deal with.

Regulation s19(3) of Mental Health Regulation 2013, which came into effect on 1 September 2013, allows for appeals lodged by persons other than involuntary patients to be heard by the President, a Deputy President or a member qualified for appointment as a Deputy President. This means that an appeal lodged by an assessable person (a person who has not yet had a mental health inquiry) is able to be heard by an experienced single legal member of the Tribunal. In 2016/17 234 appeals were heard by a single member (33.9% of the total number of appeals held). This is the same percentage as last year.

See Table 7.

Community Treatment Orders

The number of hearings to consider applications for Community Treatment Orders under s51 of the Act decreased by 26 from 5357 in 2015/16 to 5331 in 2016/17 (a 0.5% decrease). These hearings related to 3561 individuals.

Including 362 Community Treatment Orders made at a mental health inquiry, there were a total of 5362 Community Treatment Orders made in 2016/17 – 24 less that 2015/16 (0.5%). Excluding those made at a mental health inquiry the number of Community Treatment Orders made by the Tribunal under section 51 of the Act decreased by 50 from 5050 in 2015/16 to 5000 in 2016/17 – 1% decrease.

As mentioned above, one of the consequences of the change to the timing of mental health inquires in July 2012 is that fewer Community Treatment Orders are made at a mental health inquiry and in more cases a separate application and subsequent hearing are required for a person to be discharged on a Community Treatment Order.

Under s56(2) of the Act the maximum duration of a Community Treatment Order is 12 months. However of the 5362 Community Treatment Orders made in 2016/17 only 347 were for a period of more than six months (usually 12 months). This is 6.4% which is a slightly higher percentage than in 2015/16 (5.8%) but still lower than in previous years - 2014/15 (7.3%), 2013/14 (7.6%), 2012/13 (8.2%) and 2011/12 (9.6%). Although the Act provides that the Tribunal is able to make Community Treatment Orders for up to 12 months, the vast majority of orders continue to be made for periods of up to six months. Longer orders are generally only made in circumstances where there are clearly established reasons for justifying a longer period.

See Tables 8-10.

Electro Convulsive Therapy (ECT)

The Tribunal conducted 723 ECT administration inquiries in 2016/17 under s96 of the Act to consider the administration of ECT to involuntary patients (including four hearings concerning forensic patients). This is 19 more hearings than the 704 hearings conducted in 2015/16 (2.7% increase). Of these hearings the administration of ECT was approved in 610 hearing (84.4%) and not approved in 13 (1.8%). The Tribunal found that the person was capable and had consented in 25 hearings (3.5%). The remainder (75 – 10.4%) of the hearings were either adjourned, withdrawn or the Tribunal had no jurisdiction.

These ECT administration hearings related to 450 individual patients – none of whom were under the age of 16 years.

The Tribunal also conducted three ECT consent inquiries in 2016/17 to consider a voluntary patient's

capacity to give informed consent to the administration of ECT. This is three less than in 2015/16 when six such consent inquiries were conducted.

These consent inquiries related to two individual patients.

See Tables 11-12.

Financial management hearings

Under the *NSW Trustee and Guardian Act* (2009) (TAG Act) the Tribunal can make a financial management order appointing the NSW Trustee and Guardian of a person's estate in the following circumstances:

- after a mental health inquiry if ordering that a person is to be detained in a mental health facility (s44 TAG Act);
- after reviewing a forensic patient if ordering that a person is to be detained in a mental health facility (s45 TAG Act);
- on application for a patient in a mental health facility (s46 TAG Act).

The Tribunal is also able to review interim financial management orders (s48 TAG Act) and consider applications to revoke financial management orders made under the TAG Act (s88 TAG Act) or the former Protected Estates Act.

In 2016/17 the Tribunal conducted 169 hearings in relation to financial management making a total of 65 financial management orders and revoking 30 (including one relating to a forensic patient). These figures are very similar to 2015/16 when 168 hearings were held, 51 orders made and 29 revoked (including one relating to a forensic patient).

See Table 15.

Forensic Hearings

There was a 13% increase in the number of hearings held by the Forensic Division in 2016/17 compared to the previous year, 1342 in 2016/17 compared to 1188 in 2015/16. Many of these additional hearings were regular reviews of forensic patients however a significant number were for the Tribunal to consider an application for a Forensic Community Treatment Order (FCTO). The number of these hearing increased from 59 in 2015/16 to 122 in 2016/17 – an increase of 106.5%. The Tribunal is required to conduct three monthly reviews of each person subject to a FCTO who is detained in a correctional centre. The number of these reviews increased by almost 400% from 12 in 2015/16 to 59 in 2016/17. The impact of the increase in FCTOs is discussed more fully in the Forensic Division report (see pages 6-11).

In terms of the release of Forensic Patients in 2016/17, the Tribunal ordered the conditional release of 28 forensic patients and the unconditional release of three forensic patients (including one patient for whom a Community Treatment Order was also made to have effect on the date of unconditional release). This compared to 20 conditional releases and 10 unconditional releases in 2015/16. The Tribunal revoked the order for conditional release of two forensic patients in 2016/17 compared to none in 2015/16.

See Tables 16-33. The format of some of the Tables reporting on the Forensic Division have been changed this year to provide clearer information about the actual outcomes of forensic hearings for each type of matter considered by the Forensic Division. It is hope that this new reporting format will allow easier comparison of decision making from year to year.

Hearing locations and types

The Tribunal has regular rosters for its mental health inquiries, civil and forensic hearing panels. In addition

to the hearings held at the Tribunal's premises in Gladesville, in person hearings were conducted at 44 venues across the Sydney metropolitan area and regional New South Wales in 2016/17.

Although the Tribunal has a strong preference for conducting its hearings in person at a mental health facility or other venue convenient to the patient and other parties, this is not always practical or possible. The Tribunal has continued to use telephone and video-conference hearings where necessary and conducted hearings by telephone and/or video conference to 253 inpatient or community venues across New South Wales.

In 2016/17, 8,734 hearings and mental health inquiries were conducted in person (48.3%), 8,147 by video (45%) and 1,217 by telephone or on the papers (6.%). The numbers and percentages although similar to the last five years, differ quite significantly from prior years due to the impact of mental health inquiries which can only be conducted in person or by video, that is, not by telephone.

If mental health inquiries are excluded from the figures then 3,824 hearings were conducted in person (33.7%), 6,305 by video (55.6%) and 1,212 by telephone or on the papers (10.7%). These numbers and percentages varied only slightly from 2015/16 and show continuing decrease in the percentage of hearings conducted by telephone. This 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.

Mental health inquiries are conducted 'in person' at most metropolitan and a number of rural mental health facilities with video conferencing only used at those facilities where in person inquiries are not feasible due to distance or the small number of inquiries required at the facility. Of the 6,757 mental health inquiries this year 72.7% were held in person and 27.3% by video. These percentages are very similar to previous recent years but vary significantly from when the Tribunal first commenced conducting mental health inquires in 2010/11 when 35.6% were conducted in person and 64.4% by video.

The vast majority of hearings conducted by telephone or on the papers related to Community Treatment Orders (92.9%), most often for people in the community on an existing Community Treatment Order (44.3%). Hearings to vary the conditions of existing Community Treatment Orders comprised 18% of these telephone hearings – the majority of these hearings involved varying the order to reflect a change in treatment team following a change of address by the client and were usually conducted 'on the papers'.

Number of Clients

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

As at 30 June 2017 there were 1,295 people for whom the Tribunal had made an involuntary patient order either at a mental health inquiry or at a subsequent review (this compares to 1,229 at the same time in 2016, 1,259 in 2015,1195 in 2014 and 1250 in 2013). However, it should be noted that a number of these patients may, without reference to the Tribunal, have been discharged or reclassified as voluntary patients since the making of the order.

There were 79 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 or admitted.

In terms of Community Treatment Orders, as at 30 June 2017 there were 2,768 individuals subject to an Order made by the Tribunal. While a small number of these orders may have been revoked by the Director of the declared community mental health facility responsible for implementing the Order, this should be a fairly accurate count of the number of people subject to a Community Treatment Order at that point in time. This is slightly more than at the same date in 2016 (2733), 2015 (2715), 2014 (2705) and 2013 (2,763).

Representation and Attendance at Hearings

All persons appearing before the Tribunal have a right under s152 and s154 of the Act to be represented notwithstanding their mental health issues. Representation is usually provided through Legal Aid NSW by the Mental Health Advocacy Service (MHAS), although a person can choose to be represented by a private legal practitioner (or other person with the Tribunal's consent) if they wish.

Due to funding restrictions the Legal Aid NSW has advised the Tribunal that legal aid cannot automatically be provided for representation for all categories of matters heard by the Tribunal. In addition to all forensic cases, representation through the MHAS is usually provided for all mental health inquiries and reviews of involuntary patients during the first 12 months of detention; appeals against an authorised medical officer's refusal to discharge a patient and all applications for financial management orders. Representation is also provided for some applications for Community Treatment Orders and some applications for revocation of financial management orders, however this may be subject to a means and merits test. During 2011/12 the Legal Aid NSW expanded representation to include some ECT inquiries, particularly those held before an involuntary patient order has been made at a mental health inquiry.

Including mental health inquiries, representation was provided in 69.8% of all hearings in the Tribunal's civil jurisdiction (see Table 1) and 99.3% of all forensic hearings in 2016/17.

All persons with matters before the Tribunal are encouraged to attend the hearing to ensure that their views are heard and considered by the Tribunal and to ensure that they are aware of the application being made and the evidence that is being presented about them. This attendance and participation in hearings can be in person or by way of video or telephone. In civil matters the person the hearing is about attended in 85.7% of all hearings – this is the roughly the same percentage as in recent previous years. Included in these figures are mental health inquiries at which the patient must attend for the inquiry to proceed – for mental health inquiries the rate of client attendance was 95.9%. The mental health inquiry is usually adjourned if the patient is not able to attend.

In forensic matters, where there is a general requirement that the person attend unless excused from doing so by the Tribunal, the rate was 95.5%.

Appeals

Section 163 of the Act and s77A of the *Mental Health (Forensic Provisions) Act 1990* provide for appeals by leave against decisions of the Tribunal to be brought to the Supreme Court of NSW. An appeal as to the release of a forensic patient may be made to the Court of Appeal.

During 2016/17 three appeals were lodged with the Supreme Court (relating to three forensic patients) and

two appeals were lodged with the Court of Appeal (relating to the release of one forensic patient).

All three Supreme Court appeals were finalised during the reporting period with all being discontinued. One appeal that was lodged in September 2015 was also finalised by being dismissed.

The two appeals to the Court of Appeal remain on foot as at the end of this reporting period.

Section 50 of the TAG Act provides for appeals to be made to the NSW Civil and Administrative Tribunal (NCAT) against estate management orders made by the Tribunal. One such appeal was lodged in June 2017 and remains on foot as at the end of the reporting period. This appeal is against a Tribunal decision not to revoke an financial management order and is the first such appeal to have been made since this appeal jurisdiction was transferred to NCAT from the Administrative Decisions Tribunal.

Multicultural Policies and Services

The Tribunal is not required to report under the Multicultural Policies and Services Program. However, both the Act and the *Mental Health (Forensic Provisions) Act 1990* contain specific provisions designed to promote and protect the principles of access and equity. Members of the Tribunal include consumers and persons from various ethnic origins or backgrounds including Aboriginal and Torres Straight Islanders.

Persons appearing before the Tribunal have a right under s158 of the Act to be assisted by an interpreter if they are unable to communicate adequately in English. During 2016/17 interpreters in 49 different languages were used in a total of 604 hearings. This is 19 less hearings involving an interpreter than in 2015/16 – a 3% decrease. The most common languages used were Mandarin (89), Cantonese (77), Arabic (72) and Vietnamese (67) followed by Greek (30), Korean (28), Serb/Croatian (28), Spanish (21) and Farsi (20).

In August 2009 the Tribunal entered into a Memorandum of Understanding with the Community Relations Commission (now called Multicultural NSW) on the provision of translation services concerning the Tribunal's official forensic orders. One forensic order was translated into Greek in 2016/17. This is the first such translation for a number of years.

In future years, the Tribunal will continue to arrange interpreters and translations as required and ensure that its membership includes representation from people with a multicultural background. Translated copies of the Statement of Rights are available from the Tribunal's website.

The Tribunal provided a training session for our members in June 2017 on working with interpreters in Tribunal hearings. We will look at developing some aids to assist both interpreters and Tribunal members.

Government Information (Public Access) Act 2009

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

The administrative and policy functions of the Tribunal are covered by the GIPA Act. There were no requests for disclosure of information from the Tribunal's files during 2016/17.

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

Public Interest Disclosures Act 1994

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

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

Data Collection – Involuntary Referral to Mental Health Facilities

The Tribunal is required under the Act to collect information concerning the number of involuntary referrals and the provisions of the Act under which the patients were taken to hospital and admitted or released. The Regulations to the Act provide that these details are collected by means of a form which all inpatient mental health facilities are required to forward to the Tribunal with respect to each involuntary referral (Form 9).

Although a large number of Emergency Departments (54) are now gazetted under the Act as emergency assessment facilities, most Emergency Departments have historically not completed Form 9s. This has meant that the data collected from these Forms has been incomplete and not accurately reflected the full number of involuntary referrals, particularly those taken by ambulance or police to an Emergency Department rather than directly to an inpatient mental health facility.

In September 2014 Mr Ken Whelan, then Deputy Secretary of the Ministry of Health, wrote to the Chief Executives of all Local Health Districts reminding of the requirement for Emergency Departments to comply with these reporting requirements. Despite some initial improvement in reporting from Emergency Departments, an acceptable level of compliance is yet to be achieved, with only 20.4% of gazetted Emergency Departments returning any of the required Form 9s during 2016/17 (31% in 2015/16 and 25% in 2014/15).

These returns totalled 2308 involuntary referrals indicating that there remains a large number of people being involuntarily taken to emergency assessment mental health facilities that are not being recorded through this process. It is possible that some of these people are being recorded on the Form 9s submitted by mental health facilities within the same hospital, however, this is impossible to quantify. The Tribunal will continue to monitor and follow this up with relevant facilities.

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

Official Visitor Program

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

Although the Program is administratively supported by the Registrar and staff of the Tribunal, it remains completely independent of the Tribunal in terms of its statutory role. Official Visitors and the Principal Official Visitor report directly to the Minister.

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. A number of matters were referred to the Official Visitor Program by the Tribunal during 2016/17 for follow up by Official Visitors.

The Registrar of the Tribunal meets regularly with the Principal Official Visitor and Program Manager to discuss issues relating to the administration of the Program.

Premises

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

The Tribunal has six hearing rooms all fitted with video conferencing facilities. Video conferencing equipment has also been installed in the Tribunal's conference room. This room is now used occasionally for 'overflow' hearings when all other hearing rooms are being used. There are two separate waiting areas for use by people attending hearings and rooms available for advocates and representatives to meet with their clients prior to hearings.

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

Venues

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

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. Essential resources such as telephones with speaker capacity are sometimes unavailable or not working in some venues.

All Local Health Districts (LHDs) have now made changes to their video conference infrastructure to change over to IP video conferencing. The Tribunal is now able to call venues in most LHD's using IP video conferencing, which is much more cost effective and reliable. Unfortunately, staff at venues are not always familiar with the video conferencing equipment used to conduct hearings or the help desk or support arrangements in place to deal with problems with this equipment. This can lead to delays in some hearings. The Tribunal is appreciative of the conferencing 'help desk' support provided by Information Services in eHealth NSW.

There continues to be safety and security concerns at a number of venues, with panels utilising hearing rooms without adequate points of access or other appropriate security systems in place. There were two serious security incidents at Tribunal hearings during 2016/17 when patients attacked a security guard in one incident and a prison guard in the other. Both incidents prompted reviews of the security arrangement at the particular venues. The Tribunal requires that a security assessment is undertaken by staff at each mental health facility prior to every hearing, and appropriate security arrangement put in place. Security guards are arranged if required for hearings held at the Tribunal's premises in Gladesville.

Community Education and Liaison

During 2016/17 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 2007* and the *Mental Health (Forensic Provisions) Act 1990* as well as specific training on the amendments to the Mental Health Act which came into effect in August 2015.

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

Staff

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

The Tribunal has very stable staffing with many staff having worked here for a number of years. For the last four years almost all of the Tribunal's staffing positions have been occupied by permanent staff all working in their own positions. This is a very positive position and provides stability for our staff and recognises their ongoing commitment to the work of the Tribunal.

Appendix 4 shows the organisational structure and staffing of the Tribunal as at 30 June 2017. Including the President and two full time Deputy President positions, the Tribunal has a staffing establishment of 29.4 positions. All positions are filled on an ongoing basis apart from a two day per week part time position.

Tribunal Members

Appendix 3 provides a list of the members of the Tribunal as at 30 June 2017. As at this date the Tribunal had a President, two full time Deputy Presidents, eight part time Deputy Presidents and 143 part time members.

The Tribunal's part time membership reflects a sound gender balance. As at 30 June 2017 there were 79 female part time members and 61 male (this includes four female and four male part time Deputy Presidents). There are a number of members who have indigenous or culturally diverse backgrounds as well as a number who have a lived experience with mental illness and bring a valuable consumer focus to the Tribunal's hearings and general operations.

As the terms of all part time Tribunal members were due to expire on 31 August 2016 major recruitment action was commenced in early 2016. Approximately half of the Tribunal's members were reviewed by the President through an internal appraisal process, while the remainder were required to compete through an external expression of interest process. Following advertisement the Tribunal received more than 300 Expressions of Interest from people wishing to be appointed as part time members. 131 interviews were conducted and recommendations made by the interview panel to the Tribunal's President. The Tribunal was delighted with the huge response and with the extremely high calibre of people interested in working for the Tribunal. The President then made recommendations to the Minister for Mental Health for the consideration of Cabinet and the Governor. The approval process was completed in July/August 2016 with103 existing Tribunal members reappointed along with 31 new appointments. This recruitment process struck an appropriate balance between maintaining experienced members and ensuring opportunities for new members, with fresh experience and views, to join the Tribunal. Newly appointed members were inducted and commenced sitting on hearings in late 2016.

The terms of 17 part time members expired during 2016/17. Many of these members had been appointed for 20 years or more and have given long and valuable service to the work of the Tribunal. The contribution of all of these former members is greatly appreciated.

Members of the Tribunal sit on hearings in accordance with a roster drawn up to reflect members' availability, preferences and the need for hearings. Most members sit between two and four times per month at regular venues.

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

In 2016/17 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. Topics covered during the reporting period included: Best practice approaches to treating substance use for people living with mental illness; Effective questioning for eliciting information from witnesses in Tribunal hearings; Building resilience and managing vicarious trauma; Listening to consumer narratives on recovery – understanding what it means to live well; Treatment options for people with Personality Disorder, their families and carers and the work of Project Air; and Top tips for working with interpreters in Tribunal hearings.

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

Financial Report

In recent years the Tribunal had received its funding through the Mental Health Branch, Ministry of Health. A change was made to this arrangement this financial year and the Tribunal was funded directly from Finance Branch of the Ministry.

The budget allocation for 2016/17 was $6,543,490. Total net expenditure for the year was $6,756,321 – a budget deficit on $212,831.

A Treasury Adjustment of $400,000 was provided to the Ministry of Health being the agreed amount transferred for the Department of Attorney General and Justice to fund the mental health inquiries role. An additional $400,000 was provided by the Ministry of Health in 2012 to fund the changes to the mental health inquiry system discussed above. The actual expenditure related to this role for the financial year was $824,105. This included 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.

See Appendix 5 for further detail.

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

Thank You

The Tribunal is very fortunate to have such great staff and fantastic and committed members. I would like to thank the staff and members of the Tribunal for their continued hard work and commitment to the very important work that we do. I would also like to thank those staff in the inpatient and community based mental health facilities with whom the Tribunal has had contact over the last 12 months.

The successful operation of the Tribunal in conducting more than 18,000 hearings would not have been possible without their ongoing co-operation and support.

Rodney Brabin
Registrar

5. STATISTICAL REVIEW

5.1 CIVIL JURISDICTION

Table 1

Summary of statistics relating to the Tribunal's civil jurisdiction under the *Mental Health Act 2007* for the period 1 July 2016 to 30 June 2017

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	63	35	98	64	36	28 (29%)	89 (91%)
s34	Mental Health Inquiry	3698	3059	6757	55	45	6583 (97%)	6482 (96%)
s37(1)(a)	Initial review of involuntary patients prior to expiry of initial period of detention as a result of mental health inquiry	803	668	1471	55	45	1329 (95%)	1341(91%)
s37(1)(b)	3 monthly review of involuntary patients after initial 12 month period	420	249	669	63	37	597 (89%)	608 (91%)
s37(1)(c)	Continued review of involuntary patients after initial 12 month period	388	197	585	66	34	153 (26%)	506 (86%)
s44	Appeal against an authorised medical officer's refusal to discharge	404	286	690	59	41	531 (77%)	638 (92%)
s51	Community treatment orders	3396	1935	5331	64	36	1813 (34%)	3863 (72%)
s63	Review of affected persons detained under a community treatment order	4	3	7	57	43	7 (100%)	6 (86%)
s65	Revocation of a community treatment order	5	1	6	83	17	1 (83%)	6 (100%)
s65	Variation of a community treatment order	151	77	228	66	34	31 (14%)	12 (5%)
s65	Variation of Forensic CTO	14	-	14	100	100	4 (29%)	10 (71%)
s67	Appeal against a Magistrate's community treatment order	-	-	-	-	-	-	-
s96(1)	Review of voluntary patient's capacity to give informed consent to ECT	1	2	3	33	67	1 (33%)	2 (67%)
s96(2)	Application to administer ECT to an involuntary patient with or without consent	324	395	719	45	55	487 (68%)	637 (89%)
s101	Application to perform a surgical operation	6	3	9	67	33	5 (56%)	8 (89%)
s103	Application to carry out special medical treatment	-	1	1	-	100	1 (100%)	1 (100%)
s151(4)	Procedural order	1	-	1	100	-	1 (100%)	1 (100%)
s162	Application to publish or broadcast name of patient	-	-	-	-	-	-	-
TOTAL		**9678**	**6911**	**16589**	**58**	**42**	**11572 (70%)**	**1421 (86%)**

Note: The Tribunal received notification of four emergency surgeries for involuntary patients (s99) - see Table 13.

Table 2

Summary of statistics relating to the Tribunal's civil jurisdiction under the *Mental Health Act 2007* for the periods 2013/14, 2014/15, 2015/16 and 2016/17

	2013/14	*2014/15*	*2015/16*	*2016/17*
Reviews of assessable persons - Mental Health Inquiries (s34)	6232	6633	6887	6757
Reviews of persons detained in a mental health facility for involuntary treatment (s37(1))	2442	2585	2695	2725
Appeal against authorised medical officer's refusal to discharge (s44)	649	643	641	690
Applications for orders for involuntary treatment in a community setting (s51)	5068	5141	5357	5331
Variation and Revocation of Community Treatment Orders (s65)	207	196	227	248
Review of those persons detained in a mental health facility following a breach of the Community Treatment Order (s63)	9	4	6	7
Appeal against a Magistrate's Community Treatment Order (s67)	-	-	-	-
Review of those in a mental health facility receiving voluntary treatment who have been in the facility for more than 12 months (s9)	74	62	69	98
Consent to Surgical Operation (s101)	21	7	5	9
Consent to Special Medical Treatment (s103)	3	2	-	1
Review voluntary patient's capacity to consent to ECT (s96(1))	5	1	6	3
Application to administer ECT to an involuntary patient	702	758	698	719
Procedural order	-	-	4	1
Application for representation by non legal practitioner	1	1	-	-
Application to publish or broadcast	3	2	1	-
TOTALS	**15416**	**16035**	**16596**	**16589**

Table 3

Summary of outcomes for reviews of assessable persons at a mental health inquiry for the period 1 July 2016 to 30 June 2017

M	*F*	*T*	*Adjourn*	*Invol Patient Order*	*Discharge*	*Deferred Discharge*	*Discharge on CTO*	*Discharge to Carer*	*Declined to deal with/ withdrawn*	*Reclass to Voluntary*
3698	3059	6757*	657	5640	23	24	362**	9***	41	1

Note: * These determinations related to 5490 individuals.
** Includes 14 deferred discharge on making of a CTO.
*** Includes 4 deferred discharge to carer.

Table 4

Flow chart showing progress of involuntary patients admitted during the period July 2016 to June 2017

Persons taken to a mental health facility involuntarily

Total involuntary referrals

Involuntary admissions (11,326 mentally ill and 4,888 mentally disordered persons)

Mental health inquiries commenced under s34 (includes 657 hearings that were adjourned)

Involuntary patient orders made at a mental health inquiry (34.8% of total involuntary admissions; 83.4% of mental health inquiries commenced)

Involuntary patient reviews by Tribunal under s37(1)(a) (9.1% of total involuntary admissions; 25.9% of persons placed on involuntary orders at a mental health inquiry)

Involuntary patient orders made by Tribunal pursuant to s37(1)(a) review (7.8% of total involuntary admissions; 85.6% of patient reviews under s37(1)(a))

Involuntary patient review unders s37(1)(b) (4.1% of total involuntary admissions; 53.1% of patients placed on involuntary orders by Tribunal under s37(1)(a))

Involuntary patient orders made by Tribunal pursuant to s37(1)(b) reviews (3.6% of total involuntary admissions; 87% of patient reviews under s37(1)(b)).

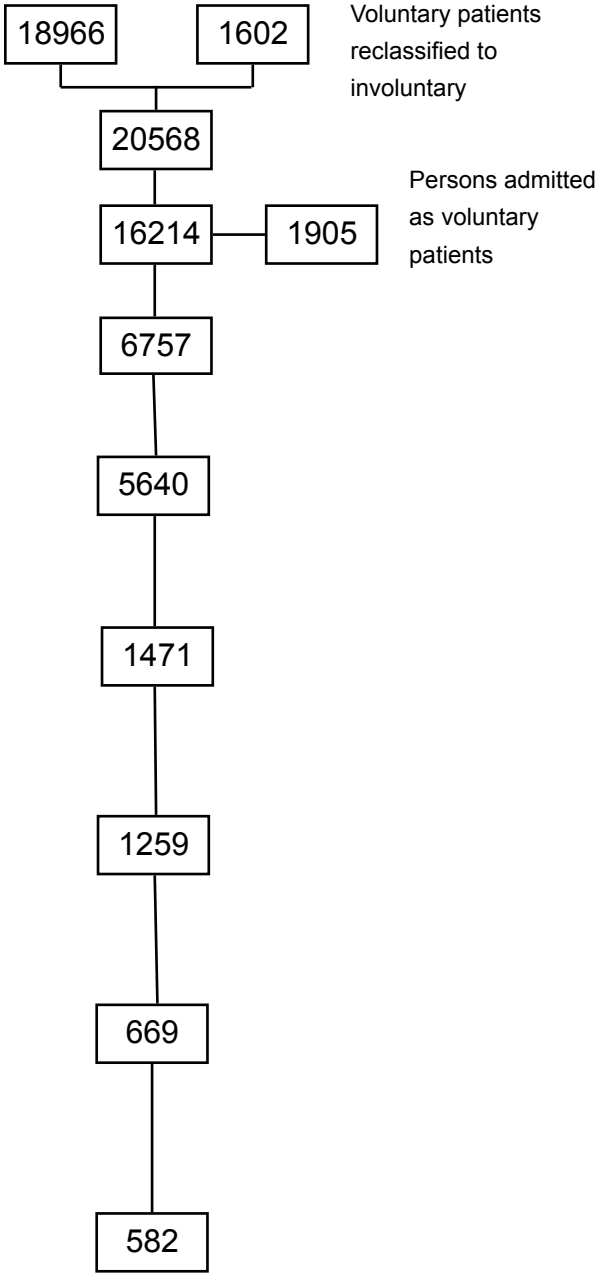


Table 5

Summary of patients subject to involuntary patient orders or voluntary patient review as at 30 June 2017

Hospital	*s34*	*s37(1)a*	*s37(1)b*	*s37(1)c*	*Total Involuntary*	*Voluntary*	*Total*
Albury	9	-	-	-	9	-	9
Bankstown	14	3	2	-	19	-	19
Blacktown	7	8	2	-	17	-	17
Bloomfield	21	15	12	26	74	9	83
Blue Mountains	3	4	-	-	7	-	7
Braeside	3	1	1	-	5	-	5
Byron Bay	2	3	1	-	6	-	6
Campbelltown	23	4	3	-	30	3	33
Coffs Harbour	6	6	3	1	16	-	16
Concord	47	17	12	21	97	11	108
Cumberland	46	27	20	66	159	14	173
Dubbo	3	1	-	-	4	-	4
Forensic Hospital	-	-	1	9	10	-	10
Gosford	13	1	1	-	15	-	15
Goulburn	6	1	2	-	9	-	9
Greenwich	8	1	-	-	9	-	9
Hornsby	19	9	3	2	33	-	33
James Fletcher	-	-	2	-	2	-	2
John Hunter	1	-	-	-	1	-	4
Kenmore	1	-	1	2	4	-	4
Lismore	10	7	1	-	18	-	18
Liverpool	30	16	8	2	56	17	73
Macquarie	4	4	21	102	131	16	147
Maitland	5	-	2	-	7	-	7
Manly	10	8	1	-	19	-	19
Mater MHC	62	23	6	8	99	3	102
Morisset	1	2	13	39	55	5	60
Nepean	13	6	4	1	24	-	24
Prince of Wales	27	20	7	-	54	-	54
Port Macquarie	3	1	-	-	4	-	4
Royal North Shore	18	3	2	-	23	-	23
Royal Prince Alfred	20	9	-	-	29	-	29
Shellharbour	27	6	2	-	35	1	36
South East Regional	4	-	-	-	4	-	4
St George	17	10	2	1	30	-	30
St Joseph's	2	4	1	-	7	-	7
St Vincent's	11	9	1	1	22	-	22
Sutherland	6	3	2	-	11	-	11
Tamworth	11	4	4	-	19	-	19
Taree	10	1	1	-	12	-	12
Tweed Heads	17	6	1	-	24	-	24
Wagga	18	2	1	-	21	-	21
Westmead Adult Psych	5	1	-	-	6	-	6
Westmead Child/Adolesc	1	-	-	-	1	-	1
Westmead PsychGeriatric	3	-	-	-	3	-	3
Wollongong	13	12	1	-	26	-	26
Wyong	18	8	2	1	29	-	29
Total	**598**	**266**	**149**	**282**	**1295**	**79**	**1374**

Note: This table represents a 'snap shot' as at 30 June 2017 of the number of people subject to involuntary patient orders, CTOs or reviewed as long term voluntary patients. A number of these people may have been discharged from the facility or order. There will also be other voluntary patients who have not been reviewed by the Tribunal as they have not been a voluntary patient for 12 months.

Table 6

Involuntary patients reviewed by the Tribunal under the *Mental Health Act 2007* for the period 1 July 2016 to 30 June 2017

		M	*F*	*T*	*Adjourn*	*Withdrawn No Jurisdic-tion*	*Discharge/ voluntary*	*Discharge on CTO*	*Continued detention as involuntary patient*
s37(1)(a)	Review prior to expiry order for detention as a result of a mental health inquiry	803	668	1471	181	3	23	5	1259
s37(1)(b)	Review at least once every 3 months during first 12 months person is an involuntary patient	420	249	669	79	1	5	2	582
s37(1)(c)	Review at least once every 6 months while person is an involuntary patient after first 12 months	388	197	585	42	-	2	-	541
Total		1611	1114	2725	302	4	30	7	2382

Note: The 1471 reviews under s37(1)(a) related to 1288 individuals.
The 669 reviews under s37(1)(b) related to 381 individuals.
The 585 reviews under s37(1)(c) related to 327 individuals.
The total of 2725 reviews under s37(1) related to 2153 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 2009/10 - 2016/17

	M	F	T	Adjourned	Withdrawn no jurisdiction	Appeal Dismissed	Dismissed and no further Appeal to be heard prior to next scheduled review	Discharged	Reclass to Voluntary
July 09 - June 10	137	118	255	27	14	192	18	3	1
July 10 - June 11	336	272	608	50	43	471	18	25	1
July 11 - June 12	413	362	775	49	62	613	20	26	5
July 12 - June 13	304	287	591	46	28	461	26	29	1
July 13 - June 14	365	284	649	56	25	521	25	22	-
July 14 - June 15	365	278	643	38	74	492	28	11	-
July 15 - June 16	339	302	641	54	77	481	12	17	-
July 16 - June 17	404	286	690*	60	59	533	21	16**	1

Note: * These determinations related to 530 individuals..
** Includes 11 orders for discharge where discharge was deferred.

Table 8

Community Treatment Orders for declared mental health facilities made by the Tribunal for the periods 2014/15, 2015/16 and 2016/17

Health Care Agency	*2014/15 Total CTOs*	*2015/16 Total CTOs*	*2016/17 Total CTOs*	*Health Care Agency*	*2014/15 Total CTOs*	*2015/16 Total CTOs*	*2016/17 Total CTOs*
Albury CMHS	24	30	33	Illawarra CMHS	109	296	203
Auburn CHC	26	45	49	Inner City MHS	88	87	78
Bankstown MHS	167	141	117	Kempsey CMHS	35	28	48
Bega Valley Counselling & MHS	25	30	22	Lake Illawarra Sector MHS	88	7	1
Blacktown and Mt Druitt PS	197	217	268	Lake Macquarie MHS	84	99	79
Blue Mountains MHS	86	98	89	Leeton/Narrandera CHC	1	-	-
Bondi Junction CHC	7	5	8	Lismore MHOPS	107	89	97
Bowral CMHS	14	16	9	Liverpool MHS	113	87	125
Byron MHS	-	-	2	Macquarie Area MHS	77	81	76
Campbelltown MHS	136	159	129	Manly Hospital & CMHS	148	153	171
Camperdown CMHS	169	176	166	Maroubra CMH	184	148	164
Canterbury CMHS	155	173	118	Marrickville CMHS	109	102	121
Central Coast AMHS	291	367	361	Merrylands CHC	108	128	97
Clarence District HS	48	56	26	Mid Western CMHS	109	109	133
Coffs Harbour MHOPS	71	80	77	Mudgee MHS	3	8	13
Cooma MHS	18	22	17	Newcastle MHS	132	162	186
Cootamundra MHS	-	1	1	Northern Illawarra MHS	107	8	1
Croydon CMHS	161	161	197	Orange C Res/Rehab Services	11	8	8
Deniliquin District MHS	12	22	26	Parramatta CHS	106	98	87
Dundas CHC	23	43	45	Penrith MHS	114	130	140
Eurobodalla CMHS	29	46	49	Port Macquarie CMHS	61	46	32
Fairfield MHS	173	156	162	Queanbeyan MHS	61	51	34
Far West MHS	27	25	32	Redfern CMHS	51	59	57
Goulburn CMHS	35	31	37	Royal North Shore H & CMHS	117	137	128
Grafton MHS			22	Ryde Hospital & CMHS	104	96	103
Granville MHS	31	18	24	Shoalhaven MHS	63	59	47
Griffith (Murrumbidgee) MHS	24	29	35	St George Div of Psychiatry & MH	221	228	238
Hawkesbury MHS	18	15	22	Sutherland C Adult & Family MHS	87	97	98
Hills CMHC	57	69	63	Tamworth MHS	2	2	1
Hornsby Ku-ring-gai Hospital & CMHS	101	113	125	Taree CMHS	48	56	56
Hunter	1	-	-	Temora CMH	10	10	8
Hunter NE Mehi/McIntyre	38	34	24	Tumut CMHS	7	5	4
Hunter NE Peel	52	50	37	Tweed MHS	115	125	129
Hunter NE Tablelands	14	19	14	Wagga Wagga CMHS	59	52	71
Hunter Valley HCA	63	73	99	Young MHS	10	15	23

Total Number of Community Treatment Orders (CTOs) 2014-15 - 5142 (includes 336 CTOs made at mental health inquiries).
Total Number of Community Treatment Orders (CTOs) 2015-16 - 5386 (includes 336 CTOs made at mental health inquiries).
Total Number of Community Treatment Orders (CTOs) 2016-17 - 5362 (includes 362 CTOs 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 2006 to 2016/17

	2006	2007	2007/8	2008/9	2009/10	2010/11	2011/12	2012/13	2013/14	2014/15	2015/16	2016/17
Total MagistrateCCO/ CTOs	1585	1460	1318	997	806	-	-	-	-	-	-	-
Mental Health Inquiry CTOs					10	566	581	339	360	336	336	362
Total TribunalCCO/ CTOs	4661	4854	4706	4058	3956	4128	4426	4882	4824	4806	5050	5000
Total CCO/CTOs made	**6256**	**6314**	**6024**	**5055**	**4772**	**4694**	**5007**	**5221**	**5184**	**5142**	**5386**	**5362**

Note 1: The capcaity to make Community Counselling Orders (CCOs) ceased in November 2007 with the introduction of the *Mental Health Act 2007*

Note 2: Magistrates ceased making Community Treatment Orders (CTOs) at mental health inquiries in June 2010 when the Tribunal took over responsibility for conducting mental health inquiries.

Table 10

Summary of outcomes for applications for Community Treatment Orders (s51) 2016/17

	M	F	Total	Adjourned	Withdrawn No Jurisdiction	Application Decline	CTO Made
Application for CTO for a person on an existing CTO	1517	820	2337	58	2	29	2248**
Application for a CTO for a person detained in a mental health facility	973	599	1572	90	12	14	1456***
Application for a CTO not detained or on a current CTO	906	516	1422	77	4	49	1292
Totals	**3396**	**1935**	**5331***	**225**	**18**	**92**	**4996**

Note: * These determinations related to 3561 individuals.
** Includes 1 CTO when discharge was deferred.
*** Includes 18 CTOs where discharge was deferred.

Table 11

Tribunal determinations of ECT consent inquiries for voluntary patients for period 2016/17

Adjourned	1
Capable and has consented	2
Incapable of consent	-
Withdrawn/discontinued at hearing	-
Total	**3***

Note: * These determinations relate to two individuals.

Table 12

Tribunal determinations of ECT administration inquiries for the periods 2012/13, 2013/14, 2014/15, 2015/16 and 2016/17

Outcome	2012/13	2013/14	2014/15	2015/16	2016/17
Capable and has consented	31	30	42	34	25
ECT approved	560	616	649	580	610**
ECT not approved	38	15	19	24	13
No jurisdiction/withdrawn	7	6	10	8	9
Adjourned	56	49	48	58	66
Totals	**692**	**716**	**768**	**704**	**723***

Note: * These determinations related to 450 individual patients (including six hearings involving three forensic patients)

** Includes four forensic patient determinations.

Table 13

Summary of notifications received in relation to emergency surgery (s99) during the periods 2011/12, 2012/13, 2013/14, 2014/15, 2015/16 and 2016/17

	M	F	T	Lung/Heart/ Kidney	Pelvis/Hip/ Leg/Spinal	Tissue/Skin	Hernia	Gastro/ Bowel/ Abdominal	Brain
2011/12	3	5	8	4	-	1	-	1	1
2012/13	1	2	3	1	1	-	1	-	-
2013/14	3	2	5	1	-	-	-	4	-
2014/15	4	-	4	2	1	-	-	1	-
2015/16	1	1	2	-	1	-	-	1	-
2016/17	2	2	4	1	2	1	-	-	-

Note: * These notifications related to four patients.

Table 14

Summary of outcomes for applications for consent to surgical procedures (s101) and special medical treatments (s103) for the period 2016/17

	M	***F***	***T***	***Approved***	***Refused***	***Adjourned***	***Withdrawn/ No Jurisdiction***
Surgical procedures	6	3	9*	7	-	2	-
Special medical treatment	-	1	1	1	-	-	-

Note: * These determinations related to nine individuals.

5.2 FINANCIAL MANAGEMENT

Table 15

Summary of statistics relating to the Tribunal's jurisdiction under the *NSW Trustee & Guardian Act 2009* for the period July 2016 to June 2017

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	17	15	32	11	3	11	4	3	-	-	30
s45	After reviewing a forensic patient	-	-	-	-	-	-	-	-	-	-	-
s46	On application to Tribunal for Order	50	31	81	12	1	51	13	4	-	-	72
s48	Review of interim FM order	4	-	4	1	-	3	-	-	-	-	3
s88	Revocation of Order	34	18	52*	6	-	-	-	-	30**	15***	21*
Total		**105**	**64**	**169**	**30**	**4**	**65**	**17**	**7**	**30**	**15**	**126**

Note: * Includes two forensic patient hearings.

** Includes a determination for one forensic patient.

*** Includes a determination for one forensic patient.

5.3 FORENSIC JURISDICTION

Table 16

Number of Tribunal reviews of forensic patients under the *Mental Health (Forensic Provisions) Act 1990* for 2015/16 and 2016/17

Description of Review	***2015/16 Reviews***			***2016/17 Reviews***		
	M	F	T	M	F	T
Review after finding of not guilty by reason of mental illness (s44)	22	3	25	18	4	22
Review after detention or bail imposed under s17 following finding of unfitness (s45(1)(a))	1	-	1	-	-	-
Review after limiting term imposed following a special hearing (s45(b))	8	3	11	8	1	9
Regular review of forensic patients (s46(1))	738	85	823	772	89	861
Application to extend period of review of forensic patients (s46(4))	1	-	1	-	-	-
Regular review of correctional patients (s61(1))	5	-	5	9	1	10
Review of a forensic patient following their apprehension due to an alleged breach of a condition of leave or release (s68(2))	66	4	70	71	7	78
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)	5	1	6	2	1	3
Initial review of person transferred from prison to MHF (s59)	69	7	76	66	12	78
Review of person awaiting transfer from prison (s58)	10	1	11	17	7	24
Application for a forensic community treatment order (s67)	58	1	59	114	8	122
Application to vary forensic community treatment order (s65)	6	-	6	6	-	6
Regular review of person subject to a forensic community treatment order and detained in a correctional centre (s61(3))	12	-	12	58	1	59
Request to suspend operation of an order pending determination of an appeal (s77A(11))	-	-	-	1	-	1
Application for ECT (s96)[1]	6	-	6	3	1	4
Application for surgical operation (s101)	-	-	-	1	-	1
Review of interim Financial Management Order	-	-	-	-	1	1
Application to revoke Financial Management Order (s88)	1	-	1	2	-	2
Application to allow publication of names (s162)	-	-	-	-	-	-
Approval of change of name (s31D)	3	2	5	-	2	2
Total	**1011**	**107**	**1118**	**1148**	**135**	**1283**
Determinations						
Fitness s16	55	9	64	45	4	49
Following limiting term s24	5	1	6	9	1	10
Total	**60**	**10**	**70**	**54**	**5**	**59**
Combined Total	**1071**	**117**	**1188**	**1202**	**140**	**1342**

[1] In 2015/16 the Tribunal approved the administration of ECT for forensic patients on five occasions and in 2016/17 on four occasions in relation to four forensic patients.

Table 17	
Outcomes: s16 Determination of fitness to be tried for period 2016/17	
s16 person is likely to become fit to be tried and is suffering from a mental illness	5
s16 person is likely to become fit to be tried and is suffering from neither a mental illness nor a mental condition	-
s16 person will not become fit to be tried	35
Adjournment	9
Total	**49***

* These hearings related to 44 patients

Table 18	
Outcomes: s24 Determination following nomination of limiting term for period 2016/17	
s24 preson is mentally ill. Referring court to be notified	4
s24 person is neither mentally ill nor suffering from a mental condition	1
s24 person is suffering from a mental condition and does not object to detention in hospital	4
Adjournment	1
Total	**10***

* These hearings related to 9 patients

Table 19	
Outcomes: s44 First review following finding of not guilty by reason of mental illness for period 2016/17	
Court order for conditional release replaced by Tribunal order	2
Current order for conditional release to continue	3
Current order for detention to continue	4
Grant of leave of absence	-
Transfer to another facility	11
Release - conditional	1
Release conditions varied	1
Total	**22***

* These hearings related to 22 patients

Table 20	
Outcomes: s45(1)(a) and (b) First review following detention under s17 or s27 for period 2016/17	
s45 person has become fit to be tried	-
s45 person has not become fit and will not become fit within 12 months	8
Adjournment	1
Total	**9***

* These hearings related to 8 patients

Table 21	
Outcomes: s46 Review of forensic patients for period 2016/17	
Current order for conditional release to continue	161
Current order for detention to conintue	349
Variation to current order for detention	4
Directons issued	1
s46(5) extension of period of review granted	54
Grant of leave of absence	138
s151(4) that hearing be conducted wholly or partly in private	1
s47(4) person is fit to be tried	6
s47(4) person is not fit to be tried	81
s46(5) extension of period of review not granted	3
Transfer to another facility	39
Release - conditional	28
Release - conditions varied	63
s151(4)(c) an order prohibiting or restricting the publication of evidence given before the Tribunal	1
s151(4)(b) an order prohibiting or restricting the publication or broadcasting of any report of proceedings	-
Release - unconditional	1
Release - unconditional, CTO also made	2
Revocation of conditional release	2
Current orders for transfer and detention to continue	32
Transfer to another facility - time limited order	1
Variation to current order for transfer and detention	4
Adjournment	68
Decision reserved	2
s47(4) Decision reserved	-
S47(4) Adjourned	1
s45 No financial management order made	1
Total	**1043***

* These hearings related to 421 patients

Table 22	
Outcomes: s58 Limited review of correctional patients awaiting transfer to a mental health facility for period	
Transfer to another facility	23
Adjournment	1
Total	**24***

* These hearing realted to 22 patients

Table 23	
Outcomes: s59 First review following transfer from a correctional centre to a mental health facility for period	
Ordered to be detained in a mental health facility	65
s65(1) classified involuntary patient - correctional patient status expires	1
s59 person is a mentally ill person, continue in a mental health facility	64
s59 is a mentally ill person and appropriate care is available in a correctional centre under a FCTO	9
s59 is a mentally ill person and appropriate care is available in a correctional centre	1
s59 person is not a mentally ill person, continue in a mental health facility	1
s59 person is not a mentally ill person, and should not continue in a mental health facility	1
Transfer to another facility	8
Transfer to another facility - CTO made	3
Not acted upon due to changed circumstances	1
Adjournment	1
Total	**155***

* These hearings related to 78 patients

Table 24	
Outcomes: s61(1) Review of correctional patients for period 2016/17	
Ordered to be detained in a mental health facility	9
s65(1) classified involuntary patient - correctional patient status expires	1
Total	**10***

* These hearing related to 9 patients

Table 25	
Outcomes: s67 Application for a forensic CTO for period 2016/17	
Forensic CTO made	117
CTO made to have effect on date of unconditional release	2
Forensic CTO not made	1
Adjournment	2
Total	**122***

* These hearings related to 106 patients

Table 26	
Outcomes: s61(3) Review of person subject to a CTO in gaol for period 2016/17	
Forensic CTO to continue	55
Forensic CTO varied	3
Adjournment	1
Total	**59***

* These hearings related to 41 patients

Table 27	
Outcomes: s65 Application to vary a forensic CTO for period 2016/17	
Forensic CTO varied	4
Tribunal has no jurisdiction	1
Adjournment	1
Total	**6***

* These hearings related to 6 patients

Table 28	
Outcomes: s68(2) Review of person apprehended under s68 for period 2016/17	
Confirm order for conditional release	15
Grant of leave of absence	3
Confirm order granting leave of absence	5
Transfer to another facility	3
Revocation of conditional release	2
Decision reserved	1
Adjournment	52
Total	**81***

* These hearings related to 29 patients

Table 29	
Outcomes: Procedural hearings for period 2016/17	
s76 Application of registered victim for non-association or place restriction	
Impose non-association condition for leave of absence	1
Vary a place restriction and non-association order on leave of absence	1
Application refused	1
s77A(11) Request to suspend the operation of an order pending determination of an appeal	
Order not suspended	1
s31D Approval of change of name	
Application granted	1
Application refused	1
Total	**6***

* These hearings related to 6 patients

Table 30			
Location of forensic and correctional patients as at 30 June 2015, 30 June 2016 and 30 June 2017			
	30 June 2015	**30 June 2016**	**30 June 2017**
Bankstown Hospital	-	1	-
Bathurst Correctional Centre	-	1	1
Blacktown Hospital	-	1	2
Bloomfield Hospital	21	23	21
Cessnock Correctional Centre	1	-	1
Community	128	132	186
Concord Hospital	5	6	7
Correctional Centre	-	1	3
Cumberland Hospital - Bunya Unit and Cottages	35	36	32
Forensic Hospital	113	111	119
Goulburn Correctional Centre	3	2	2
Junee Correctional Centre	3	1	4
Juvenile Justice Centre	-	2	-
Lismore Hospital	1	1	1
Lithgow Correctional Centre	-	1	5
Liverpool Hospital	3	1	2
Long Bay Prison Hospital	44	46	46
Macquarie Hospital	7	8	9
Metropolitan Remand and Reception Centre	36	41	70
Metropolitan Special Programs Centre	7	12	16
Morisset Hospital and Cottages	31	30	27
Nepean Hospital	1	1	-
Parklea Correctional Centre	5	3	2
Shellharbour	-	1	2
Silverwater Womens Correctional Centre	3	3	5
South Coast Correctional Centre	-	1	1
St George Hospital	-	1	-
Wagga Wagga	1	-	-
Wollongong Hospital	-	1	1
Wyong	-	1	1
TOTAL	**448**	**468**	**566**

Table 31

Location of hearings held for forensic and correctional patients during 2014/15, 2015/16 and 2016/17

	2014/15	2015/16	2016/17
Bloomfield Hospital	41	33	46
Concord Hospital	-	3	10
Cumberland Hospital - Bunya Unit	89	94	92
Forensic Hospital	246	262	261
Long Bay Prison Hospital	196	216	209
Macquarie Hospital	10	11	19
Metropolitan Remand and Reception Centre	72	93	104
Morisset Hospital	77	65	68
Tribunal Premises	288	411	533
TOTAL	**1019**	**1188**	**1342**

Table 32

Category of forensic and correctional patients as at 30 June 2016 and 30 June 2017

Year	**2016**			**2017**		
Category	**Male**	**Female**	**Total**	**Male**	**Female**	**Total**
Not Guilty by Reason of Mental Illness	314	40	354	330	42	372
Fitness/Fitness Bail	30	3	33	38	7	45
Limiting Term	21	2	23	22	2	24
Extension/Interim Extension orders	-	-	-	9	-	9
Correctional Patients	24	6	30	42	5	47
Forensic CTO	27	-	27	64	5	69
Norfolk Island NGMI	1	-	1	-	-	-
Total	**417**	**51**	**468**	**505**	**61**	**566**

Table 33

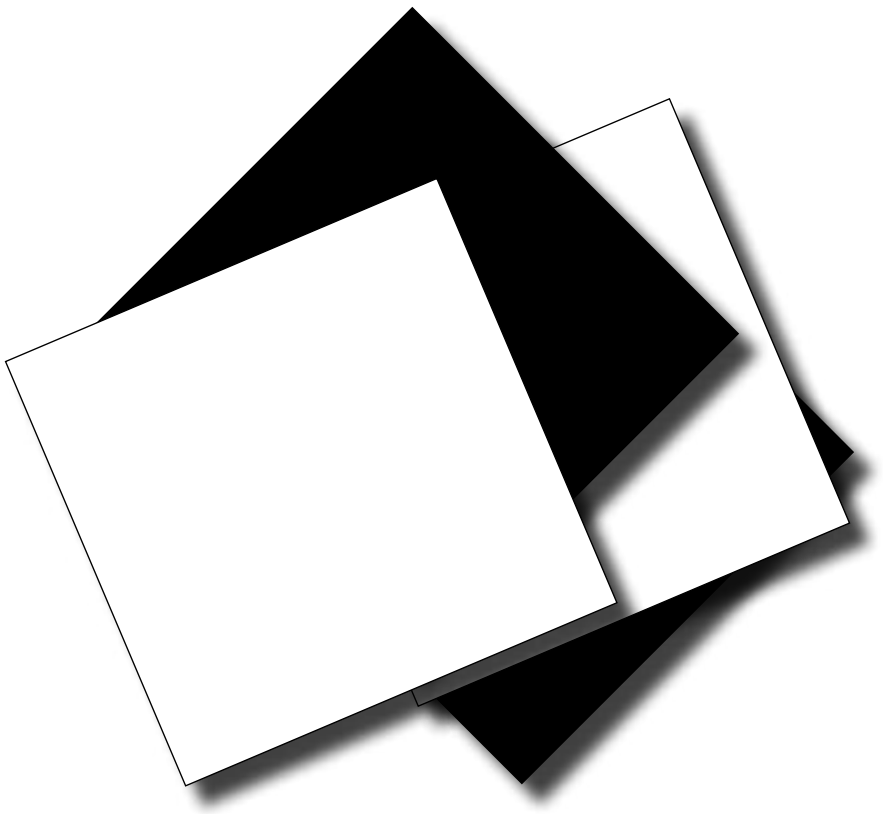
Number of forensic and correctional patients 1999 - 30 June 2017

Year	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
Patients	176	193	223	247	279	277	284	310	309	315	319	348	374	387	393	422	448	468	566

NOTES: Figures for 1997-2001 taken from MHRT Annual Reports as at 31 December of each year. Figures from 2002 - 2017 were taken as at 30 June of those years. Figures for 2009 - 2017 include correctional patients. Figures for 2011 - 2016 include one Norfolk Island forensic patient. Figures for 2011-1017 include Forensic CTOs.

Mental Health
Review Tribunal

APPENDICES



Patient statistics required under MHA s147(2) concerning people taken to a mental health facility during the period July 2016 to June 2017

(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*
MHA				
s19	Certificate of Doctor	10767	369	11136
s22	Apprehension by Police	2267	1331	3598
s20	Ambulance Officer	1058	449	1507
s58	Breach Community Treatment Order	79	19	98
s26	Request by primary carer/relative/friend	1715	10	1725
s24	Order of Court	407	126	533
s23 via s19	Authorised Doctor's Certificate	358	11	369
Total Admissions		**16651**	**2315**	**18966**
Reclassified from Voluntary to Involuntary		1468	134	1602
TOTAL		**18119**	**2449**	**20568**

(2) s147(2)(b)

Persons were detained as mentally ill persons on 11326 occasions and as mentally disordered persons on 4888 occasions. 1905 persons were admitted as voluntary patients.

(3) s147(2)(c)

A total of 6757 mental health inquiries were commenced relating to 5490 individuals.

Outcome of mental health inquiries conducted 1 July 2016 - 30 June 2017

	MHRT
Adjourned	657
Discharge or deferred discharge	56
Reclassify from involuntary to voluntary	1
Involuntary patient order	5640
Community treatment order	362
Declined to deal with	41
TOTAL	**6757**

(4) s147(2)(d)

In 2016/17 of the 20568 persons taken involuntarily to a mental health facility or reclassified from voluntary to involuntary: 2449 were not admitted; 1905 people were admitted as a voluntary patient and 16214 were detained as either a mentally ill or mentally disordered person - a total of 18119 admissions (including 1468 of the 1602 people who were reclassified from voluntary to involuntary).

The jurisdiction of the Tribunal as at 30 June 2017 as set out in the various Acts under which it operates is as follows:

Mental Health Act 2007 Matters

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

NSW Trustee & Guardian Act 2009 Matters

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

Mental Health (Forensic Provisions) Act 1990 Matters

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

Births, Deaths and Marriages Registration Act 1995 Matters

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

APPENDIX 3

Mental Health Review Tribunal Members as at 30 June 2017

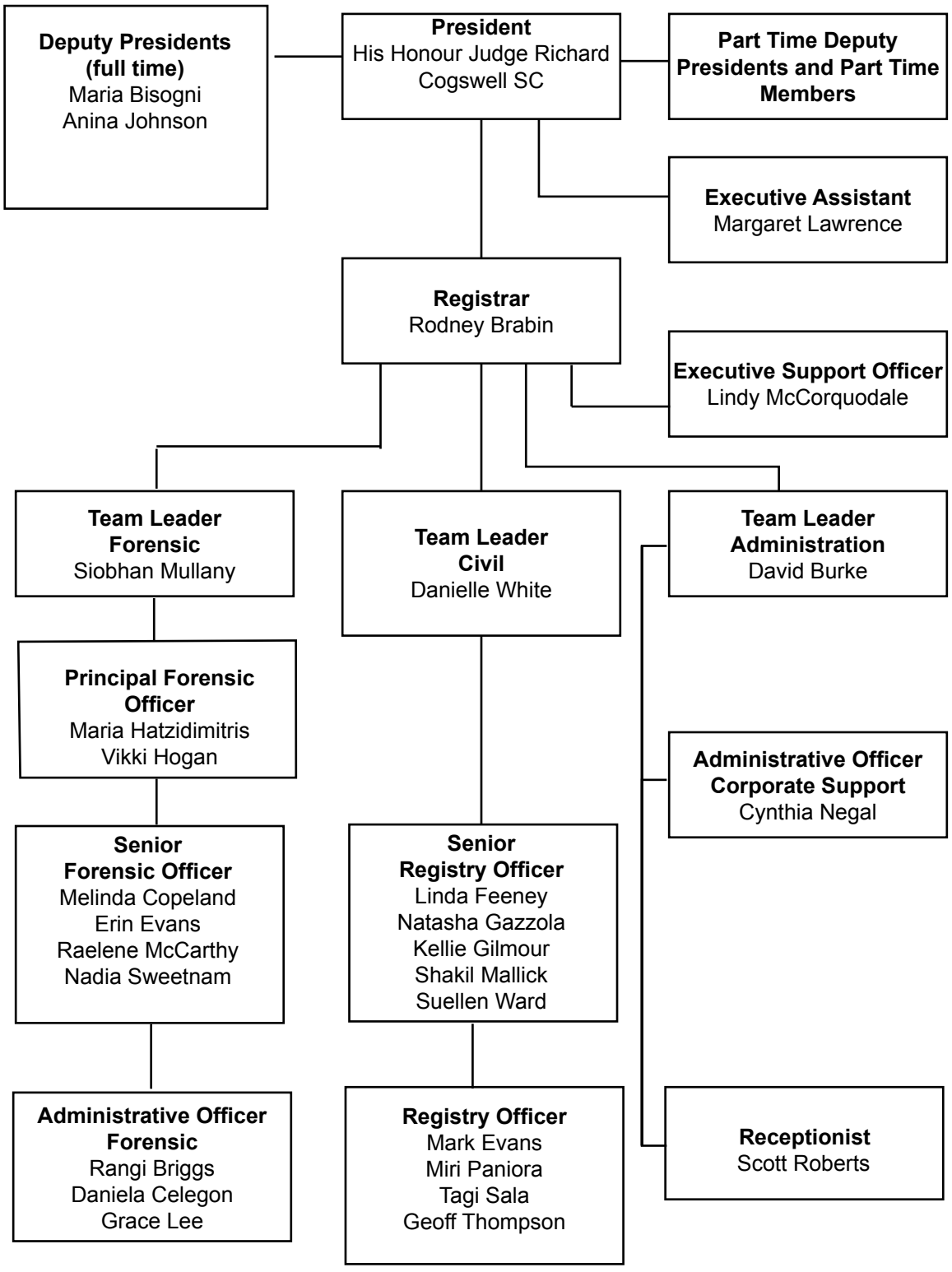
Full-Time Members	His Honour Judge Richard Cogswell SC (President)	Ms Maria Bisogni (Deputy President)	Ms Anina Johnson (Deputy President)
Part-Time Deputy Presidents	The Hon Terry Buddin SC The Hon John Dowd AO QC Mr Richard Guley AM RFD	The Hon Peter Hidden AM QC Ms Mary Jerram Ms Angela Karpin	The Hon Patricia Staunton AM The Hon Judith Walker

	Lawyers	**Psychiatrists**	**Other**
Part-Time Members	Ms Carol Abela Ms Diane Barnetson Ms Rhonda Booby Mr Peter Braine Ms Catherine Carney Ms Jennifer Conley Ms Janice Connelly Ms Elaine Connor Mr Martin Culleton Mr Shane Cunningham Ms Jenny D'Arcy Ms Pauline David Mr William de Mars Mr Phillip French Ms Helen Gamble Ms Michelle Gardner Mr Bruno Gelonesi Mr Anthony Giurissevich Ms Yvonne Grant Mr Robert Green Ms Eraine Grotte Ms Athena Harris Ingall Mr David Hartstein Mr Hans Heilpern Mr John Hislop Ms Barbara Hughes Ms Julie Hughes Mr Michael Joseph SC Mr Brian Kelly Mr Thomas Kelly Mr Dean Letcher QC Mr Michael Marshall Ms Carol McCaskie Ms Karen McMahon Mr Mark Oakman Ms Lynne Organ Ms Anne Scahill Ms Rohan Squirchuk Mr Bill Tearle Mr Gregory West	Dr Clive Allcock Dr Stephen Allnutt Dr Josephine Anderson Dr Dinesh Arya Dr Uldis Bardulis Assoc Prof John Basson Dr Jenny Bergen Dr Andrew Campbell Dr Raphael Chan Assoc Prof Kimberlie Dean Dr June Donsworth Dr Charles Doutney Dr Michael Giuffrida Dr Robrt Gordon Dr Adrienne Gould Prof James Greenwood Dr Jean Hollis Dr Rosemary Howard Dr Greg Hugh Dr Mary Jurek Dr Kristin Kerr Dr Karryn Koster Dr Dorothy Kral Prof Timothy Lambert Dr Lisa Lampe Dr Frank Lumley Dr Rob McMurdo Dr Sheila Metcalf Dr Janelle Miller Dr Enrico Parmegiani Dr Martyn Patfield Dr Daniel Pellen Dr Sadanand Rajkumar Dr Geoffrey Rickarby Dr Vanessa Rogers Dr Satya Vir Singh Dr Kathleen Smith Dr John Spencer Dr Sarah-Jane Spencer Dr Gregory Steele Dr Victor Storm Prof Christopher Tennant Dr Paul Thiering Dr Susan Thompson Dr Jennifer Torr Dr Yvonne White Dr Rosalie Wilcox Dr Sidney Williams Dr Rasiah Yuvarajan	Ms Lyn Anthony Ms Elisabeth Barry Mr Peter Bazzana Mr Ivan Beale Ms Diana Bell Ms Christine Bishop Mr Mark Coleman Ms Felicity Cox Ms Sarah Crosby Ms Irene Gallagher Mr Michael Gerondis Mr John Hageman Ms Corinne Henderson Ms Sunny Hong Ms Lynn Houlahan Ms Susan Johnston Ms Janet Koussa Ms Rosemary Kusuma Mr John Laycock Mr John Le Breton Ms Jenny Learmont AM Ms Robyn Lewis Ms Ann MacLochlainn Dr Meredith Martin Ms Maz McCalman Ms Elizabeth McEntyre Dr Sally McSwiggan Mr Francis Merritt Assoc Prof Katherine Mills Dr Susan Pulman Mr Rob Ramjan Ms Felicity Reynolds Ms Vanessa Robb Ms Pamela Rutledge Ms Jacqueline Salmons Dr Peter Santangelo Ms Alice Shires Assoc Prof Meg Smith Dr Suzanne Stone Ms Bernadette Townsend Ms Pamela Verrall Prof Stephen Woods Ms Kathryn Worne

The Tribunal notes its appreciation for the following members whose appointments ended during 2016/17: former Deputy President the Hon Helen Morgan, Mr Peter Champion, Ms Shailja Chaturvedi, Mr Gerald Cheung, Ms Gillian Church, Dr Leanne Craze, Ms Linda Emery, Ms Christine Fougere, Mr John Haigh, Ms Monica MacRae, Ms Leonie Manns, Ms Miranda Nagy, Dr Olav Nielssen, Ms Tony Ovadia, Dr Robyn Shields, Mr Jim Simpson and Dr Ronald Witton.

MENTAL HEALTH REVIEW TRIBUNAL

Organisational Structure and Staffing as at 30 June 2017



FINANCIAL SUMMARY

Expenditure 2016/17

Expenditure for 2016/17 was directed to the following areas:

Budget Allocation		6,543,490
Salaries and Wages	*6,469,798	
Goods and Services	281,413	
Equipment, repairs and maintenance	19,396	
Depreciation		
Expenditure	**6,670,607	
Less Revenue	-14,286	
		6,756,321
Budget Deficit		212,831

* Includes $3,097,521payment of part-time member fees.

** Includes expenditure of $824,105 on the Mental Health Inquiries program.