



**2015/16**

**Annual Report**

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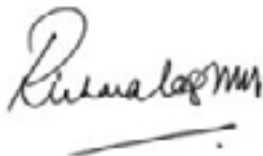
The Hon Pru Goward MP  
Minister for Mental Health  
Parliament House  
Macquarie Street  
SYDNEY NSW 2000

26 October 2016

Dear Minister

I enclose the Annual Report of the Mental Health Review Tribunal for the period from 1 July 2015 to 30 June 2016, as required by section 147 of the *Mental Health Act 2007*.

Yours sincerely



His Honour Judge Richard Cogswell SC  
PRESIDENT

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## MENTAL HEALTH REVIEW TRIBUNAL ANNUAL REPORT 2015/16

### **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'.*

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## PRESIDENT'S REPORT

I am writing just at six months into holding office as President. It has been a steep learning curve. But one outstanding feature of the Tribunal and its work has become very clear to me in that time. That feature is the people who work here. I mean my fellow statutory office-holders, the full-time staff and the sessional part-time members. Time and time again over the last six months, as friends inevitably ask how my new job is going, I find myself talking about the support I receive from these people. More important however is the contribution I have seen them make to this State's more vulnerable members and to its general populace. Discussing a matter of policy, statutory interpretation, personnel or administration with the Executive; talking to the part-time members at professional development evenings, induction sessions or over lunch; and the day-to-day work done by the full-time staff in preparing for hearings, attending hearings, on the telephone to the people we serve or are associated with (patients, families, people adversely affected by the behaviour of some patients, other people and agencies with whom we have contact): I see care, attention, integrity and a willingness to seek and provide advice.

People in our community who struggle with their mental illnesses or whose mental conditions are such that they come to public attention are monitored and supported by a skilled, dedicated and independent organisation with a clear focus on those people and the interests of the wider public.

In particular I acknowledge the guidance, support and shepherding I constantly receive from my two Deputies Maria Bisogni and Anina Johnson, the Tribunal's Registrar Rodney Brabin and my Executive Assistant Margaret Lawrence.

The Tribunal works in a challenging area of the public sector. Justice and public health intermingle, not always comfortably. In our civil jurisdiction we order the involuntary detention and/or treatment of people who have committed no offence. In our forensic jurisdiction we order the involuntary detention of people whose behaviour has come to the attention of the police; but they have not been found guilty of any crime. We also encounter victims who have lost loved ones at the hands of a person whose mental health is very compromised. They will often and understandably expect punishment not treatment towards recovery. I repeat, it is challenging but important public sector work.

In their report, Anina Johnson and Siobhan Mullany have pointed to the number of forensic patients detained in custody. There are others who are awaiting transfer from the Forensic Hospital to a less secure unit. Some have been waiting for a long time; too long. Although the statutory object of "control" (section 40 of the Mental Health (Forensic Provisions) Act 1990) of these people is obviously met, the delay in their transfer is hardly consistent with the additional objects of their "care" and "treatment". Instead, it is inconsistent with the expressly stated "intentions of Parliament" (section 68 of the Mental Health Act) that "people with a mental illness or mental disorder should receive the best possible care and treatment in the least restrictive environment enabling the care and treatment to be effectively given". Yes, this is qualified by "as far as practicable", but it diminishes the cogency and credibility of such high principle given statutory force - and the associated principle of being "supported to pursue their own recovery" - when people involuntarily detained by the State for reasons to do with their health are left languishing and frustrated about their progress. (For example, as Anina Johnson and Siobhan Mullany point out, forensic patients "feel that they are being punished, rather than offered treatment.")

There is an associated issue about time limited orders. They are controversial. The treating teams and institutions on the receiving end of these orders complain about them. They say it interferes with their clinical decisions. At worst, they suggest that one forensic patient may be moved back to a custodial setting to make a bed for another forensic patient on a time limited order to move to the Forensic Hospital. . They have a point of course. The Tribunal is aware of these challenges that an order provides to those who must comply with it (as they have done so far to their credit). Although not in an ivory tower about resource issues, each Tribunal's

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task is to make a determination about each forensic patient before it and what is in his or her and the community's best interests. There is a limit to the extent that a Tribunal can take into account resourcing issues. We do so to some extent. For example, we wait for a year before considering a time limited order and then we hear from the treating team and facility. But for the Tribunal to descend too much into accommodating resource issues can compromise its statutory function. Parliament has given us power to exercise over our fellow citizens and objects and principles to follow in exercising those powers. The focus in each case before any Tribunal is on the patient. (It is not unusual for courts and tribunals in exercising their inherent or statutory functions to expose areas that need change or greater resourcing from the public or private sector).

When I arrived, the process of recruiting new part-time members was almost complete. It was a huge undertaking – 300 expressions of interest and 135 interviews – borne mainly by the two Deputy Presidents, Maria Bisogni and Anina Johnson. It was not an easy task because of the high quality of the applicants. But it was discharged with integrity and hard work and will result in a fresh batch (31 in all) of new high quality part-time members.

I would like to record some acknowledgements here. Foremost is to my predecessor, Professor Dan Howard SC. I say on behalf of the Tribunal's members and staff that they were very appreciative of his positive contribution to our work over his times as a member and as President. I pass on heartfelt thanks to Dan on their behalf. Speaking for myself, I have been very lucky to have had such an excellent predecessor. Dan warmly welcomed me. The relationships he had established, the systems he had in place and the leadership he provided have made my transition very smooth. His advice and support for me once my appointment was imminent were very much appreciated.

The recruitment process (finalised shortly after this current reporting period) also involved us farewelling 14 longstanding members of the Tribunal. I thank those members for their wisdom, service and commitment to the Tribunal and its work. They will be formally acknowledged in our next annual report. I would also like to thank the Honourable Hal Sperling QC, Mr Lloyd McDermott and Dr Peter Klug for their contribution to the Tribunal. Finally, I acknowledge the late Herman Woltring, who died shortly after resigning from the Tribunal in early 2016.

This is a challenging and rewarding role for me after nearly 10 years as a judge. (Karin Lines enabled my straddling both 'Justice' and 'Health' - again, not an easy merger.) With the support and goodwill I have referred to, I am confident about the future.

His Honour Judge Richard Cogswell SC  
President  
26.10.16



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## FORENSIC DIVISION REPORT

The work of the Forensic Division continues to grow. In total, there were 468 forensic and correctional patients at the end of the reporting period. This represents a 4.5% increase on the number of forensic and correctional patients in 2014/2015. The number of hearings held increased by 16.6% to 1186.

This increase is consistent with the trend of the last 19 years, which has seen a tripling of the number of forensic and correctional patients over that period.

It is an unfortunate part of the NSW forensic mental health system that 15% of forensic patients are detained in custody. In all there were 70 forensic patients in the prison system as of 30 June 2016: 29 forensic patients were waiting for a suitable mental health facility; eight were waiting for aged care facilities; eight were waiting for accommodation other than aged care or a mental health facility; 25 were waiting the finalisation of court after being found unfit and detained in custody; and six forensic patients were serving concurrent terms of imprisonment.

When combined with the increasing numbers of people in custody generally, this creates an inevitable pressure on the resources available to allow forensic patients to live in the least restrictive environment and to recover as fully as possible, whilst ensuring that patient and community safety is properly managed.

### **NSW Forensic Mental Health Strategic Plan**

As the numbers of forensic patients has grown over the years, the development of services to safely accommodate and treat people has developed in an ad hoc way. The Tribunal has observed that the services are often insufficient to accommodate the needs and risks of forensic patients. This has led to people being detained in more secure settings than necessary, because there are insufficient services to support and monitor forensic patients living in a less secure environment.

The Tribunal was therefore very pleased to be asked to contribute to a NSW Forensic Mental Health Strategic Plan, undertaken by the Ministry of Health. This plan draws on the needs analysis undertaken by the Justice Health and Forensic Mental Health Network (JHFMHN), which was mentioned in last year's annual report. In its discussions with those developing the Strategic Plan, the Tribunal emphasised the importance of increasing the levels of community and low secure care, and providing appropriate services to support and monitor the wellbeing of forensic patients in these circumstances.

Research shows that many people detained in correctional centres have significant mental health difficulties with their needs often unmet due to the limited availability of mental health services. If forensic patients were placed in an appropriate setting outside of correctional centres, then that would improve access to mental health care, for those people who continue to be detained in custody.

Implementing the NSW Forensic Mental Health Strategic Plan will inevitably require an allocation of short, medium and long term resources. However, at present, resources are spent on unnecessarily detaining people in (expensive) high secure environments, when they could be safely accommodated in a lower secure or community setting.

### **Time limited orders**

The lack of appropriate places in mental health facilities has contributed to long delays in forensic patients moving from prison to mental health facilities. As the Tribunal has emphasised in its previous annual reports, forensic patients who have received a finding of not guilty by reason of mental illness (354 of the current 468 current forensic patients as at 30 June 2016) are subject to an indefinite period of control over their lives and living conditions. The arrangements for their detention should only restrict their liberty in so far as that is necessary for their treatment and the community's safety.

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The Tribunal is aware that with the significant increases in the number of people detained in custody (on remand or as sentenced prisoners) access to mental health services becomes stretched. There is reflected in an increase in the number of s58 reviews conducted from one review in 2014/2015 to 11 in 2015/2016.

As noted in last year's report, there remains significant waiting time for forensic patients who are detained in correctional centres before they are transferred to mental health facilities, in particular the Forensic Hospital. As at 30 June 2016, there were 20 patients in a correctional centre who had current Tribunal orders to be detained in the Forensic Hospital when a bed becomes available. Nine had been waiting in custody for more than a year since the Tribunal order was made, and their total time waiting in custody exceeded two years.

There are few therapeutic programs available in the correctional centres where most forensic patients are detained, so that time spent waiting in custody serves little therapeutic purpose. Patients feel that they are being punished, rather than offered treatment. Not surprisingly, patients in this situation begin to lose hope and with it, their motivation to continue along their recovery journey.

As at 30 June 2016, there were ten patients assessed as ready to leave the Forensic Hospital and waiting for a bed in one of the medium secure forensic units at the Cumberland, Bloomfield or Morrisset Hospitals. Again, several patients have been waiting more than a year for transfer.

In December 2015, then President Dan Howard SC wrote to the then CEO of Justice Health, Julie Babineau and foreshadowed that if a forensic patient had been detained for 12 months or more since the Tribunal's order that they be moved to the Forensic Hospital, the Tribunal would consider making an order specifying a time limit within which the move to the Forensic Hospital must take place.

In doing so, the Tribunal recognised that generally speaking, the unanimous clinical evidence before the Tribunal was 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 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*.

In 2015/2016 three time limited orders were made for transfer from custody to the Forensic Hospital and two time limited orders for transfer from the Forensic Hospital to a medium secure unit. These were vigorously opposed by the JHFMHN. To date, all of these orders have been complied with.

When patients do move, their recovery can be inspirational. The following case study is an example of this.

***Forensic Case Study 1***

*Mr Hallam was the subject of a time limited order made in 2014, which required that he be moved to a medium secure unit within six months. Mr Hallam's transfer took place in just under the mandatory six months period. In all, he had waited nearly two years to be transferred.*

*Since his arrival at the medium secure unit, Mr Hallam has been gradually re-engaging with the community. He finished his trade qualifications. After a period of time in supported employment, he now works in open employment, and rarely needs to rely on the disability support pension. He is a keen runner and his health and fitness have improved enormously since his move. He has developed strong friendships with his peers and made friends at work. He enjoys spending time with family on the weekends.*

*Mr Hallam is now moving to his own community accommodation, under a grant of unsupervised overnight leave, which includes ongoing mental health services support.*

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### **Limiting term patients**

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.

Corrective Services NSW has adapted their policy which applies in relation to inmates exercising leave from custody, to have regard to the special circumstances of limiting term patients.

This is particularly important for the small number of forensic patients who have a limiting term and who do not have a mental illness and are not eligible for the Community Justice Program (CJP). These patients have traditionally spent the entirety of their limiting term in custody. Leave from custody, and the opportunity for conditional release, offers a graduated, supported and monitored return to the community which reduces the likelihood of re-offending and better supports the patient's recovery and rehabilitation.

The Tribunal's recent decision in *Talbingo* [2015] NSWMHRT 6 involved further consideration of what is meant by "sufficient time in custody" in s74(e) of the *Mental Health (Forensic Provisions) Act 1990*. This decision is available on the Official Reports page of the Tribunal's website and will assist those working in this area to better plan for conditional release.

### **The roll out of the NDIS**

The roll out of National Disability Insurance Scheme (NDIS) funding has brought benefits to forensic patients. Some are now able to access an increased level of service and support in the community that would not otherwise have been available to them. However, the Tribunal understands that the NDIS will not pay for health care, criminogenic needs or to assist people to comply with the requirements of their Tribunal orders.

The Tribunal is also concerned that NDIS funding may not be granted unless the forensic patient is within six months of the date of their discharge from a mental health facility. This requirement will effectively prevent a forensic patient from access NDIS funding, as the Tribunal cannot order discharge unless satisfied that a forensic patient will not seriously endanger themselves or the community. This assessment is usually undertaken on the basis of existing engagement with community services.

These are significant concerns, particular as the Community Justice Program of Family and Community Services (FACS) is currently due to be disbanded within 18 months. Arrangements for the funding of the oversight of those with intellectual disability and who pose significant criminogenic risks have not been finalised.

The Tribunal will continue to discuss these issues with the relevant government agencies.

#### ***Forensic Case Study 2***

*Mr James has an intellectual disability and is serving a limiting term. A plan has been developed for his conditional release that involves accommodation and support services provided by a Non Government Organisation (NGO) and paid for by the Community Justice Program (CJP).*

*When considering an application for conditional release of a forensic patient, the Tribunal is required to have regard to an independent risk assessment prepared by a forensic psychiatrist or other approved clinician not currently involved in treating the forensic patient. To address the potential risk of Mr James absconding, the independent report writer suggested that a NGO staff member should remain awake overnight, and able to observe the front door of Mr James' unit. The CJP has agreed to increase funding to the NGO to pay for this additional staff time.*

*That staff member's role is to monitor Mr James' criminogenic risks. It is not a clinical requirement of his care. Therefore, when the NDIS case plan for Mr James is developed in the next 12 months, it is unlikely that there will be funding for an awake staff member overnight. When CJP is wound up, and if there are no alternative sources of funding for its services, Mr James' conditional release placement could be jeopardised.*

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### **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 appears to have stalled and deserves priority.

### **Interstate Forensic Patients**

The importance of extending the existing interstate agreements for forensic patients to States other than Queensland and Victoria has been consistently noted in previous Annual Reports. Unfortunately, no further progress has been made in negotiating interstate agreements for the transfer of forensic patients to other States. Proximity to family, community and cultural ties is often a critical aspect of a patient's recovery. The importance of family and country is particularly important for Aboriginal and Torres Strait Islander patients. The Tribunal has identified a number of forensic patients who would be appropriate candidates for an interstate transfer but these transfers cannot be progressed as there are no interstate agreements in place with the relevant States or Territories.

The Tribunal has made rare conditional release orders for forensic patients to live interstate and overseas. However, these arrangements are very difficult to monitor and are effective only because of the immense good will from clinicians who continue to oversee those arrangements from NSW.

The Commonwealth through the Law, Crime and Community Safety Council (LCCSC) is currently coordinating a review of the legislation and agreements between states and territories for transfer of forensic patients. The Tribunal along with representatives from the Ministry of Health are actively involved in this review.

### **Correctional Patients**

The Tribunal is pleased with the increased uptake of community treatment order for prisoners. The orders are made to continue treatment for those in custody and those preparing to leave custody. In 2015/16 the Tribunal made 56 such orders an increase of 77% from the 36 made in 2014/15.

The number of orders granted and the requirement for a review every three months has significantly increased the number of hearings required at the custodial venues. Custodial community treatment orders have now been in place for many years, and are generally well understood by custodial mental health clinicians. The Tribunal considers that mandatory three monthly reviews (under s61(3) of the *Mental Health (Forensic Provisions) Act 1990*) are unnecessary and that provision should be repealed.

### **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 years, presentations have been given to the Law Society, the Australian Academy of Forensic Sciences and various mental health services.

The Tribunal remains to be 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 (ID). This work is of great importance as people with intellectual disability experience very poor mental health and encounter major barriers to effective treatment. A number of important findings are already emerging from this work,

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including papers on avoidable deaths for those with mental health and intellectual disability; psychiatric diagnoses for those with both ID and mental health issues; and the pattern of Emergency Department usage and the cost of health service use for people in this cohort.

This year the Mental Health Commission has also funded a research officer for six months to finish extracting data from the Tribunal's forensic patient records. This data will inform comprehensive work being undertaken by the University of New South Wales on outcomes for forensic patients.

### **Victims Register**

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. The Tribunal meets regularly with representatives from victim support groups and endeavours to incorporate their concerns into the Tribunal's approaches to matters where victims are involved. The Tribunal also keeps abreast of victims' concerns through its membership of the Victims of Crime Interagency Forum.

In 2016/2017, the Tribunal will conduct a thorough review of its written information for victims, with the aim of ensuring that it is current and easy to understand.

### **Thanks**

The Forensic Division has continued its positive working relationships with key stakeholders in the field of forensic mental health, including the Ministry of Health, Ministry of Justice, the Justice and Forensic Mental Health Network, Legal Aid NSW, Corrective Services NSW, Family and Community Services and victims' organisations. The Tribunal values the strong working relationships that it has with the many stakeholders in this area.

As always our thanks go to the members and staff of the Forensic Division who handle their ever increasing workload with skill, compassion and good humour.

Anina Johnson  
Deputy President

Siobhan Mullany  
Team Leader

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## CIVIL DIVISION REPORT

In this reporting year the Civil Division has been particularly busy. Overall, hearings increased by 4.2 % from the previous year, reflecting a longstanding trend. On 31 August 2015, amendments to the *Mental Health Act 2007* ('the Act') came into effect. They were preceded by considerable input and recommendations by the Tribunal and necessitated the updating of key hearing documents, hearing resources and training of staff and members.

Three DVDs showing a Tribunal hearing and the role of clinicians and lawyers in those hearings were released, together with a Self Report Form. The latter is for consumers and its purpose is to provide an opportunity to communicate their views to the Tribunal in another format.

### Law Reform

The Tribunal welcomes the amendments to the Act. They further develop principles of person centred care and recognise the role carers play in providing support to loved ones. Clinicians are now required to do all that is reasonably practicable to obtain/monitor a person's consent to their treatment and recovery plans. Where a person lacks capacity they are to be given support to understand the treatment plan.

The Act refers to supporting the 'recovery' of consumers for the first time. Recovery is not defined. However, the Act's focus on the express wishes and views of consumers, their access to least restrictive, safe and effective treatment and full citizenship mean that consumers define their goals and what contributes to their well-being and sense of purpose.

The challenge for Tribunal panels is to use a recovery approach in hearings, notwithstanding its role in making orders for "involuntary" treatment. The Tribunal is committed to the principles of recovery and person centred care. To this end, targeted training of members and a new Chapter in the Members Manual provides some guidance in recovery and person centred care.

The Tribunal has been very pleased to witness some remarkable examples of recovery as illustrated in Civil Case Study 1.

The role of carers in having input into decisions about care and treatment has been enhanced. Consumers can now nominate up to two designated carers (formerly known as primary carers). There is a new category of carer - the principal care provider – a person who provides primary support to the consumer. Clinicians are obligated to identify who that person is and like designated carers, they may give information to assist in the assessment and treatment of consumers, be given specified information about a consumer, and also an opportunity to provide support.

There has been some tweaking of legislative provisions giving the Tribunal more flexible options at hearings. For example, at an involuntary patient review an order may be made to defer the discharge of patients for up to 14 days if it is in their 'best interests'. This power has now been extended to allow for the discharge on the making of a community treatment order (CTO) to be deferred for up to 14 days. It also now applies to appeals to the Tribunal against a medical superintendent's refusal to discharge. This power will be useful for consumers who may not be quite ready for discharge on the hearing day or who may need more time to organise their living arrangement in the community.

Protections for children were also enhanced. Now consumers under the age of 18 must receive developmentally appropriate services. ECT applications for consumers under 16 now require an assessment by a child and adolescent psychiatrist.

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Voluntary patients must now be given a Statement of Rights and this brings them into line with detained patients.

#### **Civil Case Study 1**

*Ms Brown is a 41-year-old patient who has been detained in a high secure mental health facility since 2010. She is a former forensic patient and has an extensive psychiatric history beginning in her early teens with many hospitalisations. Ms Brown has a significant trauma history. She has a number of diagnoses - borderline personality disorder, psychosis, alcohol and drug abuse disorder, intellectual disability and autism. The Public Guardian has been appointed as her guardian. Her index event involved setting fires and assaults. During her detention she chronically self-harmed and there were hundreds of incidents of verbal and physical aggression towards staff and her peers. Early in her admission she reported transient derogatory auditory hallucinations. Her mood was often labile, her behaviour unpredictable and she had difficulty in forming relationships with staff and peers. She was placed on a strict behaviour plan and nursed intensively in the acute ward. She has had many periods of seclusion.*

*In 2013 Ms Brown was commenced on Clozapine medication and her mental state began to improve. By late 2014 episodes of disturbed behaviour had reduced significantly and she was moved to the subacute ward. At the review of her involuntary patient order in 2016 Ms Brown had made impressive progress. Her mood was largely stable, with no overt episodes of self-harm or harm to others. Her functional skills had improved; she had developed better coping skills and distraction techniques to manage her mood. She was now able to consistently attend therapeutic groups on the ward and have leave from the facility, which she thoroughly enjoyed. Ms Brown now showed a capacity to deal appropriately with interpersonal conflict with marked improvement in self-efficacy and self-esteem.*

*Her carer attended the review and attested to Ms Brown's improvements stating Ms Brown was 'positive' about her future and she was now able to spend quality time with her.*

*The team said that Ms Brown is now well enough to be referred to a medium secure unit to build on her recovery with discharge plan. The team recognised that in the past there had been "pressure" placed on Ms Brown to get well quickly and she had often been discharged prematurely without appropriate supports. Her transition will be paced slowly.*

#### **Key statistics**

Civil hearings account for more than 92% of Tribunal work. Statistics relating to each head of jurisdiction in the civil jurisdiction have remained largely stable for the last few years. These are discussed in more detail in the Registrar's report.

Under the *NSW Trustee and Guardian Act 2009*, the Tribunal conducted 168 hearings for Financial Management Orders (down from 170 in 2014/15). Interested parties were responsible for 82 applications for a financial management order and 36 were considered at mental health inquiries. The Tribunal made 51 financial management orders. There were no reviews of interim financial management orders. There were 50 applications for the revocation of financial management orders, representing a significant increase from the previous year, when there were 24 hearings.

Amendments to s88 of the *NSW Trustee and Guardian Act 2009* on 15 May 2015 gave the Tribunal a new power to revoke orders on a 'best interest's' basis. Prior to the amendment the only ground for revocation was regained capacity. In addition, the power now extends to current as well as former patients and includes forensic patients (see Civil Case Study 2).

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### **Civil Case Study 2**

*Mr Stephens is a 41 year old forensic patient detained for a number of years in a medium secure mental health facility. In 2010, the Tribunal ordered that his financial affairs be managed by the NSW Trustee because of evidence of long term incapacity through gambling, bank debts and non-payment of hospital fees.*

*Mr Stephens made an application that the order be revoked. At the hearing there was evidence that his financial position had improved. The NSW Trustee and Guardian had sought debt waivers and some had been written off. Mr Stephens had accumulated savings of over \$10,000 from the disability support pension. There were differing views about his capacity to manage his finances. His psychiatrist opined he was incapable and although he had generally managed his pension he often wished to spend beyond his means. His key worker was confident that Mr Stephens could manage his money as his mental state had improved and he no longer gambled.*

*At the hearing Mr Stephens said he felt humiliated and demoralised by the order. His key worker said Mr Stephens 'dwells' on the order, which causes him a lot of anxiety and his interactions with the Trustee were almost always negative. Mr Stephens said he could manage his money but was open to relying on his treating team for support. The social worker agreed that informal support could be given.*

*The Tribunal revoked the order on the basis that it was in Mr Stephens's best interests to do so. The Tribunal had regard to the s39 principles in the NSW Trustee and Guardian Act 2009 that emphasise autonomy, least restriction, and the right to participate in the community on an equal footing with other members of the community, including the right to make decisions.*

*The Tribunal considered that 'best interests' should be interpreted broadly and related to a person's well-being as distinct to what is in the interests of the estate. Allowing Mr Stephens to control his finances would increase his sense of dignity, self-esteem and autonomy. The Tribunal determined that the revocation of the order would be psychologically beneficial and represented an opportunity for Mr Stephens to take responsibility for his recovery. Mr Stephens' mental state had improved and it was appropriate that he have an opportunity to be independent, self-reliant and free of restriction.*

*The Tribunal's decision on Mr Stephens' case has been published on the Tribunal's website as Stephens [2015] NSWMHRT 5*

### **Oversight of care and treatment**

For many years the Tribunal has had a referral system in place whereby Tribunal panels can relay to the Executive of the Tribunal concerns about particular cases or systemic issues. These referrals are promptly attended to by the Tribunal and feedback given to the panels about any outcomes. Where appropriate they are brought to the attention of the Ministry of Health and discussed at quarterly meetings with the Mental Health Commission.

As noted in previous annual reports, a systemic issue is the comparative lack of accommodation and support options for long term patients with complex needs. This cohort was identified in the Ombudsman's Report 'Denial of Rights: the need to improve accommodation as support for people with psychiatric disability' tabled in November 2012. The report identified gaps in service, support and accommodation for 95 consumers with psychiatric disability.



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The Tribunal has continued to work with ADHC (Ageing Disability and Homecare), the NSW Public Guardian and the Mental Health Advocacy Service to successfully advocate for support and accommodation for a number of individuals identified in the report. Many of these patients have significant psycho-social impairment and are eligible for NDIS support.

With the commencement of the NDIS, and work by the Mental Health Branch and Local Health Districts, a large proportion of the patients identified in the Ombudsman's report have now been successfully accommodated in the community. However, the Tribunal is aware, through its reviews of a number of patients who continue to be detained (see Case Study 3) of the need for more to be done to transition the remaining patients to less restrictive settings. The Tribunal will continue its advocacy for long term alternative accommodation options for these patients. The NDIS will have a role to play in appropriate discharge planning and determining what services patients will need to transition.

From time to time, the Tribunal is advised of deficits in mental health resources that impact on patients' rights to less restrictive, safe and effective care. An important aspect of care is co-ordinated discharge planning that involves consumers and carers. The Tribunal's anecdotal experience is that most health facilities take this obligation very seriously. The opportunity to evaluate the effectiveness and reach of such plans occurs at CTO hearings for persons leaving hospital.

In December 2015 the NSW Auditor-General published a report 'Mental Health Post Discharge Care'. The audit assessed how well NSW Health and Local Health Districts provide follow-up care for mental health consumers within seven days of being discharged from public mental health units. It found good follow-up of consumers in the first seven days after discharge from mental health units but noted that there were opportunities for further improvement. These findings accord with the Tribunal's experience. Regrettably, some consumers leave mental health facilities on CTOs without being consulted by their community team, nor will their Treatment Plan have been developed with them or their carers. There are many instances where the onus is placed on the consumer to make the first contact with community mental health services on discharge. Clearly, this is a high risk period for relapse and coordinated care is a necessity.

The Tribunal has also been concerned about the limited opportunities in some Local Health Districts for patients to have depot Olanzapine medication whilst in the community. The medication requires three hours' post-injection monitoring and some hospitals do not have the resources to do this for more than two patients at a time. Evidence has been given at hearings that this medication would be the treatment of choice for some consumers. Furthermore, some patients are detained for longer than necessary as they are unable to access the medication in the community because of the monitoring required.

Another barrier to discharge is the lack of safe and affordable community housing (see Civil Case Study 3). There are also long waiting periods for access to rehabilitation inpatient facilities with some taking six to 12 months. Some community mental health facilities reported that there were insufficient numbers of case managers to transfer the patient's care to non-acute services.

### **Case Study 3**

*Mr Yates is 35 years old and has longstanding treatment resistant schizoaffective disorder, developmental delay and past poly-substance abuse. He has had multiple involuntary admissions to mental health units and has spent the past 13 years in mental health units. Despite trials on the full range of antipsychotic and mood stabilising medications and ECT he continues to exhibit delusions of grandeur, disordered thinking and is occasionally aggressive. His mental state is relatively stable. His behaviour is disturbed at times. He engages in low level property destruction, which is not viewed by his treating team as psychotically driven but rather an expression of his frustration at his ongoing detention.*

*Because of his cognitive impairment Mr Yates is unable to retain and learn the majority of skills needed for everyday living. He requires prompting and supervision of care needs. The Public Guardian has been appointed as his guardian.*

*For many years Mr Yates was deemed ineligible for ADHC supported accommodation. In March 2013, ADHC reversed its decisions after the Tribunal sought an explanation. The treating team had given evidence that Mr Yates' acute mental illness had resolved and that his issues arose from his cognitive and social disabilities.*

*Mr Yates was transferred from the acute to the subacute ward on 2013. He currently receives 12 hours ADHC funding to attend structured programs twice weekly. On these outings Mr Yates goes shopping, to the movies, plays pool and attends the library followed by morning tea. He attends the program without any significant management issues.*

*At subsequent Tribunal reviews ADHC has advised that Mr Yates is on an extensive waiting list for supported accommodation. ADHC consider that he needs to live on his own with 24 hour carer support but are unable to fund this. The treating team continue to advocate for a community placement without success. At his most recent review the team reported ongoing discussions with ADHC as to the level of mental health clinical input Mr Yates will need to assist his transition. However, no appropriate accommodation has been identified.*

### **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.

A paper was given by Maria Bisogni at the International Law and Mental Health Conference in Vienna in July 2015 on the role of lawyers in Recovery. This paper and presentation were aimed at providing practical tips for lawyers and clinicians who appear at Tribunal hearings. A number of Tribunal members also attended this Conference and presented a 'mock' Tribunal hearing.

Good working relationships with mental health facilities are essential for the smooth and efficient conduct of hearings. On 24 August 2015 the Tribunal hosted a half day seminar for Tribunal Liaison Clerks (TLC) on the amendments to the Act. TLCs play an essential role in co-ordinating applications to the Tribunal from the facility and then providing support to Tribunal members on the hearing days. They are a key link between the Tribunal and the facility and the work they do is greatly appreciated.

There has also been effective liaison with a large number of bodies who interact with the Tribunal, including the Official Visitor Program, NSW CAG, NCAT (the Guardianship Division), the NSW Trustee and Guardian, the Department of Corrective Services, ADHC, the NDIA, the Mental Health Drug and Alcohol Office, Area Directors, Directors of Mental Health Facilities, Medical Superintendents and the Mental Health Advocacy Service.

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The Tribunal has set down regular 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 preliminary submission was made to the NSW Law Reform Commission’s Review of the *Guardianship Act 1987*. 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 review will give the Tribunal an opportunity to make 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. Some legislative clarification would be welcome. In the meantime, the Tribunal has worked on a medical consent table that sets out the applicable legislation. That is now posted on the Tribunal’s website.

The Tribunal was an active participant in NSW Health’s Advance Planning for End of Life Care at End of Life: Action Plan 2013-2018 Working Group. The brief of the Group was to develop and publish an online resource about advance care planning for end of life in mental health settings. In November 2015 a resource approved for mental health consumers, their families and carers and health professionals, was completed and circulated. The objective of the resources is to educate these groups about advanced care planning for end of life, including; the right to participate in these decisions; express their wishes, choices and preferences; and to be supported in their decisions if capacity is lacking.

**An acknowledgement of members and staff**

The Tribunal thanks its members and staff for their fine work over the past year. The challenges of the past year could not have been achieved without the dedication and hard work of staff who are committed to the ideals and principles of the Act. We look forward to meeting new challenges next year.

Maria Bisogni  
Deputy President

Danielle White  
Team Leader

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## REGISTRAR'S REPORT

This has been another busy and challenging year for the Tribunal with considerable time and energy devoted to preparing for and implementing the amendments to the *Mental Health Act 2007* (the Act) which came into effect on 31 August 2015. The Tribunal also undertook major recruitment action for part time members during the first half of 2016 as the terms of all current part time members were due to expire on 31 August 2016.

The total number of hearings conducted by the Tribunal increased by 4.2% from 17,222 hearings in 2014/15 to 17,950 in 2015/16 (728 additional hearings). This means that in the six years since June 2010 when the Tribunal assumed the responsibility for conducting mental health inquiries there has been a staggering 97% increase in the number of hearings conducted. Further details about this increase are discussed below.

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

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

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

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

### Caseload

In 2015/16 the Tribunal conducted 17,950 hearings including 6,887 mental health inquiries. This 728 more hearings represents a 4.2% increase in the total number of hearings compared to 2014/15. Although in terms of numbers the increase in hearings was mostly in the Tribunal's civil jurisdiction, there were 169 additional forensic hearings conducted in 2015/16 – a significant increase of 16.6%.

This was the sixth 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 2015/16 the Tribunal held 6,887 mental health inquiries – 254 more than the previous year (an increase of 3.8%).

Of the mental health inquiries conducted in 2015/16, 5,654 (82.1%) resulted in an involuntary patient order being made. This percentage is slightly down from the previous few years but still 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 slight decrease in the percentage of Community Treatment Orders made at a mental health inquiry during 2015/16 – 4.9% (336) compared to 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. A total of 78 orders were made at a mental health inquiry for the patient to be discharged or for deferred discharge (1.1%). This included 12 patients who were discharged into the care of their designated carer (previously known as primary carer).

The total number of hearings for the review of involuntary patients under s37(1) of the Act increased by 110 in 2015/16 to 2695 from 2585 in 2014/15 – a 4.3% increase. The Tribunal is required to review the case of each involuntary patient on or before the end of the patient’s initial period of detention ordered at a mental health inquiry s(37(1)(a)), then at least once every three months for the first 12 months that the person is an involuntary patient s(37(1)(b)), and then at least every six months while the person continues to be detained as an involuntary patient s(37(1)(c)). Significantly, the number of initial reviews under s37(1)(a) increased by 88 (6.6%) and the number of reviews under s37(1)(b) by 104 (16.7%) while the number of reviews under s37(1)(c) decreased by 82 (13.2%).

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 remained much the same with a slight decrease from 643 in 2014/15, to 641 in 2015/16. Of the appeal hearings conducted in 2015/16, 493 were dismissed (76.9%) and the patient was ordered to be discharged on 17 occasions (2.7%). The remaining 131 appeals were either adjourned, withdrawn or the Tribunal had no jurisdiction to deal with (see Table 7).

The number of hearings to consider applications for Community Treatment Orders increased by 216 from 5141 in 2014/15 to 5357 in 2015/16 (a 4.2% increase). These hearings related to 3544 individual patients.

Including those made at a mental health inquiry there were a total of 5386 Community Treatment Orders made in 2015/16 – an increase of 244 (4.7%) over the previous year. Excluding those made at a mental health inquiry (336) the number of Community Treatment Orders made by the Tribunal under section 51 of the Act increased by 244 from 4806 in 2014/15 to 5050 in 2015/16 – a 5.1% increase. As mentioned above, one of the consequences of the change to the timing of mental health inquiries 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 5386 Community Treatment Orders made in 2015/16 only 315 were for a period of more than six months (usually 12 months). This is 5.8% which is a slightly lower percentage of such orders in 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.

There was a 16.6% increase in the number of hearings held by the Forensic Division in 2015/16 compared to the previous year, 1186 in 2015/16 compared to 1017 in 2014/15.

In 2015/16 the Tribunal conducted:

|   | <b>2015/16</b> |
|---|----------------|
| Civil Patient hearings (for details see Tables 1-14)<br>(* includes 6887 mental health inquiries) | *16596         |
| Financial Management hearings (for details see Table 15)  | 168            |
| Forensic Patient reviews (for details see Tables 16 - 23)   | 1186           |
|   | <u>17950</u>   |

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 - 2015/16

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

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 42 venues across the Sydney metropolitan area and regional New South Wales in 2015/16. 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 260 inpatient or community venues across New South Wales. In 2015/16, 8,871 hearings and mental health inquiries were conducted in person (49.4%), 9,515 by video (44.1%) and 1,164 by telephone (6.5%). 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 3,827 hearings were conducted in person (34.3%), 6,176 by video (55.3%) and 1,160 by telephone (10.4%). These numbers and percentages varied slightly from 2014/15 when 3,789 hearings were conducted in person (35.8%), 5,645 by video (53.3%) and 1155 by

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telephone (10.6%) and show a 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. The vast majority of telephone hearings related to Community Treatment Orders (95.8%), most often for people in the community on an existing Community Treatment Order (49.6%). Hearings to vary the conditions of existing Community Treatment Orders comprised 17.1% of these telephone hearings – the majority of these hearings involved varying the order to reflect a change in treatment team following a change of address by the client.

### **Number of Clients**

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 2016 there were 1,229 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 1,259 at the same date 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 61 individuals who had been voluntary patients for more than 12 months and had been reviewed by the Tribunal – again a number of these may have been discharged or reclassified since the Tribunal review. See Table 5 for further details including a summary of the facilities in which these individuals were detained/admitted.

In terms of Community Treatment Orders, as at 30 June 2016 there were 2,733 individuals subject to an Order made by the Tribunal. While a small number of these orders may have been revoked by the Director of the Health Care Agency responsible for implementing the Order, this should be a fairly accurate count of the number of people subject to a Community Treatment Order at that point in time. This is slightly more than at the same date in 2015 (2715) and in 2014 (2705) and slightly less than in 2013 when there were 2,763 individuals subject to a Community Treatment Order.

The Tribunal conducted 6,887 mental health inquiries in 2015/16. This is 254 more than the 6,633 conducted in 2014/15 (a 3.8% increase). 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. During 2015/16 73.2% of mental health inquiries were held in person and 26.8% by video compared to 72.3% in person and 27.7% by video in 2014/15, 68.9% in person and 31.1% by video in 2013/14, 66.9% in person and 33.1% by video in 2012/13, 47% in person and 53% by video in 2011/12, and 35.6% in person and 64.4% by video in 2010/11.

In 2015/16, 16.6% of initial mental health inquiries were commenced during the first week of a person's detention (compared to 15% in 2014/15, 16% in 2013/14, 15.1% in 2012/13 and 5.5% in 2011/12), 58.6% during the second week (58.1% in 2014/15, 56.8% on 2013/14, 56.9% in 2012/13 and 22.2% in 2011/12), 24.3% in week three (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 (0.7% 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, 0.2%, the inquiry was commenced sometime after four weeks (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.

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When the Tribunal first assumed the role of conducting mental health inquiries there was a significant increase in the number of hearings to consider appeals against a decision of an authorised medical officer to refuse a request for discharge a patient (775 in 2011/12 and 608 in 2010/11 compared to 255 in 2009/10). However, following the change in timing of mental health inquiries in July 2012 the number of appeals reduced in 2012/13 to 591 (23.7%). The number of appeals increased in 2013/14 by 58 to 649 (a 9.8% increase from 2012/13) but has remained relatively consistent for the last 2 years at 643 in 2014/15 and 641 in 2015/16.

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 is able to be heard by an experienced single legal member of the Tribunal. In 2015/16 217 appeals were heard by a single member (33.9% of the total number of appeals held). This is an increase from 27.8% the previous year.

### **Representation and Attendance at Hearings**

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

Including mental health inquiries, representation was provided in 77% of all hearings in the Tribunal's civil jurisdiction (see Table 1) and 97.6% of all forensic hearings in 2015/16.

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 86% of all hearings – this is the roughly the same percentage as in 2011/12, 2012/13, 2013/14 and 2014/15. 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 97.9%. 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 96.7%.

### **Appeals**

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

During 2015/16 four appeals were lodged with the Supreme Court and one appeal was lodged with the Court of Appeal against a decision of the Supreme Court in September 2015. All four Supreme Court appeals were finalised during the reporting period with all being dismissed. The appeal to the Court of Appeal was allowed and the matter referred back to the Supreme Court where it was dismissed as the original Tribunal order had since expired.

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## **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 Strait 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 2015/16 interpreters in 49 different languages were used in a total of 623 hearings. This is 56 less hearings involving an interpreter than in 2014/15 – an 8% decrease. The most common languages used were Vietnamese (83), Mandarin (73), Arabic (68) and Cantonese (67) followed by Korean (45), Serb/Croatian (31), Spanish (27) and Italian (25).

In August 2009 the Tribunal entered in to 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. No forensic orders were translated in 2015/16 or in the previous three years. Translated copies of the Statement of Rights are available from the Tribunal's website.

In future years, the Tribunal will continue to arrange interpreters and translations as required and ensure that its membership includes representation from people with a multicultural background. We will also investigate the option of translation of some of the Tribunal's publications now that the review of the *Mental Health Act 2007* is concluded.

## **Government Information (Public Access) Act 2009**

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

The administrative and policy functions of the Tribunal are covered by the GIPA Act. There were no requests for disclosure of information from the Tribunal's files during 2015/16.

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 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.

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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. Since that time there has been some improvement in reporting from Emergency Departments, however an acceptable level of compliance is yet to be achieved, with only 31% of gazetted Emergency Departments returning the required Form 9s (a slight increase from 25% in 2014/15). These returns totalled 2841 involuntary referrals indicating that there remains a large number of people being involuntarily taken to 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 services.

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 two permanent and one temporary staff positions. In March 2008 the Official Visitor Program relocated to share premises with the Tribunal at Gladesville and became administratively reportable to the Registrar of the Tribunal.

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

In May 2014 the Tribunal was consulted as part of a Functional and Operational Review of the Official Visitor Program commissioned by the Ministry of Health and has continued to be involved in discussions about the implementation of the recommendations made in the Review report including consideration as to the most appropriate administrative reporting arrangements and physical location for the Program. It has now been determined that current arrangements for the Program should continue.

In late 2015 the long term Principal Official Visitor, Jan Roberts, retired from this role after 28 years dedicated service as an Official Visitor and 12 as Principal Official Visitor. I would like to acknowledge my appreciation and admiration to Jan for her extraordinary service to the Program and to consumers of mental health service across NSW.

I would also like to welcome Karen Lenihan to the role of Principal Official Visitor. Following an external recruitment process Karen took up this role in early 2016 with vigour and enthusiasm. Karen was an existing Official Visitor and has extensive experience working in the health and mental health sectors in a variety of roles.

### **Premises**

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

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

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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 and conducted a training session for them in August 2014 focusing on the amendments to the *Mental Health Act 2007*.

The Tribunal continues to be constrained by the limited resources and facilities available at some mental health facilities and correctional centres. Many venues do not have an appropriate waiting area for family members and patients prior to their hearing. There are safety and security concerns at a number of venues, with panels utilising hearing rooms without adequate points of access or other appropriate security systems in place. Essential resources such as telephones with speaker capacity are sometimes unavailable 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 has overcome some of the previous compatibility issues with equipment at some venues. Unfortunately, staff at some venues are not always familiar with the video conferencing equipment used to conduct hearings or the help desk or support arrangements in place to deal with problems with this equipment. This can lead to delays in some hearings. The Tribunal is however appreciative of the support provided by the Conference Services team at eHealth NSW who provide video conference support to the Tribunal and most LHDs.

### **Community Education and Liaison**

During 2015/16 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 Provision) 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. For the last three 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.

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Appendix 4 shows the organisational structure and staffing of the Tribunal as at 30 June 2016. Including the President and two full time Deputy President positions, the Tribunal has a staffing establishment of 29.4 position.

### **Tribunal Members**

Professor Dan Howard SC retired from his role as President of the Tribunal at the end of February 2016. Dan had been a member of the Tribunal since 2008 and was President for just over 3½ years. Dan provided clear, calm and confident leadership to the Tribunal during a period of significant reform in the mental health sector. Staff and members of the Tribunal were all greatly appreciative of Dan's support and leadership.

In March this year the Tribunal welcomed His Honour Judge Richard Cogswell SC as President of the Tribunal. Judge Cogswell is a sitting District Court Judge and brings with him a wealth of experience in law and a keen interest in the work of the Tribunal.

Appendix 3 provides a list of the members of the Tribunal as at 30 June 2016. As at this date the Tribunal had a President, two full time Deputy Presidents, seven part time Deputy Presidents and 117 part time members. One new part time Deputy President was appointed during the year and three part time members and one part time Deputy President resigned.

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.

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. 103 existing Tribunal members were 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.

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

The Tribunal's part time membership reflects a sound gender balance. As at 30 June 2016 there were 73 female part time members and 53 male (this includes four female and three 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.

In 2015/16 the Tribunal continued its program of regular professional development sessions for its members. These sessions involve presentations from Tribunal members and staff as well as guest speakers. The sessions are conducted out of hours and no payment is made for members' attendance. The Tribunal is

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encouraged and appreciative of the high rate of member attendance at these sessions. Topics covered during the reporting period included: New opportunities for forensic patients with a cognitive disability; What forensic patients need – a study assessing risk, need and placement; Procedural issues for conducting a Tribunal hearing; South Eastern Sydney Recovery College: Learning and Growth for Mental Health; Duty to Care: Is it being observed? Physical and Mental Comorbidity; What will the NDIS mean for the future of the Community Justice Program and government provision of disability services; and current issues for the Tribunal's Forensic Division. A session was also held in late June 2015 specifically focusing on the changes to the *Mental Health Act 2007* and *NSW Trustee and Guardian Act 2009*.

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**

The Tribunal receives its funding from the Mental Health Branch, Ministry of Health. Total net expenditure for 2015/16 was \$6,533, 800 (see Appendix 5). This was an increase of approximately \$300,000 (4.9%) from the previous financial year.

A Treasury Adjustment of \$400,000 was provided to the Ministry of Health being the agreed amount transferred for the Department of Attorney General and Justice to fund the mental health inquiries role. An additional \$400,000 was provided by the Ministry of Health 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 \$801,500. 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.

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 almost 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 2015 to 30 June 2016

| 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   | 44                                | 25          | 69           | 64                | 36        | 29 (42%)            | 58 (84%)           |
| s34            | Mental Health Inquiry  | 3752                              | 3135        | 6887         | 54                | 46        | 6813 (99%)          | 6739 (98%)         |
| s37(1)(a)      | Initial review of involuntary patients prior to expiry of initial period of detention as a result of mental health inquiry | 815                               | 612         | 1427         | 36                | 64        | 1313 (92%)          | 1288 (90%)         |
| s37(1)(b)      | 3 monthly review of involuntary patients after initial 12 month period   | 445                               | 283         | 728          | 61                | 39        | 674 (93%)           | 636 (87%)          |
| s37(1)(c)      | Continued review of involuntary patients after initial 12 month period   | 352                               | 188         | 540          | 52                | 48        | 313 (58%)           | 481 (89%)          |
| s44            | Appeal against an authorised medical officer's refusal to discharge  | 339                               | 302         | 641          | 53                | 47        | 512 (80%)           | 581 (91%)          |
| s51            | Community treatment orders   | 3349                              | 2008        | 5357         | 63                | 37        | 2483 (46%)          | 3794 (71%)         |
| s63            | Review of affected persons detained under a community treatment order  | 5                                 | 1           | 6            | 83                | 17        | 4 (67%)             | 6 (100%)           |
| s65            | Revocation of a community treatment order  | 1                                 | 1           | 2            | 50                | 50        | 1 (50%)             | 1 (50%)            |
| s65            | Variation of a community treatment order *   | 149                               | 76          | 225          | 66                | 34        | 33 (15%)            | 20 (9%)            |
| s67            | Appeal against a Magistrate's community treatment order  | -                                 | -           | -            | -                 | -         | -                   | -                  |
| s96(1)         | Review of voluntary patient's capacity to give informed consent to ECT   | 3                                 | 3           | 6            | 50                | 50        | 2 (33%)             | 5 (83%)            |
| s96(2)         | Application to administer ECT to an involuntary patient with or without consent  | 273                               | 425         | 698          | 39                | 61        | 531 (76%)           | 608 (87%)          |
| s101           | Application to perform a surgical operation  | 2                                 | 3           | 5            | 40                | 60        | 3 (60%)             | 4 (80%)            |
| s103           | Application to carry out special medical treatment   | -                                 | -           | -            | -                 | -         | -                   | -                  |
| s151(4)        | Procedural order   | 4                                 | -           | 4            | 100               | -         | 1 (25%)             | -                  |
| s162           | Application to publish or broadcast name of patient  | 1                                 | -           | 1            | 100               | -         | -                   | -                  |
| <b>TOTAL</b>   |  | <b>9534</b>                       | <b>7062</b> | <b>16596</b> | <b>57</b>         | <b>43</b> | <b>12712 (77%)</b>  | <b>14221 (86%)</b> |

\* Includes five variations of Forensic Community Treatment Orders.

**Note:** The Tribunal received notification of two emergency surgeries for involuntary patients (s99).

**Table 2****Summary of statistics relating to the Tribunal's civil jurisdiction under the Mental Health Act 2007 for the periods 2012/2013, 2013/14, 2014/15 and 2015/16**

|  | 2012/13      | 2013/14      | 2014/15      | 2015/16      |
|--|--------------|--------------|--------------|--------------|
| Reviews of assessable persons - Mental Health Inquiries (s34)  | 6321         | 6232         | 6633         | 6887         |
| Reviews of persons detained in a mental health facility for involuntary treatment (s37(1))   | 2433         | 2442         | 2585         | 2695         |
| Appeal against authorised medical officer's refusal to discharge (s44)   | 591          | 649          | 643          | 641          |
| Applications for orders for involuntary treatment in a community setting (s51)   | 5180         | 5068         | 5141         | 5357         |
| Variation and Revocation of Community Treatment Orders (s65)   | 191          | 207          | 196          | 227          |
| Review of those persons detained in a mental health facility following a breach of the Community Treatment Order (s63)               | 8            | 9            | 4            | 6            |
| 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) | 77           | 74           | 62           | 69           |
| Consent to Surgical Operation (s101)   | 12           | 21           | 7            | 5            |
| Consent to Special Medical Treatment (s103)  | -            | 3            | 2            | -            |
| Review voluntary patient's capacity to consent to ECT (s96(1))   | 5            | 5            | 1            | 6            |
| Application to administer ECT to an involuntary patient  | 692          | 702          | 758          | 698          |
| Procedural order   | -            | -            | -            | 4            |
| Application for representation by non legal practitioner   | -            | 1            | 1            | -            |
| Application to publish or broadcast  | -            | 3            | 2            | 1            |
| <b>TOTALS</b>  | <b>15510</b> | <b>15416</b> | <b>16035</b> | <b>16596</b> |

**Table 3****Summary of outcomes for reviews of assessable persons at a mental health inquiry for the period 1 July 2015 to 30 June 2016**

| <i>M</i> | <i>F</i> | <i>T</i> | <i>Adjourn</i> | <i>Invol Patient Order</i> | <i>Discharge</i> | <i>Deferred Discharge</i> | <i>Discharge on CTO</i> | <i>Discharge to Carer</i> | <i>Declined to deal with/ withdrawn</i> | <i>Reclass to Voluntary</i> |
|----------|----------|----------|----------------|----------------------------|------------------|---------------------------|-------------------------|---------------------------|---|-----------------------------|
| 3752     | 3135     | 6887*    | 787            | 5654                       | 23               | 43                        | 336                     | 12                        | 32                                      | -                           |

**Note:** \* These determinations related to 5594 individuals.

**Table 4**

**Flow chart showing progress of involuntary patients admitted during the period July 2015 to June 2016**

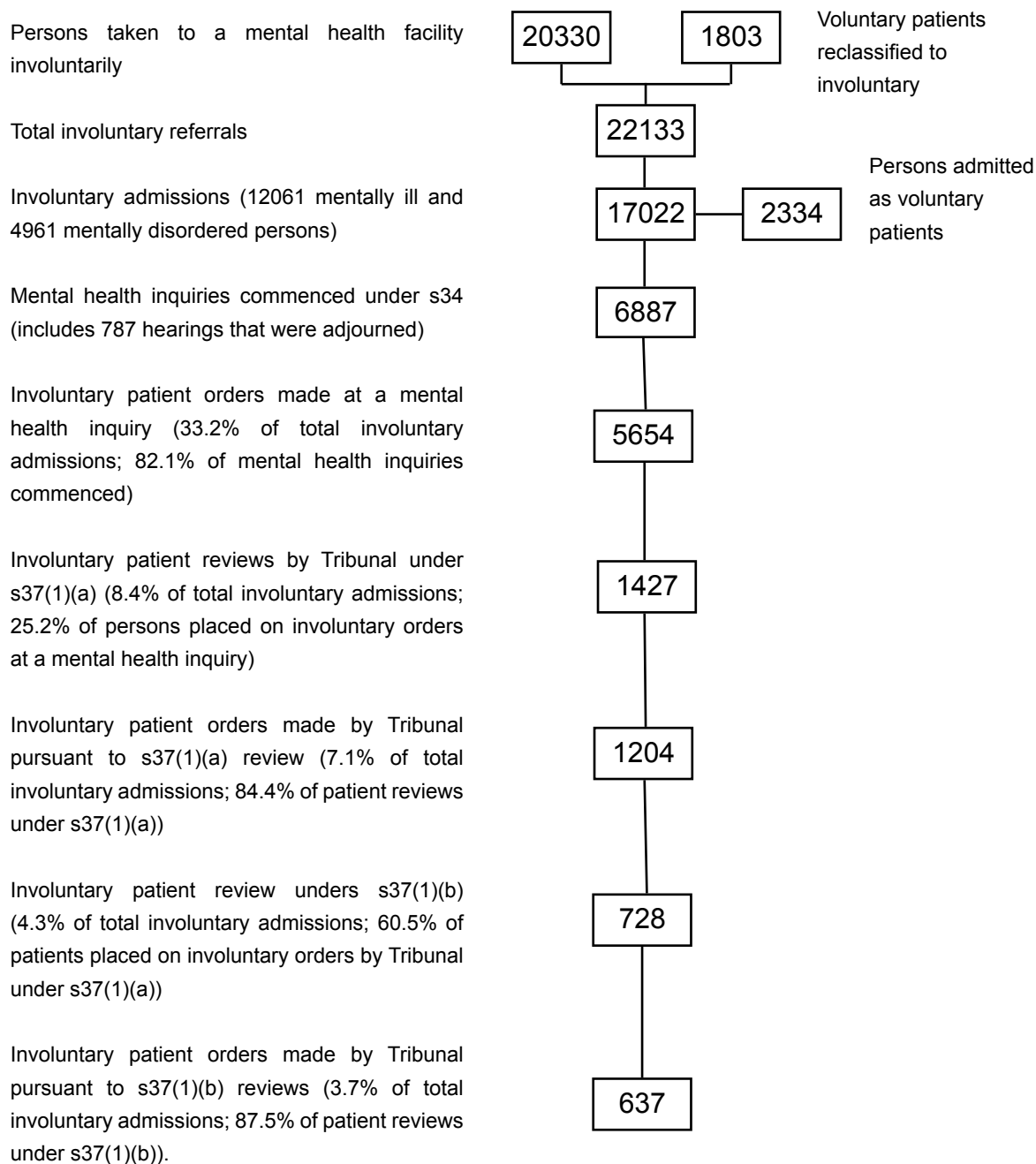




Table 5

**Summary of patients subject to Involuntary patient orders  
or voluntary patient review as at 30 June 2016**

| <i>Hospital</i>         | <i>s34</i> | <i>s37(1)a</i> | <i>s37(1)b</i> | <i>s37(1)c</i> | <i>Total<br/>Involuntary</i> | <i>Voluntary</i> | <i>Total</i> |
|-------------------------|------------|----------------|----------------|----------------|------------------------------|------------------|--------------|
| Albury                  | 4          | 0              | 0              | 0              | 4                            | 0                | 4            |
| Bankstown               | 11         | 6              | 1              | 0              | 18                           | 0                | 18           |
| Bega                    | 1          | 0              | 1              | 0              | 2                            | 1                | 3            |
| Blacktown               | 10         | 5              | 1              | 1              | 17                           | 0                | 17           |
| Bloomfield              | 11         | 12             | 12             | 29             | 64                           | 10               | 74           |
| Blue Mountains          | 5          | 1              | 1              | 0              | 7                            | 0                | 7            |
| Braeside                | 4          | 2              | 0              | 0              | 6                            | 0                | 6            |
| Broken Hill             | 1          | 0              | 0              | 0              | 1                            | 0                | 1            |
| Campbelltown            | 22         | 8              | 0              | 0              | 30                           | 0                | 30           |
| Coffs Harbour           | 11         | 6              | 1              | 0              | 18                           | 1                | 19           |
| Concord                 | 48         | 31             | 15             | 18             | 112                          | 5                | 117          |
| Cumberland              | 43         | 18             | 16             | 69             | 146                          | 10               | 156          |
| Dubbo                   | 3          | 0              | 0              | 0              | 3                            | 0                | 3            |
| Forensic Hospital       | 0          | 1              | 1              | 8              | 10                           | 0                | 10           |
| Gosford                 | 13         | 3              | 0              | 0              | 16                           | 0                | 16           |
| Goulburn                | 8          | 5              | 1              | 0              | 14                           | 0                | 14           |
| Greenwich               | 5          | 0              | 1              | 0              | 6                            | 0                | 6            |
| Hornsby                 | 15         | 14             | 7              | 0              | 36                           | 0                | 36           |
| James Fletcher          | 0          | 1              | 0              | 0              | 1                            | 0                | 1            |
| John Hunter             | 3          | 1              | 0              | 0              | 4                            | 0                | 4            |
| Kenmore                 | 3          | 2              | 1              | 0              | 6                            | 1                | 7            |
| Lismore                 | 18         | 1              | 2              | 0              | 21                           | 2                | 23           |
| Liverpool               | 21         | 12             | 3              | 0              | 36                           | 6                | 42           |
| Macquarie               | 6          | 8              | 21             | 112            | 147                          | 14               | 161          |
| Maitland                | 7          | 2              | 1              | 0              | 10                           | 0                | 10           |
| Manly                   | 14         | 3              | 1              | 0              | 18                           | 0                | 18           |
| Mater MHC               | 48         | 21             | 11             | 8              | 88                           | 2                | 90           |
| Morisset                | 1          | 0              | 13             | 41             | 55                           | 6                | 61           |
| Nepean                  | 13         | 11             | 5              | 0              | 29                           | 0                | 29           |
| Prince of Wales         | 28         | 14             | 5              | 1              | 48                           | 0                | 48           |
| Port Macquarie          | 4          | 4              | 0              | 0              | 8                            | 0                | 8            |
| Royal North Shore       | 16         | 5              | 1              | 0              | 22                           | 0                | 22           |
| Royal Prince Alfred     | 22         | 8              | 1              | 0              | 31                           | 0                | 31           |
| Shellharbour            | 12         | 10             | 3              | 0              | 25                           | 1                | 26           |
| St George               | 12         | 4              | 2              | 0              | 18                           | 0                | 18           |
| St Joseph's             | 2          | 1              | 0              | 0              | 3                            | 0                | 3            |
| St Vincent's            | 17         | 3              | 0              | 0              | 20                           | 0                | 20           |
| Sutherland              | 4          | 8              | 2              | 0              | 14                           | 1                | 15           |
| Sydney Children's       | 1          | 0              | 0              | 0              | 1                            | 0                | 1            |
| Tamworth                | 10         | 6              | 3              | 0              | 19                           | 1                | 20           |
| Taree                   | 6          | 3              | 1              | 0              | 10                           | 0                | 10           |
| Tweed Heads             | 7          | 1              | 1              | 0              | 9                            | 0                | 9            |
| Wagga                   | 12         | 5              | 0              | 0              | 17                           | 0                | 17           |
| Westmead Adult Psych    | 7          | 4              | 0              | 1              | 12                           | 0                | 12           |
| Westmead Child/Adolesc  | 2          | 0              | 0              | 0              | 2                            | 0                | 2            |
| Westmead PsychGeriatric | 5          | 0              | 0              | 0              | 5                            | 0                | 5            |
| Wollongong              | 9          | 4              | 0              | 0              | 13                           | 0                | 13           |
| Wyong                   | 10         | 12             | 4              | 1              | 27                           | 0                | 27           |
| <b>Total</b>            | <b>535</b> | <b>266</b>     | <b>139</b>     | <b>289</b>     | <b>1229</b>                  | <b>61</b>        | <b>1290</b>  |

**Note:** This table represents a 'snap shot' as at 30 June 2016 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 2015 to 30 June 2016**

|              |  | <i>M</i> | <i>F</i> | <i>T</i> | <i>Adjourn</i> | <i>Withdrawn<br/>No<br/>Jurisdic-<br/>tion</i> | <i>Discharge/<br/>voluntary</i> | <i>Discharge<br/>on CTO</i> | <i>Continued<br/>detention as<br/>involuntary<br/>patient</i> |
|--------------|--|----------|----------|----------|----------------|--|---------------------------------|-----------------------------|---|
| s37(1)(a)    | Review prior to expiry order for detention as a result of a mental health inquiry                | 815      | 612      | 1427     | 198            | 8  | 15                              | 2                           | 1204  |
| s37(1)(b)    | Review at least once every 3 months during first 12 months person is an involuntary patient      | 445      | 283      | 728      | 76             | 7  | 5                               | 3                           | 637   |
| s37(1)(c)    | Review at least once every 6 months while person is an involuntary patient after first 12 months | 352      | 188      | 540      | 23             | -  | 1                               | 2                           | 514   |
| <b>Total</b> |  | 1612     | 1083     | 2695     | 297            | 15   | 21                              | 7                           | 2355  |

**Note:** The 1427 reviews under s37(1)(a) related to 1251 individuals.  
The 728 reviews under s37(1)(b) related to 410 individuals.  
The 540 reviews under s37(1)(c) related to 321 individuals.  
The total of 2695 reviews under s37(1) related to 1644 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 - 2015/16**

|                   | <i>M</i> | <i>F</i> | <i>T</i> | <i>Adjourned</i> | <i>Withdrawn<br/>no<br/>jurisdiction</i> | <i>Appeal<br/>Dismissed</i> | <i>Dismissed<br/>and no<br/>further<br/>Appeal to<br/>be heard<br/>prior to next<br/>scheduled<br/>review</i> | <i>Discharged</i> | <i>Reclass to<br/>Voluntary</i> |
|-------------------|----------|----------|----------|------------------|--|-----------------------------|---|-------------------|---------------------------------|
| 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**              | -                               |

**Note:** \* These determinations related to 515 individuals.

\*\* Includes two orders for discharge on a Community Treatment Order.

**Table 8**

**Community Treatment Orders for declared mental health facilities made by the Tribunal  
for the periods 2013/14, 2014/15 and 2015/16**

| <i>Health Care Agency</i>           | <i>2013/14</i>    | <i>2014/15</i>    | <i>2015/16</i>    | <i>Health Care Agency</i>        | <i>2013/14</i>    | <i>2014/15</i>    | <i>2015/16</i>    |
|-------------------------------------|-------------------|-------------------|-------------------|----------------------------------|-------------------|-------------------|-------------------|
|                                     | <i>Total CTOs</i> | <i>Total CTOs</i> | <i>Total CTOs</i> |                                  | <i>Total CTOs</i> | <i>Total CTOs</i> | <i>Total CTOs</i> |
| Albury CMHS                         | 20                | 24                | 30                | Inner City MHS                   | 97                | 88                | 87                |
| Auburn CHC                          | 27                | 26                | 45                | Kempsey CMHS                     | 32                | 35                | 28                |
| Bankstown MHS                       | 165               | 167               | 141               | Lake Illawarra Sector MHS        | 135               | 88                | 7                 |
| Bega Valley Counselling & MHS       | 20                | 25                | 30                | Lake Macquarie MHS               | 78                | 84                | 99                |
| Blacktown                           | 189               | 197               | 217               | Leeton/Narrandera CHC            | 4                 | 1                 | -                 |
| Blue Mountains MHS                  | 101               | 86                | 98                | Lismore MHOPS                    | 89                | 107               | 89                |
| Bondi Junction CHC                  | 7                 | 7                 | 5                 | Liverpool MHS                    | 145               | 113               | 87                |
| Bowral CMHS                         | 9                 | 14                | 16                | Macquarie Area MHS               | 79                | 77                | 81                |
| Campbelltown MHS                    | 160               | 136               | 159               | Manly Hospital & CMHS            | 141               | 148               | 153               |
| Camperdown                          | 155               | 169               | 176               | Maroubra CMH                     | 184               | 184               | 148               |
| Canterbury CMHS                     | 137               | 155               | 173               | Marrickville CMHS                | 143               | 109               | 102               |
| Central Coast AMHS                  | 302               | 291               | 367               | Merrylands CHC                   | 112               | 108               | 128               |
| Clarence District HS                | 37                | 48                | 56                | Mid Western CMHS                 | 123               | 109               | 109               |
| Coffs Harbour MHOPS                 | 84                | 71                | 80                | Mudgee MHS                       | 7                 | 3                 | 8                 |
| Cooma MHS                           | 21                | 18                | 22                | Newcastle MHS                    | 145               | 132               | 162               |
| Cootamundra MHS                     | 1                 | -                 | 1                 | Northern Illawarra MHS           | 144               | 107               | 8                 |
| Croydon                             | 166               | 161               | 161               | Orange C Res/Rehab Services      | 15                | 11                | 8                 |
| Deniliquin District MHS             | 9                 | 12                | 22                | Parramatta                       | 86                | 106               | 98                |
| Dundas CHC                          | 27                | 23                | 43                | Penrith MHS                      | 118               | 114               | 130               |
| Eurobodalla CMHS                    | 15                | 29                | 46                | Port Macquarie CMHS              | 63                | 61                | 46                |
| Fairfield MHS                       | 191               | 173               | 156               | Queanbeyan MHS                   | 49                | 61                | 51                |
| Far West MHS                        | 30                | 27                | 25                | Redfern CMHS                     | 59                | 51                | 59                |
| Goulburn CMHS                       | 38                | 35                | 31                | Royal North Shore H & CMHS       | 147               | 117               | 137               |
| Granville                           | 17                | 31                | 18                | Ryde Hospital & CMHS             | 109               | 104               | 96                |
| Griffith (Murrumbidgee) MHS         | 17                | 24                | 29                | Shoalhaven MHS                   | 49                | 63                | 59                |
| Hawkesbury MHS                      | 26                | 18                | 15                | St George Div of Psychiatry & MH | 241               | 221               | 228               |
| Hills CMHC                          | 42                | 57                | 69                | Sutherland C Adult & Family MHS  | 87                | 87                | 97                |
| Hornsby Ku-ring-gai Hospital & CMHS | 100               | 101               | 113               | Tamworth                         | 1                 | 2                 | 2                 |
| Hunter                              | 3                 | 1                 | -                 | Taree CMHS                       | 52                | 48                | 56                |
| Hunter NE Mehi/McIntyre             | 27                | 38                | 34                | Temora                           | 16                | 10                | 10                |
| Hunter NE Peel                      | 29                | 52                | 50                | Tumut                            | 6                 | 7                 | 5                 |
| Hunter NE Tablelands                | 15                | 14                | 19                | Tweed Heads                      | 118               | 115               | 125               |
| Hunter Valley HCA                   | 55                | 63                | 73                | Wagga Wagga CMHS                 | 54                | 59                | 52                |
| Illawarra CMHS                      | -                 | 109               | 296               | Young MHS                        | 14                | 10                | 15                |

Total Number of Community Treatment Orders (CTOs) 2013-14 - 5184 (includes 360 CTOs made at mental health inquiries).  
 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).

| <b>Table 9</b>  |             |             |             |             |             |             |             |             |             |             |             |             |              |
|---|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|--------------|
| <b>Number of Community Counselling Orders and Community Treatment Orders made by the Tribunal and by Magistrates for the period 2004 to 2015/16</b> |             |             |             |             |             |             |             |             |             |             |             |             |              |
|   | 2004        | 2005        | 2006        | 2007        | 2007/8      | 2008/9      | 2009/10     | 2010/11     | 2011/12     | 2012/13     | 2013/14     | 2014/15     | 2015/16      |
| Total Magistrate CCO/CTOs   | 2092        | 1542        | 1585        | 1460        | 1318        | 997         | 806         | -           | -           | -           | -           | -           | -            |
| Mental Health Inquiry CTOs  |             |             |             |             |             |             | 10          | 566         | 581         | 339         | 360         | 336         | 336          |
| Total Tribunal CCO/CTOs   | 3992        | 4325        | 4661        | 4854        | 4706        | 4058        | 3956        | 4128        | 4426        | 4882        | 4824        | 4806        | 5050*        |
| <b>Total CCO/CTOs made</b>  | <b>6084</b> | <b>5867</b> | <b>6256</b> | <b>6314</b> | <b>6024</b> | <b>5055</b> | <b>4772</b> | <b>4694</b> | <b>5007</b> | <b>5221</b> | <b>5184</b> | <b>5142</b> | <b>5386*</b> |

**Note 1:** The capacity 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.

\* Includes one CTO made at a s44 appeal and two CTOs made at s37 reviews.

| <b>Table 10</b>  |             |             |              |            |                           |                     |             |
|--|-------------|-------------|--------------|------------|---------------------------|---------------------|-------------|
| <b>Summary of outcomes for applications for Community Treatment Orders (s51) 2015/16</b> |             |             |              |            |                           |                     |             |
|  | M           | F           | Total        | Adjourned  | Withdrawn No Jurisdiction | Application Decline | CTO Made    |
| Application for CTO for a person on an existing CTO                                      | 1528        | 844         | 2372         | 44         | 2                         | 17                  | 2309        |
| Application for a CTO for a person detained in a mental health facility                  | 902         | 652         | 1554         | 102        | 6                         | 16                  | 1430        |
| Application for a CTO not detained or on a current CTO                                   | 919         | 512         | 1431         | 96         | 7                         | 20                  | 1308        |
| <b>Totals</b>  | <b>3349</b> | <b>2008</b> | <b>3557*</b> | <b>242</b> | <b>15</b>                 | <b>53</b>           | <b>5047</b> |

**Note:** \* These determinations related to 3544 individuals

| <b>Table 11</b>   |           |
|---|-----------|
| <b>Tribunal determinations of ECT consent inquiries for voluntary patients for period 2015/16</b> |           |
| Adjourned   | 2         |
| Capable and has consented   | -         |
| Incapable of consent  | 3         |
| Withdrawn/discontinued at hearing   | 1         |
| <b>Total</b>  | <b>6*</b> |

**Note:** \* These determinations relate to four individuals.

**Table 12****Tribunal determinations of ECT administration inquiries  
for the periods 2011/12, 2012/13, 2013/14, 2014/15 and 2015/16**

| Outcome                   | 2011/12    | 2012/13    | 2013/14    | 2014/15    | 2015/16       |
|---------------------------|------------|------------|------------|------------|---------------|
| Capable and has consented | 24         | 31         | 30         | 42         | 34            |
| ECT approved              | 581        | 560        | 616        | 649        | 580           |
| ECT not approved          | 11         | 38         | 15         | 19         | 24*           |
| No jurisdiction/withdrawn | 13         | 7          | 6          | 10         | 8**           |
| Adjourned                 | 42         | 56         | 49         | 48         | 58            |
| <b>Totals</b>             | <b>671</b> | <b>692</b> | <b>716</b> | <b>768</b> | <b>704***</b> |

**Note:** These determinations related to 438 individual patients (including six hearings involving three forensic patients)

- \* Includes five forensic patient determinations.
- \*\* Includes one forensic patient determination.
- \*\*\* Includes six forensic patients determinations.

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

|          | M | F | T | Lung/Heart/<br>Kidney | Pelvis/Hip/<br>Leg | Tissue/Skin | Hernia | Gastro/<br>Bowel/<br>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                              | -     |

**Note:** \* These notifications related to two patients.

**Table 14****Summary of outcomes for applications for consent to surgical procedures (s101) and  
special medical treatments (s103) for the period 2015/16**

|                           | <i>M</i> | <i>F</i> | <i>T</i> | <i>Approved</i> | <i>Refused</i> | <i>Adjourned</i> | <i>Withdrawn/<br/>No<br/>Jurisdiction</i> |
|---------------------------|----------|----------|----------|-----------------|----------------|------------------|---|
| Surgical procedures       | 2        | 3        | 5*       | 4               | -              | 1                | -   |
| Special medical treatment | -        | -        | -        | -               | -              | -                | -   |

**Note:** \* These determinations related to five 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 2015 to June 2016**

| Section of Act | Description of Reviews               | Reviews    |           |            | Adjourn-ments | With- drawn no jurisdiction | Order made | No Order made | Interim Order under s20 | Revoca- tion Ap- proved | Revo- cation Declined | Legal Repres. |
|----------------|--------------------------------------|------------|-----------|------------|---------------|-----------------------------|------------|---------------|-------------------------|-------------------------|-----------------------|---------------|
|                |                                      | M          | F         | T          |               |                             |            |               |                         |                         |                       |               |
| s44            | At a Mental Health Inquiry           | 23         | 13        | 36         | 11            | 2                           | 11         | 9             | 3                       | -                       | -                     | 35            |
| s46            | On application to Tribunal for Order | 50         | 32        | 82         | 19            | 4                           | 40         | 16            | 3                       | -                       | -                     | 73            |
| s48            | Review of interim FM order           | -          | -         | -          | -             | -                           | -          | -             | -                       | -                       | -                     | -             |
| s88            | Revocation of Order                  | 34         | 16        | 50*        | 9             | -                           | -          | -             | -                       | 29*                     | 12                    | 23*           |
| <b>Total</b>   |                                      | <b>107</b> | <b>61</b> | <b>168</b> | <b>39</b>     | <b>6</b>                    | <b>51</b>  | <b>25</b>     | <b>6</b>                | <b>29</b>               | <b>12</b>             | <b>131</b>    |

**Note:** \* Includes one forensic patient.

### 5.3 FORENSIC JURISDICTION

**Table 16**

**Combined statistics for Tribunal reviews of forensic patients under the Mental Health (Forensic Provisions) Act 1990 for 2014/15 and 2015/16**

| <i>Description of Review</i>   | <i>2014/15 Reviews</i> |           |             | <i>2015/16 Reviews</i> |            |             |
|--|------------------------|-----------|-------------|------------------------|------------|-------------|
|  | M                      | F         | T           | M                      | F          | T           |
| Review after finding of not guilty by reason of mental illness (s44)   | 26                     | 6         | 32          | 22                     | 3          | 25          |
| Review after detention or bail imposed under s17 MHCPA following finding of unfitness (s45(1)(a))  | -                      | -         | -           | 1                      | -          | 1           |
| Review after limiting term imposed following a special hearing (s45(b))  | 9                      | -         | 9           | 8                      | 3          | 11          |
| Regular review of forensic patients (s46(1))   | 668                    | 69        | 737         | 738                    | 85         | 823         |
| Application to extend period of review of forensic patients (s46(4))   | 1                      | -         | 1           | 1                      | -          | 1           |
| Regular review of correctional patients (s61(1))   | 9                      | -         | 9           | 5                      | -          | 5           |
| Review of a forensic patient following their apprehension due to an alleged breach of a condition of leave or release (s68(2))   | 32                     | 3         | 35          | 66                     | 4          | 70          |
| 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) | 2                      | 1         | 3           | 5                      | 1          | 6           |
| Initial review of person transferred from prison to MHF (s59)  | 61                     | 4         | 65          | 69                     | 7          | 76          |
| Review of person awaiting transfer from prison (s58)   | 1                      | -         | 1           | 10                     | 1          | 11          |
| Application for a forensic community treatment order (s67)   | 33                     | 1         | 34          | 58                     | 1          | 59          |
| Application to vary forensic community treatment order (s65)   | 7                      | 1         | 8           | 6                      | -          | 6           |
| Regular review of person subject to a forensic community treatment order and detained in a correctional centre (s61(3))  | 4                      | -         | 4           | 12                     | -          | 12          |
| Application for ECT (s96) <sup>1</sup>   | 8                      | 2         | 10          | 6                      | -          | 6           |
| Application for surgical operation (s101)  | -                      | -         | -           | -                      | -          | -           |
| Application to revoke Financial Management Order (s88)   | -                      | -         | -           | 1                      | -          | 1           |
| Application to allow publication of names (s162)   | -                      | -         | -           | -                      | -          | -           |
| Approval of change of name (s31D)  | 3                      | 1         | 4           | 3                      | 2          | 5           |
| <b>Total</b>   | <b>864</b>             | <b>88</b> | <b>952</b>  | <b>1011</b>            | <b>107</b> | <b>1118</b> |
| <b>Determinations</b>  |                        |           |             |                        |            |             |
| Fitness s16  | 55                     | 2         | 57          | 55                     | 9          | 64          |
| Following limiting term s24  | 7                      | 1         | 8           | 5                      | 1          | 6           |
| <b>Total</b>   | <b>62</b>              | <b>3</b>  | <b>65</b>   | <b>60</b>              | <b>10</b>  | <b>70</b>   |
| <b>Combined Total</b>  | <b>926</b>             | <b>91</b> | <b>1017</b> | <b>1071</b>            | <b>117</b> | <b>1188</b> |

<sup>1</sup> In 2014/15 the Tribunal approved the administration of ECT for forensic patients on eight occasions and in 2015/16 on five occasions in relation to two forensic patients.

**Table 17****Determinations following reviews held under the  
Mental Health (Forensic Provisions) Act 1990 for the periods 2014/15 and 2015/16**

|  | 2014/15    |          |            | 2015/16    |          |            |
|--|------------|----------|------------|------------|----------|------------|
|  | M          | F        | T          | M          | F        | T          |
| Forensic Community Treatment Order - order made  | 35         | 1        | 36         | 55         | 1        | 56         |
| Forensic Community Treatment Order - not made  | 1          | -        | 1          | -          | -        | -          |
| Forensic Community Treatment Order to continue   | -          | -        | -          | 10         | -        | 10         |
| Variation to Forensic CTO  | 8          | 1        | 9          | 7          | -        | 7          |
| Revocation of Forensic CTO   | -          | -        | -          | -          | -        | -          |
| Determination under s59 person IS a mentally ill person who should continue to be detained in a mental health facility         | 55         | 4        | 59         | 54         | 6        | 60         |
| Determination under s59 person IS NOT a mentally ill person who should continue to be detained in a mental health facility     | -          | -        | -          | 1          | -        | 1          |
| Determination under s59 person is NOT a mentally ill person and should NOT continue to be detained in a mental health facility | 2          | -        | 2          | 1          | -        | 1          |
| Classification as an involuntary patient   | 1          | -        | 1          | 2          | 1        | 3          |
| Determination under s76F appeal against Director-General's failure or refusal to grant leave allowed, leave granted            | -          | -        | -          | -          | -        | -          |
| Approval for publication of name under s162  | -          | -        | -          | -          | -        | -          |
| Approval for change of name  | 2          | 1        | 3          | -          | -        | -          |
| Application for change of name - withdrawn   | 1          | -        | 1          | -          | -        | -          |
| Application for change of name - not forwarded or acted upon   | 1          | -        | 1          | -          | -        | -          |
| <b>Total</b>   | <b>106</b> | <b>7</b> | <b>113</b> | <b>130</b> | <b>8</b> | <b>138</b> |



| <b>Table 18</b>  |            |           |            |            |            |             |
|--|------------|-----------|------------|------------|------------|-------------|
| <b>Outcomes of reviews held under the Mental Health (Forensic Provisions) Act 1990<br/>for the periods 2014/15 and 2015/16</b> |            |           |            |            |            |             |
|  | 2014/15    |           |            | 2015/16    |            |             |
|  | M          | F         | T          | M          | F          | T           |
| No change in conditions of detention   | 342        | 29        | 371        | 319        | 35         | 354         |
| Transfer to another facility   | 50         | 5         | 55         | 54         | 5          | 59          |
| Transfer to another facility - CTO made  | 1          | -         | 1          | -          | 1          | 1           |
| Transfer to another facility - time limited order  | 3          | -         | 3          | 3          | -          | 3           |
| Order to be detained in a mental health facility   | 64         | 4         | 68         | 54         | 6          | 60          |
| Variation to order of detention  | 1          | -         | 1          | -          | -          | -           |
| Grant of leave of absence  | 107        | 16        | 123        | 116        | 16         | 132         |
| Revocation of leave of absence   | 2          | -         | 2          | -          | -          | -           |
| Less restrictive conditions of detention   | -          | -         | -          | -          | -          | -           |
| Conditional release  | 16         | 2         | 18         | 18         | 2          | 20          |
| No change to conditional release   | 106        | 13        | 119        | 131        | 24         | 155         |
| Court order for conditional release replaced by Tribunal order   | 1          | 1         | 2          | 1          | -          | 1           |
| Current order for conditional release to continue pending apprehension   | 2          | -         | 2          | 1          | -          | 1           |
| Variation of conditions of release   | 66         | 9         | 75         | 45         | 6          | 51          |
| Revocation of conditional release  | 6          | -         | 6          | -          | -          | -           |
| Unconditional release  | 3          | 1         | 4          | 9          | 1          | 10          |
| Non-association or place restriction on leave or release (s76)   | 2          | 1         | 3          | 3          | -          | 3           |
| Refused application for non-association or place restriction   | -          | -         | -          | 2          | -          | 2           |
| Vary a non-association or place restriction  | -          | -         | -          | -          | 1          | 1           |
| Extend review period to 12 months <sup>1</sup>   | 42         | 4         | 46         | 42         | 5          | 47          |
| Extend period of review - not granted  | 3          | 1         | 4          | 3          | -          | 3           |
| Procedural order (s151 MHA)  | -          | -         | -          | 3          | -          | 3           |
| Adjournments   | 40         | 5         | 45         | 94         | 6          | 100         |
| Order for apprehension or detention  | 1          | -         | 1          | 10         | -          | 10          |
| Decision Reserved  | 7          | -         | 7          | 5          | 1          | 6           |
| <b>Total</b>   | <b>865</b> | <b>91</b> | <b>956</b> | <b>913</b> | <b>109</b> | <b>1022</b> |

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

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

**Table 19****Determinations of the Mental Health Review Tribunal as to fitness to stand trial following reviews held under the Mental Health (Forensic Provisions) Act 1990 for the periods 2014/15 and 2015/16**

|   | 2014/15    |          |            | 2015/16    |           |            |
|---|------------|----------|------------|------------|-----------|------------|
|   | M          | F        | T          | M          | F         | T          |
| s16 person WILL become fit to stand trial on the balance of probabilities within 12 months                        | 10         | -        | 10         | 12         | 1         | 13         |
| s16 person WILL NOT become fit to stand trial on the balance of probabilities within 12 months                    | 26         | 1        | 27         | 28         | 6         | 34         |
| s24 person is mentally ill  | 3          | 1        | 4          | 3          | 1         | 4          |
| s24 person is suffering from a mental condition and DOES object to being detained in a mental health facility     | -          | -        | -          | -          | -         | -          |
| s24 person is suffering from a mental condition and DOES NOT object to being detained in a mental health facility | 3          | -        | 3          | 1          | -         | 1          |
| s24 person is neither mentally ill nor suffering from a mental condition  | 1          | -        | 1          | 1          | -         | 1          |
| s45 person has become fit to be tried   | -          | -        | -          | 1          | 1         | 2          |
| s45 person has not become fit to stand trial and will not become fit within 12 months                             | -          | -        | -          | 7          | 1         | 8          |
| s47 person has become fit to stand trial  | 13         | -        | 13         | 14         | 4         | 18         |
| s47 person has not become fit to stand trial and will not become fit within 12 months                             | 72         | 3        | 75         | 66         | 6         | 72         |
| Adjournments/Decision Reserved  | 24         | 1        | 25         | 15         | 2         | 17         |
| <b>TOTAL</b>  | <b>152</b> | <b>6</b> | <b>158</b> | <b>148</b> | <b>22</b> | <b>170</b> |

**Table 20****Location of forensic and correctional patients as at 30 June 2014, 30 June 2015 and 30 June 2016**

|   | 30 June 2014 | 30 June 2015 | 30 June 2016 |
|---|--------------|--------------|--------------|
| Bankstown Hospital                            | -            | -            | 1            |
| Bathurst Correctional Centre                  | -            | -            | 1            |
| Blacktown Hospital                            | 1            | -            | 1            |
| Bloomfield Hospital                           | 21           | 21           | 23           |
| Cessnock Correctional Centre                  | -            | 1            | -            |
| Community                                     | 120          | 128          | 132          |
| Concord Hospital                              | 6            | 5            | 6            |
| Correctional Centre                           | -            | -            | 1            |
| Cumberland Hospital - Bunya Unit and Cottages | 31           | 35           | 36           |
| Forensic Hospital                             | 112          | 113          | 111          |
| Goulburn Correctional Centre                  | 4            | 3            | 2            |
| Junee Correctional Centre                     | -            | 3            | 1            |
| Juvenile Justice Centre                       | -            | -            | 2            |
| Lismore Hospital                              | -            | 1            | 1            |
| Lithgow Correctional Centre                   | -            | -            | 1            |
| Liverpool Hospital                            | 1            | 3            | 1            |
| Long Bay Prison Hospital                      | 43           | 44           | 46           |
| Macquarie Hospital                            | 7            | 7            | 8            |
| Maitland Hospital                             | 1            | -            | -            |
| Metropolitan Remand and Reception Centre      | 23           | 36           | 41           |
| Metropolitan Special Programs Centre          | 8            | 7            | 12           |
| Mid North Coast Correctional Centre           | 1            | -            | -            |
| Morisset Hospital and Cottages                | 32           | 31           | 30           |
| Nepean Hospital                               | 2            | 1            | 1            |
| Parklea Correctional Centre                   | 2            | 5            | 3            |
| Shellharbour                                  | 2            | -            | 1            |
| Silverwater Womens Correctional Centre        | 1            | 3            | 3            |
| South Coast Correctional Centre               | -            | -            | 1            |
| St George Hospital                            | -            | -            | 1            |
| Sutherland Hospital                           | 1            | -            | -            |
| Wagga Wagga                                   | -            | 1            | -            |
| Windsor Correctional Centre                   | 1            | -            | -            |
| Wollongong Hospital                           | -            | -            | 1            |
| Wyong   | 2            | -            | 1            |
| <b>TOTAL</b>                                  | <b>422</b>   | <b>448</b>   | <b>468</b>   |

**Table 21****Location of hearings held for forensic and correctional patients during 2013/14, 2014/15 and 2015/16**

|  | 2013/14    | 2014/15     | 2015/16     |
|--|------------|-------------|-------------|
| Bathurst Correctional Centre             | -          | -           | -           |
| Bloomfield Hospital                      | 39         | 41          | 33          |
| Concord Hospital                         | -          | -           | 3           |
| Cumberland Hospital - Bunya Unit         | 83         | 89          | 94          |
| Forensic Hospital                        | 252        | 246         | 262         |
| Goulburn Gaol                            | -          | -           | -           |
| Long Bay Prison Hospital                 | 181        | 196         | 216         |
| Macquarie Hospital                       | 14         | 10          | 11          |
| Metropolitan Remand and Reception Centre | 64         | 72          | 93          |
| Morriset Hospital                        | 69         | 77          | 65          |
| Tribunal Premises                        | 270        | 288         | 411         |
| <b>TOTAL</b>                             | <b>972</b> | <b>1019</b> | <b>1188</b> |

**Table 22****Category of forensic and correctional patients as at 30 June 2015 and 30 June 2016**

| Year                                   | 2015       |           |            | 2016       |           |            |
|--|------------|-----------|------------|------------|-----------|------------|
|  | Male       | Female    | Total      | Male       | Female    | Total      |
| Not Guilty by Reason of Mental Illness | 310        | 37        | 347        | 314        | 40        | 354        |
| Fitness/Fitness Bail                   | 31         | 4         | 35         | 30         | 3         | 33         |
| Limiting Term                          | 24         | 2         | 26         | 21         | 2         | 23         |
| Correctional Patients                  | 24         | 5         | 29         | 24         | 6         | 30         |
| Forensic CTO                           | 10         | -         | 10         | 27         | -         | 27         |
| Norfolk Island NGMI                    | 1          | -         | -          | 1          | -         | 1          |
| <b>Total</b>                           | <b>400</b> | <b>48</b> | <b>448</b> | <b>417</b> | <b>51</b> | <b>468</b> |

**Table 23****Number of forensic and correctional patients 1998 - 30 June 2016**

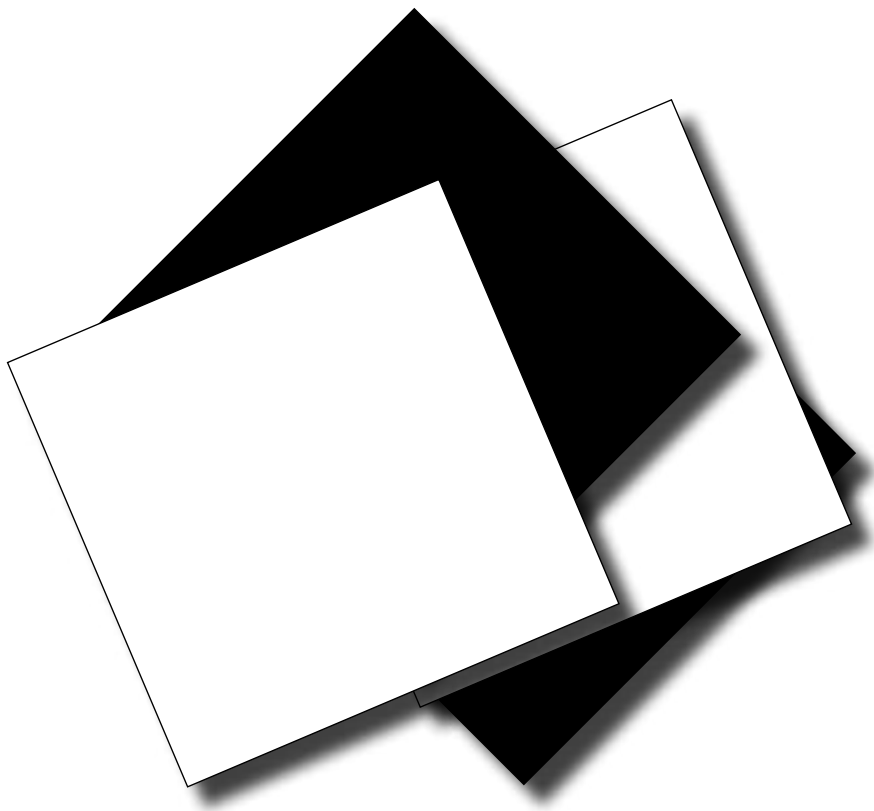
| Year              | 1998 | 1999 | 2000 | 2001 | 2002 | 2003 | 2004 | 2005 | 2006 | 2007 | 2008 | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 | 2016 |
|-------------------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|------|
| Forensic Patients | 144  | 176  | 193  | 223  | 247  | 279  | 277  | 284  | 310  | 309  | 315  | 319  | 348  | 374  | 387  | 393  | 422  | 448  | 468  |

*NOTE: Figures for 1997-2001 taken from MHRT Annual Reports as at 31 December of each year. Figures from 2002 - 2014 were taken as at 30 June of these years. Figures for 2009 - 2015 include correctional patients. Figures for 2011 - 2016 include one Norfolk Island forensic patient.*



Mental Health  
Review Tribunal

# APPENDICES



## APPENDIX 1

### Patient statistics required under MHA s147(2) concerning people taken to a mental health facility during the period July 2015 to June 2016

(1) s147(2)(a)

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

|  | <i>Method of referral</i>                | <i>Admitted</i> | <i>Not Admitted</i> | <i>Total</i> |
|--|--|-----------------|---------------------|--------------|
| MHA07                                      |  |                 |                     |              |
| s19  | Certificate of Doctor                    | 11745           | 432                 | 12177        |
| s22  | Apprehension by Police                   | 2492            | 1520                | 4012         |
| s20  | Ambulance Officer                        | 1055            | 443                 | 1498         |
| s58  | Breach Community Treatment Order         | 101             | 33                  | 134          |
| s26  | Request by primary carer/relative/friend | 1410            | 35                  | 1445         |
| s24  | Order of Court                           | 380             | 125                 | 505          |
| s23 via s19                                | Authorised Doctor's Certificate          | 534             | 25                  | 559          |
| <b>Total Admissions</b>                    |  | <b>17717</b>    | <b>2613</b>         | <b>20330</b> |
| Reclassified from Voluntary to Involuntary |  | 1639            | 164                 | 1803         |
| <b>TOTAL</b>                               |  | <b>19356</b>    | <b>2777</b>         | <b>22133</b> |

(2) s147(2)(b)

Persons were detained as mentally ill persons on 12061 occasions and as mentally disordered persons on 4961 occasions. 2334 persons were admitted as voluntary patients.

(3) s147(2)(c)

A total of 6887 mental health inquiries were commenced relating to 5594 individuals.

### Outcome of mental health inquiries conducted 1 July 2015 - 30 June 2016

|  | MHRT        |
|--|-------------|
| Adjourned                                | 787         |
| Discharge or deferred discharge          | 78          |
| Reclassify from involuntary to voluntary | -           |
| Involuntary patient order                | 5654        |
| Community treatment order                | 336         |
| Declined to deal with                    | 32          |
| <b>TOTAL</b>                             | <b>6887</b> |

(4) s147(2)(d)

In 2015/16 of the 22133 persons taken involuntarily to a mental health facility or reclassified from voluntary to involuntary: 2777 were not admitted; 2334 people were admitted as a voluntary patient and 17022 were detained as either a mentally ill or mentally disordered person - a total of 19356 admissions (including 1639 of the 1803 people who were reclassified from voluntary to involuntary).

There were 6887 mental health inquiries commenced with 5654 involuntary patient orders made. Of these only 1427 patients remained in a mental health facility until the end of the involuntary patient order (which could be made for a maximum of three months) and were reviewed by the Tribunal. This means 4227 people were discharged from a mental health facility or reclassified to voluntary status prior to the end of their initial involuntary patient order.

**The jurisdiction of the Tribunal as at 30 June 2016 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<br>(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<br>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  |

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### *Mental Health (Forensic Provisions) Act 1990 Matters*

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

### *Births, Deaths and Marriages Registration Act 1995 Matters*

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



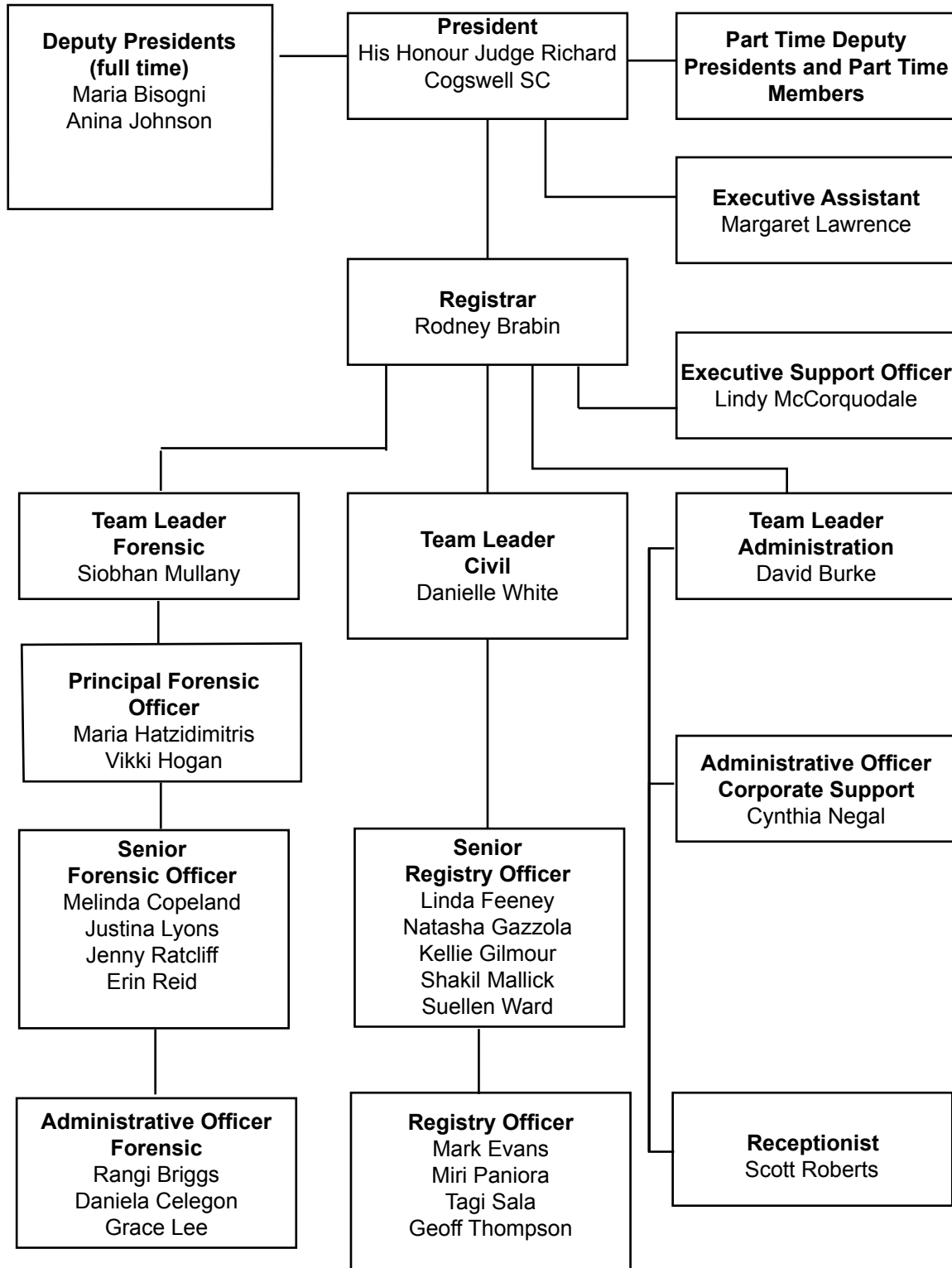
## Mental Health Review Tribunal Members as at 30 June 2016

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

The Tribunal notes its appreciation for the following members whose appointments ended during 2015/16: former President Professor Dan Howard SC; Deputy President The Hon Hal Sperling QC, Mr Lloyd McDermott, Dr Peter Klug and the late Mr Herman Woltring.

# MENTAL HEALTH REVIEW TRIBUNAL

## Organisational Structure and Staffing as at 30 June 2016



## FINANCIAL SUMMARY

### Expenditure 2015/16

Expenditure for 2015/16 was directed to the following areas:

|                                    |                   |
|------------------------------------|-------------------|
| Salaries and Wages                 | *6,159,280        |
| Goods and Services                 | 348,098           |
| Equipment, repairs and maintenance | 35,956            |
| Depreciation                       | <u>          </u> |
| Expenditure                        | **6,543,334       |
| Less Revenue                       | <u>    9,534</u>  |
|                                    | 6,533,800         |

\* Includes \$2,987,945 payment of part-time member fees.

\*\* Includes expenditure of \$801,489 on the Mental Health Inquiries program.