INQUIRY INTO OPPORTUNITIES TO CONSOLIDATE TRIBUNALS IN NSW

SUPPLEMENTARY SUBMISSION BY THE NSW MENTAL HEALTH REVIEW TRIBUNAL

1. **Mental Health and Guardianship jurisdictions in Australia**

   The Mental Health Review Tribunal (or equivalent) operates as a separate stand alone Tribunal is all states and territories of Australia other than:

   a) the ACT – where it forms part of the ACT Civil and Administrative Tribunal (ACAT); and,
   b) South Australia – where Mental Health Act treatment orders are made by the Guardianship Board of South Australia.

   Both these jurisdictions are considerably smaller than NSW in terms of the number of mental health and guardianship matters they deal with.

   Attachment A – provides a summary of the mental health and guardianship jurisdictions in each state and territory of Australia.

   Attachment B – provides a more detailed summary of the scope of mental health jurisdictions in each state and territory of Australia.

2. **Suggestion to combine registries of the NSW Mental Health Review Tribunal and the Guardianship Tribunal**

   As mentioned in the Tribunal's original submission the MHRT requires trained dedicated registry staff who understand mental legislation, clientele and issues. Our registry staff carry out a quasi case management role and give advice and direction to health professionals, family members and consumers about the application of mental health legislation and the role of the Tribunal. MHRT registry staff are also responsible for maintenance of the Forensic Patient's Victim's Register and contact with registered victims, which requires particular sensitivities and skills.

   Staff of the NSW Guardianship Tribunal carry out a similar specialist role in relation to the jurisdiction of that Tribunal i.e. guardianship and financial management of persons with a disability that affects their capacity to make their own decisions or manage their own affairs.

   Staff of both registries have developed expert working knowledge and relationships with key service providers and stakeholders in each

jurisdiction. There is a risk that this would be lost if the registries were combined.
While there may be a very small crossover of clients between the two Tribunals, the roles are quite distinct and separate. Any combining of registries may in fact blurr these distinctions.

The scheduling of Tribunal members and cases in each Tribunal is already very complicated. The MHRT currently runs separate, but overlapping, rosters for its civil hearings (requiring a member from each 3 categories of Tribunal members), forensic hearings (requiring a presidential member, plus a psychiatrist member and another suitably qualified member) and mental health inquiries (requiring an experienced legal member only).

The MHRT currently operates on a staffing level of 25 positions plus 3 full time presidential members. It is a very cost effective and efficient operation with little scope for savings and efficiencies.

Jurisdiction	NSW	Victoria	Queensland	Western Australia
Mental Health	Mental Health Reciew Tribunal	Mental Health Review Board	Mental Health Review Tribunal	Mental Health Review Board
- civil	yes	yes	yes	yes
- forensic	yes	no (Forensic Leave Panel)	yes (orders made by Mental Health Court)	no
Guardianship	Guardianship Tribunal	Victorian Civil and Administrative Tribunal (VCAT)	Queensland Civil and Administrative Tribunal (QCAT)	State Administrative Tribunal (SAT)
		- Guardianship List		
Super' Tribunal	Administrative Decisions Tribunal (ADT)	Victorian Civil and Administrative Tribunal (VCAT)	Queensland Civil and Administrative Tribunal (QCAT)	State Administrative Tribunal (SAT)

Jurisdiction	SA	Tasmania	Australian Capital Terrotiry	Northern Territory
Mental Health	Guardianship Board	Mental Health Tribunal	ACT Civil and Administrative Tribunal (ACAT)	Mental Health Reciew Tribunal
- civil	yes	yes	yes	yes
- forensic	no	no (Forensic Tribunal)	yes	no
Guardianship	Guardianship Board	Guardianship and Administration Board	ACT Civil and Administrative Tribunal (ACAT)	Local Court - Guardianship Panel
Super' Tribunal	n/a	n/a	ACT Civil and Administrative Tribunal (ACAT)	n/a

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Jurisdiction	**VIC**	**NSW**	**QLD**	**WA**	**SA**	**TAS**	**ACT**	**NT**
Legislation	Mental Health Act 1986	Mental Health Act 2007	Mental Health Act 2000	Mental Health Act 1996	Mental Health Act 2009	Mental Health Act 1996	Mental Health (Treatment & Care) Act 1994	Mental Heath & Related Services Act 1998
Primary Category	mental illness	mental illness	mental illness	mental illness	mental illness	mental illness	mental illness	mental illness
Definition	a medical condition characterised by a significant disturbance of thought , mood, perception or memory	a condition which seriously impairs mental functioning, characterised by any one or more of the following symptoms: delusions, hallucinations, serious disorder of thought form, a severe disturbance of mood, sustained or repeated irrational behaviour indicating the presence of any one or more of the symptoms referred to.	a condition characterised by a clinically significant disturbance of thought, mood, perception or memory	a person has a mental illness if the person suffers from a disturbance of thought, mood, volition, perception, orientation or memory that impairs judgment or behaviour to a significant extent.	Means any illness or disorder of the mind (subject to Schedule 1)	a mental condition resulting in **(a)** serious distortion of perception or thought; **(b)** serious impairment or disturbance of the capacity for rational thought; **(c)** serious mood disorder; **(d)** involuntary behaviour or serious impairment of the capacity to control behaviour.	means a condition that seriously impairs (either temporarily or permanently) the mental functioning of a person and is characterised by the presence in the person of any of the following symptoms: **(a)** delusions; **(b)** hallucinations; **(c)** serious disorder of thought form; **(d)** a severe disturbance of mood; **(e)** sustained or repeated irrational behaviour indicating the presence of the symptoms referred to in paragraph (a), (b), (c) or (d);	a condition that seriously impairs mental functioning in one or more areas of thought, mood, volition, perception characterised by the presence of at least one of the following symptoms: delusions; hallucinations; serious disorders of the stream of thought; serious disorders of thought form; serious disturbances of mood or by sustained or repeated irrational behaviour that may be taken to indicate the presence of at least one of the symptoms referred to.
Excluding	intellectual disability or antisocial personality various personal beliefs and conduct use of alcohol or drugs (but serious effects of use can be considered)	developmental disability of mind	intellectual disability	A person does not have a mental illness by reason only that the person: • holds, or refuses to hold, a particular religious, philosophical, or political belief or opinion; • is sexually promiscuous, or has a particular sexual preference; • engages in immoral or indecent conduct; • has an intellectual disability; • takes drugs or alcohol; • demonstrates anti-social behaviour.	Schedule 1 exclusions; Political beliefs, religion, philosophy, sexuality, political activity, religious activity, sexual conduct, immoral conduct, illegal conduct, developmental disability of mind, alcohol or any other drug, anti-social behaviour, economic or social status, or cultural or racial group	• Antisocial behaviour • Intellectual or behavourial nonconformity • Intellectual disability • Intoxication by alcohol or drug	A person is not to be regarded as mentally ill or mentally dysfunctional only because the person expresses a particular political, religious, or philosophical opinion or belief or a particular sexual preference or orientation; or engages or refuses to engage in a particular religious or political activity or engages in sexual promiscuity or immoral or illegal conduct, or has taken alcohol or other drug or has engaged in antisocial behaviour	intellectual disability personality, habit or impulse disorders acquired brain damage mental disturbance B
Treatment	the exercise of professional skills to remedy or lessen ill - effects/pain/suffering caused	Not defined	anything done, or to be done, with the intention of having a therapeutic effect on the person's illness.	Psychiatric treatment means treatment for mental illness. Deep sleep therapy and insulin coma or sub-coma therapy is prohibited treatment and a criminal act.	Treatment or procedures administered or carried out by a medical practitioner or other health professional in the course of professional practice, and includes the prescription or supply of drugs	Not defined	Not defined	the exercise of professional skills to remedy or lessen ill – effects, pain, suffering caused
Secondary Category	"mental disorder"	mental disorder	Not applicable	Not applicable	Not applicable	Not applicable	mental dysfunction	Mental disturbance
Definition	includes mental illness Concept is utilised in the provisions authorising continued detention of a person who does not satisfy the "standard" criteria but who are at risk of serious self harm.	A person (whether or not the person is suffering from mental illness) is a mentally disordered person if the person's behaviour for the time being is so irrational as to justify a conclusion on reasonable grounds that temporary care, treatment or control of the person is necessary: (a) for the person's own protection from serious physical harm, or (b) for the protection of others from serious physical harm.	N/A	N/A	N/A	N/A	a disturbance or defect, to a substantially disabling degree, of perceptual interpretation, comprehension, reasoning, learning, judgment, memory, motivation or emotion	means behaviour of a person that is so irrational as to justify the person being temporally detained under the Act
Constitution of review body	Mental Health Review Board 3 member multidisciplinary	From 21/6/2010 Mental Health Review Tribunal single member	Mental Health Review Tribunal 3 member multidisciplinary	Mental Health Review Board. When exercising review	Guardianship Board – general division. May be single member.	Mental Health Tribunal Generally 3 member	ACT Civil and Administrative Tribunal (ACAT) using a single	Mental Health Review Tribunal 3 member multidisciplinary

	lawyer:psychiatrist:community Single member for some reviews	(as soon as practicable – usually 2-4 weeks) Mental Health Review Tribunal 3 member multidisciplinary lawyer:psychiatrist:community	lawyer:psychiatrist:community (third member neither a lawyer or a doctor) (as many as 5 members or as few as 1 member in certain matters with President's approval)	functions and other general functions the Board is constituted by a 3 member multidisciplinary panel of 1 each of a lawyer, psychiatrist, and community member. When exercising jurisdiction regarding psychosurgery the Board is constituted by 5 persons – 4 Board members (lawyer, 2 psychiatrists, 1 community member) and 1 ad hoc member chosen from a panel of persons with experience and qualifications in neurosurgery submitted by the Royal Australasian College of Surgeons	Appeal Division – 3 Member Board – Deputy President, Psychiatrist and a person who has experience in representing people with a mental illness.	multidisciplinary Panel makeup determined by President and not defined in statute single member divisions possible	presidential member (lawyer) for emergency decisions and multi member panel for other matters. Each panel must have a presidential member and one other with special knowledge, qualifications or interest. In practice 3 member panels are used with the presidential member, a psychiatrist and a community member.	lawyer:medical: special interest or expertise
Secondary Review	VCAT – re-hearing Supreme Court – point of law	Supreme Court – re-hearing (assisted by assessors)	Mental Health Court (Supreme Court judge assisted by two psychiatrists)	State Administrative Tribunal. Applications can be made by the person the subject of the Board decision or (with the leave of the SAT) by any other person with a sufficient interest in the matter. SAT must be constituted by a legally qualified member, a psychiatrist member, and one other member who is neither a legally qualified member nor a medical practitioner. Review is by way of hearing de novo. A further appeal from a decision of the SAT lies to the Supreme Court on the application of the person concerned or (with the leave of the Court) by any other person with a sufficient interest in the matter. The grounds of appeal may be that SAT erred in fact or law, or both, acted without or in excess of jurisdiction, or that there is any other sufficient reason for hearing an appeal	District Court – rehearing (assisted by an assessor)	Supreme Court - rehearing	Supreme Court - rehearing	Supreme Court – re-hearing
Powers	Discharge/detain Revoke or vary CTO Direct that an inpatient be placed on a CTO Direct review of a treatment plan	broadranging	Confirm/revoke ITO Confirm/revoke FO Approve LCT (FO/ITO) Approve treatment application (ECT/psychosurgery) Find NFFT patient (not of a permanent nature) FFT/NFFT upon review Approve move out of Queensland Make Confidentiality Order Make a Forensic Patient Information Order Order examination Issue an attendance notice Review Young Person detained in High Secure unit Hear appeals against decisions of the administrator not to allow a visitor Make non-contact order for a forensic patient	The Board's main powers on review are to order that the person is to continue as, or be discharged from being an involuntary patient, that a CTO should be made for a detained patient, transfer of a detained patient from one hospital to another, transfer of the care of a CTO patient from one practitioner to another, vary or give directions concerning the terms of a CTO	Broadranging	Discharge/detain/ vary order	Broad ranging	broad ranging
Mandatory Review	Within 8 weeks and thereafter every 12 months	As soon as practicable and thereafter 3 - 6 months	ITO within 6 weeks and thereafter every 6 months FO within six months and thereafter every six months	As soon as practicable after a person becomes an involuntary patient but in any event within 8 weeks, and thereafter each 6 months if the person continues to be an involuntary patient.	Within 28 days and thereafter 3, 6, or 12 monthly	28 days and thereafter 6 – 12 months	3 days. The tribunal must authorise any involuntary detention beyond 3 days. Orders can be made for up to 6 months. Tribunal can (and usually does) review on its own motion before expiry but this is discretionary.	No later than 14 days after admission and thereafter as ordered by the Tribunal
Patient Appeals	Yes heard as soon as practicable	Yes	Yes, at any time	At any time, except within 28	Yes, against 28 day treatment order,	Yes heard within 21 days,	Yes – applications for review	Yes, at any time

	No limit on number / frequency			days after the Board has considered and determined substantially the same issue as would be raised by the proposed application.	7 day detention, 42 day detention and against interstate transfer	provided 90 days have elapsed since last review	can be made at any time and must be heard within 2 working days.	
Forensic	No	Yes	Yes	No	No	No Forensic Tribunal chaired by President Mental Health Tribunal	Yes	No
Psychosurgery and/or ECT	Not ECT Separate Psychosurgery Review Board	ECT No provision for Psychosurgery	Both ECT and psychosurgery (5 member panel)	Psychosurgery requires prior approval by the MHRB (separate panel of members – see above). ECT does not require prior MHRB approval. If 1 psychiatrist recommends it but a 2nd psychiatrist does not approve the recommendation then the matter is to be referred to the MHRB – but the MHRB cannot substitute its decision for that of the 2nd psychiatrist. If the 2nd psychiatrist continues to withhold approval of the recommendation of the 1st psychiatrist then the MHRB can recommend an alternative treatment; transfer responsibility for the patient from the 1st psychiatrist to another psychiatrist; or (if the patient is involuntary) discharge the patient from involuntary status.	ECT and Neurosurgery	neither	ECT only Psychosurgery requires Supreme Court approval	Not Psychosurgery ECT
What role does the Tribunal play in relation to treatment						The Tribunal has no role in relation to treatment treatment decisions are made by the Guardianship and Administration Board		
What are the treatment timeframes for review						N/A		
How is a child defined						Child is a person under 14		
In what circumstances can a child be admitted						With consent of parent or under order		
Does your Tribunal play any role in relation to voluntary patients						No		
Do you differentiate between treatment in the community and treatment in hospital						Yes continuing Care Order max 6 months allows treatment in hospital, Community Treatment Order max 12 mths treatment in the community		
Who decides where treatment will occur						Clinical decision Tribunal plays no role		