Submission No 52

INQUIRY INTO OPPORTUNITIES TO CONSOLIDATE TRIBUNALS IN NSW

Organisation: Mental Health Review Tribunal

Date received: 30/11/2011

Mental Health
Review Tribunal

Building 40 Gladesville Hospital, Gladesville
PO Box 2019 Boronia Park NSW 2111
Tel: (02) 9816 5955 Toll Free: 1800 815 511
Fax: (02) 9817 4543
Fax: (02) 9879 6811 (Forensic only)
Website: www.mhrt.nsw.gov.au
Email: mhrt@doh.health.nsw.gov.au

The Director
Standing Committee of Law and Justice
Parliament House
Macquarie Street
Sydney NSW 2000

30 November 2011

Dear Director

Inquiry into Opportunities to Consolidate Tribunals in NSW

I enclose the MHRT's submission to the inquiry and thank the Committee for granting an extension of time until today.

The MHRT is a clearly identifiable, highly accessible and responsive body, which has demonstrated that it can quickly and sensitively address the needs of the mental health community. This capacity should not be compromised at a time when mental health is finally being accorded the importance it deserves within the priorities of government at state and federal level.

Consolidation of the MHRT with other tribunals would run counter to the modern trend in mental health policy. The trend has been to recognise that the unique issues society faces in mental health now warrant special recognition to overcome the much publicised lack of priority previously accorded to mental health. The proposed new Mental Health Commission is a clear recognition of this. Also despite similar moves in Western Australia, Queensland, Victoria and South Australia to consolidate tribunals the equivalent mental health review body in those states remained separate.

Mental illness can make a person very vulnerable to stress and rapport between the patient and their treating team can be difficult to establish and can remain very fragile. Treating teams can also be at risk from some vulnerable patients who become violent when stressed or acutely ill. These considerations can make the legal hearing process fraught with problems and the MHRT has demonstrated it can manage these issues with sensitivity, subtlety and in a procedurally fair way.

The MHRT is a high volume cost efficient jurisdiction. In 2010/11 the MHRT conducted in excess of 13500 hearings at a cost of approximately $415.00 per hearing. In 1995 the then MHRT President, Robert Hayes, estimated the cost per hearing to be $450 to $480.

The MHRT has a staffing establishment of 25 and three full time presidential members. The MHRT is an extremely efficient and cost effective operation with little scope for administrative savings and efficiencies, whereas the logistical and administrative challenges and associated costs generated by this high volume of work could easily blow out if the MHRT became part of a larger body seeking economies of scale.

The perception of the Mental Health Review Tribunal within the mental health community, including clinicians, notwithstanding its role in making involuntary orders is essentially favourable. This is principally due to the Tribunal being a specialist body dedicated to the unique challenges posed by mental illness including those associated with involuntary orders. This perception would be lost if the Tribunal were to be merged with a body with other functions and could well compromise the effectiveness of the Tribunal and NSW mental health legislation.

Yours faithfully

The Hon Greg James QC
President

INQUIRY INTO OPPORTUNITIES TO CONSOLIDATE TRIBUNALS IN NSW

SUBMISSION BY
THE NSW MENTAL HEALTH REVIEW TRIBUNAL

TABLE OF CONTENTS

PART A

Why the MHRT should remain as a separate tribunal

The MHRT is a clearly identifiable, highly accessible and responsive body, which has demonstrated that it can quickly and sensitively respond to the needs of the mental health community. This capacity should not be compromised at a time when mental health is finally being accorded the importance it deserves within the priorities of government at state and federal level.

Consolidation of the MHRT with other tribunals would also run counter to the modern trend in mental health policy. The trend has been to recognise that the unique issues society faces in mental health now warrant special recognition to overcome the much publicised lack of priority previously accorded to mental health. The new Mental Health Commission is a clear recognition of this. Also despite similar moves in Western Australia, Queensland, Victoria and South Australia to consolidate tribunals the equivalent mental health review body in those states remained separate.

The idea of a 'Protective Jurisdiction' in a super tribunal/bureaucracy would not assist the unique cause of the mentally ill and a large tribunal bureaucracy would severely hinder the creativeness and responsiveness required in this area.

Mental illness can make a person very vulnerable to stress and rapport between the patient and their treating team can be difficult to establish and can remain very fragile. Treating teams can also be at risk from some vulnerable patients who become violent when stressed or acutely ill. These considerations can make the legal hearing process fraught with problems and the MHRT has demonstrated it can manage these issues with sensitivity, subtlety and in a procedurally fair way.

Whilst there may be merit in consolidating like tribunals the MHRT is essentially and procedurally unlike most other tribunals. The MHRT is a highly specialised tribunal requiring members and staff with specialist skills. This is evident from an examination of the role and functions of the MHRT described in Part B of this submission. The MHRT notes the following matters in particular:

1. Unlike many other tribunals the MHRT is not predominantly an administrative review body. This is evident from its broad jurisdiction that sweeps from authorising involuntary detention and considering applications for the approval of specific treatments such as surgery and Electro Convulsive Therapy, through to monitoring the safety of conditionally released forensic patients in the community.

2. The MHRT's role since its establishment as a specialist body is to ensure that mentally ill people receive appropriate care in the least restrictive environment consistent with safe and effective care. Thus the MHRT is a vital part of the clinical decision making process in NSW from hospitalisation through to rehabilitation and community care.

3. The MHRT requires members from 3 different and specialist backgrounds to sit on most cases – an experienced Australian, legal practitioner, a psychiatrist and an other suitably qualified member. The members are chosen for their particular expertise and are trained to conduct inquisitorial style mental health hearings. Whilst some members may choose to work on other tribunals the specialised nature of the MHRT work is such that that they do not require 'cross-fertilisation through training programs' with other bodies, nor do they need to broaden their experience (e.g. sitting on the odd consumer or industrial matter).

4. The MHRT's distinction from administrative review bodies becomes increasingly apparent in the MHRT's forensic jurisdiction. In this area the MHRT's role ranges from the quasi judicial when determining leave, release and fitness matters through to executive when regularly monitoring the safety of forensic patients who have been conditionally released to the community.

5. Whereas there may be scope for consolidation of registry support functions in some like tribunals this would not work with the MHRT. The MHRT requires trained dedicated registry staff who understand the legislation and clientele (the patients and the health professionals) the MHRT serves in order for the role to be performed with sensitivity. Also the registry teams play a quasi case management role, particularly in the forensic system, in coordinating the hearings to ensure that involuntary detention and treatment is lawful and in the forensic area this extends to liaising with treating teams to monitor safety and to manage breaches of orders.

6. In mental health, particularly in the forensic area, no distinct line can be drawn separating the quasi judicial and executive functions. A large amount of information must be gathered and assessed through liaison with treating teams, legal representatives, primary carers and victims. The process is dynamic and MHRT members and registry staff must operate as a cohesive, integrated entity in order to manage the complexity, sensitivity and at times urgency of the issues raised by the evidence. Whilst the MHRT has achieved this integration most tribunals do not operate in this way and generally the larger the tribunal the greater the separation between registry staff and membership. If this happened in the mental health area it could prove very costly to both vulnerable patients and the broader community.

7. The vital ongoing connection/liaison that the MHRT has with mental health facilities across the state, Ministry of Health and Justice Health, the prison system, as well as NGO's and service providers in the community, is a particularly significant distinction to tribunals that simply determine legal disputes.

8. The Tribunal is a high volume jurisdiction. In 2010/11 the MHRT conducted in excess of 13500 hearings at a cost of approximately $415.00 per hearing. (In 1995 the estimate was $450 to $480 per hearing).

9. The MHRT has a staffing establishment of 25 and 3 full time presidential members. The MHRT is an extremely efficient and cost effective operation with little scope for administrative savings and efficiencies, whereas the logistical and administrative

challenges and associated costs generated by this volume of work could easily blow out if the MHRT became part of a larger body seeking economies of scale.

10. The MHRT is unusual in that it is not adversarial and is required by the *Mental Health Act 2007* to conduct its hearings with as little formality and technicality, and with as much expedition as possible.

11. The Forensic Jurisdiction

The forensic jurisdiction involves a range of activities which these would not be readily absorbed within the culture and operating protocols of a generalist administrative review tribunal. These activities include: quasi-judicial determinations under the *Mental Health (Forensic Provisions) Act 1990* concerning fitness and the care, treatment and detention of forensic patients and correctional patients; monitoring and investigation of conditionally released patients; interagency liaison and educational activity.

The MHRT is involved in regular liaison with the courts and agencies operating in the criminal justice system including NSW Attorney General's, Corrective Services NSW, Justice Health and Aging Disability and Home Care. A high level of coordination and cooperation is also required with bodies such as the Community Offender Services and the Serious Offenders Review Council.

The MHRT plays a vital role in monitoring the safety of forensic patients in the community and in relation to the apprehension of interstate forensic patients who have come into NSW. In performing these functions the MHRT is in close liaison with Ministry of Health and the Minister for Mental Health.

The MHRT currently performs these important roles independently and efficiently.

PART B

The Role and Functions of the Mental Health Review Tribunal

Overview

The Mental Health Review Tribunal is an independent quasi-judicial body, which operates under the provisions of the *Mental Health Act 2007* and the *Mental Health (Forensic Provisions) Act 1990*. Each Tribunal panel consists of three members: a lawyer member who chairs the hearing, a psychiatrist and another suitably qualified member. Tribunal members have extensive experience in mental health, with a number of members having personal experience of mental illness as either consumers or carers.

The Tribunal has a wide range of powers to make decisions regarding the care and treatment of mentally ill persons in NSW in both civil (*Mental Health Act 2007*) and forensic (*Mental Health (Forensic Provisions) Act 1990*) matters. In the last financial year it conducted 12,413 civil reviews and 870 forensic reviews.

Under the *Mental Health Act 2007* the Tribunal reviews the cases of involuntary patients, and long-term voluntary psychiatric patients; hears appeals against an authorised medical officer's refusal to discharge a patient; makes, varies and revokes community treatment orders; determines applications for certain treatments (such as ECT) and surgery; as well as making orders for financial management where people are unable to manage their own financial affairs.

Under the *Mental Health (Forensic Provisions) Act 1990* the Tribunal reviews the care, treatment and detention of forensic and correctional patients, makes orders in relation to the detention, transfer, leave and release of persons acquitted of crimes by reason of mental illness or those subject to a limiting term; hears appeals against the Director-General's refusal or failure to grant special circumstances leave; makes orders for apprehension if it appears that a forensic patient has breached a condition of leave or release; as well as determining matters concerning persons found unfit to be tried.

The Tribunal is required to conduct its hearings with as little formality and technicality as a proper consideration of the matters before it allow. Participants at hearings usually include the patient and their lawyer, primary carers and members of the treating team and or case managers. In forensic review hearings it is also not uncommon for victims to attend.

In performing its role the Tribunal actively seeks to pursue the principles for care and treatment as described in section 68 of the *Mental Health Act 2007*, and in particular to provide for the delivery of the best possible care and treatment of each patient in the least restrictive environment that is consistent with safe and effective care. Section 3 provides for the objects of the Act. They include the provision of appropriate care, while protecting civil rights including the patient's right to participate in health care decisions.

Civil Jurisdiction

The *Mental Health Act 2007* [MHA07] came into effect on 16 November 2007.[1] The revised legislation introduced a number of reforms, two of which particularly affected the work of the Tribunal:

- the review and management of those receiving involuntary treatment in a mental health facility; and
- the making and operation of Community Treatment Orders.

Detention in a mental health facility

Mental health legislation in NSW provides a strict external review regime to ensure that a person is not inappropriately subjected to involuntary detention or treatment. Central to this in the civil regime has been an early review hearing, 'a mental health inquiry' followed up by further reviews and appeals to the Tribunal should the mental health facility seek to continue the person's involuntary status. There have been a number of significant changes in recent times to the regime and the Tribunal's role.

Prior to the MHA07, the legal status and classification of a person detained in a mental health facility would change on at least two occasions during the first three months of

[1] Gazette No 169 of 16.11.2007, p1.

detention. The MHA07 simplified this process by abolishing the temporary patient and continued treatment patient categories and instead classifying all persons ordered to be detained after a mental health inquiry as involuntary patients. This simplification allowed for a clearer articulation of patient rights at all stages of their involuntary treatment in a mental health facility. In particular it provided that a person detained for involuntary treatment in a mental health facility may apply at any time for discharge,[2] and appeal to the Tribunal if that application is refused, or not considered within 3 working days.[3]

The MHA07 also provided for greater oversight and review of the care and treatment of involuntary patients. Now, during the first twelve months of involuntary treatment, the Tribunal reviews the cases of involuntary patients every 3 months. It is only when an involuntary patient is detained for more than twelve months that the review period falls back to the pre-2007 frequency of once every 6 months.

In 2009 Parliament passed legislation, which provides for the mental health inquiry function to move to the Tribunal. The new provision commenced in 2010 and ensured that there is a single oversight mechanism for the involuntary patient regime which provides continuity of oversight and an opportunity to achieve consistent standards from the outset of the involuntary patient assessment and review process.

Community Treatment Orders

The Act's objectives and its principles of care and treatment[4] make it clear, that a person should receive care and treatment in the least restrictive environment enabling that care and treatment to be safely and effectively given and that treatment in the community should be provided wherever possible. The use of Community Treatment Orders in appropriate cases plays a significant role in achieving this by allowing individuals to receive care and treatment in the community instead of being detained in a mental health facility. Applications for Community Treatment Orders represent a major area of activity for the Tribunal. It considered 4380 applications in 2010/2011.

---

[2] *Mental Health Act 2007*, s42
[3] *Mental Health Act 2007*, s44
[4] *Mental Health Act 2007, s3 and s68*

The MHA07 introduced a number of significant reforms in the area of community based treatment. The Act abolished Community Counselling Orders, and instead provided that an application to the Tribunal can be made for a Community Treatment Orders [CTOs] for a person experiencing mental illness in the community without the person first having to deteriorate to extent that they require actual admission to hospital. This has been a very important reform for a number of reasons. First, it supports treating teams and the Tribunal to achieve the goal of treatment in the community wherever possible. Secondly, it is consistent with the clinical goal of reducing long term harm to the individual through relapse prevention strategies. Thirdly it reduces the load on mental health facilities by reducing the number of admissions.

Any person who is subject to an application for a CTO must be given notice of the application and a copy of the proposed treatment plan. However, where the application is made concerning a person in the community, not currently on a CTO, a minimum 14 day notice period was introduced to ensure that the person is aware of the application and have an opportunity to review the proposed treatment plan prior to the application being considered by the Tribunal.

A further major change in relation to CTOs was that the MHA07 provided that the Tribunal can now make CTOs for a period up to 12 months, rather than the previous limit of 6 months. This extended period of time for the operation of a CTO is beneficial in those cases where long-term case management is required, and/or when more frequent reviews cause distress to the person subject to the CTO. Currently, approximately 11% of the CTOs made by the Tribunal each year are made for a period greater than six months.

Forensic Jurisdiction

The forensic mental health system is concerned with managing and reducing any risk posed by forensic patients to the community and to themselves. It provides for mental health treatment both in mental health facilities and correctional centres as well as in the community. The system offers highly specialised treatment and rehabilitation services which aim to reduce the risk to the point where the person can be safely treated or managed in the community.

The Tribunal is responsible for the care, treatment, detention and possible leave or release of patients within the forensic system in NSW. The legislative framework for the system and the Tribunal's role within it has undergone momentous change in recent years.

Overview of Legislative Changes

The *Mental Health Legislation Amendment (Forensic Provisions) Act* 2008 (the Amendment Act) came into effect on 1 March 2009.[5] The Amendment Act retitled the *Mental Health (Criminal Procedure) Act* 1990 as the *Mental Health (Forensic Provisions) Act 1990* (the Act). The Amendment Act abolished the previous system of determinations which were made by the Minister for Health or Governor for the treatment, care, detention and release of persons found not guilty by reason of mental illness or unfit for trial under the *Mental Health (Criminal Procedure) Act*. It makes the Mental Health Review Tribunal, constituted by a special Forensic Panel, the determining authority in such matters. The Panel must be presided over by a current or former judge when considering release matters. The Amendment Act also introduces a new category of patient — "correctional patient" — for persons who develop mental illness whilst in custody whether on remand (including persons refused bail) or whilst serving a sentence. The category "forensic patients" only includes persons found not guilty by reason of mental illness and either detained or released subject to conditions or persons found unfit to stand trial who are detained.

The Act does not change the legal concepts of unfitness for trial or the verdict of not guilty due to mental illness. The NSW Law Reform Commission is currently considering those concepts and the relevant court procedure as part of its reference on sentencing of persons suffering from mental illness or cognitive deficit.

Role of the Tribunal

In the forensic area, following the amendments, the Tribunal is required to review the cases of correctional patients and forensic patients as soon as practicable after their referral, and

[5] Gazette No 44 of 27.2.2009, p1.

then at least once every six months thereafter. In some circumstances the Tribunal can now extend the review period up to 12 months

In the case of persons found unfit to be tried the Tribunal is to determine whether they are likely to remain unfit for 12 months following the finding of unfitness.[6] At the same time the Tribunal may now make a recommendation to the Court about the person's care and treatment needs. When the Tribunal conducts further reviews of persons found unfit to be tried, it must consider the fitness issue at each review.

The Tribunal may make orders to permit leave and release for forensic patients from mental health facilities, correctional centres or other places and may make orders which would have the effect of terminating the status of a person as a forensic patient.[7] This is considered further below .

Specific requirements for orders

The Act is now far more prescriptive about the matters the Tribunal should consider when determining what order to make in relation to forensic patients and correctional patients.[8] When the Tribunal considers the release of a forensic patient, section 74 specifically provides that:

> a report by a forensic psychiatrist or other person of a class prescribed by the regulation (such as a forensic psychologist) not currently involved in treating the person, as to the condition of the patient and whether the safety of that person or any member of the public will be seriously endangered by that person's release.

The requirement for an independent report in release matters reflects section 43 which provides that where the Tribunal considers ordering the release of a forensic patient, it must not make the order unless it is satisfied that the safety of the patient or any member of the

[6] Mental Health (Forensic Provisions) Act 1990, s 16(1).
[7] Mental Health (Forensic Provisions) Act 1990, ss 51–53.
[8] Mental Health (Forensic Provisions) Act 1990, s 74

public will not be seriously endangered by the patient's release and that no other care of a less restrictive kind consistent with safe and effective care is appropriate.[9]

The Act provides that the Tribunal may release a person with or without conditions. If the Tribunal releases a person conditionally it may impose conditions specified in s75 including conditions as to medication, living arrangements and use or non-use of alcohol and other substances. In addition, victims may apply for further conditions to be imposed under s76 for non contact with the victim or their family members and prohibitions or restrictions on visiting places. Such restrictions may also be imposed in relation to any leave granted by the Tribunal.

Whilst none of these requirements are surprising they do add a degree of transparency and accountability to the Tribunal's decision making process and they make it clear that forensic patients and correctional patients are entitled to receive appropriate care and treatment which is no more restrictive than is necessary for safety reasons.

Correctional Patients

As noted at the outset, the Amendment Act introduces a new category of patient — correctional patient — which covers persons who develop mental illness whilst in custody on remand (including persons refused bail) or whilst serving a sentence. The Director-General (or delegate) may order such persons to be transferred to a mental health facility for care and treatment under s55 if it appears that the person is a mentally ill person, or with the consent of the person if they are suffering from a mental condition for which treatment is available in a mental health facility.

When the Director-General (or delegate) makes an order under s55, the actual transfer does not always take place immediately because a place may not be immediately available in a mental health facility. Section 58 makes provision for the Tribunal to conduct limited reviews at least once each month of such cases until the person is transferred (or until the order is revoked).

[9] Mental Health (Forensic Provisions) Act 1990, s 43.

Under s59 the Tribunal must review the case of a person transferred to a mental health facility as soon as practicable after the transfer and may order the persons continued detention, care or treatment in a mental health facility or correctional centre. The Tribunal must continue to review the case of a correctional patient every six months and may review them at any time (s61(1)).

The significant point in relation to correctional patients is that the Tribunal cannot grant them leave or release but can under s62(2) recommend leave for correctional patients to the Commissioner of Corrective Services who can grant the leave.

Community Treatment Orders and reclassifying patients

A real innovation under the new provisions is that the Act now provides in section 67 for forensic Community Treatment Orders (CTOs) for compulsory treatment in correctional centres. The Tribunal can make these orders for forensic patients, correctional patients and inmates.[10] The Tribunal is currently working with Justice Health to implement this aspect of the legislation. Generally speaking the CTO provisions of the Mental Health Act 2007 apply to forensic CTOs with some variations as specified in the Regulations. The Act envisages that the forensic CTO may be amended in order to continue when the person is released thereby providing a vital continuity of care link between the corrections environment and the community.

The Act also continues the power for the Tribunal to reclassify a forensic patient, on a limiting term, as an involuntary patient when they are in the last six months of the term[11] or to similarly reclassify a correctional patient who is in the last six months of their term of imprisonment.[12] These provisions are commonly used in conjunction with the community treatment order provisions under the Mental Health Act 2007 to reclassify the person and then release them immediately to the community on a CTO. A patient may be subject to a CTO whilst also subject to parole conditions. Both systems can apply in a complementary fashion.

[10] Mental Health (Forensic Provisions) Act 1990, s 67.
[11] Mental Health (Forensic Provisions) Act 1990, s 53
[12] Mental Health (Forensic Provisions) Act 1990, s 65

Right of appearance or submissions

Section 154 of the *Mental Health Act 2007* provides that forensic patients having any matter before the Tribunal must be represented; unless the forensic patient decides he or she does not want to be represented. The forensic patient is to be represented by an Australian legal practitioner or, with the approval of the Tribunal, by another person of the patient's choice.

Although the Tribunal is now the determining authority for leave and release matters, the Act provides that the Minister for Health and the Attorney General may appear before the Tribunal, or make submissions to the Tribunal in relation to the possible release or grant of leave to a forensic patient.[13] Because of this provision, and the victim's right to seek place restriction and non association orders on leave and release matters, the Tribunal has introduced a requirement for treating teams and forensic patients to give notice of any intended application for leave and release. This allows the Tribunal to give the Minister for Health, the Attorney General and victims appropriate notice of such applications.

Appeals from the Forensic Division of Tribunal

The Act now provides in Section 77A for appeals from Tribunal decisions to the Supreme Court and to the Court of Appeal.

A forensic or correctional patient who is party to proceedings before the Tribunal under the amended Act may, with leave, appeal a Tribunal determination to the Court on a question of law or on "any other question": The appeal to the Supreme Court can be from any Tribunal determination other than a release determination.[14] Appeals in relation to release determinations are by leave to the Court of Appeal.[15]

The Minister for Health may appeal to the Supreme Court from any determination of the Tribunal in a proceeding before it under the amended Act, as of right, on a question of law or

[13] Mental Health (Forensic Provisions) Act 1990, s 76A(2)
[14] Mental Health (Forensic Provisions) Act 1990, s 77A(1)
[15] Mental Health (Forensic Provisions) Act 1990, s 77A(4)

"any other question" other than a release determination.[16] Appeals in relation to release determinations are as of right to the Court of Appeal.[17]

The Attorney General may, as of right, appeal to the Court of Appeal from a Tribunal determination concerning the release of a person, made under the Act, on a question of law[18].

A victim of a forensic patient who has applied to the Tribunal seeking non association or place restriction orders in relation to leave or release under s76 may, by leave, appeal to the Supreme Court from any Tribunal determination under that section in those proceedings on a question of law or "any other question".[19]

After deciding an appeal made under s 77A, the court may (unless it affirms the Tribunal determination):

- make such order as, in its opinion, should have been made by the Tribunal (s 77A(9)(a), or
- remit its decision on the question to the Tribunal and order a rehearing of the proceedings by the Tribunal (s 77A(9)(b)), which on rehearing must not proceed in a manner or make an order or decision that is inconsistent with the decision of the court (s 77A(10)).

The Act also provides for the Tribunal or the court to suspend the Tribunal's order pending the outcome of an appeal: s 77A(11). The suspension can be terminated under s 77A(12).

If a rehearing is held, fresh evidence — or evidence in addition to or in substitution for the evidence on which the original determination was made — may be given on the rehearing: s 77A(13).

[16] Mental Health (Forensic Provisions) Act 1990, s 77A(2)
[17] Mental Health (Forensic Provisions) Act 1990, s 77A(5)
[18] Mental Health (Forensic Provisions) Act 1990, s 77A(6)
[19] Mental Health (Forensic Provisions) Act 1990, s 77A(3)

Collaborative Work

In addition to the statutory roles in both the civil and forensic jurisdictions described above, the Tribunal also works closely with a number of government departments and non government organisations including the Ministry of Health, Area Health Services, Justice Health, the Department of the Attorney-General and Justice and Corrective Services NSW. As well as providing education as to the legislation and the work of the Tribunal, the MHRT also works with these agencies to promote and assist in the development of standards.

Conclusion

The developments and changes provided for by the amendments to mental health legislation in New South Wales are very positive. In the civil area, the revised legislation allows for greater support for persons suffering from a mental illness in the community and improved continuity of care. In the forensic area, there is now a level of transparency and accountability in relation to the decisions concerning forensic patients that should, in time, build confidence in the system.

The Tribunal is concerned that these positive developments in the NSW mental health system could be undermined if the Mental Health Review Tribunal does not maintain its separate status as an independent tribunal.