2018/19

Annual Report

The Hon Bronnie Taylor MLC
Minister for Mental Health
Parliament House
Macquarie Street
SYDNEY NSW 2000

30 September 2019

Dear Minister

I enclose the Annual Report of the Mental Health Review Tribunal for the period from 1 July 2018 to 30 June 2019, as required by section 147 of the *Mental Health Act 2007*.

Yours sincerely

Judge Paul Lakatos SC
President

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THE VALUES WE BRING TO OUR WORK

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

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

The work that we do

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

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

PRESIDENT'S REPORT

I have come to this role after more than a decade in the District Court of New South Wales and have been here only a matter of months. Coincidentally, the former Minister for Mental Health, Ms Tanya Davies has changed roles and the incoming Minister, Ms Bronnie Taylor commenced her responsibilities, a short time after I took up my commission.

In that time, I have come to know the staff and many of the part-time members of the Tribunal. As the statistics show, the work of the Tribunal is increasing and relentless. In order for this organisation to function efficiently (as I believe it does), it requires the consistent and diligent application of the permanent staff in undertaking the not insignificant task of organising hearings and reviews, ensuring the attendance in person and by audio/visual link of consumers, carers and members of the treating team at those hearings and providing the part-time members with the necessary information to undertake important role of the Tribunal in reviewing the care and treatment of consumers.

My experience over the past months has been that all staff with whom I have had contact, approach their tasks in an enthusiastic, professional and efficient manner. From the feedback that I have received, their interactions with the stakeholders have been positive and constructive.

I note from reading past Annual Reports of the Tribunal, my predecessors has spoken in similar fashion about the work of staff during their respective tenures.

I have had the pleasure of working with a fraction of the part-time members and have met a number of others. That contact has confirmed that the Tribunal gains invaluable expertise and judgment from the very well qualified part-time members. All members are dedicated to the statutory tasks of the Tribunal and are motivated in discharging those tasks, by the primary consideration of the welfare of the patient.

The function of this Annual Report is to report the exercise by the Tribunal of its functions. These are accurately summarised in the preceding section relating to our values and the work we do. Against this background I think it appropriate to note our activities and any issues which have impacted on the achievement of our aims and goals. The intent is to assist in identifying and remedying any deficiencies where possible.

Mental Health Review Tribunal: A Review in respect of Forensic Patients and Victims

In December 2017, the Honourable Anthony Whealy QC provided the Review report to the Minister for Mental Health and the Attorney General. The Review report made 30 recommendations under three headings. As further detailed in the Forensic Division Report, many of those recommendations have been implemented or are in the course of being implemented.

Following that review, the Specialist Victims Support Service (SVSS) commenced its operations. The relationship between the Tribunal and that service has been constructive and cooperative. In the last Annual Report, Judge Richard Cogswell SC outlined a number of the difficulties which have attended the participation of victims.

In the Whealy review, the author recommended that Tribunal proceedings should continue to be conducted in a non-adversarial manner and that victims should be provided with a voice in the proceedings but not be given the status of contradictors or parties in the proceedings. The Mental Health (Forensic Provisions) Regulation 2017, clause 7A provides for the opportunity for a victim to make submissions about the impact of the index event on him or her and other persons and any risks associated with the prospective leave or release of the patient. The regulation provides the opportunity for a victim to raise questions in the hearing which the Tribunal considers appropriate for discussion.

The Whealy review recognised the “clash of two ideologies” involving the criminal justice system, a purpose of which is the removal of convicted criminals from society and their punishment on the one hand, and the forensic mental health system involving the safe care, treatment and possible rehabilitation of the patient.

It is this clash of ideologies which, from my limited perspective, gives rise to a difficulty where the expectations of victims in relation to limitations to be placed upon the forensic patient, do not align with the considerations the Tribunal is required to have regard to, when dealing with issues relevant to leave and release. Those are the circumstances where the most anxiety is caused to victims as they sometimes may entertain the belief that their concerns have not been heard and acknowledged. The reality is that the Tribunal does listen and is most often sympathetic to those concerns; however, because the issues of concern to victims are not the only matters to be considered, the Tribunal’s decision can be interpreted as a rebuff or rejection of the victim’s position.

These problems are capable of being lessened if there is an opportunity for the victims to be advised before the hearing of what the Tribunal can realistically do, consistent with the evidence presented and the requirements of the legislation. The SVSS, which started in February 2019, will be able to fulfil this role, for those registered victims who would like their support.

It is the function of the Tribunal to periodically review the care and treatment of forensic patients. When a forensic patient has achieved a sufficient recovery for the questions of leave and release to be considered, the Tribunal must determine whether leave or release is mandated by the provisions of the *Mental Health (Forensic Provisions) Act 1990*. This periodic review should be contrasted with the manner in which the criminal justice system deals with criminal offenders. In that case, there are usually two occasions in which the concerns of the victims are taken into account: at the time of the sentencing of the offender and at the time the offender seeks release on parole.

When Tribunal hearings occur, a further issue is the effect upon the victims in being involved in the hearings. Some victims continue to hold the view that the forensic patient committed the index event intentionally and that he or she will continue to commit violent acts, upon leave or release. Accordingly, claims of improvement in mental state and assessments of reduction of the risk of serious danger to him or herself or others, are met with a degree of scepticism. The Whealy review noted that some victims “may have unresolved psychological trauma arising from the impact of the offence committed, and may not have adequate therapeutic support.”

Against this background, the effect upon the well-being of victims when the matter is agitated routinely in the prescribed statutory cycle, is a matter which deserves consideration. Whether the routine nature of the Tribunal reviews, assists or impedes the recovery of victims or their coming to terms with the tragedy (as best that can be done), is worthy of some thought. These views do not seek to impede those victims who choose to be involved, as they have an undoubted right to do so; they merely seek to raise whether with appropriate support and assistance, any prejudicial effect on the victims can be ameliorated.

Time-limited orders

Under the provisions of the *Mental Health (Forensic Provisions) Act 1990*, in exercising its functions of review of forensic patients, the Tribunal is empowered to order the transfer of such a person to a mental health facility. When a forensic patient has recovered sufficiently to justify his or her transfer to a less secure mental health facility, the Tribunal orders such a transfer. However, the reality of the present circumstances is that often, there are no or limited beds in a less secure mental health facility at the time the review is undertaken. The Tribunal has attempted to meet this real-world problem by making time-limited orders i.e. that the transfer is to take place either when a bed becomes available or on or before a specified time.

For many years, my predecessors have remarked about the lack of medium and low secure facilities available to consumers in the forensic system, particularly those who have been assessed as representing an acceptable risk to move to facilities of that kind. This problem continues. The professionals within the forensic system have acknowledged these problems and have attempted to work within the limitations, but nevertheless to expedite where possible, the movement of consumers to more appropriate therapeutic facilities.

The statutory role of the Tribunal involves making judgments about the safe and effective care of consumers, in the least restrictive setting, consistent with that level of care. If that judgment in a particular case is that the consumer is best cared for in a less restrictive environment, but no places are available, a question can arise as to whether a time-limited order, meets the statutory test.

Ultimately, the question of the availability of resources, is not a matter for the Tribunal and neither is the availability of the necessary funds from the public purse. It is however worthwhile noting that apart from human rights considerations (which are of themselves of great importance), a recent study has shown that the rate of recidivism of persons passing through the forensic system is significantly less than those who pass through the prison system (6.3% as against more than 40%).

These figures suggest that even though the initial expenditure may appear prohibitive, in the long term, the savings resulting from the lack of recidivism, may also be substantial and therefore warrant the outlay of funds.

These considerations have prompted a review within the Tribunal in relation to the making of time-limited orders i.e. orders that delay the transfer of a consumer from a correctional centre to a mental health facility; or from a high security facility to a less secure facility, usually in circumstances where no accommodation is available.

Having had the opportunity to meet and speak with many of the stakeholders, I recognise that each of them is aware of these constraints and have expressed the common desire for improvements to the system. These are matters at the forefront of the thinking of the members of the Tribunal given the statutory test which must be applied i.e. safe and effective treatment of the least restrictive kind.

A Further Resource matter

A number of serious incidents which have gained much publicity have occurred recently involving mentally ill people. This has caused some public debate about the adequacy and resourcing of mental health services across the board, not only in the forensic and custodial settings. The Tribunal is aware that there are many serving prisoners who have mental illnesses and the capacity to effectively treat those illnesses in the custodial setting is limited.

The position is that such persons do not have access to appropriate treatment in that period of time and indeed, their illness may regress rather than remain at the status quo. I endorse the comments in the Forensic Division Report that there are “insufficient mental health beds at an appropriate level of security for forensic patients” and that a strategic approach is required to address this problem.

A different facet of the same issue has been adverted to in the Civil Division Report which is the lack of appropriate accommodation and support for long-term patients with complex needs. The Tribunal encourages the ventilation of these issues, in the hope that progress can be made to remedy some or all of them.

NDIS

The National Disability Insurance Scheme has brought significant potential improvement into the lives of those with disabilities, including the clientele of the Tribunal. However, there have been teething

problems in the effective and efficient implementation of the scheme, as has been noted in the reports of the Forensic Division and the Civil Division. The teething problems have included underfunded plans and long delays whilst an NDIS plan is authorised. The adverse effects on forensic and civil patients/consumers cannot be disputed and it is necessary that efforts be made to improve the efficient delivery of the NDIS. The Tribunal understands that the National Disability Insurance Agency and the Commonwealth Department of Social Services have proposed a range of reforms to improve the NDIS for people with psychosocial disability.

Public concern about Leave and Release

Many of the persons who come under the control of the Tribunal have been the cause of acts of violence towards others. There is an understandable apprehension in the community that when such persons are granted leave or release, there is an unacceptable risk of further acts of violence. From time to time, there has been significant publicity directed to such public concerns. In many cases, that publicity has failed to make reference to the system surrounding leave and release, and the checks and balances contained within the legislation to ensure minimising the risk to the public.

The mental health legislation is predicated on a number of principles applicable to the care and treatment of persons with mental illnesses or mental disorders. Those principles emphasise that a primary focus is the optimum care and treatment of persons with mental illness in the least restrictive environment to assist in their recovery. The Tribunal is bound to apply those principles. In regard to the release of a mentally ill person, the Tribunal must also be satisfied that the safety of the patient or any member of the public will not be seriously endangered.

The Tribunal must have regard to a report from a psychiatrist or other appropriate expert who is not involved with the patient, which report must address the condition of the person and the risk the person poses to himself or any member of the public. The Minister for Mental Health and the Attorney General are provided the opportunity to participate in the hearings. Registered victims are also provided with the opportunity to make submissions in relation to leave and release.

If the patient is granted leave or conditional release and the conditions are not complied with, the Tribunal can issue an order for the person's apprehension and detention. In that way oversight of the patient is maintained and consequent risks minimised.

The Tribunal is made up of approximately 140 part-time members who come from the judiciary, the law, law enforcement, psychiatry and other allied health services. They bring to the Tribunal an extensive range of experiences which result in the routine proper testing of evidence, especially in relation to leave and release. This is not only my view but it is a view confirmed in the Whealy review where the distinguished author considered that "the legislative test for leave and release is appropriate" and concluded that "the Tribunal applies a rigorous approach to assessing risk and safety, making decisions on leave and release conservatively and responsibly."

The Tribunal welcomes discussion and scrutiny of its activities and it is for this reason that Tribunal hearings are open to the public and the media. Such open access is limited in regard to the disclosure and publication of matters personal to the patient but otherwise, the process is open to scrutiny. The Tribunal encourages informed debate about these matters.

Civil Division issues

As has been pointed out, the Tribunal aspires to ensure the safety and effectiveness of the treatment of persons under its purview. That task is a collaborative one requiring the input and cooperation of the treating teams at the mental health facilities. It is facilitated by the inclusion in the reports forwarded to the Tribunal, of all relevant material and also the attendance at hearings, of members of the treating

team who can speak authoritatively to the reports and the patient’s trajectory. The attendance at such hearings of registrars who have had minimal contact with the patient/consumer has presented problems.

It is of course outside the Tribunal’s role to be concerned with the make-up of the treating teams and their functions. However, it would greatly assist in the efficient conduct of hearings if those who attend have sufficient knowledge and background to assist in the assessment of the treatment accorded to the patient/consumer.

From the perspective of the Tribunal and its members, efforts have been made to further the professional development of the members and their continued collaboration via the peer lawyers group. In addition, members of the Tribunal continue to liaise with and attend mental health facilities with a view to training treating teams about the requirements of the Mental Health Act and improving the interaction between the treating teams and the Tribunal.

The Tribunal welcomes the amendments to the Act which relate to the capacity for hearings to take place in the consumer’s absence provided relevant criteria are met and also the increased involvement of carers by the requirement that they be notified of all matters heard at mental health facilities.

I wish to acknowledge the consistent and diligent work of all of the staff of the Tribunal and in particular, to thank members of the executive team: the Deputy Presidents, Ms Maria Bisogni and Ms Anina Johnson, and the Registrar, Mr Rodney Brabin. Each of them has substantial corporate knowledge of the workings of the Tribunal and has made my transition into this role, much easier than it otherwise might have been.

Judge Paul Lakatos SC
President

FORENSIC DIVISION REPORT

Implementing the recommendations of the Whealy review

In July 2018, *Mental Health Review Tribunal: A Review in respect of Forensic Patients* (the Review), undertaken by Hon Anthony Whealy QC, was released.

The Review found that the "legislative test for leave and release is appropriate and that the Tribunal applies a rigorous approach to assessing risk and safety, making decisions on leave and release conservatively and responsibly." The Review also found, however, that the "system is weighted too heavily towards the interests of patients, without adequate consideration for the safety and interests of victims."

In all, thirty recommendations were made by the Hon Anthony Whealy QC. The steps taken by the Tribunal and others to comply with these recommendations are set out in this Report.

Specialist Victims Support Service and new legal rights for victims

One of the key recommendations of the Review was that there should be enhanced rights for registered victims and the establishment of a Specialist Victims Support Service (SVSS) (Recommendations 11 to 13 and 22 to 29).

The SVSS started operations in February 2019. The SVSS provides holistic advice and support to victims, including facilitating victim involvement in Tribunal hearings. This has been a gap in the forensic system and the Tribunal was delighted with the establishment of the SVSS.

The *Mental Health (Forensic Provisions) Amendment (Victims) Act 2018* also commenced in February 2019. It increased the statutory recognition of victims, by providing that an object of the *Mental Health (Forensic Provisions) Act 1990* (*MHFPA*) was to protect the safety of victims of forensic patients and to acknowledge the harm done to victims. There is now also specific recognition of the victims of forensic patients in the Charter of Victims' Rights.

At the same time, registered victims' rights to make submissions were extended to any leave or release matter. For the first time, the Mental Health (Forensic Provisions) Regulations 2017 (MHFP Regs) described what could be included in a victim's submissions and set out the arrangements for providing a copy of the submission to a forensic patient and their lawyer.

The Tribunal now also provides written reasons to registered victims whenever a hearing considers whether to grant leave or release, and has been told by the SVSS that victims find these reasons to be very helpful.

The arrangements set out in the MHFP Regs were complemented by the Tribunal's new Forensic Practice Direction. This Practice Direction also increased the notice period for the relevant Ministers and victims (Recommendation 18) to five weeks.

The Tribunal registry and SVSS have worked closely to hand over the physical files of over 270 registered victims. Procedures were developed to ensure that the SVSS was advised of hearings and is able to support victims to participate in whatever way they feel most comfortable. These arrangements have been continually revised as we learn from the experience of working together.

The Tribunal's staff has continued to meet regularly with SVSS and the representatives of victim support groups, to smooth the path of these reforms.

Other recommendations from the Hon Anthony Whealy QC

By the end of the financial year 2018/19, the Tribunal had rewritten its Forensic Guidelines to clarify the process for issuing orders under s 68 of the *MHFPA* and closing its hearings (Recommendation 19). These Guidelines were reviewed again in February 2019 to incorporate the changes to the way in which victims are involved in Tribunal hearings. Last financial year, a new webpage was created for the Tribunal's website called Access to Tribunal Hearings, as well contact points for the media (Recommendations 14 and 30).

This financial year, the Tribunal conducted a review of barriers to victims and broader public participation in Tribunal hearings (Recommendations 14 to 17). An assessment was made of all the video link equipment at the venues at which the Tribunal sits. Any technological barriers were raised first with Local Health Districts and then with the Ministry of Health. All Local Health Districts now have equipment that allows for victims and the public to be able to hear and watch Tribunal hearings.

There is ongoing consultation being conducted by the Ministry of Health about the use of an alternative phrase to "index event" (Recommendation 9).

The legislative changes which provide for Victim Impact Statements to be made in Court commenced on 27 May 2019. The Practice Direction and Guidelines will be amended to set out the new processes for managing Victim Impact Statements in the Tribunal. This process will be undertaken in consultation with SVSS and the Mental Health Advocacy Service.

National Statement of Principles Relating to Persons Unfit to Plead or Not Guilty by Reason of Cognitive or Mental Health Impairment

This financial year saw the release of the *National Statement of Principles Relating to Persons Unfit to Plead or Found Not Guilty by Reason of Cognitive or Mental Health Impairment* developed by the Council of Attorneys General. It has been endorsed by New South Wales, as well as most other States and Territories.

This important statement sets out some key principles for forensic mental health care such as:

- Where time limits on orders apply, jurisdictions should avoid time limits that exceed the maximum term of imprisonment that could have been imposed if the person had been convicted of the offence charged.
- Criteria for leave and release from detention should have regard to a person's recovery, program participation, treatment progression and any risk of harm to themselves or the community. It should not have regard to punitive principles such as whether the person has spent sufficient time in detention.
- Forensic patients should have a personalised, recovery oriented care plan which focuses on the least restrictive options. This plan should be developed soon after the original forensic order is made.
- Plans and programs should take into account the individual needs of forensic patients, including their cultural and linguistic needs and their age.
- Detention should occur in facilities appropriate to the person's needs and in the least restrictive environment that is possible to protect against serious risk of significant harm.
- Step down accommodation should be available to ensure that people can recover and transition to life in the community.

These are important principles and the Tribunal welcomes this National Statement.

Some of the principles are inconsistent with the existing provisions of the *MHFPA*, such as the requirement that a patient subject to a limiting term spend sufficient time in custody before being eligible

for conditional release. It is hoped that the review and revision of the *MHFPA* will align with these principles.

There are also practical ways in which the NSW forensic system could improve in meeting these principles. For forensic patients with cognitive impairment, there is a noticeable lack of appropriate detention facilities and step down accommodation, which results in people spending their limiting terms in custody. As has been mentioned in previous annual reports, the NDIS is not the solution to this impasse and investment by the NSW Government will be needed to meet the standards set out in the National Statement.

The Tribunal is a member of the Cognitive Impairment Subcommittee, led by NSW Health and formed to assist with the implementation of forensic mental health reforms, which is looking at addressing the issue of adequate care for patients with cognitive impairment through the establishment of a cross-agency framework. The framework aims to strengthen the support, management and supervision of individuals with cognitive impairment in contact with the criminal justice system.

Long waits and no strategic plan

For some years, there have been lengthy delays before the court process is finalised. A mentally ill person who is bail refused is likely to spend this time in custody, rather than in a mental health facility. Even after the court proceedings have concluded, forensic patients often wait another two years to be admitted to a mental health facility.

As at 30 June 2019, there were 30 male forensic patients waiting in custody for a bed in the Forensic Hospital. This is an increase from 27 patients last year, and 25 the year before. The number has been increasing steadily each year. Waiting times for admissions to the medium or low secure beds have improved since the last financial year. As at 30 June, 13 patients were waiting for a bed, a modest increase from 10 patients in the previous year.

Justice Health and Forensic Mental Health Network says that on average, 15 male forensic patients and 6 female patients are admitted to the Forensic Hospital every year.

These figures explain why many patients wait between 18 months to 2 years for admission to the Forensic Hospital *after* their court proceedings have finished. One patient had been admitted to custody in December 2014. It was clear at that point that he had a mental illness and was likely to be found not guilty by reason of that illness of the very serious charges that he was facing. Yet, nearly 4 ½ years later after first coming into custody and 3 years after being found not guilty of these offences, he was still waiting to be admitted to a mental health facility. This kind of wait can cause people to lose hope and lose faith in the system.

As President Lakatos has said in his report, the recidivism figures for forensic patients are so much lower for forensic patients than for inmates. Community safety is enhanced if people with serious mental illness who have committed serious criminal acts are able to promptly access the mental health treatment and rehabilitation that enables their safe return to community living.

There is significant evidence that nonpharmacological treatments are a key part of mental health recovery, as the example later in this report shows. Yet, the Tribunal's observation is that access to psychological services, mental health group programs or other recovery based supports is almost nil."

These delays are a result of insufficient mental health beds at an appropriate level of security for forensic patients. The causes of that problem are multiple, including a lack of forensic beds and lack of community mental health services and accommodation. A well-considered strategic approach is needed

to make sure that valuable resources are spent in a way that is cost effective, and that achieves the least restrictive, yet safe and effective outcome for forensic patients and the community.

In its Annual Report for 2018/2019, the Tribunal noted that the NSW Forensic Mental Health Strategic Plan had been in discussion for two years. One year on, the Tribunal has not yet seen a copy of that Plan. The Tribunal urges the Ministry of Health and the Justice Health and Forensic Mental Health Network to bring the Strategic Plan to completion in the next financial year.

Time limited orders

When the clinical evidence suggests that a transfer of a forensic patient to a less restrictive environment would be appropriate, the Tribunal's usual order is to transfer *when a bed becomes available*, and in the meanwhile to order the patient's detention in the more restrictive setting.

However the Tribunal retains the power to make an order that a forensic patient be transferred within a specified time frame ("a time limited order").

In the last financial year, time limited orders were made on 12 occasions, or 23% of the occasions on which the Tribunal ordered a patient's transfer. (Table 21).

Community rather than medication

The evidence is clear that medication is only one part of a person's recovery from mental ill health. The case of Mr F offers a clear example of how meaningful activities can transform a person's mental health. It also illustrates the importance of a therapeutic relationship between clinician and client, one which values the client's input and own sense of recovery.

CASE STUDY – MR F

Mr F was found not guilty by reason of his mental illness of the offence of murder. He had a history of substance use, past criminal offences and had previously spent time in custody. Whilst in the Forensic Hospital, he was prescribed clozapine to treat his "negative symptoms", which included significant withdrawal, lack of motivation and some blunted affect. Clozapine was prescribed at a high dose, but made little impact on these symptoms. It did however, cause Mr F a number of significant physical problems that impacted on the quality of his daily life.

After a period of time in a medium secure unit, Mr F's treating psychiatrist noticed a significant improvement in those aspects of Mr F's behaviour that had been labelled as negative symptoms. The therapeutic programs in the medium secure unit, such as engagement in psychology, daily activities and employment, led to an increase in Mr F's social engagement and his motivation. His expression of emotion increased and his rapport with clinical staff and peers (now friends) improved. In short, Mr F's treating psychiatrist considered that many of the things that that had been labelled as negative symptoms were in fact a product of social isolation and institutionalisation rather than symptoms of an illness improved.

Mr F's psychiatrist agreed to reduce and then cease clozapine, while keeping an injectable antipsychotic medication. Mr F's physical health improved and his mental health remained stable. In short, it was social integration, rather than clozapine, that made a difference to Mr F's life.

Forensic patients and their whereabouts

There were 33 new findings of Not Guilty by Reason of Mental Illness made in this financial year, which is exactly the same number as in the previous year (See Table 19).

As at 30 June 2018, there were 618 forensic and correctional patients in NSW, which is effectively the same number as the 616 forensic and correctional patients in the previous financial year (see Table 33).

The information in Table 31 relates to forensic and correctional patients. When looking at the information for the 477 forensic patients alone, about 39% live in the community under conditions of release approved by the Tribunal. About 44% of the forensic patients are detained in a mental health facility and about 17% remain in custody. These numbers have not changed significantly since the last financial year.

The numbers of unconditional release orders do fluctuate significantly from year to year.

In 2018/2019 the number of unconditional orders made was 12, down from 19 in 2017/2018, and up slightly from 10 in 2017/2016.

Interstate arrangements for forensic patients

For a number of years, the Tribunal has noted in its Annual Report that there are no interstate arrangements for the transfer of forensic patients. This means that patients whose family and cultural connections are in another State may be disadvantaged, as they cannot move to that State (whilst still under their forensic order) to continue their recovery.

Queensland and Victoria have already successfully arranged for the transfer of forensic patients between those two States. The Tribunal considers that similar arrangements should be possible for patients in NSW.

Pleasingly in December 2018, a Memorandum of Understanding with Queensland was reinstated. This allows forensic patients who abscond to Queensland to be returned to NSW via health services rather than through a custodial arrangement.

Interstate Arrangements with other states remain under negotiation between the Ministry of Health and their interstate counterparts. The Tribunal looks forward to re-establishing arrangements with Victoria that allow forensic patients to be returned via health services rather than police.

The National Disability Insurance Scheme (NDIS)

The Tribunal has been regularly consulted on the impact of the change in funding for disability services for forensic patients from the NSW Government to the NDIS.

The launch of the Community Safety Fund in 2018/2019 is a very positive step. This Fund ensures that the Community Justice & Integrated Services Program (CJISP) can continue to offer case management and risk assessment for forensic patients with cognitive impairments. The CJISP offers ongoing and urgent discharge planning, case management and risk assessment. The CJISP reports regularly to the Tribunal so that the Tribunal can respond to any increased risks to the community or make decisions which allow for the least restrictive safe and effective options to be put in place.

The Community Safety Fund also allows for the purchase of services for people with a cognitive impairment and intensive support needs who are in contact with the criminal justice system or the Tribunal. The Fund is said to be intended to temporarily fill a gap where additional support is required for personal and community safety, on top of reasonable and necessary supports funded by the National Disability Insurance Agency.

It has also been pleasing to hear that when CJISP is able to discuss individual cases with NDIS planners at a senior level, the NDIS plans which are subsequently approved are appropriate to the needs of

forensic patients. However, this level of knowledge and understanding of complex disability needs should be available across the NDIA so that all NDIS plans are appropriate to a client's needs.

The Tribunal is also aware from its hearings that there can be long delays while a NDIS plan review is authorised, an appointment for that review scheduled and then a decision made and communicated. While waiting for a decision on NDIS funding, forensic patients cannot move to appropriate community accommodation.

Increased Workload in the Forensic Division

As Registrar, Rodney Brabin has noted in his report, the number of forensic hearings has consistently increased over recent years – from 972 in 2013/14 to 1541 in 2018/19. This represents a 58.5% increase in five years (569 more hearings). There was a 3.4% increase in this financial year alone. An additional staff member for the forensic team has been funded this financial year, to reflect the increase in the Forensic Division's workload, which has been most welcome.

Research and Presentations

The first papers from the long running research into the forensic files held by the Tribunal should be available shortly. This research project is conducted through the University of NSW, led by A/Professor Kimberlie Dean and funded by the Mental Health Commission. It involved the collection of 250 items of data from 500 forensic patients' files over a 25 year period. The database has been linked to the criminal justice dataset, and is now funded to be linked to the administrative health dataset.

Early findings from this research were cited by A/Professor Kimberlie Dean in her submission to the Productivity Commission's Inquiry into Mental Health and showed that:

> "The 12-month rate of re-offending for released forensic patients is 6.3% for a cohort accrued over the past 25 years (Dean et al., submitted 2019); this compares to a rate typically over 40% for released prisoners in NSW. Our findings are consistent with those across jurisdictions internationally supporting the notion that forensic mental health services are effective at reducing post-release contact with the justice system, vital for supporting social and economic participation for this high-risk and high-needs group (Fazel et al., 2016; Dean et al., submitted 2019; Hayes et al., 2014)."

As always, the Deputy President and staff of the Forensic Division continue to be involved in formal and informal presentations on the work of the Tribunal.

Thanks

The Tribunal continues to work with key stakeholders including the Ministry of Health, Ministry of Justice, the Justice and Forensic Mental Health Network, Legal Aid NSW, Corrective Services NSW, Premier and Cabinet, Family and Community Services and victims' organisations.

We farewelled His Honour Judge Richard Cogswell SC as President and welcomed Judge Paul Lakatos SC. The Tribunal is very fortunate to have the leadership of these two men, who bring keen intellect and a compassionate approach to the Tribunal's work.

More generally, this has been a busy year, full of changes, for the Tribunal's Forensic Division – both staff and members. They undertake their work with compassion, good humour and diligence. Thank you.

Nadia Sweetnam	Anina Johnson
Team Leader	**Deputy President**

CIVIL DIVISION REPORT

Hearing standards

In the reporting year, the Tribunal has continued its objective of improving hearing standards. The Tribunal has continued to focus on person-centred hearings and applying recovery principles. As part of that focus the Tribunal has closely examined its role in relation to treatment, with a paper on the topic being disseminated to members.

The Tribunal's role in treatment

With about 140 part time Tribunal members and approximately 18,700 hearings a key objective for the Tribunal is to achieve a broadly consistent approach from its panels. Such consistency is necessary for maintaining confidence in our processes and decisions. It is obviously important for consumers, carers and clinicians attending hearings to be able to anticipate how the Tribunal might approach treatment proposals, although this will also be dictated by the consumer's individual circumstances.

The Tribunal's paper on treatment explores the nature and extent of the Tribunal's role in reviewing treatment and care with a view to ensuring a consistent approach. Later iterations of the *Mental Health Act 2007* (the Act) contemplate a meaningful and comprehensive review of the care and treatment of each consumer that involves and considers their views. Carers should also be apprised of treatment proposals and have their views considered. These discussions should take place before a hearing and be ongoing.

Unfortunately, many mental health facilities are staffed by registrars who are on six monthly rotations and it is not uncommon for a registrar to meet the consumer or carers shortly before the hearing, thereby limiting the time for comprehensive discussions to take place. However, a well-planned and focussed hearing will often facilitate a collaborative and valuable discussion about treatment. Also, it is crucial to make fair, transparent and accountable decision-making to consider the views of the parties. Ultimately, of course, it is for the Tribunal to determine if the planned 'treatment' meets professional standards and is suitable and efficacious.

The Tribunal's treatment paper will be explored further at a Professional Development Evening for Tribunal members in September 2019. The paper is readily available on the Tribunal's website with a companion paper on 'recovery' language.

Professional Development

The Tribunal has continued to provide guidance to panels on hearing standards via the quarterly Professional Development Events, regular updates to members on a range of issues and developments, practice directions and official reports.

An important 'quality assurance' measure for ensuring adherence to appropriate hearing standards across all members is assessing their performance against a comprehensive set of performance criteria. These member appraisals take place every four years, with the most recent round commencing in 2018. The appraisals allow the Tribunal to assess the general approach and culture of Tribunal hearings. It is evident from the appraisals, that on the whole, Tribunal members are very adept at involving consumers, carers and clinicians in discussions about care and treatment. It can be said with confidence that the Tribunal has a culture of 'person - centred hearings' that accords with the objects and the principles of care and treatment under the Act.

Peer Lawyers Group

A new initiative by President, His Honour Judge Richard Cogswell SC, who retired in March 2019, was introducing the Peer Lawyers Group of Tribunal members. The inaugural meeting took place in mid -

February 2019 and the Group has now met on several occasions. It has given very useful feedback to the Executive on several issues including hearing standards and is also a valuable part of professional development.

Some systemic issues

For many years now, Tribunal panels have alerted the Tribunal Executive as to individual and systemic issues of concern via a Member Feedback Form. These concerns sometimes relate to the standard or quality of treatment and care plans for individual consumers. Case Study 1 below is an example of concerns raised by a Tribunal panel and the response.

A recurring issue reported by Tribunal members is the lack of appropriate accommodation and support for long-term patients with complex needs. In the last two Annual Reports, the Tribunal noted the good work of the Pathways to Community Living Initiative (PCLI) in placing long-term consumers in more appropriate community-based accommodation. Whilst this valuable work is ongoing, Tribunal members and panels continue to draw attention to a number of individuals whose transition is impeded by uncertainty in relation to NDIS funding.

The NDIS issues raised include underfunded plans, lengthy wait times for the review of plans, and a lack of accountability by the National Disability Insurance Agency (NDIA) to mental health facilities as to the progress of submitted plans. This latter issue affects Tribunal hearings as a lack of information as to the progress of an NDIS application might delay the introduction of less restrictive care for the consumer. Whilst the Tribunal can contact the NDIA about individual cases, the increasing number of cases where there are NDIS issues makes it a systemic concern that requires consultation at an organisational level.

Case study 2 below illustrates some of the difficulties with NDIS funding and the Tribunal's role in liaising with NSW Public Guardian, the Mental Health Advocacy Service (MHAS), the treating team and the NDIA to facilitate a community transition. In this case study, the Tribunal successfully requested an increase of Ms Y's NDIS package to enable her to source appropriate support and accommodation.

Case study 3 is an example of a consumer with complex needs and the challenges in finding appropriate community accommodation and support.

These systemic issues are raised with the Chief Psychiatrist, the Mental Health Commissioner, the Official Visitors, and the Minister for Mental Health.

CASE STUDY 1

Mr R is 17 years old and is detained at a mental health facility pursuant to an involuntary patient order made at a mental health inquiry. Mr R is indigenous and has schizophrenia and autism. He has a two year history of moving between homelessness and juvenile detention, resulting in a loss of follow up care. He was held in juvenile justice for 12 months prior to being released. He was apprehended by police who found him smashing bottles in a park and emptying the bins. He lashed out at police who then considered he was a risk to the public and he was taken to a mental health facility. Mr R has no support in the community. At the hearing the treating team discussed discharging Mr R to a refuge if no accommodation could be located for him.

At the time of the Tribunal's inquiry, Mr R did not have a guardian or carer and the Department of Family and Community Services indicated that it would not open a case file. Nor, did Mr R have an NDIS package. He was considered vulnerable to abuse and at risk of entering the forensic system. Mr R has no money. The medical report also disclosed that XR has had prior admissions

and that he has a history of early childhood neglect and was exposed to parental abuse and domestic violence.

At the hearing there was evidence from the treating doctor that: a guardianship application had been made, but it had stalled because Mr R was considered to be the responsibility of Family and Community Services; Mr R lacked capacity to make decisions; and Mr R had no support to apply for an NDIS package. The treating doctor was of the view that Mr R needed to be housed in a 24 hour support group home, initially, and later he should be moved to 16 hours daily care. Mr R's symptoms were well controlled with treatment but he continued to be detained in hospital owing to a lack of accommodation.

The Tribunal wrote to the NDIA requesting that it liaise with Mr R's treating team to devise a package along the old ADHC model to allow Mr R to be discharged. The Tribunal expressed concern that no one entity had taken on the responsibility of addressing Mr R's issues.

Two months after the hearing, Mr R's lawyer advised the Tribunal that a guardianship application was lodged by the hospital social worker. The Public Guardian was appointed for 12 months with functions for accommodation and authority to implement such decisions; health care medical and dental consents. The social worker was also making an application for NDIS and Centrelink benefits.

Carers

On 1 July 2018, the Act was amended to require that notice be given to all carers in relation to all Tribunal hearings conducted at mental health facilities. However, whilst the important role of carers and their right to be provided with specified information has been in the Act since 2009, from discussions with carer groups, many apparently continue to feel sidelined by treating teams.

Discussions with carer groups indicate that carers often feel impotent to respond to their exclusion from the process. It is said that clinicians often will only involve a carer if this is specifically requested by the consumer. However, the obligation to notify carers does not depend on the consent of the consumer and this obligation does not appear to be understood by some clinicians. Moreover, some clinicians appear to be unaware that in cases where a carer's attendance at a hearing is likely to have an adverse impact on the consumer, or imperil their relationship, that the Tribunal has flexible powers to partly or wholly close a hearing, thus facilitating their involvement. Frequently, carers have information that is relevant to the Tribunal's decision and their participation in hearings should be accommodated.

Further education of the roles and responsibly of clinicians in relation to carers under the Act is required. We understand that the Ministry is working on a Carer Notification Form for all hearings. This should be a useful prompt for clinicians.

The consumers' peer work force

Last year's Annual Report referred to the potential for peer workers to be involved in Tribunal hearings to support consumers. To that end, we circulated a survey to all the Local Health Districts in NSW to get a sense of the numbers of peer workers and their perceived role.

We are pleased to report that of the facilities which responded, most had either recruited, or were in the process of recruiting, peer workers. On the whole, their role was mostly working with the consumer alongside treating teams. Only a few facilities considered that peers could support consumers attending Tribunal hearings, and this restriction on the role was mostly related to budgetary constraints.

Anecdotally, few peer workers have attended hearings. The Tribunal considers that the case for their involvement in hearings remains compelling. Many consumers find hearings stressful and feel that the views of the treating team will always prevail. These concerns could feed into a perception that the Tribunal is not impartial and that a consumer's views will be discounted. Having a peer, that is, someone who may bring an independent perspective from treating teams, families and carers, may address perceived power imbalances and enhance the hearing experience. This benefit of peer involvement in hearings is more critical for those consumers living in the community on a Community Treatment Order who are not entitled to free legal representation.

In NSW a professional paid peer workforce is in its infancy. It is hoped that over time, the role of peer workers will encompass support at Tribunal hearings.

Law Reform

There were two significant amendments to the Act during the reporting period.

The first took effect from 1 July 2018 and it permits some hearings to take place in the consumer's absence, if certain criteria are met, including the Tribunal being satisfied that the patient is too unwell to attend, or refuses to attend the hearing. This was an important amendment to allow Tribunal reviews to take place in the absence of the consumer, in limited circumstances and only with protections in place for the consumer.

If the consumer's attendance could be achieved by an adjournment, that remains the preferred outcome. However, in cases such as ECT treatment where there is no prospect of the consumer attending the hearing owing to the acuity of their illness, hearings can proceed in their absence for a decision. In such cases the authorised medical officer is responsible for contacting the consumer's carers and family and involving the MHAS for their views. To guide treating teams, the Tribunal issued a Practice Direction requiring authorised medical officers to complete a pro forma application.

There were a total of 62 applications, of which 61.3 % (or 38) were involuntary patient reviews and all but one was approved. The remainder related to ECT applications of which 38.7 % (or 24) were made and all but three were approved. These figures would suggest that these requests are made infrequently.

As noted above, the Act was also amended to provide for the notification of carers in relation to all matters heard at mental health facilities. Prior to the amendment notification was required only for mental health inquiries, ECT, surgery and special medical treatment.

CASE STUDY 2

Ms Y is 21 and has a history of schizophrenia, complex post-traumatic stress disorder, substance abuse and intellectual disability. She is Indigenous. The Tribunal reviewed Ms Y's involuntary patient status and determined that she was a mentally ill person and ordered her ongoing care and treatment at the Hospital. However, rather than setting a review period for three months (which is the norm) the panel ordered an early review, to be held within four weeks. She has improved since her admission and is stable, and is ready for discharge with the only barrier being her not having accommodation and intensive support. She has the Public Guardian and the NSW Trustee manage her finances.

The panel ordered an early review due to concerns that Ms Y requires supported, independent accommodation, with 24 hour supervision in order to be discharged from the Hospital. However, it appeared that the NDIA had not approved of a package that would have facilitated her transition to the community. Her package of $95,000 was inadequate to meet her complex needs and she

had limited accommodation and support options. The treating team gave evidence that Ms Y would require one-to-one care for the first six months after discharge.

After the hearing, the Tribunal contacted the NDIA and requested that Ms Y's NDIS package be increased to meet support and accommodation needs which would allow her to be discharged into less restrictive and appropriate care.

Within three months, the NDIA re-assessed Ms Y's NDIS package and provided funding for her to reside in supervised accommodation sourced by the local Aboriginal mental health service. At a subsequent hearing, the Tribunal heard evidence that Ms Y had maintained her stable mental state, and was enjoying escorted visits to her new home. The treating team were transitioning her to the home with intensive social support to reduce her stress and avoid a deterioration in her mental state. Ms Y who had visited the group home was looking forward to her discharge.

External training

Part of the Tribunal's role is to liaise with mental health facilities in relation to any systemic issues that arise from hearings. Often we will attend facilities to provide training to treating teams about the Act. Such training is important in addressing not only the legal requirements for making orders, but also in discussing the culture of hearings and how evidence at hearings may be given in ways that are respectful of the consumer's views and do not undermine the therapeutic relationship.

During the reporting year, there were training sessions at Canterbury, Blacktown and Liverpool Hospitals and an information for carers event was hosted by the Parramatta Mission in Hornsby Hospital.

Ms Danielle White, Civil Team Leader, continued to support and provide training to the Volunteers Program at Cumberland Hospital which supports family and carers of people attending Tribunal hearings at Cumberland Hospital.

Key statistics

As outlined in the Registrar's report, the hearing statistics have been largely stable in respect of civil hearings over the last few years. A notable change that is not revealed by the data has been an anecdotal increase in eating disorder cases considered by the Tribunal. We understand that this increase is related to Local Health Districts now having allocated funding to provide services to this cohort.

Civil hearings account for almost 92% of the Tribunal's work. As noted by the Registrar, there were 18,668 hearings in the reporting year, representing an increase of 0.7 % since the previous year. In the Civil Division, there were 17,006 hearings, 102 more than last year. There were 121 hearings relating to financial management orders, 23 fewer than the preceding year.

There was a marginal decrease in mental health inquiries of 0.3% from the previous year, (i.e. 19 fewer hearings) and a total of 6,787. There was an increase in Involuntary Patient Review hearings from 2,725 in the previous year to 2,831 (up 3.9% or 106 hearings), relating to 1,780 consumers.

Appeal hearings against the authorised medical officer's refusal to discharge a patient decreased by 56, to a total of 629, with 486 of the appeals (or 77.3%) being dismissed, and 18 orders for discharge (12 such orders were made in the previous year) and one patient was reclassified as a voluntary patient.

There were 814 applications for ECT hearings in relation to involuntary patients (including four forensic patients), and ECT was approved in 717 cases (or 88.1%) and not approved in 7 cases (or 0.1%). In 29

matters, the Tribunal found that the patient had capacity and had given consent to ECT. None of these hearings involved children under the age of 16.

Under the *NSW Trustee and Guardian Act 2009*, the Tribunal conducted 121 hearings for Financial Management Orders (down from 144 in 2016/17). Interested parties were responsible for 81 applications for a Financial Management Order and 32 were considered at mental health inquiries. The Tribunal made 50 Financial Management Orders, eight of which were interim orders; 11 were made at mental health inquiries; 30 were made on the application of interested parties; and 1 was made at the review of an interim order. There were 49 applications for the revocation of Financial Management Orders, a decrease of two from the previous year. The Tribunal revoked 20 of the orders.

The number of applications for Community Treatment Orders (CTOs) increased by 162 (or 3%) to 5,357 this year. A total of 5,599 CTO determinations were made. Of these, 491 were made for more than six months (usually 12 months) and this represents 10.6 % of the orders made. This is noticeably higher than the previous year when only 6.5 % were for more than six months.

CASE STUDY 3

The Tribunal conducted a review of Mr M's voluntary patient status. He was detained in hospital in July 2017 after he made an attempt on his life. He has a diagnosis of polysubstance use, borderline intellectual impairment, and mixed personality disorder and head injury. The Public Guardian was appointed with an accommodation and services function.

There was evidence at the hearing that the treating team was trying to find stable and secure accommodation. Mr M was declined supported accommodation through the NDIS. The treating team was struggling to get him on the priority housing waiting list but he had been approved for assessment by a supported accommodation.

The Tribunal panel was told that Mr M did not qualify for HASI support as mental illness is not his primary diagnosis. Mr M's functioning is adequate but making decisions and problem solving remain problematic for him. The NDIS did support a package for up to 12 hours a day but not supported accommodation.

There was evidence from Mr M at the hearing that he was frustrated as he did not know when he was getting out of hospital. He did not like being in hospital but accepted that it was necessary to stay there until accommodation was found.

The Tribunal determined that Mr M consented to remaining at the Hospital albeit under sufferance because he had nowhere else to go. Furthermore, the panel stated that it was 'satisfied that he continued to benefit from the treatment and support provided but only on the basis that he was homeless'. The panel was not satisfied that hospital was an appropriate place for Mr M to reside.

Instead of ordering a review in a year, the Tribunal ordered a review in three months urging that alternative accommodation and support be arranged.

The Tribunal wrote to the NDIA noting the following: a neuropsychological support was required at the next hearing; Mr M did not have a primary diagnosis of mental illness and is given Quetiapine medication for insomnia; Mr M had been hospitalised for two years which was clearly unacceptable. The Tribunal requested that Mr M be reconsidered for supported accommodation on the basis that his disability and functional needs arose from his disability and not his mental illness.

The Tribunal was advised by the Public Guardian and the Hospital's social worker that Mr M was discharged to Hasi plus 24 hour supported accommodation 3 months after the hearing. Mr M was looking forward to leaving the Hospital. His NDIS funding covered group activities, transport training, psychological counselling to address coping strategies and OT support for living skills.

Submissions and reports

The Tribunal made the following submissions this year: to the Review of Housing and Mental Health Agreement (HMHA); a second submission in respect of the review of the *Guardianship Act 1987*; and a submission to The Special Commission of Inquiry into the Drug 'Ice'.

An acknowledgement of members and staff

In March 2019, we farewelled President His Honour Judge Richard Cogswell SC and soon thereafter welcomed his successor, Judge Paul Lakatos. The transition has been smooth and seamless. Richard was an interested, thoughtful and capable leader and Paul is of the same ilk. The Tribunal is in excellent hands!

As always, we are indebted to the skill, dedication and hard work of core staff (whose work is unrelenting) and our Tribunal members without whom the Tribunal could not meet its duties and responsibilities.

Maria Bisogni	Danielle White
Deputy President	**Team Leader**

REGISTRAR'S REPORT

This has been another busy and challenging year for the Tribunal in which we farewelled His Honour Richard Cogswell SC and welcomed Judge Paul Lakatos SC as President of the Tribunal.

The total number of hearings conducted by the Tribunal increased slightly by 0.7% from 18,538 hearings in 2017/18 to 18,668 in 2018/19 (130 additional hearings). This means that the number of hearings conducted by the Tribunal has more than doubled (an increase of 105%) since June 2010 when the Tribunal assumed the responsibility for conducting mental health inquiries. Further details about this increase are discussed below.

Under s 147 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, and
d) the number of persons detained as involuntary patients.

The Report is also to include any matters the Minister may direct or that are 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 2018/19 the Tribunal conducted 18,668 hearings including 6,787 mental health inquiries. These 130 additional hearings represent a 0.7% increase in the total number of hearings compared to 2017/18. There were 102 more hearings conducted in the Tribunal's civil jurisdiction (0.6% increase) and 51 more hearings in the forensic jurisdiction (3.4% increase). There were 23 fewer Financial Management hearings (16% decrease) in 2018/19.

The number of forensic hearings has consistently increased over recent years – from 972 in 2013/14 to 1541 in 2018/19. This represents a 58.5% increase in five years (569 more hearings).

2018/19

Civil patient hearings (for details, see Tables 1-14) (*includes 6,787 MHIs)	17,006
Financial Management hearings (for details see Table 15)	121
Forensic Patient reviews (for details see Tables 16-34	1,541
	18668

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 - 2018/19

	Civil Patient Hearings	*Financial Management Hearings*	*Forensic Patient Hearings*	*Totals per year*	*% Increase over previous year*
1991	1986	61	185	2232	%
1992	2252	104	239	2595	+16.26%
1993	2447	119	278	2844	+9.60%
1994	2872	131	307	3310	+16.39%
1995	3495	129	282	3906	+18.01%
1996	4461	161	294	4916	+25.86%
1997	5484	183	346	6013	+22.31%
1998	4657	250	364	5271	-12.34%
1999	5187	254	390	5831	+10.62%
2000	5396	219	422	6037	+3.48%
2001	6151	304	481	6936	+14.8%
2002	6857	272	484	7613	+9.8%
2003	7787	309	523	8619	+13.2%
2004	8344	331	514	9189	+6.6%
2005	8594	293	502	9389	+2.2%
2006	9522	361	622	10505	+11.9%
2007	8529	363	723	9615	-8.5%
2007-08	8440	313	764	9517	N/A
2008-09	7757	224	771	8752	-8.1%
2009-10	8084	193	824	9101	+4.0%
2010-11	12413	221	870	13504	+43.4%
2011-12	13501	219	928	14648	+8.5%
2012-13	15510	225	943	16678	+13.9%
2013-14	15416	191	972	16579	-0.6%
2014-15	16035	170	1017	17222	+3.9%
2015-16	16596	168	1186	17950	+4.2%
2016-17	16589	169	1340	18098	+0.8%
2017-18	16904	144	1490	18538	+2.4%
2018-19	17006	121	1541	18668	+0.7%

Mental Health Inquiries

This was the ninth full year of the Tribunal's jurisdiction to conduct mental health inquiries under s 34 of the Act. Until 21 June 2010, this role had been carried out by Magistrates. During 2018/19, the Tribunal held 6,787 mental health inquiries – 19 fewer than the previous year (a 0.3% decrease). These mental health inquiries related to 5,511 individual patients.

Of the mental health inquiries conducted in 2018/19, 5,521 (81.4%) resulted in an involuntary patient order being made. This percentage is slightly lower than in 2017/18 (83.4%) and in 2016/17 (83.5%) 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 an increase in the percentage of Community Treatment Orders (CTOs) made at a mental health inquiry during 2018/19 - 6.1% (416) compared to 2017/18 - 4.9% (335), but this is still significantly 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. Forty six (46) of the CTOs made at a mental health inquiry had the discharge from the mental health facility deferred for up to 14 days - an increase from 23 such orders in 2017/18. This option was provided for as one of the 2015 amendments to the Act and allows for proper discharge arrangements to be made or finalised following the making of a CTO.

A total of 89 orders were made at a mental health inquiry for the patient to be discharged or for deferred discharge (1.3%). This included 25 patients who were discharged into the care of their designated carer, 16 of which had the discharge deferred for up to 14 days.

There was an increase in the number of mental health inquires that were adjourned – 724 (13.1%) compared to 677 (9.9%) in 2017/18 and 657 (9.7%) in 2016/17.

See Tables 1-3.

In 2018/19, 16.7% of initial mental health inquiries were commenced during the first week of a person's detention (compared to 16.2 in 2017/18 and 15.9 in 2016/17), 56.5% during the second week (55.7% in 2017/18 and 57.3% in 2016/17), 25.2% in week three (26.7% in 2017/18 and 26.1% in 2016/17) and 1.3% in the persons fourth week of detention (1% in 2017/18 and 0.6% in 2016/17).

In a small proportion of cases, 0.5%, the inquiry was commenced sometime after four weeks (0.5% in 2017/18 and 0.1% in 2016/17). Each such case was looked into 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.

Other than for some minor variations these figures have been relatively consistent for the last six or seven years and reflect the Tribunal's expectation that assessable persons are presented for a mental health inquiry within three weeks of the person being detained in a mental health facility.

Involuntary patient reviews

The total number of hearings for the review of involuntary patients under s 37(1) of the Act decreased by 104 in 2018/19 to 2727 from 2,831 in 2017/18 – a 3.7% decrease. These reviews related to 1,665 individual patients.

The Tribunal is required to review the case of each involuntary patient on or before the end of the patient's initial period of detention ordered at a mental health inquiry (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)). The number of initial reviews under s 37(1)(a) decreased by 146 (-9.4%) and under s 37(1)(b) by 1 (-.1%) while the number of reviews under s 37(1)(c) increased by 43 (7.9%).

See Tables 1, 2 and 6.

Appeals against a refusal to discharge

The number of hearings held under s 44 of the Act to consider an appeal against an authorised medical officer's refusal to discharge a patient decreased by 56 to 629 in 2018/19 compared to 685 in 2017/18 – an 8.2% decrease. These appeals related to 511 individual patients.

Of the appeal hearings conducted in 2018/19, 486 were dismissed (77.3%). Of these, 18 appeals were dismissed and an order made that there be no further right of appeal before the next review by the Tribunal.

The patient was ordered to be discharged on 18 occasions (2.9%). The remaining 125 appeals were either adjourned, withdrawn or the Tribunal had no jurisdiction to deal with them.

Regulation 19(3) of *Mental Health Regulation 2013*, which came into effect on 1 September 2013, allows for appeals lodged by persons other than involuntary patients to be heard by the President, a Deputy President or a member qualified for appointment as a Deputy President. This means that an appeal lodged by an assessable person (a person who has not yet had a mental health inquiry) is able to be heard by an experienced single legal member of the Tribunal. In 2018/19 244 appeals were heard by a single member (38.8% of the total number of appeals held). This is a slightly higher percentage than last year (36.9%).

See Tables 1, 2 and 7.

Community Treatment Orders

The number of hearings to consider applications for CTOs under s 51 of the Act increased by 162 from 5,357 in 2017/18, to 5,519 in 2018/19 (a 3% increase). These hearings related to 3,638 individuals.

Including 416 CTOs made at a mental health inquiry, there were a total of 5,599 CTOs made in 2018/198 – 237 more (4.4%) than in 2017/18. Excluding those made at a mental health inquiry, the number of CTOs made by the Tribunal under s 51 of the Act increased by 160 from 5,017 in 2017/18 to 5,177 in 2018/19 – 3.2% increase.

As mentioned above, one of the consequences of the change to the timing of mental health inquires in July 2012 is that fewer CTOs 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 CTO.

Under s 56(2) of the Act, the maximum duration of a CTO is 12 months. However, of the 5,599 CTOs made in 2018/19, only 491 were for a period of more than six months (usually 12 months). This is 10.6% of the orders made, which is a significantly higher than the 6.5% percent in 2017/18 (351 of 5,362 CTOs made). Although the Act provides that the Tribunal is able to make CTOs for up to 12 months, the vast majority of orders continue to be made for periods of up to six months. Longer orders are generally only made in circumstances where there are clearly established reasons for justifying a longer period.

See Tables 1, 2 and 8-10.

Electro Convulsive Therapy (ECT)

The Tribunal conducted 814 ECT administration inquiries in 2018/19 under s 96 of the Act to consider the administration of ECT to involuntary patients (including four hearings concerning forensic patients). This is two more than 2017/18 (0.2% increase). Of these hearings, the administration of ECT was approved in 717 hearings (88.1%) and not approved in 7 (0.1%). The Tribunal found that the person was capable and had consented to the treatment in 29 hearings (3.6%). The remainder (61 – 7.5%) of the hearings were either adjourned, withdrawn or the Tribunal had no jurisdiction.

These ECT administration hearings related to 484 individual patients – none of whom were under the age of 16 years.

The Tribunal also conducted two ECT consent inquiries in 2018/19 to consider a voluntary patient's capacity to give informed consent to the administration of ECT. In both these matters the person was found to be incapable of consenting to the administration of ECT and the ECT was not able to be administered while ever the person remained a voluntary patient.

These consent inquiries related to two individual patients and was two less hearings than in 2017/18.

See Tables 1, 2 and 11-12A.

Financial management hearings

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

- after a mental health inquiry if ordering that a person is to be detained in a mental health facility (s 44 of the *TAG Act)*;
- after reviewing a forensic patient if ordering that a person is to be detained in a mental health facility (s 45 of the *TAG Act*), and
- on application for a patient in a mental health facility (s 46 of the *TAG Act*).

The Tribunal is also able to review interim Financial Management Orders (s 48 of the *TAG Act*) and consider applications to revoke financial management orders made under the TAG Act (s 88 of the *TAG Act*) or the former *Protected Estates Act*.

In 2018/19 the Tribunal conducted 121 hearings in relation to financial management and made a total of 50 Financial Management Orders (including eight Interim Financial Management Orders) and revoked 19 orders. These figures are slightly lower than in 2018/19 when 144 hearings were held, 47 orders made and 20 revoked (including one relating to a forensic patient).

See Table 15.

Forensic Hearings

There was a 3.4% increase in the number of hearings held by the Forensic Division in 2018/19 compared to the previous year, 1541 in 2018/19 compared to 1490 in 2017/18. This follows an 11.2% and 13% increase the previous two years and means that the number of forensic hearings has increased by 29.9% in the last three years (355 more hearings).

Many of these additional hearings were regular reviews of forensic patients however a significant number were for the Tribunal to consider an application for a Forensic Community Treatment Order (FCTO). The number of these hearings has increased from 59 in 2015/16 to 173 in 2017/18 and now to 182 in 2018/19 – an increase of 208.5% over the last three years (5.2% increase last year).

The Tribunal is required to conduct three monthly reviews of each person subject to a FCTO who is detained in a correctional centre. The number of these reviews increased by 112% from 59 in 2016/17 to 125 in 2017/18, but decreased to 108 in 2017/18 (-13.6%). This decrease may be partly attributed to an amendment to s 61(3) of the *Mental Health (Forensic Provisions) Act 1990* (*MHFPA*) which came into effect from 1 July 2018 and required these reviews to be conducted no later than three months after the CTO is made and at least once every six months during the term of the order. This change has the potential effect of removing one review of a person who is on a 12 month FCTO.

In terms of the release of forensic patients in 2018/19, the Tribunal ordered the conditional release of 25 forensic patients and the unconditional release of 12 forensic patients (including eight patients for whom a CTO was also made to have effect on the date of unconditional release). This compared to 29 conditional releases and 19 unconditional releases in 2017/18. The Tribunal made no orders revoking conditional release of a forensic patient in 2018/19 compared to one in 2017/18 and two in 2016/17.

See Tables 16-34.

Hearing locations and types

The Tribunal has regular rosters for its mental health inquiries, civil and forensic hearing panels. In addition to the hearings held at the Tribunal's premises in Gladesville, in person hearings were conducted at 39 venues across the Sydney metropolitan area and regional New South Wales in 2018/19.

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 243 inpatient or community venues across New South Wales.

In 2018/19, 8,718 hearings and mental health inquiries were conducted in person (46.7%), 84882 by video (45.5%) and 1,460 by telephone or "on the papers" (7.8%). The numbers and percentages are very similar to recent years.

If mental health inquiries are excluded from the figures then 3,916 hearings were conducted in person (33%), 6,513 by video (54.8%) and 1,449 by telephone or on the papers (12.2%). These numbers and percentages are similar to previous years. The continued low numbers of 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 hearings conducted by telephone or on the papers related to CTOs (96%), most often for people in the community on an existing CTO (37%) or already living in the community (30.9%). A significant proportion (24.4%) of these telephone hearings were to vary the conditions of existing CTOs or Forensic CTOs (FCTOs) (the majority of these hearings involved varying the order to reflect a change in treatment team following a change of address by the client and were usually conducted 'on the papers' or by telephone in the case of variations to FCTOs).

Mental health inquiries are conducted 'in person' at most metropolitan and a number of rural mental health facilities. Video conferencing is only used at those facilities where in person inquiries are not practical. Of the 6,787 mental health inquiries this year, 70.8% were held in person and 29.2% by video. These percentages are very similar to previous recent years but vary significantly from when the Tribunal first commenced conducting mental health inquires in 2010/11 when 35.6% were conducted in person and 64.4% by video.

Number of Clients

The Tribunal is responsible for making and reviewing all involuntary patient orders and all CTOs (apart from a small number of orders made by Magistrates under s 33 of the *MHFPA*). 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 CTO at any given time.

As at 30 June 2019, there were 1,248 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 1,316 at the same time in 2018 and 1,295 in 2017). 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 66 individuals who had been voluntary patients for more than 12 months and had been reviewed by the Tribunal – again, a number of these people may have been discharged or reclassified since the Tribunal review.

See Table 5 for further details including a summary of the facilities in which these individuals were detained or admitted.

In terms of CTOs, as at 30 June 2019, there were 2,981 individuals subject to an order made by the Tribunal. While a small number of these orders may have been revoked by the Director of the declared community mental health facility responsible for implementing the order, this should be a fairly accurate count of the number of people subject to a CTO at that point in time. This is slightly more than at the same date in recent years: 2018 (2,784); 2017 (2,768), 2016 (2,733), 2015 (2,715), 2014 (2,705) and 2013 (2,763).

Representation and Attendance at Hearings

All persons appearing before the Tribunal have a right under s 152 and s 154 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 Legal Aid Commission has advised the Tribunal that Legal Aid cannot automatically be provided for representation for all categories of matters heard by the Tribunal. In addition to all forensic cases, representation through the MHAS is usually provided at 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 CTOs 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 83% of all hearings in the Tribunal's civil jurisdiction (see Table 1) and 95.2% of all forensic hearings in 2018/19.

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 recent previous years. Included in these figures are mental health inquiries at which the patient must attend for the inquiry

to proceed – for mental health inquiries the rate of client attendance was 97%. 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 91.2%. Most of the hearings where the forensic patient did not attend were reviews of FCTOs which, with the agreement of the forensic patient, were often conducted 'on the papers'.

Hearings proceeding in the absence of the patient

Involuntary patients detained in a mental health facility under s 37 of the Act or persons detained for breaching their CTO under s 63 of the Act, or patients/persons subject to an application for an ECT inquiry under s 96 of the Act are required by the Act to be 'brought before' the Tribunal for the hearing. Every reasonable effort should be made to bring the patient/person before the Tribunal for all such hearings. Where appropriate, this can include participation by video or by telephone.

However, amendments to the Act which came into effect on 1 July 2018 now allow for these hearings to take place in the absence of the patient, in limited circumstances. In circumstances where the patient/person is too unwell to attend or refuses to attend the hearing the authorised medical officer may apply to the Tribunal for the hearing to take place in the patient's absence.

The Tribunal may conduct hearings in the absence of the patient only if it is satisfied that the patient is too unwell to attend the hearing or they refuse to attend the hearing within a reasonable period and that it is desirable for the safety and welfare of the patient that the hearing proceed. In making its determination the Tribunal is required to consider the views (if known) of the patient, any representative, the designated carer and the principal care provider.

In 2018/19 there was a total of 62 such applications from authorised medical officers for hearings to proceed in the absence of the patient. Of these 38 (61.3%), related for s 37 reviews of involuntary patients (37 were approved, one was not approved) and 24 (38.7%) related to s 96 ECT hearings (of theses 21 were approved, 3 were not approved).

Appeals

Section 163 of the Act and s 77A of the *MHFPA* provide for appeals by leave against decisions of the Tribunal to be brought to the Supreme Court of NSW. An appeal as to the release of a forensic patient may be made to the Court of Appeal.

During 2018/19 three appeals were lodged with the Supreme Court of NSW. These appeal plus two appeals lodged in early 2017 with the Court of Appeal were all finalised in 2018/19. All the appeals were dismissed, other than one which was discontinued by the plaintiff.

Section 50 of the *NSW Trustee and Guardian Act 2009* provides for appeals to be made to the NSW Civil and Administrative Tribunal (NCAT) against estate management orders made by the Tribunal. There were no such appeals lodged during 2018/19.

Multicultural Policies and Services

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

Persons appearing before the Tribunal have a right under s 158 of the Act to be assisted by an interpreter if they are unable to communicate adequately in English. During 2018/19, interpreters in 47 different languages were used in a total of 533 hearings. This is 26 less hearings involving an interpreter than in 2017/18 – a 4.3% decrease. The most common languages used were Vietnamese (85), Mandarin (83)

and Arabic (68) followed by Cantonese (55), Korean (30), Serb/Croatian (24) and Greek (21).

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. There were no forensic orders translated in 2018/19.

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

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. The administrative and policy functions of the Tribunal are covered by the *GIPA Act*. However information relating to the judicial functions of the Tribunal is 'excluded information' under the *GIPA Act* and as such is generally not disclosed.

There was one request for disclosure of information from the Tribunal's client files during 2018/19. The request was refused by the Ministry of Health on the basis that it sought access to "excluded information". This decision was upheld on appeal to the NSW Information and Privacy Commissioner.

In May 2019 the Tribunal responded to a GIPA application received by the Ministry of Health seeking information about the number of administrations of ECT. The Tribunal does not hold this information and was not able to provide the requested information.

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 (EDs) (54) are now gazetted under the Act as emergency assessment facilities, most EDshave 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 EDs rather than directly to an inpatient mental health facility.

In September 2014 Mr Ken Whelan, then Deputy Secretary of the Ministry of Health, wrote to the Chief Executives of all Local Health Districts reminding of the requirement for EDs to comply with these reporting requirements. Despite some initial improvement in reporting from EDs, an acceptable level of compliance is yet to be achieved, with only 14.8% (8 of 54) gazetted EDs returning any of the required Form 9s during 2018/19 (this is the same as for 1017/18 but is down from 20.4% in 2016/17, 31% in 2015/16 and 25% in 2014/15).

The returns from EDs totalled 2,421 involuntary referrals indicating that there remains a large number of people being involuntarily taken to emergency assessment mental health facilities that are not being recorded through this process. It is possible that some of these people are being recorded on the Form 9s submitted by mental health facilities within the same hospital, however, this is impossible to quantify.

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

Official Visitors Program

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

In late 2017, the Program relocated to new premises adjacent to the Tribunal's premises at Gladesville. While still connected to the Tribunal, these new premises offer the Program more space and greater 'separation' from the Tribunal.

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

A Memorandum of Understanding was entered into by the Tribunal and the Official Visitors Program in 2009 setting out the agreed systems for raising issues identified by the Tribunal or the Official Visitors Program in relation to the other body. A number of matters were referred to the Official Visitors Program by the Tribunal during 2017/18 for follow up by Official Visitors.

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

Premises

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

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

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

Venues

Regular liaison with hearing venues is essential for the smooth running of the Tribunal's hearings. Venue coordinators or Tribunal Liaison Clerks at each site provide invaluable assistance in the scheduling of matters; collation of evidence and other relevant information for the panels; contacting family members and advocates for the hearing; and supporting the work of the Tribunal on the day. This role is particularly important in ensuring that all the necessary notifications have occurred and correct documentation is available for mental health inquiries. In most facilities this role is carried out by staff who are already very busy with their other responsibilities. The Tribunal is very appreciative of the support provided by staff at all the facilities where we conduct hearings.

The Tribunal continues to experience some difficulties with facilities at some venues:

- Many venues do not have an appropriate waiting area for family members and patients prior to their hearing.
- Essential resources such as video conference equipment or telephones with speaker capacity are sometimes unavailable or not working in some venues.
- The sound quality with video equipment at some venues is very poor – particularly if the microphones have been installed in the ceiling.
- Staff at venues are not always familiar with the video conferencing equipment used to conduct hearings or the help desk or support arrangements in place to deal with problems with this equipment. This can lead to delays in some hearings.

These issues are monitored and particular concerns or incidents raised with venues as they arise.

Community Education and Liaison

During 2018/19 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 Act and the *MHFPA*.

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.

In late 2018 the Tribunal received approval and funding for an additional grade 5/6 position to assist with the increased workload in the Forensic Division. This position was filled from early 2019 and has made a significant difference.

The Tribunal has very stable staffing with many staff having worked here for a number of years. Apart from some recent turnover in staff, almost all of the Tribunal's staffing positions remain occupied by permanent staff all working in their own positions. This is a very positive position and provides stability for our staff and recognises their ongoing commitment to the work of the Tribunal.

Appendix 4 shows the organisational structure and staffing of the Tribunal as at 30 June 2019. Including the President and two full time Deputy President positions, the additional position increased the Tribunal's establishment to 30.4 positions, all of which are filled.

Tribunal Members

Appendix 3 provides a list of the members of the Tribunal as at 30 June 2019. As at this date the Tribunal had a President, two full time Deputy Presidents, nine part time Deputy Presidents and 130 part time members.

The Tribunal's membership reflects a sound gender balance. As at 30 June 2019, including Presidential members, there were 80 female and 62 male members. 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.

Part time Tribunal members are generally appointed for four year terms with the last recruitment carried

out in 2016. Our next planned recruitment is in 2020.

The term of our former President, the Hon Richard Cogswell SC ended on 28 February 2019. Our thanks to Richard for his clear leadership and support to the Tribunal during his 3 year term as President. We were very pleased to welcome Judge Paul Lakatos SC as our new President from 1 March 2019.

The term of one part time Deputy President, the Hon John Dowd AO QC ended on 31 August 2018 and two part time lawyer members, Ms Eraine Grotte and Mr Michael Joseph SC, resigned their appointments during 2018/19. The contribution of all these members to the important work of the Tribunal is greatly appreciated.

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

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

In 2018/19 the Tribunal continued its program of regular professional development sessions for its members. These sessions involve presentations from Tribunal members and staff as well as guest speakers. Topics covered during the reporting period included: exploring the basics of a successful hearing (for our lawyer members); forensic patients in NSW over a 25 year period: characteristics and outcomes from the Forensic Patient Database project; forensic reforms – progress on the responses to the MHRT Review by the Hon Anthony Whealy and the Law Reform Commission Reports; the NDIS – key issues for the Tribunal; the role of peers in consumer consultation; recovery from an eating disorder – best practice and the role of the *Mental Health Act*; Specialist Victim Support Services – what do we do and how do we do it; and Risk & Fear – risk assessment and risk management.

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

Financial Report

In recent years, the Tribunal had received its funding through the Mental Health Branch, Ministry of Health. A change was made to this arrangement in 2016/17 and the Tribunal was funded directly from Finance Branch of the Ministry.

The budget allocation for 2018/19 was $7,744,992. Total net expenditure for the year was $7,754,061 – a budget overspend of $9,069 (0.1%).

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 $908,627. This included the cost of additional three member Tribunal panels required to deal with the increased number of appeals lodged by patients against an authorised medical officer's refusal to discharge.

See Appendix 5 for further detail.

The Tribunal's allocation and expenditure in 2017/18 were impacted by an 18% increase in the rates paid to our part time members approved by Treasury with the support of the Minister on 25 September 2018. This the first increase in rates for our members since their rates were frozen in 2012 following the implementation of the Classification and Remuneration Framework for NSW Government Boards and Committees. The Tribunal is most appreciative of the support of the Minister and the Ministry of Health in securing this increase recognising the professional standing of members and the important role they fulfil in the mental health system.

Thank You

The Tribunal is very fortunate to have such great staff and fantastic and committed members. I would like to thank the staff and members of the Tribunal for their continued hard work and commitment to the very important work that we do. I would also like to thank those staff in the inpatient and community based mental health facilities with whom the Tribunal has had contact over the last 12 months. The successful operation of the Tribunal in conducting more than 18,600 hearings would not have been possible without their ongoing co-operation and support.

Rodney Brabin
Registrar

STATISTICAL REVIEW

CIVIL JUSISDICTION

Table 1

Summary of statistics relating to the Tribunal's civil jurisdiction under the Mental Health Act 2007 for the period 1 July 2018 to 30 June 2019

Section of Act	*Description of Review*	*Hearings (Including Adjournments)*			*% Reviewed by Sex*		*Legally Represented*	*Client Attended*
		M	*F*	*Total*	*M*	*F*		
s9	Review of voluntary patients	46	33	79	58	42	45 (57%)	72 (91%)
s34	Mental Health Inquiry	3704	3083	6787	55	45	6713 (97%)	6612 (97%)
s37(1)(a)	Initial review of involuntary patients prior to expiry of initial period of detention as a result of mental health inquiry	754	655	1409	54	46	1317 (93%)	1310 (93%)
s37(1)(b)	3 monthly review of involuntary patients after initial 12 month period	454	280	734	62	38	687 (94%)	670 (91%)
s37(1)(c)	Continued review of involuntary patients after initial 12 month period	366	218	584	63	37	346 (59%)	517 (89%)
s44	Appeal against an authorised medical officer's refusal to discharge	342	287	629	54	46	549 (87%)	613 (97%)
s51	Community treatment orders	3539	1980	5519	64	36	3695 (67%)	4060 (74%)
s63	Review of affected persons detained under a community treatment order	3	5	8	38	62	7 (88%)	8 (100%)
s65	Revocation of a community treatment order	12	7	19	63	37	2 (11%)	3 (16%)
s65	Variation of a community treatment order	230	105	335	69	31	59 (18%)	22 (7%)
s65	Variation of Forensic CTO	63	15	78	81	19	50 (64%)	42 (54%)
s67	Appeal against a Magistrate's community treatment order	-	-	-	-	-	-	-
s96(1)	Review of voluntary patient's capacity to give informed consent to ECT	1	1	2	50	50	0 (0%)	2 (100%)
s96(2)	Application to administer ECT to an involuntary patient with or without consent	327	483	810	40	60	676 (84%)	712 (88%)
s96(3)	Application to administer ECT to person under 16 - voluntary patient	-	-	-	-	-	-	-
s101	Application to perform a surgical operation	5	2	7	71	29	6 (86%)	7 (100%)
s103	Application to carry out special medical treatment	-	-	-	-	-	-	-
s151-s156	Procedural orders	4	1	5	80	20	3 (60%)	3 (60%)
s162	Application to publish or broadcast name of patient	1	-	1	100	-	1 (100%)	1 (100%)
Total		**9851**	**7155**	**17006**	**58**	**42**	**14156 (83%)**	**14654 (86%)**

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

Table 2

Summary of statistics relating to the Tribunal's civil jurisdiction under the *Mental Health Act 2007* for the periods 2015/16, 2016/17, 2017/18 and 2018/19

	2015/16	*2016/17*	*2017/18*	*2018/19*
Reviews of assessable persons - Mental Health Inquiries (s34)	6887	6757	6806	6787
Reviews of persons detained in a mental health facility for involuntary treatment (s37(1))	2695	2725	2831	2727
Appeal against authorised medical officer's refusal to discharge (s44)	641	690	685	629
Applications for orders for involuntary treatment in a community setting (s51)	5357	5331	5357	5519
Variation and Revocation of Community Treatment Orders (s65)	227	248	299	432
Review of those persons detained in a mental health facility following a breach of the Community Treatment Order (s63)	6	7	15	8
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)	69	98	79	79
Consent to Surgical Operation (s101)	5	9	10	7
Consent to Special Medical Treatment (s103)	-	1	1	-
Review voluntary patient's capacity to consent to ECT (s96(1))	6	3	4	2
Application to administer ECT to an involuntary patient	698	719	810	810
Application to administer ECT to a person under 16 - voluntary patient	-	-	1	-
Procedural order	4	1	2	5
Application for representation by non legal practitioner	-	-	3	-
Application to publish or broadcast	1	-	1	1
Total	**16596**	**16589**	**16904**	**17006**

Table 3

Summary of outcomes for reviews of assessable persons at a mental health inquiry for the period 1 July 2018 to 30 June 2019

M	*F*	*T*	*Adjourn*	*Invol. Patient Order*	*Discharge*	*Deferred Discharge*	*Discharge on CTO*	*Discharge to Carer*	*Declined to deal with/ withdrawn*	*Reclass to Voluntary*
3704	3083	6787*	724	5521	14	50	416***	25**	37	-

Note: * These determinations related to 5511 individuals.
** Includes 46 deferred discharge on making of a CTO.
*** Includes 16 deferred discharge to carer.

Table 4

Flow chart showing progress of involuntary patients admitted during the period July 2018 to June 2019

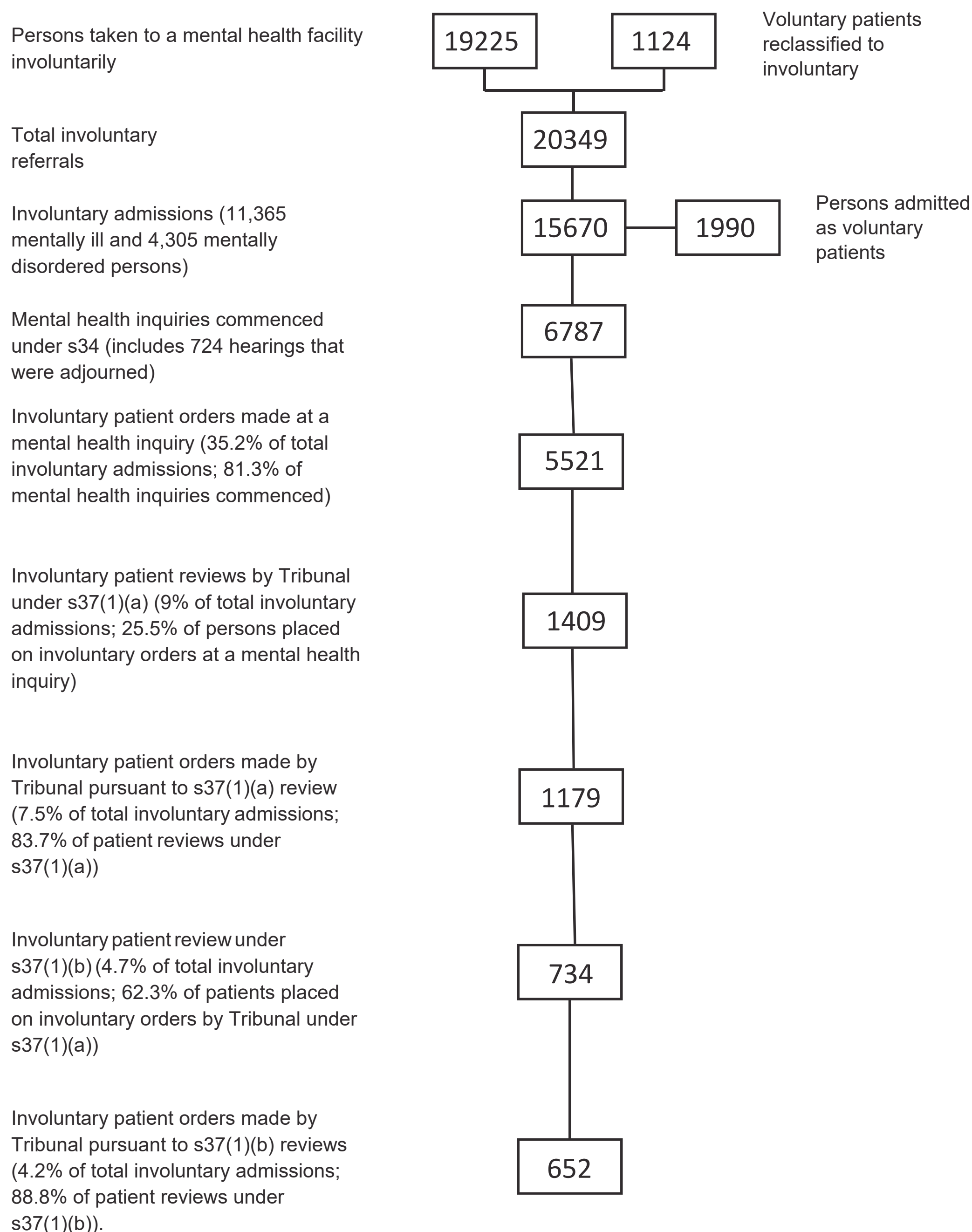


Table 5							
Summary of patients subject to involuntary patient orders or voluntary patient review as at 30 June 2019							
Hospital	***s34***	***s37(1)a***	***s37(1)b***	***s37(1)c***	***Total Involuntary***	***Voluntary***	***Total***
Albury	6	-	-	-	**6**	-	**6**
Bankstown	11	3	1	-	**15**	-	**15**
Blacktown	16	5	4	-	**25**	-	**25**
Bloomfield	20	13	19	28	**80**	-	**80**
Blue Mountains	4	5	-	-	**9**	-	**9**
Braeside	8	3	2	-	**13**	-	**13**
Broken Hill	1	-	-	-	**1**	-	**1**
Byron Bay	-	1	-	-	**1**	-	**1**
Campbelltown	22	5	3	-	**30**	-	**30**
Coffs Harbour	15	8	2	-	**25**	-	**25**
Concord	35	23	18	19	**95**	9	**104**
Cumberland	34	21	10	51	**116**	17	**133**
Dubbo	3	-	-	-	**3**	-	**3**
Forensic Hospital	1	-	2	7	**10**	-	**10**
Gosford	8	4	1	-	**13**	-	**13**
Goulburn	8	2	-	-	**10**	-	**10**
Greenwich	4	-	-	-	**4**	-	**4**
Hornsby	29	6	2	-	**37**	-	**37**
John Hunter	2	-	1	-	**3**	-	**3**
Kenmore	2	-	1	-	**3**	-	**3**
Lismore	14	3	-	-	**17**	-	**17**
Liverpool	17	20	7	2	**46**	14	**60**
Macquarie	9	13	25	92	**139**	24	**163**
Maitland	5	3	-	-	**8**	-	**8**
Mater MHC	46	27	8	12	**93**	1	**94**
Morisset	1	6	15	49	**71**	**-**	**71**
Nepean	13	6	-	-	**19**	1	**20**
Northern Beaches	9	2	-	-	**11**	-	**11**
Prince of Wales	27	14	4	3	**48**	-	**48**
Port Macquarie	6	-	1	-	**7**	-	**7**
Royal North Shore	16	12	3	-	**31**	-	**31**
Royal Prince Alfred	24	8	1	-	**33**	-	**33**
Shellharbour	19	7	5	1	**32**	-	**32**
South East Regional	7	-	-	-	**7**	-	**7**
St George	15	10	3	3	**31**	-	**31**
St Joseph’s	-	1	-	-	**1**	-	**1**
St Vincent’s	19	4	-	-	**23**	-	**23**
Sutherland	7	8	6	-	**21**	-	**21**
Tamworth	8	4	2	1	**15**	-	**15**
Taree	1	1	-	1	**3**	-	**3**
Tweed Heads	9	7	1	-	**17**	-	**17**
Wagga	14	-	-	1	**15**	-	**15**
Westmead Adult Psych	7	1	-	-	**8**	-	**8**
Westmead Child/Adolesc	-	1	-	1	**2**	-	**2**
Westmead PsychGeriatric	5	-	-	-	**5**	-	**5**
Wollongong	13	1	-	-	**14**	-	**14**
Wyong	24	8	-	-	**32**	-	**32**
Total	**564**	**266**	**147**	**271**	**1248**	**66**	**1314**

Note: This table represents a ‘snap shot’ as at 30 June 2019 of the number of people subject to involuntary patient orders or reviewed as long term voluntary patients. A number of these people may have been discharged from the facility. 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 2018 to 30 June 2019									
		M	***F***	***T***	***Adjourn***	***Withdrawn No Jurisdiction***	***Discharge/ voluntary***	***Discharge on CTO***	***Continued detention as involuntary patient***
s37(1)(a)	Review prior to expiry order for detention as a result of a mental health inquiry	754	655	1409	213	1	11	5	1179
s37(1)(b)	Review at least once every 3 months during first 12 months person is an involuntary patient	454	280	734	73	1	7	1	652
s37(1)(c)	Review at least once every 6 months while person is an involuntary patient after first 12 months	366	218	584	28	-	2	-	554
Total		1574	1153	2727	314	2	20	6	2385

Note: The 1409 reviews under s37(1)(a) related to 1257 individuals.
The 734 reviews under s37(1)(b) related to 403 individuals.
The 584 reviews under s37(1)(c) related to 323 individuals.
The total of 2727 reviews under s37(1) related to 1665 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 - 2018/19									
	M	***F***	***T***	***Adjour-ned***	***Withdrawn no jurisdiction***	***Appeal Dismissed***	***Dismissed and no further Appeal to be heard prior to next scheduled review***	***Discharged***	***Reclass to Voluntary***
July 09 - June 10	137	118	255	27	14	192	18	3	1
July 10 - June 11	336	272	608	50	43	471	18	25	1
July 11 - June 12	413	362	775	49	62	613	20	26	5
July 12 - June 13	304	287	591	46	28	461	26	29	1
July 13 - June 14	365	284	649	56	25	521	25	22	-
July 14 - June 15	365	278	643	38	74	492	28	11	-
July 15 - June 16	339	302	641	54	77	481	12	17	-
July 16 - June 17	404	286	690	60	59	533	21	16	1
July 17 - June 18	391	294	685	43	55	559	15	12**	1
July 18 - June 19	342	287	629*	53	72	468	18	18**	-

Note: * These determinations related to 511 individuals.
** Includes 13 orders for discharge where discharge was deferred.

Table 8

Community Treatment Orders for declared mental health facilities made by the Tribunal for the periods 2016/17, 2017/18 and 2018/19

Health Care Agency	Total CTOs			Health Care Agency	Total CTOs		
	2016/17	*2017/18*	*2018/19*		*2016/17*	*2017/18*	*2018/19*
Albury CMHS	33	30	38	Kempsey CMHS	48	43	49
Auburn CHC	49	46	65	Lake Illawarra Sector	1	-	1
Bankstown MHS	117	149	133	Lake Macquarie MHS	79	70	77
Bega Valley Counselling & MHS	22	28	28	Lismore MHOPS	97	112	114
Blacktown and Mt Druitt PS	268	246	292	Lithgow MHS	-	5	7
Blue Mountains MHS	89	59	50	Liverpool MHS	125	127	147
Bondi Junction CHC	8	6	9	Macquarie Area MHS	76	81	88
Bowral CMHS	9	11	15	Manly Hospital & CMHS	171	140	68
Byron MHS	2	15	21	Maroubra CMH	164	185	183
Campbelltown MHS	129	169	133	Marrickville CMHS	121	121	114
Camperdown CMHS	166	158	169	Merrylands CHC	97	74	28
Canterbury CMHS	118	100	119	Mid Western CMHS	133	123	118
Central Coast AMHS	361	401	441	Mudgee MHS	13	11	17
Clarence District HS	26	-	-	Newcastle MHS	186	209	183
Coffs Harbour MHOPS	77	93	99	Northern Beaches	-	-	144
Cooma MHS	17	24	13	Northern Illawarra MHS	1	-	-
Cootamundra MHS	1	-	-	Orange C Res/Rehab	8	5	6
Croydon CMHS	197	236	241	Parramatta CHS	87	98	134
Deniliquin District MHS	26	29	31	Penrith MHS	140	78	73
Dundas CHC	45	35	2	Port Macquarie CMHS	32	30	47
Eurobodalla CMHS	49	32	25	Queanbeyan MHS	34	34	36
Fairfield MHS	162	156	147	Redfern CMHS	57	36	55
Far West MHS	32	20	17	Royal North Shore H & CMHS	128	157	199
Goulburn CMHS	37	37	56	Ryde Hospital & CMHS	103	135	139
Grafton MHS	22	37	37	Shoalhaven MHS	47	72	77
Granville MHS	24	25	49	Springwood MHS	-	8	17
Griffith (Murrumbidgee) MHS	35	38	53	St George Div of	238	221	208
Hawkesbury MHS	22	20	25	St Mary's MHS	44	59	59
Hills CMHC	63	47	55	Sutherland C Adult & Family MH	98	80	85
Hornsby Ku-ring-gai Hospital & CYMHS	125	152	152	Tamworth CMHS	1	10	6
Hunter	-	1	-	Taree CMHS	56	70	65
Hunter NE Mehi/McIntyre	24	29	38	Temora CMH	8	10	11
Hunter NE Peel	37	39	32	Tumut CMHS	4	8	12
Hunter NE Tablelands	14	20	24	Tweed MHS	129	106	108
Hunter Valley HCA	99	82	104	Wagga Wagga CMHS	71	57	47
Illawarra CMHS	203	139	120	Young MHS	23	20	11
Inner City MHS	78	73	81				

Total Number of Community Treatment Orders (CTOs) 2016-17 - 5362 (includes 362 CTOs made at mental health inquiries).
Total Number of Community Treatment Orders (CTOs) 2017-18 - 5362 (includes 335 CTOs made at mental health inquiries).
Total Number of Community Treatment Orders (CTOs) 2018-19 - 5599 (includes 416 CTOs made at mental health inquiries).

Table 9											
Number of Community Treatment Orders made by the Tribunal and by Magistrates for the period 2008/9 to 2018/19											
	2008/9	***2009/ 10***	***2010/ 2011***	***2011/ 2012***	***2012/ 2013***	***2013/ 2014***	***2014/ 2015***	***2015/ 2016***	***2016/ 2017***	***2017/ 2018***	***2018/ 2019***
Total Magistrate CTOs	997	806	-	-	-	-	-	-	-	-	-
Mental Health Inquiry CTOs	-	10	566	581	339	360	336	336	362	335	416
Total Tribunal CTOs	4058	3956	4128	4426	4882	4824	4806	5050	5000	5027	5183*
Total CTOs made	**5055**	**4772**	**4694**	**5007**	**5221**	**5184**	**5142**	**5386**	**5362**	**5362**	**5599**

Note 1: 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 6 CTOs made at s37 reviews of involuntary patients.

Table 10							
Summary of outcomes for applications for Community Treatment Orders (s51) 2018/19							
	M	***F***	***Total***	***Adjourned***	***Withdrawn No Jurisdiction***	***Application Decline***	***CTO Made***
Application for CTO for a person on an existing CTO	1545	790	2335	64	4	16	2251**
Application for a CTO for a person detained in a mental health facility	964	679	1643	123	5	14	1501***
Application for a CTO not detained or on a current CTO	1030	571	1541	91	4	21	1425
Total	**3539**	**1980**	**5519***	**278**	**13**	**51**	**5177**

Note:
* These determinations related to 3638 individuals.
** Includes 1 CTO when discharge was deferred.
*** Includes 106 CTOs where discharge was deferred.

Table 11	
Tribunal determinations of ECT consent inquiries for voluntary patients for period 2018/19	
Adjourned	-
Capable and has consented	-
Capable but refused consent	-
Incapable of consent	2
Total	**2***

Note: * These determinations related to two individuals.

Table 12

Tribunal determinations of ECT administration inquiries for the periods 2014/15, 2015/16, 2016/17, 2017/18 and 2018/19

Outcome	***2014/15***	***2015/16***	***2016/17***	***2017/18***	***2018/19***
Capable and has consented	42	34	25	35	29
ECT approved	649	580	610**	708**	717
ECT not approved	19	24	13	12	7
No jurisdiction/withdrawn	10	8	9	6	4
Adjourned	48	58	66	51	57
Total	**768**	**704**	**723***	**812***	**814***

Note: * These determinations related to 485 individual patients (including four hearings involving two forensic patients)
** Includes four forensic patient determinations.

Table 12A

Tribunal determinations of ECT inquiries for persons under the age of 16 years for the period 2018/19

Outcome	***Voluntary Patient***	***Involuntary Patient***
Capable and consented	-	-
ECT approved	-	-
ECT not approved	-	-
No jurisdiction/withdrawn	-	-
Adjourned	-	-
Total	**-**	**-**

Table 13									
Summary of notifications received in relation to emergency surgery (s99) during the periods 2011/12 - 2018/19									
	M	***F***	***T***	***Lung/Heart/ Kidney***	***Pelvis/Hip/ Leg/Spinal***	***Tissue/Skin***	***Hernia***	***Gastro/ Bowel/ Abdominal***	***Brain***
2011/12	3	5	8	4	-	1	-	1	1
2012/13	1	2	3	1	1	-	1	-	-
2013/14	3	2	5	1	-	-	-	4	-
2014/15	4	-	4	2	1	-	-	1	-
2015/16	1	1	2	-	1	-	-	1	-
2016/17	2	2	4	1	2	1	-	-	-
2017/18	2	-	2	-	1	1	-	-	-
2018/19	-	2	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 2018/19							
	M	F	T	Approved	Refused	Adjourned	Withdrawn/No Jurisdiction
Surgical procedures	5	2	7	7	-	-	-
Special medical treatment	-	-	-	-	-	-	-

Note: * These determinations related to seven individuals.

FINANCIAL MANAGEMENT

Table 15

Summary of statistics relating to the Tribunal's jurisdiction under the NSW Trustee & Guardian Act 2009 for the period July 2018 to June 2019

Section of Act	*Description of Reviews*	*Reviews*			*Order made*	*Interim Order under s20*	*No Order made*	*Revocation Approved*	*Revocation Declined*	*Adjournments*	*Withdrawn no jurisdiction*	*Legal Repres.*
		M	*F*	*T*								
s44	At a Mental Health Inquiry	16	16	32	13	5	3	-	-	7	4	32
s45	After reviewing a forensic patient	-	-	-	-	-	-	-	-	-	-	-
s46	On application to Tribunal for Order	31	21	52	29	3	3	-	-	15	2	47
s48	Review of interim FM order	2	-	2*	-	1	-	-	-	1	-	2
s88	Revocation of Order	20	15	30*	-	-	-	19*	11	5	-	19
Total		**69**	**52**	**121**	**42**	**8**	**6**	**19**	**11**	**28**	**6**	**100**

Note: * Includes one forensic patient hearing.

FORENSIC JURISDICTION

Table 16

Number of Tribunal reviews of forensic patients under the *Mental Health (Forensic Provisions) Act 1990* for 2017/18 and 2018/19

Description of Review	*2017/18 Reviews*			*2018/19 Reviews*		
	M	***F***	***T***	***M***	***F***	***T***
Review after finding of not guilty by reason of mental illness (s44)	25	8	33	27	3	30
Review after detention or bail imposed under s17 following finding of unfitness (s45(1)(a))	1	-	1	-	-	-
Review after limiting term imposed following a special hearing (s45(b))	3	3	6	9	1	10
Regular review of forensic patients (s46(1))	781	89	870	804	109	913
Application to extend period of review of forensic patients (s46(4))	-	-	-	-	-	-
Regular review of correctional patients (s61(1))	7	-	7	11	1	12
Review of a forensic patient following their apprehension due to an alleged breach of a condition of leave or release (s68(2))	45	7	52	38	16	54
Application by a victim of a forensic patient for the imposition of a non contact or place restriction condition on the leave or release of the forensic patient (s76)	5	-	5	11	1	12
Initial review of person transferred from prison to MHF (s59)	94	11	105	80	11	91
Review of person awaiting transfer from prison (s58)	17	3	20	25	4	29
Application for a forensic community treatment order (s67)	162	11	173	154	28	182
Application to vary forensic community treatment order (s65)	1	-	1	-	-	-
Regular review of person subject to a forensic community treatment order and detained in a correctional centre (s61(3))	115	10	125	96	12	108
Request to suspend operation of an order pending determination of an appeal (s77A(11))	-	-	-	-	-	-
Application for ECT (s96)1	2	-	2	2	2	4
Application for surgical operation (s101)	-	-	-	-	-	-
Application to revoke Financial Management Order (s88)	2	1	3	1	-	1
Review of interim Financial Management Order (s48)	-	-	-	1	-	1
Application to allow publication of names (s162)	2	-	2	4	-	4
Approval of change of name (s31D)	4	-	4	2	2	4
Total	**1266**	**143**	**1409***	**1265**	**190**	**1455**
Determinations						
Fitness s16	65	9	74	66	3	69
Following limiting term s24	8	2	10	16	3	19
Total	**73**	**11**	**84**	**82**	**6**	**82**
Combined Total	**1339**	**154**	**1493***	**1347**	**196**	**1543**

* Includes two Financial Management hearings under *NSW Trustee & Guardian Act 2009.*

Table 17	
Outcomes: s16 Determination of fitness to be tried for period 2018/19	
s16 person is likely to become fit to be tried and is suffering from a mental illness	11
s16 person is likely to become fit to be tried and is suffering from neither a mental illness nor a mental condition	1
s16 person will not become fit to be tried	36
Adjournment	20
Total	**70***

* These hearings related to 52 patients.

Table 18	
Outcomes: s24 Determination following nomination of limiting term for period 2018/19	
s24 person is mentally ill. Referring court to be notified	6
s24 person is suffering from a mental condition and does object to detention in hospital	1
s24 person is suffering from a mental condition and does not object to detention in hospital	6
s 24 person is neither mentally ill nor suffering from a mental condition	1
Adjournment	5
Total	**19**

* These hearings related to 15 patients.

Table 19	
Outcomes: s44 First review following finding of not guilty by reason of mental illness for period 2018/19	
Court order for conditional release replaced by Tribunal order	-
Current order for conditional release to continue	4
Current order for detention to continue	7
Transfer to another facility	12
Release - conditional	4
Release - conditions varied	1
Revocation of conditional release	-
Grant leave of absence	2
Adjournment	3
Total	**33**

* These hearings related to 29 patients.

Table 20	
Outcomes: s45(1)(a) and (b) First review following detention under s17 or s27 for period 2018/19	
s45 person has become fit to be tried	-
s45 person has not become fit and will not become fit within 12 months	9
Adjournment	1
Total	**10***

* These hearings related to nine patients.

Table 21	
Outcomes: s46 Review of forensic patients for period 2018/19	
Current order for conditional release to continue	103
Current order for detention to continue	319
Current order for apprehension to continue	1
Directions issued	1
s46(5) extension of period of review granted	73
Grant of leave of absence	138
s151(4) that hearing be conducted wholly or partly in private	-
s47(4) person is fit to be tried	15
s47(4) person is not fit to be tried	70
s46(5) extension of period of review not granted	2
Transfer to another facility	39
Release - conditional	25
Release - conditions varied	179
Release - unconditional	4
Release - unconditional, CTO also made	8
Revocation of conditional release	-
Current orders for transfer and detention to continue	33
Transfer to another facility - time limited order	12
Variation to current order for transfer and detention	8
Adjournment	87
Decision reserved	4
Classified as an involuntary patient	1
s47(4) Decision reserved	-
s45 Financial management order made	1
Total	**1123**

* These hearings related to 465 patients

Table 22	
Outcomes: s58 Limited review of correctional patients awaiting transfer to a mental health facility for period 2018/19	
Transfer to another facility	25
Adjournment	4
Decision reserved	1
Total	**30***

* These hearing related to 27 patients

Table 23	
Outcomes: s59 First review following transfer from a correctional centre to a mental health facility for period 2018/19	
Ordered to be detained in a mental health facility	78
s65(1) classified involuntary patient - correctional patient status expires	-
s59 person is a mentally ill person, continue in a mental health facility	78
s59 is a mentally ill person and appropriate care is available in a correctional centre under a FCTO	9
s59 is a mentally ill person and appropriate care is available in a correctional centre	-
s59 person is not a mentally ill person, continue in a mental health facility	-
s59 person is not a mentally ill person, and should not continue in a mental health facility	2
Transfer to another facility	5
Transfer to another facility – CTO made	3
s45 No financial management order made	74
Adjournment	2
Total	**251***

* These hearings related to 89 patients.

Table 24	
Outcomes: s61(1) Review of correctional patients for period 2018/19	
Ordered to be detained in a mental health facility	6
s65(1) classified involuntary patient - correctional patient status expires	1
Transfer to another facility	1
Transfer to another facility – CTO made	2
Adjournment	2
Total	12*

* These hearing related to eight patients.

Table 25	
Outcomes: s67 Application for a forensic CTO for period 2018/19	
Forensic CTO made	172
CTO made to have effect on date of unconditional release	7
Forensic CTO not made	-
Application withdrawn at hearing	-
Adjournment	4
Total	**183***

* These hearings related to 176 patients.

Table 26	
Outcomes: s61(3) Review of person subject to a CTO in gaol for period 2018/19	
Forensic CTO to continue	100
Forensic CTO varied	2
Forensic CTO revoked	2
Adjournment	4
Total	**108***

* These hearings related to 85 patients.

Table 27	
Outcomes: s65 Application to vary a forensic CTO for period 2018/19	
Forensic CTO varied	-
Tribunal has no jurisdiction	-
Adjournment	-
Total	**-**

Table 28	
Outcomes: s68(2) Review of person apprehended under s68 for period 2018/19	
Confirm order for conditional release	12
Grant of leave of absence	-
Confirm order granting leave of absence	4
Transfer to another facility	-
Revocation of conditional release	-
Decision reserved	-
Adjournment	38
Total	**54***

* These hearings related to 24 patients.

Table 29	
Outcomes: s76 application of registered victim for non-association or place restriction for period 2018/19	
Adjournment	1
Application refused	2
Application withdrawn at hearing	2
Decision reserved	1
Impose place restriction and non-association condition on conditional release	1
Impose place restriction and non-association condition on leave of absence	1
Impose place restriction condition on conditional release	1
Variation non-association order for conditional release	2
Variation place restriction order for conditional release	1
Vary a place restriction and non-association condition on conditional release	1
Total	**13***

* These hearings related to 10 patients.

Table 30	
Outcomes: Procedural hearings for period 2018/19	
s162 Application to publish or broadcast name	
Application granted	2
Application refused	1
Adjourned	2
s31D Approval of change of name	
Application granted	3
Application withdrawn at hearing	1
Total	**9***

* These hearings related to 6 patients.

Table 31			
Location of forensic and correctional patients as at 30 June 2017, 30 June 2018 and 30 June 2019			
	30 June 2017	30 June 2018	30 June 2019
Bathurst Correctional Centre	1	-	-
Blacktown Hospital	2	3	2
Bloomfield Hospital	21	18	23
Cessnock Correctional Centre	1	2	7
Community	186	182	193
Concord Hospital	7	8	8
Correctional Centre	3	32	16
Cumberland Hospital - Bunya Unit and Cottages	32	31	31
Forensic Hospital	119	109	110
Goulburn Correctional Centre	2	-	1
Grafton Correctonal Centre	-	2	1
Junee Correctional Centre	4	2	2
Juvenile Justice Centre	-	4	-
Lismore Hospital	1	1	-
Lithgow Correctional Centre	5	4	6
Liverpool Hospital	2	2	1
Long Bay Prison Hospital	46	57	51
Macquarie Hospital	9	9	5
Mater Mental Health Facility	-	1	-
Metropolitan Remand and Reception Centre	70	83	79
Metropolitan Special Programs Centre	16	18	14
Morisset Hospital and Cottages	27	31	28
Northern Beaches Hospital	-	-	2
Parklea Correctional Centre	2	1	4
Prince of Wales Hospital	-	1	-
Shellharbour	2	1	2
Silverwater Womens Correctional Centre	5	7	15
South Coast Correctional Centre	1	3	8
South East Regional Hospital	-	1	-
St George Hospital	-	-	-
Wagga Wagga	-	1	1
Wellington Correctional Centre	-	-	5
Wollongong Hospital	1	1	1
Windsor Correctional Centre	-	-	1
Wyong	1	1	1
Total	**566**	**616**	**618**

Table 32			
Location of hearings held for forensic and correctional patients during 2016/17, 2017/18 and 2018/19			
	2016/17	**2017/18**	**2018/19**
Bloomfield Hospital	46	46	44
Concord Hospital	10	15	14
Cumberland Hospital - Bunya Unit	92	95	117
Forensic Hospital	261	281	269
Long Bay Prison Hospital	209	251	253
Macquarie Hospital	19	19	14
Metropolitan Remand and Reception Centre	104	133	119
Morisset Hospital	68	54	62
Tribunal Premises	533	599	651
Total	**1342**	**1493**	**1543***

* Includes two hearings under *NSW Trustee and Guardianship Act 2009*.

Table 33						
Category of forensic and correctional patients as at 30 June 2018 and 30 June 2019						
Year	**2018**			**2019**		
Category	**Male**	**Female**	**Total**	**Male**	**Female**	**Total**
Not Guilty by Reason of Mental Illness	339	47	**386**	350	48	**398**
Fitness/Fitness Bail	39	1	**40**	34	3	**37**
Limiting Term	22	3	**25**	28	3	**31**
Extension/Interim Extension orders	10	-	**10**	10	1	**11**
Correctional Patients	29	1	**30**	45	3	**48**
Forensic CTO	115	10	**125**	81	12	**93**
Total	**554**	**62**	**616**	**548**	**70**	**618**

Table 34

Number of forensic and correctional patients 2001 - 30 June 2019

Year	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
Patients	223	247	279	277	284	310	309	315	319	348	374	387	393	422	448	468	566	616	618

Note: *Figures for 1997-2001 taken from MHRT Annual Reports as at 31 December of each year. Figures from 2002 - 2017 were taken as at 30 June of those years. Figures for 2009 - 2019 include correctional patients. Figures for 2011 - 2016 include one Norfolk Island forensic patient. Figures for 2011-2019 include Forensic CTOs.*

APPENDICES

APPENDIX 1

Patient statistics required under MHA s147(2) concerning people taken to a mental health facility during the period July 2018 to June 2019

(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.

MHA	Method of referral	Admitted	Not Admitted	Total
s19	Certificate of Doctor	10264	364	10628
s22	Apprehension by Police	2083	1326	3409
s20	Ambulance Officer	1581	761	2342
s58	Breach Community Treatment Order	111	20	131
s26	Request by primary carer/relative/friend	1809	12	1821
s24	Order of Court	357	104	461
s23 via s19	Authorised Doctor's Certificate	420	13	433
Total Admissions		**16625**	**2600**	**19225**
Reclassified from Voluntary to Involuntary		1035	89	1124
TOTAL		**17660**	**2689**	**20349**

(2) s147(2)(b)
Persons were detained as mentally ill persons on 11365 occasions and as mentally disordered persons on 4305 occasions. 1990 persons were admitted as voluntary patients.

(3) s147(2)(c)
A total of 6787 mental health inquiries were commenced relating to 5511 individuals.

Outcome of mental health inquiries conducted 1 July 2018 - 30 June 2019

	Outcome
Adjourned	724
Discharge or deferred discharge	89
Reclassify from involuntary to voluntary	-
Involuntary patient order	5521
Community treatment order	416
Declined to deal with	37
TOTAL	**6787**

(4) s147(2)(d)
In 2018/19 of the 20349 persons taken involuntarily to a mental health facility or reclassified from voluntary to involuntary: 2689 were not admitted; 1990 people were admitted as a voluntary patient and 15670 were detained as either a mentally ill or mentally disordered person - a total of 17660 admissions (including 1035 of the 1124 people who were reclassified from voluntary to involuntary).

APPENDIX 2

The jurisdiction of the Tribunal as at 30 June 2019 as set out in the various Acts under which it operates is as follows:

Mental Health Act 2007 Matters

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

NSW Trustee & Guardian Act 2009 Matters

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

Mental Health (Forensic Provisions) Act 1990 Matters

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

Births, Deaths and Marriages Registration Act 1995 Matters

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

APPENDIX 3

Mental Health Review Tribunal Members at 30 June 2019

Full-Time Members	Judge Paul Lakatos SC (President)	Ms Maria Bisogni (Deputy President)	Ms Anina Johnson (Deputy President)
Part-Time Deputy Presidents	Prof Hugh Dillon Mr John Feneley Mr Richard Gulley AM RFD	The Hon Peter Hidden AM QC Ms Mary Jerram AM Ms Angela Karpin	The Hon Patricia Staunton AM The Hon Judith Walker The Hon Stephen Walmsley SC

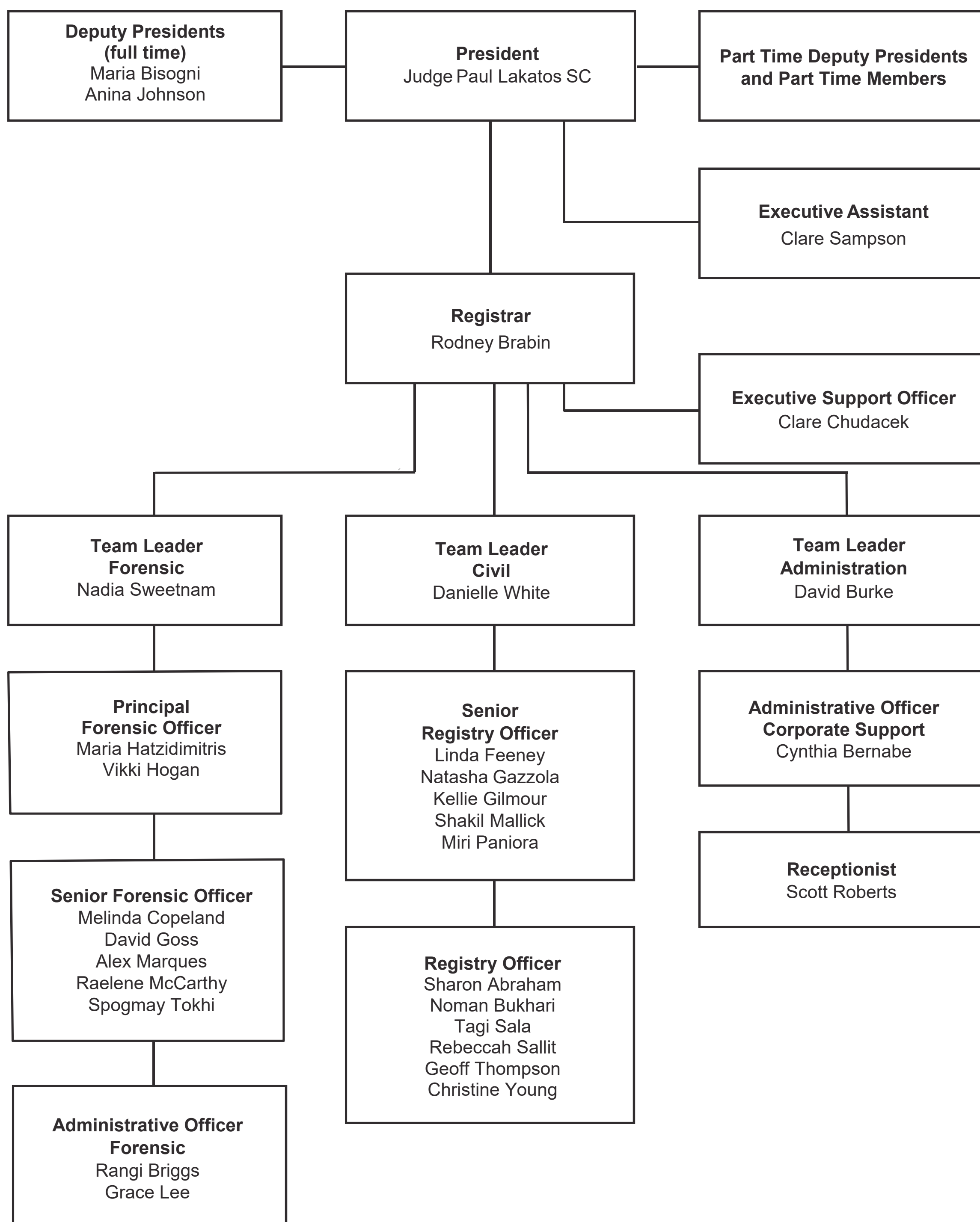
	Lawyers	**Psychiatrists**	**Other**
Part-Time Members	Ms Carol Abela	Dr Clive Allcock	Ms Lyn Anthony
	Ms Diane Barnetson	Dr Stephen Allnutt	Ms Elisabeth Barry
	Ms Rhonda Booby	Dr Josephine Anderson	Mr Peter Bazzana
	Mr Peter Braine	Dr Dinesh Arya	Mr Ivan Beale
	Ms Catherine Carney	Dr Uldis Bardulis	Ms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

The Tribunal notes its appreciation for the following members whose appointments ended during 2018/19:
Former President The Hon Richard Cogswell SC, Deputy President the Hon John Dowd QC and Tribunal member Dr Sheila
Members Ms Eraine Grotte and Mr Michael Joseph SC.

APPENDIX 4

MENTAL HEALTH REVIEW TRIBUNAL

Organisational Structure and Staffing as at 30 June 2019



APPENDIX 5

FINANCIAL SUMMARY

Expenditure 2018/19

Expenditure for 2018/19 was directed to the following areas:

Budget Allocation		7,744,992
Salaries and Wages	*7,265,270	
Goods and Services	423,481	
Equipment, repairs and maintenance	77,758	
Expenditure	**7,766,509	
Less Revenue	-12,448	
		7,754,061
Budget overspend		-9,069