Mental Health Tribunal

2015-16

Annual Report

Mental Health Tribunal

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28 September 2016

Dr Vanessa Goodwin
Level 10, 10 Murray Street
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Dear Minister

I am pleased to present the Mental Health Tribunal's Annual Report in accordance with Section 178 of the *Mental Health Act 2013* for the period 1 July 2015 to 30 June 2016.

Yours Sincerely

Yvonne Chaperon
President, Mental Health Tribunal

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SECTION TWO:
Performance and financial report of the Mental Health Tribunal

Terminology

It is acknowledged there are diverse views on terminology used for persons with mental illness and for those who receive treatment. In this report, the terms 'patient', and 'involuntary patient' and 'forensic patient' are used when the context concerns specific statutory functions of the Tribunal. This is in accordance with the terminology used in the provisions of the Mental Health Act 2013, which defines these terms.

Presidents Message

I am pleased to present the Annual Report of the Mental Health Tribunal (the Tribunal) for 2015-16, which has been a most productive year. The report provides an outline of the purpose, key activities, performance and financial summary of the Tribunal during the 2015–16 financial year.

In keeping with the trend of the past two years, the Tribunal's workload has continued to increase steadily. This year the Tribunal held 2155 civil hearings and 52 forensic hearings. We also had an increase in the number of the ad hoc hearings held (hearings not in our planned hearing timetable) which we are still required to accommodate to meet our legislative obligations.

The Mental Health Act 2013 was implemented in February 2014 and since then, concerns have been raised by the Tribunal, medical practitioners, mental health services staff and other consumer groups about several aspects of the legislation's operation. Several drafting anomalies have been identified, and amendments are required to ensure our legislation - and therefore the Tribunal - best serves Tasmanians requiring our support.

Over the past year the Tribunal and other stakeholders, particularly the Department of Health and Human Services' Mental Health Services group, have been heavily involved in developing recommendations for those amendments. I can now report that a final round of amendments has been circulated for comment to stakeholders and the Bill has now been tabled in Parliament.

A significant activity for the Tribunal in the past year was a move to new premises in September 2015. We now have space in which to grow, with our own dedicated Tribunal hearing room. I would like to thank the Guardianship and Administration Board and the Resource Management and Planning Appeal Tribunal for the use of their hearing rooms over the past two years before our move. It has been greatly appreciated.

Further activity in 2015-16 saw the development of the new logo, which was undertaken to symbolise the new Act with a greater human rights focus, and the purpose and responsibilities of the Tribunal. We believe the logo represents Tasmania and the three main stakeholders of the Act: the patient, the health services and the Tribunal itself. In our view, the logo shows the three stakeholders are closely aligned: linkages represent our collaborative relationship that provides the patient with the treatment they need; and the spaces represent the least restrictive setting for assessment and treatment of people with mental illness that we strive for.

As well as rolling out the new logo in our communications and signage, we have been working to develop a new look to all Tribunal orders and soon our website at www.mentalhealthtribunal.tas.gov.au.

The Tribunal's 49 members have continued to provide the highest quality of service and I extend my personal thanks to them all for the deep commitment, wisdom, expertise and skill that they have each brought to our work this year.

I would like to extend my thanks to Richard Grueber, Deputy President. Richard continues to be of great support to the Tribunal and it's Registry.

I would also like to thank the Tribunal's hard working staff, and staff who have left the employment of the Tribunal in the last 12 months. We could not hold the number of hearings we do and be prepared for those hearings without their continued hard work and dedication.

I acknowledge the important work and support of the Legal Order Co-ordinators in the regions of Burnie, Hobart and Launceston who have the enormous task of coordinating the applications and orders within their services.

Lastly I would like to thank the Department of Justice for its continued support of the Tribunal, to enable it to meet its statutory functions under *The Mental Health Act 2013*.

The Tribunal has met with many challenges over the past year, and there remain countless more challenges ahead in the mental health sphere where the Tribunal has a significant role to play in supporting people with mental illness. I look forward to the next twelve months.

Yvonne Chaperon
PRESIDENT

Overview of the Mental Health Tribunal

About the Mental Health Tribunal

The Mental Health Tribunal (the Tribunal) is an independent statutory body established under the ***Mental Health Act 2013***. The Tribunal's primary function is to authorise and review the treatment of people with mental illness, who lack decision making capacity to provide informed consent for treatment.

The Tribunal provides a vital level of safeguard, protecting the rights and dignity of people being involuntarily treated for mental illness.

The Tribunal commenced operations on 17 February 2014, replacing the previous Mental Health Tribunal and the Forensic Tribunal, which both operated under the previous *Mental Health Act 1996*.

Vision

Ensuring the protection of rights, safety, inclusive participation and just outcomes for people with mental illness.

Goals

- To promote and enable persons with mental illness to live, work and participate in the community
- To facilitate maximum opportunity for participation of those with mental illness and their support networks in decision making
- To achieve a culture of best practice in the operations of the Tribunal
- To contribute effectively to the development of mental health legislation, policy and practice in Tasmania
- To recognise and be responsive to national and international trends, developments and advances in mental health law

Values

- Accessible
- Equitable
- Professional
- Inclusive
- Accountable

Composition of the Mental Health Tribunal

The Tribunal consists of at least six persons, including:

- at least one person who is an Australian lawyer with at least five years' experience as such;
- at least one person who is a psychiatrist; and
- at least four other members

All members are appointed by the Governor, with one member being appointed as President and another as Deputy-President.

The President and Deputy President are appointed for a period of five years, while other members are appointed for a term not exceeding three years.

The Tribunal:

- may sit in divisions;
- acts by majority;
- may adjourn proceedings and make interim orders for the period of any adjournment;
- conducts proceedings with as little formality and as much expedition as appropriate for proper consideration; and
- is not bound by the rules of evidence.

Members

The President of the Tribunal, Ms Yvonne Chaperon, was appointed in January 2014 for a five year term and the Deputy President, Mr Richard Grueber, was appointed in December 2013 for a five year term.

The Tribunal currently has 48 other members who are all appointed for a period of up to three years. Of these, 15 are psychiatrists, 20 are legal members and 13 are general members.

The President is appointed on a full-time basis. Two other members are employed full-time by the Department of Justice and provide part-time service as Tribunal members to support the requirements of the Tribunal and the remaining members work on a sessional basis, hearing matters as required.

A list of current members appointed under the *Mental Health Act 2013* is at **Appendix A**.

Overview of the Mental Health Tribunal

Registry

The operation of the Tribunal is supported by a Registrar appointed under the Act and four permanent administrative staff.

The legislative framework

The current *Mental Health Act 2013* (the Act) replaced the *Mental Health Act 1996*. It was initiated to address issues raised by consumers, clinicians and other stakeholders throughout a significant consultation process.

The Act enables individuals with capacity to make their own treatment choices, while facilitating treatment for individuals who lack decision-making capacity and who need treatment for their own health or safety, or for the safety of others. The Act represents a significant improvement in the protection of the rights of mental health consumers in Tasmania to its predecessor. It balances consumer rights with the need for treatment, while also recognising the important role played by carers and family members of people with a mental illness.

The previous framework, across both the *Mental Health Act 1996* and the *Guardianship and Administration Act 1995*, was unnecessarily complex and principally allowed a person to be treated without consent, and for a person to be detained without being treated. A comprehensive review was conducted and this regime was considered contrary to the rights of persons with a mental illness and was deemed not consistent with a human rights approach. These concerns were addressed in the current Act.

Key features of the Act in relation to the Tribunal are:

- decision-making capacity is a key threshold criterion for determining whether or not the Act will apply. On this basis the legislation does not enable a person with decision-making capacity to be assessed, treated or detained against their will
- establishment of a single independent Tribunal with authority to make decisions about both treatment and treatment setting, in the hospital and/or community
- a streamlined and simplified treatment pathway and clarified protective custody, assessment and treatment pathways
- all Treatment Orders made by the independent Tribunal are required to be regularly reviewed within mandated timeframes

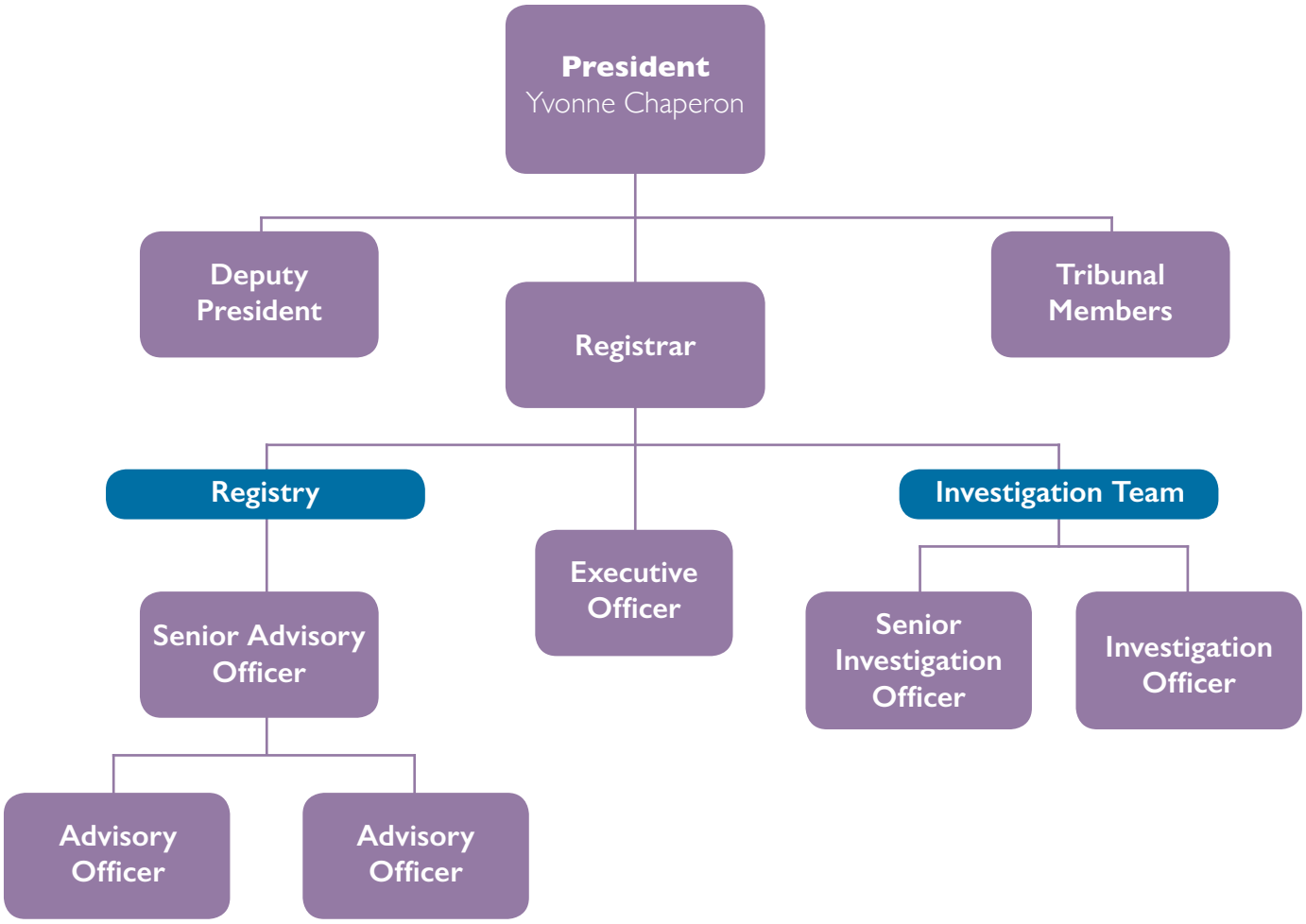
Other important aspects of the Act include:

- establishment of the statutory office of the Chief Civil Psychiatrist and the Chief Forensic Psychiatrist
- The Chief Civil Psychiatrist and Chief Forensic Psychiatrist are able to intervene directly with respect to the assessment, treatment and care of patients and may issue standing orders and clinical guidelines to guide the Act's interpretation and utilisation
- the responsibilities of clinicians and the rights of consumers and their families/carers are clearly outlined and
- the legislation contains provisions for the appointment, role and function of Official Visitors, for the approval of facilities and statutory officers and the management of forensic patients.

Since the commencement of the Act concerns have been raised about several aspects of the legislation's operation. As a result, a number of amendments were drafted and circulated for consultation throughout the reporting year. The Tribunal has worked with the Department of Health and Human Services and other stakeholders and these amendments are designed to further improve the operation of the Act.

The Act is due to be fully reviewed six years after its enactment.

Figure 1: Mental Health Tribunal organisational chart



SECTION ONE: Functions and procedures of the Mental Health Tribunal

1.1 Tribunal Functions

The Tribunal's primary functions are established under the *Mental Health Act 2013* and include:

- to make, vary, renew and discharge treatment orders
- to authorise the treatment of forensic patients
- to conduct reviews in relation to certain matters for involuntary and forensic patients
- to authorise special psychiatric treatment
- to determine applications for leave for patients subject to Restriction Orders
- to carry out any further functions given to it under this or any other Act.

Under the *Criminal Justice (Mental Impairment) Act 1999* the Tribunal also has responsibility for the review of Supervision and Restriction Orders.

1.2 Mental Health Tribunal Orders

The Tribunal's primary functions are making and reviewing treatment orders for involuntary patients[1] (civil[2]) and determining matters for forensic patients.

1.2.1 Civil

Assessment Order (AO)

An Assessment Order is a short term mechanism for a person to be assessed for mental illness, without informed consent, by an approved medical practitioner (generally, a psychiatrist) to determine whether the assessment and/or treatment criteria are met.

Any medical practitioner may make an assessment order if they believe that a person needs to be assessed against the assessment criteria. The assessment criteria are:

- The person has, or appears to have, a mental illness that requires or is likely to require treatment for
  - the person's health or safety; or
  - the safety of other persons; and
- cannot be properly assessed with regard to the mental illness or the making of a treatment order except under the authority of the assessment order; and
- does not have the capacity to make decisions regarding assessment for themselves.

In some cases an Assessment Order will be the "first step" towards an application being made to the Tribunal for a Treatment Order.

An Assessment Order may authorise a patient's admission to and detention in an approved hospital for and in connection with the assessment that is authorised by the Order.

An assessment order only lasts for 24 hours, unless a second approved medical practitioner affirms the assessment order, in which case they may extend the order, once, by a period not exceeding 72 hours.

Interim Treatment Order (ITO)

In making an application to the Tribunal for a Treatment Order in respect of a person with a mental illness, the approved medical practitioner (AMP) may request that an Interim Treatment Order be made.

An Interim Treatment Order may be necessary if the Tribunal cannot determine the application before the assessment order expires. It provides the applicant with the authority to treat a person until a treatment order is determined. It also provides authority for a patient's detention in an approved facility.

An application for an Interim Treatment Order may be determined by a single member of the Tribunal and the Order is valid for 10 days.

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[1] **Involuntary patient** means a person who is subject to an assessment order or treatment order', s3 *Mental Health Act 2013*.

[2] The notion of 'civil' is encompassed in section 143(4) of the Act where the responsibilities of the Chief Civil Psychiatrist are held to be in relation to patients other than – (i) forensic patients; or (ii) persons who are subject to supervision orders.

Treatment Order (TO)

A Treatment Order is an Order, made by the Tribunal, which authorises treatment for a person with mental illness, without the person's informed consent. A Treatment Order can be applied for by any approved medical practitioner.

A Treatment Order may follow directly from an Assessment Order or be initiated for a person who is not, at the time of application, subject to an Assessment Order.

While a Treatment Order is in operation it provides authority for the patient to be given the treatment, or types of treatment, specified in the Order and referred to in a treatment plan for the patient.

A Treatment Order can operate in the community, or in hospital, or in some combination of treatment settings. An order which operates in the community is authority for any mental health officer or police officer to take the patient under escort to ensure that he or she presents for treatment under the Order.

The Tribunal may also make a Treatment Order which includes a requirement in relation to treatment setting and detention.

The Tribunal may make a treatment order in respect of a person if, and only if it is satisfied that –

- An approved medical practitioner has applied for a treatment order in respect of the person; and
- The requirements of s37 of the Act have been met in respect of the application; and
- The person meets the treatment criteria set out in s40 of the Act:
  - the person has a mental illness; and
  - without treatment, the mental illness will, or is likely to, seriously harm –
    - the person's health or safety; or
    - the safety of other persons; and
  - the treatment will be appropriate and effective in terms of the outcomes referred to in section 6(1); and
  - the treatment cannot be adequately given except under a treatment order; and
  - the person does not have decision-making capacity.

A Treatment Order application must be determined within 10 days of being lodged with the Tribunal and must be heard by a panel of three Tribunal Members

See **Appendix B** for a standard Treatment Order workflow.

Renewal of an Order

A Treatment Order will be in effect for the period determined by the Tribunal up to six months, on first renewal and up to twelve months on second renewal, and will automatically expire unless it is renewed through an application by an approved medical practitioner. An application for renewal must be made ten days before the day the current order will expire. There is no limit to the number of times a Treatment Order may be renewed.

There are automatic reviews undertaken by the Tribunal built into the life of every order and also opportunities for a person to request a review.

Admission of civil patient to a Secure Mental Health Unit (SMHU)

An involuntary patient may be admitted to a secure mental health unit in certain, limited, circumstances.

Admission of an involuntary patient to a secure mental health unit is only to be in accordance with the requirements of section 63 of the Act and only if the Chief Civil Psychiatrist has made a formal request to the Chief Forensic Psychiatrist. All admissions are reviewed by the Tribunal.

1.2.2 Forensic orders and authorisations

The Tribunal also determines matters relating to forensic patients. A forensic patient is a person who has been admitted to a Secure Mental Health Unit (SMHU), and who has not yet been discharged from such a unit, or a person who has been released into the community by the Supreme Court however requires supervision by the Chief Forensic Psychiatrist. This may include:

- persons who have been ordered by a Court to be detained in a secure mental health unit rather than in prison while they are awaiting trial, during a trial or pending a sentencing decision (including where a court has ordered a person to be detained in a secure mental health unit for assessment)
- persons who have been placed on a Restriction Order by a Court
- persons subject to a Supervision Order who have breached or who are considered likely to breach the order and who have been apprehended and admitted to a secure mental health unit
- sentenced prisoners and remandees who have been admitted to a SMHU from prison
- sentenced detainees who have been admitted to a secure mental health unit from Ashley Youth Detention Centre

Involuntary patients may also be transferred to a SMHU and detained there in certain, limited circumstances, however these are not forensic patients.

Restriction and Supervision Orders

A Restriction Order is made by the Supreme Court and requires the person subject to the order to be admitted to and detained in a secure mental health unit until the order is discharged by that Court.

A Restriction Order can be made in relation to a person found guilty of an offence, or found not guilty by reason of insanity, if the person has a mental illness that requires treatment, and for the person's own health or safety or for the protection of members of the public, the person requires detention in a secure mental health unit.

A Supervision Order may be made by the Supreme Court releasing the person subject to the order under the supervision of the Chief Forensic Psychiatrist and subject to any conditions specified in the order.

A Supervision Order can be made in relation to a person found guilty of an offence, or found not guilty by reason of insanity, if the person has a mental illness that requires treatment, and for the person's own health or safety or for the protection of members of the public, the person requires supervision by the Chief Forensic Psychiatrist whilst living in the community.

Section 37 of the *Criminal Justice (Mental Impairment) Act 1999* requires the following of the Tribunal:

- review the Forensic Order within 12 months after the order was made; and
- once every 12 months after that

On review, the Tribunal can:

- determine that the order is no longer needed or that the conditions of the order are inappropriate, and issue a certificate to this effect. This enables a defendant on a Restriction Order or Supervision Order to apply to the Supreme Court to have the order discharged, revoked or varied
- recommend another type of Order and conditions that may be appropriate
- recommend that the Order be continued without change
- recommend that the Secretary apply to have a Supervision Order revoked and that a Restriction Order be made in its place

See **Appendix C** for a Restriction and Supervision Order workflow

Authorisation for Detention

Under Section 31 of the Criminal Justice (Mental Impairment) Act 1999 a person subject to a Supervision Order may be apprehended and detained at a SMHU (currently there is only one unit being the Wilfred Lopes Centre) if it is believed on reasonable grounds that the person has breached or is likely to breach the conditions of their Supervision Order, or there has been or is likely to be a serious deterioration in the persons mental health.

Once at the SMHU a person may be detained for four days without the authorisation of the Tribunal. If the person is required to be held longer than four days, an application for further detention, prior to the expiration of the four days must be made to the Tribunal. One member of the Tribunal can authorise the further detention of the person, however this must then be reviewed by the Tribunal consisting of three members within a reasonable time.

Authorisation of Treatment

Under Section 88 of the Act an application for Authorisation for Treatment must be made in writing to the Tribunal from an Approved Medical Practitioner (AMP) in order for a forensic patient to receive treatment where the criteria are met.

The Tribunal is to conduct a hearing in respect of an application. A single Tribunal member can authorise treatment on an interim basis for a maximum of 14 days in relation to the application initially, however a three member panel hearing must be held within that time frame to finally determine the matter.

Leave of absence

Section 78 of the Act makes provision for leave of absence from a SMHU for a forensic patient subject to a Restriction Order.

The Tribunal by notifying the patient may also extend the leave or vary the conditions of the leave.
When the written application has been received by the Tribunal Registry, the Tribunal must notify the Victim Support Service of the application. A search of the eligible persons register is then conducted and any persons in relation to the offence are notified of the application in order to make a submission in respect of it.

The Tribunal is also required to notify any other person who in the Tribunal's opinion should be notified of the application, and advise them that they may make a written submission regarding the application. All applications for leave are determined by the Tribunal.

1.2.3 Reviews

The Tribunal has a wide range of review powers in respect to both involuntary civil and forensic patients. The most frequently heard reviews include:

- 30 day review – The Tribunal must undertake a review of a Treatment Order within thirty days of it being made if it has not been discharged or expires.
- 90 day review – The Tribunal must undertake a review of a Treatment Order within ninety days of it being made, and every 90 days thereafter until it is discharged or expires.
- 3 day review of detention at an approved hospital - The Tribunal must review a treatment order within 3 days after it has been notified of a patient's detention at an approved hospital due to failing to comply with treatment.
- 3 day review of involuntary admission to the SMHU - The Tribunal must review the admission (or extension) within 3 days after being notified of the admission (or extension)
- The Tribunal also has the power to conduct a review on its own motion at any time where the Act does not expressly provide for a review (see below at 1.3.8 Own motion reviews)
- reviews can also be undertaken on the application of any person with the necessary standing.

In undertaking a review the general powers of the Tribunal allow it to combine a mandatory review with a discretionary review; refer any matter concerning the review to the relevant Chief Psychiatrist for possible intervention; issue any related or incidental directions it considers appropriate; and issue recommendations to people it considers appropriate.

A full list of review powers can be found at **Appendix D**.

1.3 Mental Health Tribunal Hearings

1.3.1 Conduct of hearings and procedure

The Act requires the Tribunal to sit as either a single Tribunal member or as a division of three members to hear and determine all matters within the jurisdiction of the Tribunal.

Each division is made up of a legal member (the Chair), a psychiatrist member and a general member. A general member is a person who has experience in the field of mental health.

The Act provides a framework for the Tribunal hearing procedures but allows discretion in the manner in which hearings are conducted. In accordance with the Act the Tribunal ensures that the hearings are informal, inclusive and non-adversarial. The Tribunal considers this is the best way to achieve both fairness and efficiency, balancing the need to ensure that questions of liberty are dealt with appropriately and thoroughly, while remaining mindful of not disturbing the therapeutic relationship between patients and their treating teams.

Hearings are generally conducted in person either at the approved facility where the patient is being treated or in a meeting room adhering to safety requirements in the community.

Generally present at hearings, other than the Tribunal members, are the patient and the treating medical practitioner and any representatives including relatives or friends of the patient. Patients in the community may also have a case manager in attendance.

The Tribunal has developed resources to assist members with conducting hearings and discharging their responsibilities including a Members resource manual and practice directions.

1.3.2 Practice Directions

The President may issue practice directions in relation to the practice and procedure of the Tribunal to complement existing legislation, and to clarify issues that arise in the course of the Tribunal's function.

1.3.3 Representation

Legal Representative

Some patients may not be able to present their views as well as they would like to due to their illness or reluctance to speak for various reasons. All patients of any proceedings have the right to representation, either by a private solicitor or by the Legal Aid Commission of Tasmania. The Registry provides representation information pamphlets with each hearing notification.

If a patient has requested legal representation, the legal representative may write to the Tribunal to request documentation in relation to a matter that is or has been before it.

The Tribunal may adjourn proceedings if it deems a patient is, or may be unable to make arrangements for representation and is not, or may not be receiving assistance elsewhere. In such cases the Registry will make arrangements for representation on the patient's behalf and the hearing may be rescheduled if necessary to allow adequate time for instructions to be communicated.

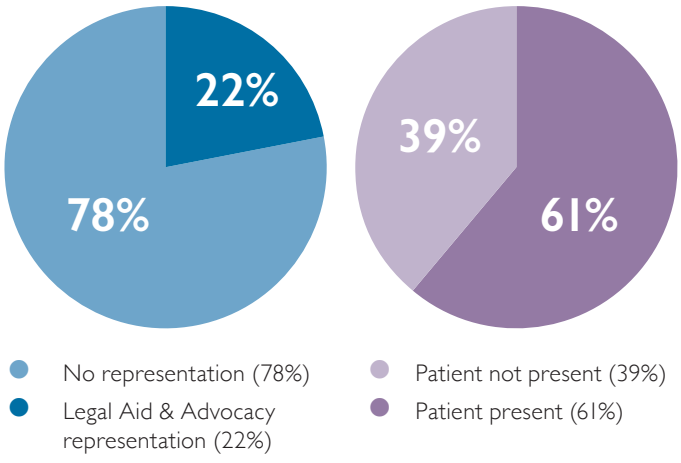
Advocate

Advocacy Tasmania runs the Mental Health Tribunal Representation Scheme. It has trained advocates who assist patients in putting their views to the Tribunal. The services provided by Advocacy Tasmania are free of charge and available to any persons requesting its service.

Support person

People, such as a relative, carer, friend or other support person, can attend a hearing to give support and to assist in putting views to the Tribunal and the treating team.

Figure 2: Representation and patient attendance at hearings



1.3.5 Adjournments

The Tribunal may adjourn proceedings on any particular matter twice but for not more than 30 days in total.

On adjourning any proceedings, the Tribunal may make any Interim Orders or determinations it considers appropriate in the circumstances.

Matters can be adjourned for many and varied reasons some of which include: the patient or other necessary party being unavailable; the patient not receiving notification of the hearing in a reasonable time; a required report has not been undertaken or the patient has not been assessed; or time is needed for further instructions to a legal representative.

1.3.6 Determinations and Orders

The Tribunal delivers its determination orally at the conclusion of the hearing and completes a written determination to reflect this decision. A copy of the order determination is provided to the patient at the conclusion of the hearing. A formal Order is also produced and mailed to the patient and the treating medical practitioner and case manager (if applicable) once it has been processed by the Registry and signed by the Registrar.

1.3.7 Statement of Reasons

Any party to proceedings has a right to request a written statement of reasons within 30 days of the determination. A party to proceedings is defined in Schedule 4, Part 1, Section 1.

The Tribunal has 21 days to provide the statement of reasons which are prepared by the Chair of the Tribunal and approved by the other 2 members sitting on the day.

Any statement that is written is provided to all parties to the proceeding in accordance with the Act. In order to protect the privacy of patients and witnesses, statements of reasons refer to all persons present at the hearing by their initials only.

The Tribunal also automatically provides a statement of reasons for a review of a Restriction Order or Supervision Order on its own initiative where a certificate has been issued.

During 2015-16, the Tribunal received 37 requests for statement of reasons.

1.3.8 Own motion reviews (investigations)

The Tribunal has specific review functions under the Act and has the power to review, or investigate, a matter at any time through its own decision to do so or at the request of another person with standing.

Mandatory reports are provided to the Tribunal periodically in relation to matters concerning patients (see Table 1 below). The reports are analysed, and where anomalies are found in the exercise of actions taken by other parties in relation to patients the Tribunal corresponds with the relevant party to determine the circumstances.

The Tribunal may refer any of these matters to the Chief Civil or Forensic Psychiatrists for further investigation.

Specifically, the Tribunal can review on its own motion (investigate) the matters in Table 1:

Statutory provision of the Act	Area of Review
s 114	Rights of forensic patients in SMHU
s 180(a)	Assessment Orders (AO)
s 181(1)(e)	Treatment Orders (TO)
s 182(b)	Involuntary admission to SMHU
s 183(a)	Refusal to return forensic patient to external custodian
s 184(d)	Status of voluntary inpatient
s 185(b)	Admission to SMHU of prisoner or youth detainee
s 186(1)(a)	Urgent circumstances treatment
s 187(a)	Seclusion and restraint
s 188(a)	Force
s 189(a)	Withholding of information from patient
s 190(a)	Involuntary patient or forensic patient transfer within Tasmania
s 191(a)	Determinations relating to leave of absence (LOA)
s 192(a)	Exercise of visiting, telephone or correspondence right
s 194(a)	Other reviews

Table 1: Matters the Tribunal has the power to conduct an own motion review in relation to.

In 2015-16 the Tribunal conducted 44 own motion reviews (investigations):

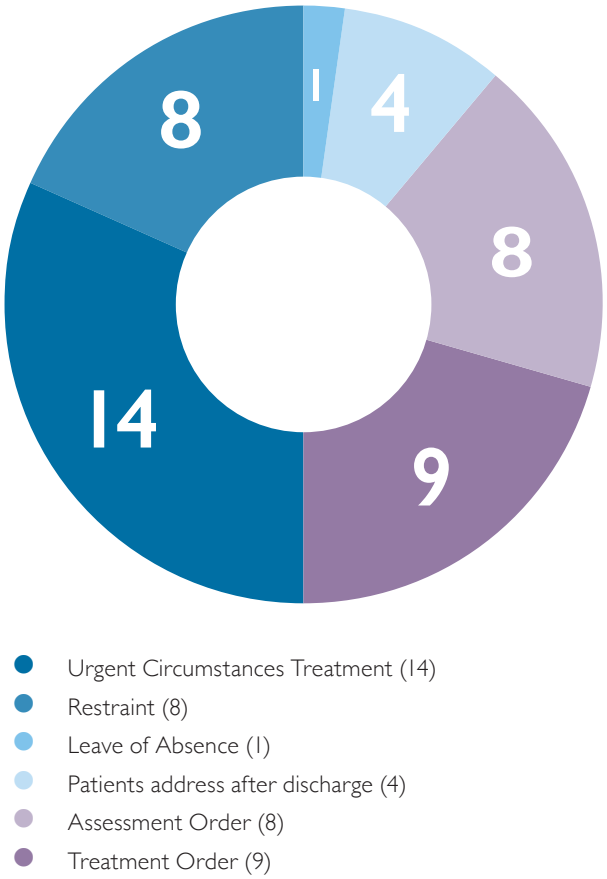


Figure 3: Matters the Tribunal has conducted own motion reviews (investigations) in relation to.

1.3.9 Appeals

Under Section 174, a person who is a party to a Tribunal proceeding may appeal to the Supreme Court from a determination made in those proceedings.

An appeal must be lodged within 30 days after a determination is given by the Tribunal, or within 30 days after the person is provided with a statement of reasons.

In 2015-16 three appeals were lodged with the Supreme Court of Tasmania. Two of the appeals were heard and dismissed, while one had not concluded by the end of the year.

1.4 Registry and administrative procedures

1.4.1 Scheduling of hearings

The Registry is responsible for scheduling the Tribunal's hearings. Hearings are held: four days a week, fifty two weeks a year, in three regions, with a morning and afternoon session of up to five matters each. Further unscheduled sessions are required from time to time, which will run simultaneously with other regular sessions. Scheduling of civil hearings is undertaken in the Tribunal's case management system, however forensic matters are scheduled through manual processes.

1.4.2 Notification

Under the Act the Tribunal is required to provide reasonable notice in writing of hearings. Notice is provided to each patient and any other relevant parties, which may include:

- members of the treating team
- responsible person - nominated on the application
- case manager
- relevant Chief Civil and Forensic Psychiatrists
- other persons determined by the Tribunal to be necessary to proceedings.

The Registry is also responsible for contacting all parties prior to a hearing by email or telephone contact to determine their attendance.

1.4.3 Processing of Determinations and Orders

The Registry is responsible for receiving all applications and correspondence in relation to patients. This information is vetted, entered into the case management system and prepared into files, along with the preparation of decision/determination documentation and draft order information for the purpose of the relevant hearing. Subsequent to a matter being heard, the Registry staff process the draft documents, entering it into the case management system or other manual systems and finally produce the formal order and any other required correspondence which is distributed to the necessary parties.

1.4.4 Case Management System

The Tribunal currently has a McGirrs Case Management System (MCMS) product to support its civil functions and processes. MCMS does not support the forensic functions of the Tribunal. The Registry are responsible for entering and maintaining the data in the system to ensure information provided to hearings is accurate. These staff are also responsible for identifying system issues and liaising with account managers to rectify and initiate improvements.

1.4.5 Recordings

It is the policy of the Tribunal that all proceeding are recorded. The Registry maintains an historical record of the hearing recordings.

The recordings are used for the purposes of:

- assisting Tribunal members in writing statement of reasons when a request is made to the Tribunal, or
- producing a transcript when an appeal in the Supreme Court is initiated; or
- being provided upon request to be listened to by a legal representative or other relevant person.

1.4.6 Venues and video conference facilities

The Tribunal sits at 12 different venues around the state:

Inpatient hearings
Royal Hobart Hospital, Hobart
Launceston General Hospital, Launceston
North West Regional Hospital, Burnie
Millbrook Rise Centre, New Norfolk
Roy Fagan Centre, Lenah Valley
In the community hearings
Level 4/144 Macquarie Street, Hobart
52 Frankland Street, Launceston (ACMHS)
1 Strahan Street, Burnie (BACMHS)
1 Strahan Street, Burnie (BACMHS)
St Marys District Hospital, St Marys
Flinders Island Community Centre, Flinders Island
Forensic hearings
Wilfred Lopes Centre, Hobart

Table 2: Tribunal sitting venues

Wherever possible the Tribunal conducts in-person hearings with all parties in attendance. Where all parties cannot be present, video conference and teleconference facilities are used. All venues attended by the Tribunal have video conference capability. The video conference facilities belong to and are managed by the Department of Health and Human Services.

In 2015-16 the Tribunal moved premises which included a refurbished hearing room. Hearings are conducted, both in person and by video conference from this venue.

1.4.7 Rostering members

Availability of the 50 Tribunal members to sit at hearings is requested every three months and a roster is then produced by the Registry for each region, South, North and Northwest Tasmania. The Registry have the responsibility of amending the roster when changes occur to a members availability due to such circumstances as conflict of interest, other employment priorities, illness, personal matters and leave.

1.4.8 Interpreters

The Tribunal provides the services of an Interpreter whenever requested by the patient. This is a requirement put in place to ensure that the patient is given every opportunity to understand and participate in the hearing process. In 2015-16 there were 2 requests made for an interpreter.

SECTION TWO: Performance and financial report of the Mental Health Tribunal

2.1 Performance

2.1.1 Civil statistics comparison[3]

	2014-15	2015-16
Interim Orders Made	552	496
Hearings Conducted *	539***	561
Orders**	**2014-15**	**2015-16**
Treatment Orders made	410	371
Treatment Orders varied	361	605
Treatment Order renewed	123	150

Notes:

* The 2014-15 Annual Report methodology was applied to both 2014-15 and 2015-16 data to achieve comparable figures; 'Hearings conducted' reported here only includes applications for treatment orders and renewal of treatment orders.
** These figures do not represent all hearings conducted.
*** Amended figure from the 2014-15 Annual Report.

New reporting

New reporting methodology has been developed and commissioned in 2015-16. The new structure will shape future annual reports and will assist in identifying trends across the Tribunals data. 'Hearings Conducted', as reported below, now captures all hearings held including both 1 member and 3 member panels. This figure provides a clear reflection of the current workload pressures.

[3] The Tribunal is continuing to develop and improve its data collection and analysis methodology. The 2014-15 data has been re-analysed using the 2015-16 reporting approach to draw some comparison between the two reporting periods. Due to the vast difference in data collation from previous years a full comparison between the 2014-15 and 2015-16 data is unable to be provided.

2.1.2 Key civil statistics overview

	2015-16
Treatment Order Applications Received and Processed by the Registry	531
Interim Orders Made	495
Treatment Orders Issued	371

Hearings Conducted	2015-16
Interim Orders made	495
Application Hearing	400
30 Day Review Hearing	248
90 Day Review Hearing	382
Application for Variation of a Treatment order	439
Renewal of Treatment Order	161
Discretionary Review Hearing	30
TOTAL	**2155**

Hearings Adjourned	41

2.1.3 Civil performance

The Tribunal has experienced an increase in the volume of its work each year since the Act came into force. During the reporting period 2015-16, the Tribunal received 531 Treatment Order applications with 400 matters proceeding to hearing. Statutory timeframes continued to be managed affectively with no Treatment Order application hearings being held outside the 10 day limitation. A total of 2155 hearings were held for the year.

The most significant increases in workload activity were in relation to variations and renewals of orders. Variations to orders (which relate to changes being made to the details of an order where a patient has been discharged from or re-detained in an approved facility or to treatment stipulated on an order), which are ordinarily conducted by a single member of the tribunal, increased significantly. Treatment Orders being renewed also reported a substantial increase indicating a steady rise in the number of longer term Treatment Orders.

Hearings Conducted

In 2015-16 the Tribunal heard a total of 2155 matters. These were conducted by a combination of 1 and 3 member panels. A breakdown of the matter types can be seen in **Figure 4**.

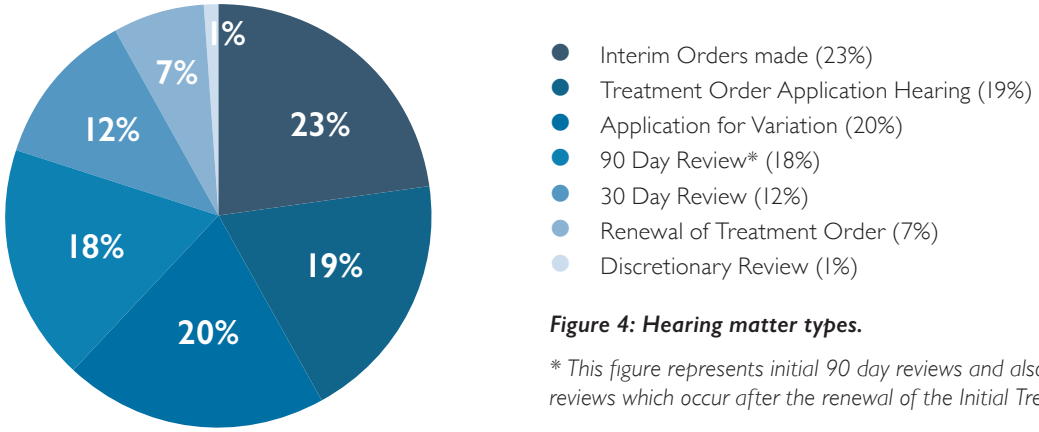


Figure 4: Hearing matter types.

** This figure represents initial 90 day reviews and also further 90 day reviews which occur after the renewal of the Initial Treatment Order.*

Duration of orders

An initial Treatment Order, unless sooner discharged under section 49 or section 181, cannot be made for a period greater than 6 months. Applicants request a 6 month order in the majority of applications. A large percentage of initial Treatment Orders continue to be in place for 3 – 6 months. A renewal of a Treatment Order can be made for up to 12 months.

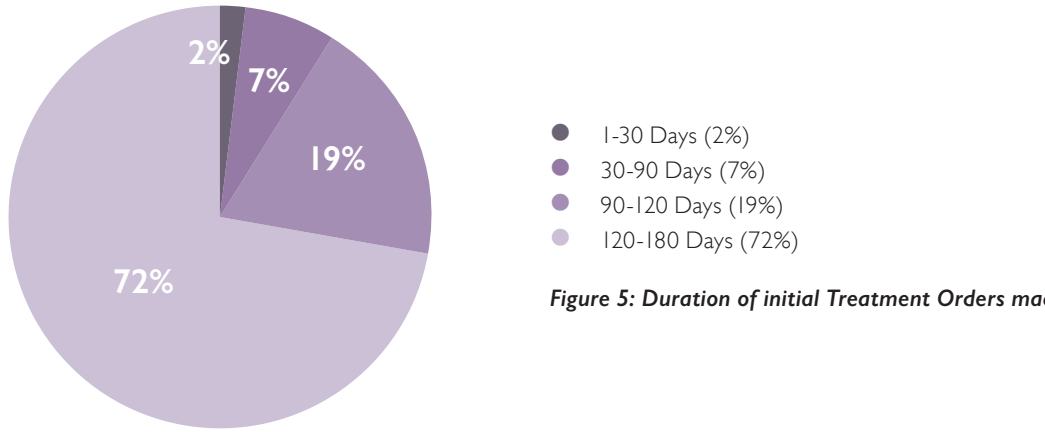


Figure 5: Duration of initial Treatment Orders made

Electro–Convulsive Therapy (ECT)

During 2015-16 18.75% of applications requested ECT as a treatment option (ECT applications granted are not always used as treatment). The majority of these requests were granted with only 15% being refused.

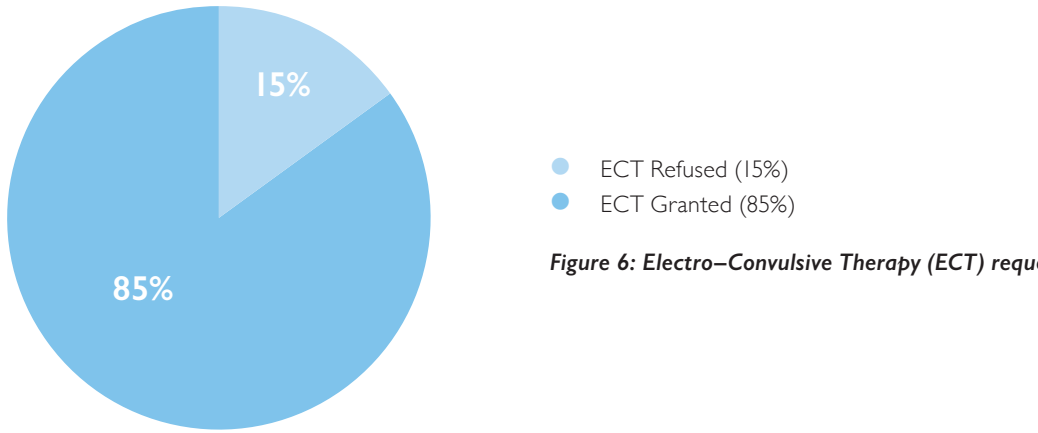


Figure 6: Electro–Convulsive Therapy (ECT) requests

2.1.4 Key forensic statistics overview

	2014-15	2015-16
Restriction Order Hearings Conducted	11	12
Restriction Order Hearings Adjourned	2	Nil
Restriction Order Certificate Issued	Nil	2

Supervision Order Hearings conducted	21	28
Supervision Order Hearing Adjourned	3	4
Supervision Order Certificate Issued	10	11

Leave applications requested	6	12
Leave applications granted	6	10

Authorisation of Treatment Requested	3	3
Authorisation for Treatment Granted	3	3

2.1.5 Forensic performance

This year a substantial increase in Supervision Order hearings occurred on last year's figures, and while no significant change occurred in Restriction Order hearing numbers, two certificates were issued. Of these Restriction Order certificates issued both forensic patients made applications to the Supreme Court to have the Restriction Orders revoked. The Court's decision resulted in both orders being revoked and Supervision Orders being imposed in place. The number of leave applications increased with a similar increase in those being granted.

2.1.6 Reporting Data Collation

The President commissioned a Civil and Forensic patient statistic's form in July 2015. The use of this form has been built into the Tribunal's daily operations. The data provides insight into each of our client's social settings and allows identification of trends in different aspects of illness, compliance and treatment. This data will enable the Tribunal to improve its service delivery by having a deeper understanding of its stakeholders. From this year's data the following information was reported:

2.1.7 Key patient social statistics

	2014-15	2015-16**
Patients attending Hearings **	*	61%
Patients with Legal Representation and/or Advocacy Representation at hearing	*	22%

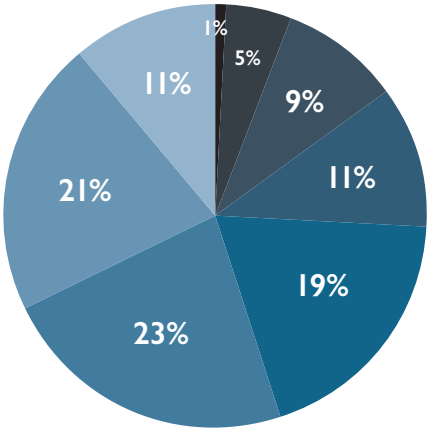
Notes:

* Not previously reported on

** These figures come from a manual data collection process implemented by the Registry to assist in capturing information that the current MCMS system is unable to.

Date of Birth

A majority of the patients were 25 to 55 years old and only a small number of patients were born before the 1940's. The need for applications for Treatment Orders prior to the age of 20 is generally very low.

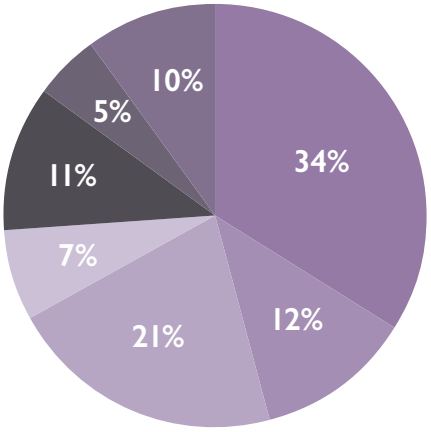


- 1920's (1%)
- 1930's (5%)
- 1940's (9%)
- 1950's (11%)
- 1960's (19%
- 1970's (23%)
- 1980's (21%)
- 1990's (11%)

Figure 7: Patient age ranges

Diagnosis

The percentages are indicating primary diagnosis of patients who had Tribunal hearings in 2015-16. Schizophrenia is the most prevalent mental illness affecting 34% of patients from hearings within the Financial Year.

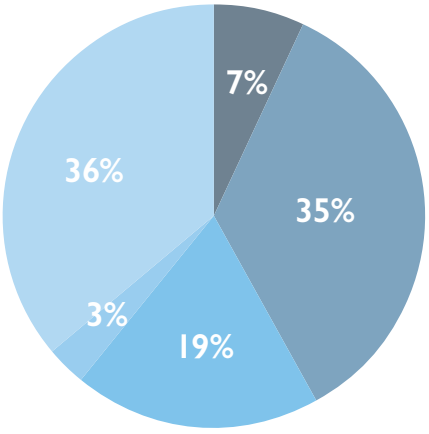


- Depression (11%)
- Personality Disorder (5%)
- Other (10%)
- Schizophrenia (34%)
- Schizoaffective (12%)
- Bi-polar (21%)
- Substance induced illness or psychosis (7%)

Figure 8: Percentages of primary diagnosis types

Comorbid Conditions

The presence of one or more conditions, disorders or substance use co-occurring with the primary mental illness diagnosis is common. A comorbid condition was present in 74% of cases recorded, with substance use rating the highest, over a third of the patients also used substances.



(Examples of other comorbid conditions include: cerebral haemorrhage, head injury, hyperthyroidism, kidney failure, pregnant, thyroid conditions, autistic spectrum, acquired brain injury, autism (high functioning).

- Intellectual (7%)
- Substance Use (35%)
- Physical Illness (19%)
- Other (3%)
- None (36%)

Figure 9: Prevalence of comorbid condition with primary diagnosis

2.2 Financial Report

In the 2015-16 Budget delivered on 28 May 2015, the Government announced that the Tribunal's budget allocation had been increased by $540,533 from $937,866 to $1.478 million. This increase in total budget was insufficient to meet the Tribunal 2015-16 operating costs which were $1.572 million, resulting in a deficit of $44,496.97.

Approximately 85 per cent of the Tribunal's expenses relate to salaries for staff and fees for Tribunal members - $1.300 million out of total expenses of $1.523 million in 2015-16. There has been a steady rise in the salary costs in recent years – from $358,485 in 2012-13, $783,405 in 2013-14 to $1.337 million in 2014-15 - with the transition from the *Mental Health Act 1996* to the *Mental Health Act 2013* and the consequent increase in workload resulting from the new Act. Currently, the Tribunal pays salaries for the President, two Investigation Officers, a Registrar and three Registry staff and the Tribunal members who sit sessionally eight times per week, for adhoc hearing sittings and for the writing of statement of reasons.

Although the Tribunal's salary expenses have now appeared to have plateaued in 2015-16, the following points should be noted:

- In 2015-16, the Tribunal operated for significant periods with fewer staff than provided for in its establishment due to a combination of sick leave, maternity leave, long service leave and staff transferring to other divisions within the Department. To make up some of this shortfall, the Tribunal had the temporary use of a number of staff employed with Department of Justice, but was not required to contribute towards their salaries.

- The Tribunal has little or no capacity to progress a number of necessary projects, such as the documentation of its policies and procedures. For example, in the absence of such documentation significant disruption has been caused to the daily operations of the Tribunal. The Tribunal has experienced substantial staff movement through the year and the lack of documented processes and procedures places extra strain on existing staff to train new members as well as maintain service delivery. Current staffing levels leave little room for development and improvement of the Registry. The other main project requiring funding is the Tribunal's case management system. The Tribunal's current case management system requires a significant amount of manual manipulation to generate material and is supplemented with information sourced from a number of independently maintained registers.

- Although the Tribunal is currently meeting its statutory obligations, these obligations represent the minimum level of service the Tribunal should provide. Further resources are required to enable the Tribunal to provide education and develop material for relevant stakeholders to ensure that the *Mental Health Act 2013* achieves its stated purpose of providing a human rights based approach to the treatment of patients with mental illness and is focussed on patients and their rights.

In 2015-16, the Tribunal's budget allocation was increased to $1.493 million to meet increases in costs in line with increases in the Consumer Price Index.

A summary of the Tribunal's financial expenditure is at **Appendix E**.

Appendix A

Membership List

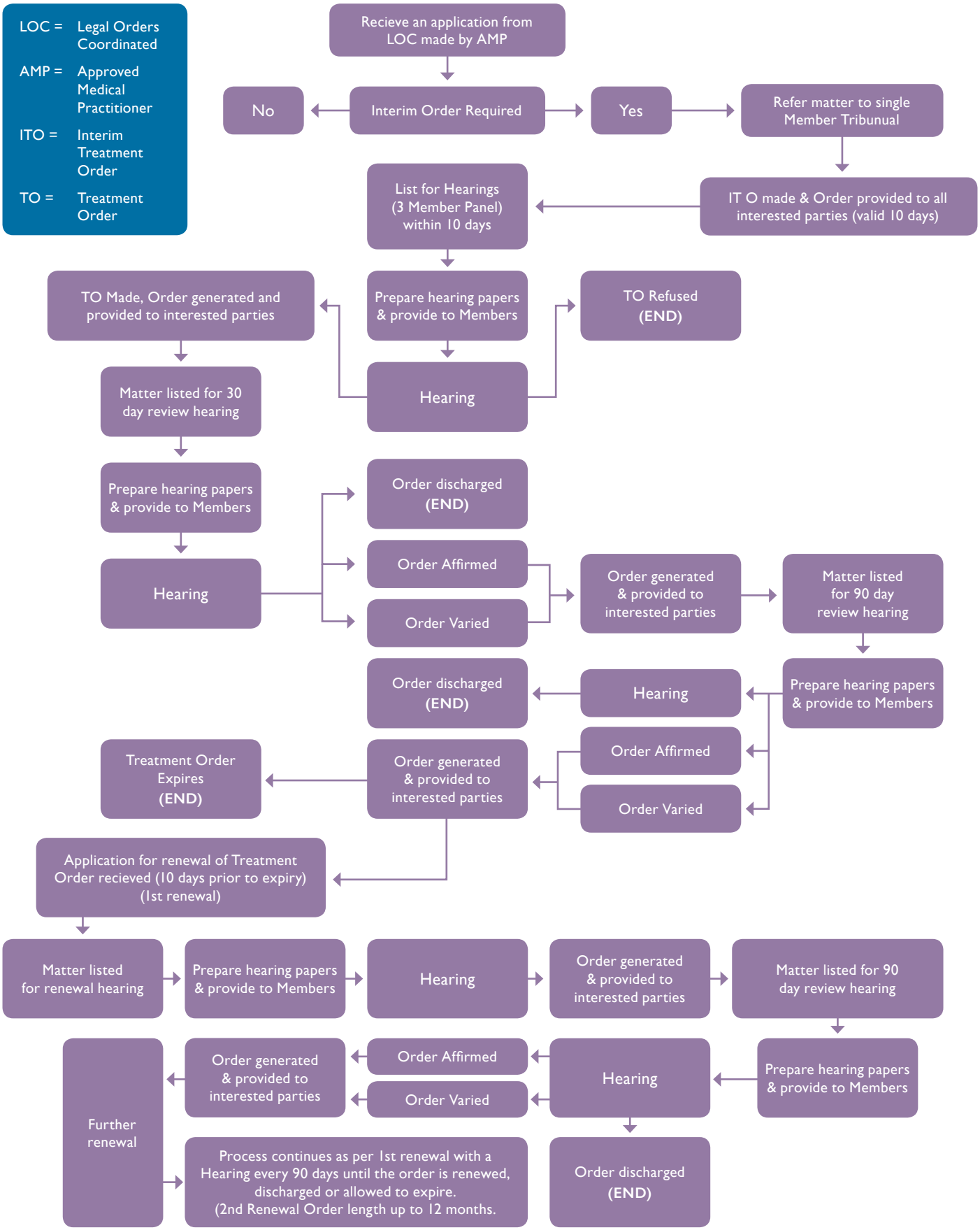
Full Time Members	Period of appointment
President	
Ms Yvonne Chaperon	29 Apr 2014 - 29 Apr 2019
Deputy President	
Mr Richard Grueber	16 Dec 2013 - 15 Dec 2018
Investigation Officers	
Thomas Saltmarsh	15 Dec 2014 - 15 Dec 2016
Merrilyn Williams	16 Dec 2013 - 15 Dec 2016

Sessional Members	Period of appointment
Psychiatrist	
Joanna Bakas	16 Dec 2013 - 15 Dec 2016
Nicola Beamish	16 Dec 2013 - 15 Dec 2016
Cyril Been	16 Dec 2013 - 15 Dec 2016
Julian Davis	16 Dec 2013 - 15 Dec 2016
Pei Lim	17 Feb 2014 - 16 Feb 2017
Milford McArthur	16 Dec 2013 - 15 Dec 2016
Martin Morrissey	16 Dec 2013 - 15 Dec 2016
Saxby Pridmore	16 Dec 2013 - 15 Dec 2016
Ian Sale	16 Dec 2013 - 15 Dec 2016
Fiona Judd	17 Feb 2014 - 16 Feb 2017
Michael Jordan	6 May 2015 - 5 May 2018
Peter Sharp	6 May 2015 - 5 May 2018
Laurence Herst	1 Jun 2015 - 31 May 2018
Rita Kronstorfer	1 Jun 2015 - 31 May 2018
Matthew Warden	1 Jun 2015 - 31 May 2018
Legal	
Gregory Barnes	17 Feb 2014 - 16 Feb 2017
Jane Beaumont	16 Dec 2013 - 15 Dec 2016
Barbara Carthew – Wakefield	16 Dec 2013 - 15 Dec 2016
Isabelle Crompton	17 Feb2014 - 16 Feb 2017
Kate Cuthbertson	16 Dec 2013 - 15 Dec 2016
Elizabeth Dalgeish	16 Dec 2013 - 15 Dec 2016

Sessional Members	Period of appointment
Legal	
Simon Gates	12 Feb 2014 - 11 Feb 2017
Lesley Hambly	16 Dec 2013 - 15 Dec 2016
Jacqueline Harnett	16 Dec 2013 - 15 Dec 2016
Susan Hill	16 Dec 2013 - 15 Dec 2016
Rowena Holder	17 Feb 2014 - 16 Feb 2017
Anna Jordon	16 Dec 2013 - 15 Dec 2016
Elizabeth Maclaine – Cross	16 Dec 2013 - 15 Dec 2016
Debra Rigby	16 Dec 2013 - 15 Dec 2016
Ken Stanton	17 Feb 2014 - 16 Feb 2017
Michael Stoddart	17 Feb 2014 - 16 Feb 2017
Matthew Verney	16 Dec 2013 - 15 Dec 2016
Peter Wise	16 Dec 2013 - 15 Dec 2016
General	
Susan Aylett	16 Dec 2013 - 15 Dec 2016
David Barker	16 Dec 2013 -15 Dec 2016
Jennifer Bridge- Wright	17 Feb 2014 - 16 Feb 2017
Charlotte Brown	16 Dec 2013 - 15 Dec 2016
Leiemma Canty	16 Dec 2013 - 15 Dec 2016
Moya Cassidy	16 Dec 2013 - 15 Dec 2016
Frank Ederle	16 Dec 2013 - 15 Dec 2016
Carolyn Mackel	16 Dec 2013 - 15 Dec 2016
Kylie McShane	17 Deb 2014 - 16 Feb 2017
Leon Peck	16 Dec 2013 - 15 Dec 2016
Peter Quealy	16 Dec 2013 - 15 Dec 2016
Kim Steven	16 Dec 2013 - 15 Dec 2016
Geoffrey Storr	16 Dec 2013 - 15 Dec 2016

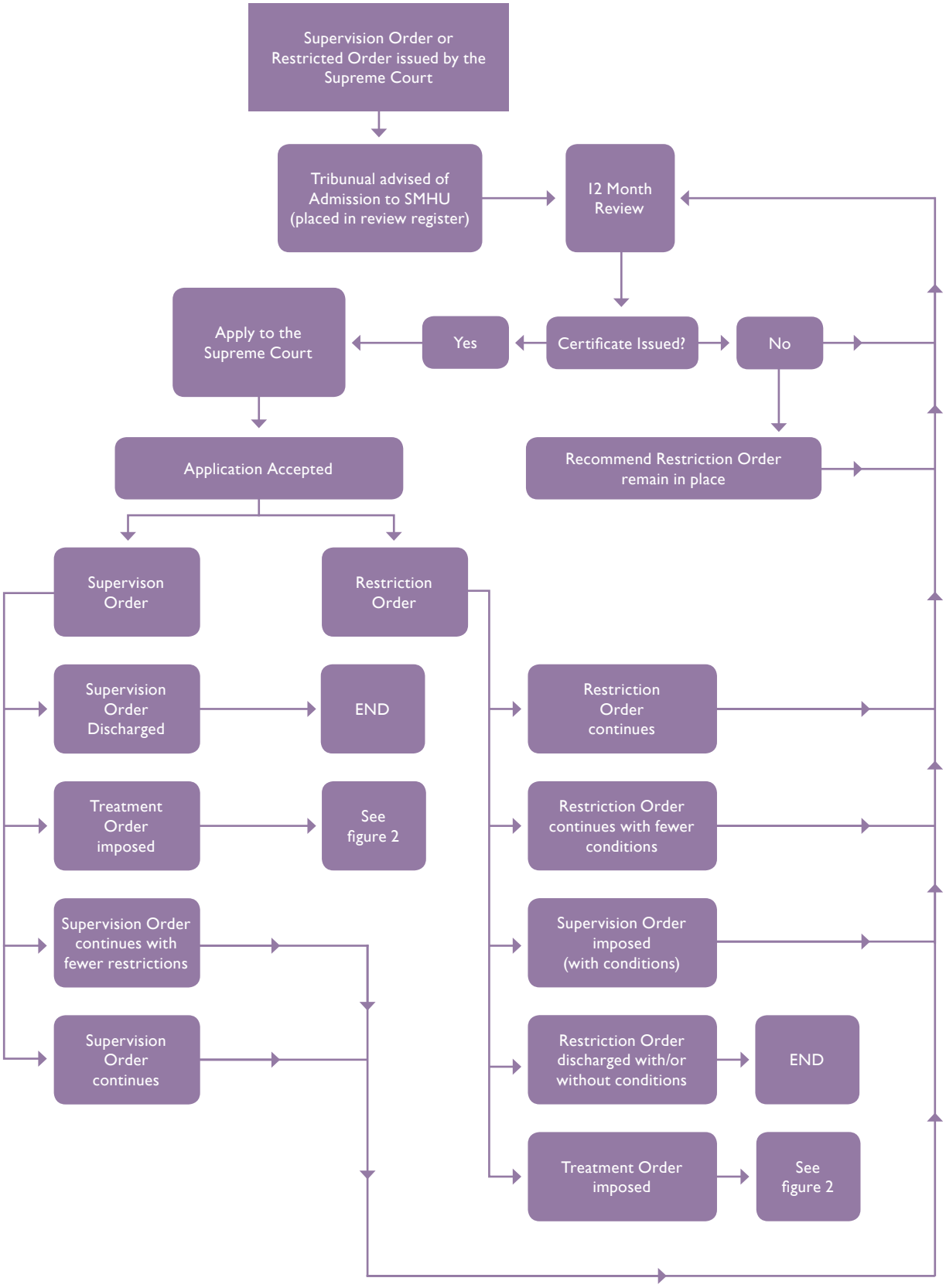
Appendix B

Standard Treatment Order Workflow



Appendix C

Restriction and Supervision Order Workflow



* Not all patients issued with certificates apply to the Supreme Court

Appendix D

Mental Health Tribunal Review Functions

Mental Health Act 2013	
Section	**Review**
180	Review of Assessment Order
181	Review of Treatment Order
181 (a)	30 day review
181 (b)	90 day review
181 (c)	Further 90 day review
181 (1)(d)	Failure to comply
181 (1)(e)(i)	Own motion review
182	Review of involuntary admission to SMHU
183	Review of refusal to return forensic patient to external custodian
184	Review of status of voluntary inpatient
185	Review of admission to SMHU of prisoner or youth detainee
186	Review of Urgent circumstances treatment
187	Review of seclusion and restraint
188	Review of force
189	Review of withholding of information from patient
190	Review of involuntary patient or forensic patient transfer within Tasmania
191	Review of determination relating of leave of absence
192	Review of exercise of visiting, telephone or correspondence right
193	Other reviews

Criminal Justice (Mental Impairment) Act 1999	
Section	**Review**
36B (4)	Appeal against direction under section 36A
37	Restriction orders and supervision orders made under the Act

Appendix E

Financial Summary

	2013-14[1]		2014-15		2015-16	
	Budget	**Actual**	**Budget**	**Actual**	**Budget**	**Actual**
Salaries	459,921.00	384,424.71	628,888.00	591,343.41	752,452.00[4]	703,992.74
Tribunal member fees	294,500.00	300,751.68	531,250.00	531,250.00	450,000.00	464,064.67[5]
Employee related expenses	70,497.00	98,229.59	93,174.00	93,174.00	98,817.00	131,955.36
Information technology	12,780.00	10,043.56	12,780.00	12,780.00	38,000.00	38,008.39
Office expenses	15,000.00	15,430.26	22,200.00	22,200.00	14,000.00	19,342.94
Travel expenses	29,900.00	20,840.21	29,900.00	29,900.00	18,600.00	23,676.74
Property expenses	42,000.00	65,550.75	100,500.00	100,500.00	87,500.00	89,474.52
Other expenses	12,447.00	200,576.27[2]	480,826.00[3])	(480,826.00[3])	18,970.00	52,516.61
TOTAL	**937,045.00**	**1,095,847.03**	**937,866.00**	**1,543,261.95**	**1,478,339.00**	**1,523,031.97**

Notes:

1. The Mental Health Act 2013 commenced on 17 February 2014.
2. Includes $182,557 on a new electronic case management system.
3. In 2014-15, the Tribunal's budget allocation was $937,866. The Tribunal originally estimated its operating costs would be $1.437 million in 2014-15, resulting in a deficit of $499,621, however, the Tribunal actual expenditure was $1.543 million, resulting in a deficit of $605,395.
4. A new position, Investigation Officer, was created in 2015 to assist with the workload demand and reduce the cost of Tribunal member fees. Amongst other responsibilities the Investigation Officer sits as a part time Tribunal member.
5. In 2015-16 the reduction in Tribunal member fees can be attributed to the introduction of a part time member sitting regularly who is not remunerated sessionally, and changes in managing hearing lists to ensure sessions with only one or two matters are minimised.

Mental
Health
Tribunal

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