



Annual Report

Mental Health Tribunal

2014-15



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President's Report

I am pleased to present this report on the operation of the Mental Health Tribunal under the *Mental Health Act 2013*.

The *Mental Health Act 2013* commenced operation on 17 February 2014, replacing the *Mental Health Act 1996*. Consequently, 2014-15 is the first full year the current Act has been operational.

As I noted in the 2013-14 report, the new Act differs significantly from the previous Act in a number of respects:

- To be subject to the new Act a patient must:
 - have a mental illness which may harm the patient's health or safety or the safety of another person; and
 - lack decision-making capacity.
- The new Act provides that the Tribunal is solely responsible for authorising the treatment of patients with mental illness.
- The new Act provides for greater review and oversight of the treatment of patients. Upon receipt of an application, the Tribunal may be required to make an interim treatment order and must determine the application within 10 days. Further, the Tribunal must review a treatment order within 30 and 90 days of it being made, and then at intervals not exceeding 90 days thereafter. In addition, the Tribunal has the authority to review other aspects of the patient's care – e.g. the use of seclusion and restraint and the review of the status of voluntary patients.
- The new Act places an emphasis on the rights of patients.

The new Act has resulted in an increase in the Tribunal's workload. In 2014-15, the Tribunal:

- made 552 interim treatment orders;
- made 410 treatment orders;
- conducted 777 review hearings; and
- conducted 46 forensic hearings.

Under the previous Act, the Tribunal conducted a total of 440 review hearings in 2012-13, which was the last full year of operation of that Act.

The new Act has meant that the Tribunal had to completely revise all its work practices to perform its statutory functions, including the implementation of a new case management system. This revision of work practices has continued in 2014-15 as the Tribunal has sought to more efficiently and effectively meet its increased workload and manage the complex administrative requirements imposed by the Act. In addition, the Tribunal has implemented a new staffing structure with the employment of two Investigation Officers who are also appointed as Tribunal members. The Investigation Officers investigate matters as set out in s.179 of the *Mental Health Act 2013* and they also make Interim Treatment Orders, vary Treatment Orders in out of session determinations of matters and also sit as tribunal panel members in determining Treatment Orders and review of those orders.

In 2014-15, the following new psychiatrist members were appointed to the Tribunal; Dr Fiona Judd, Dr Michael Jordan, Dr Peter Sharp, Dr Rita Kronstorfer and Dr Matthew Warden. These appointments are most welcome as the Tribunal had previously relied on a small pool of psychiatrist members to sit on the three member panel to determine applications for treatment orders and conduct subsequent reviews.

I would like to thank all Tribunal members for their continued dedication to the Tribunal. The members bring a wealth of expertise and wisdom to their role and all have done an extraordinary job and played an integral role in continuing to ensure that the Tribunal can determine matters as required.

I also thank Mr Richard Grueber for his work in his role as Deputy President. Mr Grueber has given immense support both to me and to the Tribunal throughout the last 12 months.

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*.

Last but not least, I would like to thank the Mental Health Tribunal staff who consistently work incredibly hard. It is due to their dedication that the Tribunal continues to meet its statutory obligations.

A handwritten signature in blue ink that reads 'Yvonne Chaperon'.

Yvonne Chaperon
President, Mental Health Tribunal

Overview of the Mental Health Tribunal

Introduction

The Mental Health Tribunal is an administrative body with primary responsibility to authorise and review the treatment of patients with mental illness who are unable to provide informed consent.

The Tribunal is established under the *Mental Health Act 2013* and its primary functions are to:

- make, vary, renew and discharge treatment orders;
- authorise the treatment of forensic patients;
- authorise special psychiatric treatment;
- determine applications for leave, from secure mental health units, for patients subject to restriction orders;
- carry out any further functions given to it under that or any other Act.

The Tribunal commenced operations on 17 February 2013 and replaced the previous Mental Health Tribunal and the Forensic Tribunal, both of which operated under the previous *Mental Health Act 1996*.

Composition of the Tribunal

The Tribunal consists of at least six persons, including:

- at least one person who is an Australian lawyer with at least 5 years' experience as such;
- at least one person who is a psychiatrist; and
- at least 4 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 5 years, while other members are appointed for a period of 3 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 is Ms Yvonne Chaperon who was appointed in January 2014 for a five year term and the Deputy President is Mr Richard Grueber who was appointed in December 2013 for a five year term.

The Tribunal currently has 45 other members who are all appointed for a three year term. Of these, thirteen are psychiatrists.

A list of current members under the Act can be found at **Appendix I**.

Of the Tribunal members, the President is appointed on a full-time basis. Two of the members, Mr Thomas Saltmarsh and Ms Merrilyn Williams, are employed by the Mental Health Tribunal also on a full time basis. The remaining members work on a sessional basis, hearing matters as required.

Registry

The Tribunal is supported by a Registrar, two investigation officers and four permanent administrative staff.

A list of those staff can be found at **Appendix I**.

The Mental Health Act 2013

Overview

The *Mental Health Act 2013* (the new Act) replaced the *Mental Health Act 1996* (the previous Act) with effect from 17 February 2014.

The new Act 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.

Key features of the new Act are:

- decision-making capacity is the most significant criterion for determining whether or not the Act will apply. Consequently, the Act 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 to enable a patient who is suspected of suffering from a mental illness:
 - to be taken into protective custody;
 - to be assessed to determine whether that illness requires treatment; and
 - to enable the authorisation of treatment in the event that the patient does not have capacity to provide informed consent;
- all treatment orders made by the Tribunal must be regularly reviewed within mandated timeframes;
- establishment of the statutory officers of the Chief Civil Psychiatrist and the Chief Forensic Psychiatrist. Both officers may intervene directly with respect to the assessment, treatment and care of patients and may issue standing orders and clinical guidelines to guide the interpretation and application of the Act;
- the responsibilities of clinicians and the rights of consumers and their families and/or carers are clearly outlined;

- the new Act provides for the appointment, role and function of Official Visitors. Official Visitors may visit facilities and receive and assess complaints from, or concerning, patients;
- the new Act provides for the approval of facilities for treatment of patients; and
- the new Act provide for the treatment of patients under restriction and supervision orders.

The Act enables individuals with capacity, to make their own treatment choices, while also 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.

Mental Health Orders

Central to the treatment path under the new Act is the making of a treatment order.

A treatment order provides authority for a patient, without informed consent, to be:

- given treatment or a type of treatment; and
- admitted to, and detained in, an approved facility or type of approved facility.

An application for a treatment order is made by an approved medical practitioner to the Tribunal on a form approved by the Tribunal.

If the patient is the subject of an assessment order, the applicant must:

- have assessed the patient; and
- be satisfied the patient meets the treatment criteria.

If the patient is not the subject of an assessment order:

- the applicant and one other approved medical practitioner must have assessed the patient within the preceding 7 days;
- both the applicant and the other approved medical practitioner must be satisfied the patient meets the treatment criteria.

To be the subject of an assessment order, a patient must meet the following treatment criteria:

- the patient has a mental illness;
- without treatment, the mental illness will, or is likely to, seriously harm the patient's safety or the safety of others;

- the treatment will be appropriate and effective;
- the treatment cannot be given except under an order; and
- the patient does not have decision making capacity.

An application is determined by a panel of three members of the Tribunal, one of whom must be a psychiatrist.

The panel must determine the application within 10 days of it being lodged.

The panel may make a treatment order for a period of up to six months.

The treatment order takes effect as soon as it is made.

A single member of the Tribunal may make an interim treatment order in the event that:

- a three member panel cannot immediately determine the application; and
- the delay in waiting for a decision would, or is seriously likely to, harm the health/safety of the patient or others.

An interim order lapses if not determined by the Tribunal within 10 days.

The Act also provides that the Tribunal must review a treatment order:

- within 30 days after it is made (if it is still in effect);
- within 90 days after it is made (if it is still in effect); and
- every 90 days after that for so long as it remains in effect.

In addition, the Tribunal may review a treatment order at any other time, either on its own motion or on the application of any person with necessary standing.

An application for renewal of a treatment order is made by an approved medical practitioner to the Tribunal, on a form approved by the Tribunal, and must be made at least 10 days before the expiry of the current order.

Details of treatment orders heard by the Tribunal in the period 1 July 2014 to 30 June 2015 can be found at **Appendix 2**.

Forensic Orders

The Tribunal also determines matters relating to forensic patients. Generally, this refers to patients subject to restriction and supervision orders made under the Criminal Justice (Mental Impairment) Act 1999.

A restriction order is made by the Supreme Court and requires the patient in respect of whom it is made 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 in respect of whom it is made 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.

Review of restriction and supervision orders

Restriction and supervision orders made in accordance with the Criminal Justice (Mental Impairment) Act 1999 must be reviewed by the Tribunal within 12 months of the order being made and within each 12 months thereafter.

If, in having regard to these matters, the Tribunal determines a certificate should be issued, the patient then has the opportunity to apply to the Supreme Court to have the order discharged.

Leave of absence

The Tribunal determines whether a patient who is the subject of a restriction order, should have leave of absence from a secure mental health unit for clinical or personal reasons.

The Tribunal determines whether a patient, who is not the subject of a restriction order, should have leave of absence in Tasmania. As with patients who are the subject of restriction orders, this may be granted for clinical or personal reasons.

Authorisation of treatment

The Tribunal may, upon application by an approved practitioner, authorise the administration of treatment to a forensic patient where:

- the patient has a mental illness;
- without treatment, the mental illness will, or is likely to, seriously harm the patient's safety or the safety of others; and
- the patient does not have decision making capacity.

As with treatment orders for other patients, an application is determined by a panel of three members of the Tribunal, one of whom must be a psychiatrist. A single member of the Tribunal may make an interim order.

Authorisation of Detention

The Chief Forensic Psychiatrist is empowered to detain patients on Supervision Orders for a maximum period of 96 hours. This detention can occur if the person has breached the conditions of their supervision order and, as a consequence, has or may have deterioration in their mental health that results in a risk of harm.

Reviews of Corrections Act 1997 Transfers

The Tribunal also has jurisdiction under the Corrections Act 1997 to consider applications for review received from patients in a secure mental health unit who have been transferred to the unit from a prison and who wish to return to prison.

Details of all forensic orders dealt with by the Tribunal in 2014-15 can be found at **Appendix 3**.

2014-15 Financial Report

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.

Approximately 90 per cent of the Tribunal's expenses relate to salaries for staff and fees for Tribunal members - \$1.337 million out of total expenses of \$1.543 million in 2014-15. There has been a steady rise in the salary costs in recent years – from \$358,485 in 2012-13 to \$783,405 in 2013-14 - 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 and four Registry staff and the Tribunal members who sit sessionally eight times per week.

The Tribunal has implemented a new staffing structure to minimise Tribunal costs and have employed two Investigation Officers who are also appointed as Tribunal members. The Investigation Officers, as MHT members, make Interim Treatment Orders and Variations to Treatment Orders out of session and sit on three member panels determining Treatment Orders and reviewing those orders.

There have also been other cost increases resulting from the implementation of the new Act:

- property expenses increased from \$65,550 in 2013-14 to \$94,611 in 2014-15, associated with increased lease cost as a result the Tribunal moving from 54 Victoria Street to 144 Macquarie Street. This move was necessary because the Tribunal required its own dedicated hearing room and additional space to accommodate the new staff; and
- information technology expenses increased from \$10,043 in 2013-14 to \$27,140 in 2014-15, associated with the cost of maintaining the Tribunal new case management system which was commissioned in February 2014 coinciding with the commencement of the new Act.

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 to \$1.478 million.

A summary of expenses can be found at **Appendix 4**.

Appendix I – Tribunal members

Table 1 Members appointed under the *Mental Health Act 2013*

Ms Sue Aylett	Mr Simon Gates	Mr Leon Peck
Dr Joanna Bakas	Mr Richard Grueber	Dr Saxby Pridmore
Mr David Barker	Ms Kim Hambly	Mr Peter Quealy
Mr Greg Barns	Ms Jackie Hartnett	Mrs Debra Rigby
Dr Nicky Beamish	Ms Susan Hill	Dr Ian Sale
Ms Jane Beaumont	Ms Rowena Holder	Mr Tom Saltmarsh
Dr Cyril Been	Dr Laurence Herst	*Dr Peter Sharp
Ms Jennifer Bridge-Wright	Mrs Anna Jordan	Mr Ken Stanton
Ms Charlotte Brown	*Dr Michael Jordan	Mr Kim Steven
Ms Leiemma Canty	*Prof Fiona Judd	Mr Michael Stoddart
Ms Moya Cassidy	*Dr Rita Kronstorfer	Mr Geoff Storr
Ms Yvonne Chaperon	Dr Pei Lim	Mr Matthew Verney
Ms Isabelle Crompton	Ms Carolyn Mackel	Ms Barbara Wakefield
Ms Kate Cuthbertson	Ms Elizabeth Maclaine-Cross	*Dr Matthew Warden
Ms Elizabeth Dagleish	Dr Milford McArthur	Ms Merrilyn Williams
Dr Julian Davis	Dr Kylie McShane	Mr Peter Wise
Mr Frank Ederle	Dr Martin Morrissey	

* - indicates new members

Registry Staff

- Tom Saltmarsh – Registrar (July – December 2014)
- Martha Robson – Registrar (December 2014 – June 2015)
- Rebecca Howard – Executive Officer
- Carolyn Veenendaal – Senior Advisory Officer
- Sally Cornish – Advisory Officer
- Eloise Bowden – Advisory Officer
- Justine White – Advisory Officer (seconded from Finance, Department of Justice, May 2015 – June 2015)

Investigation Officers/MHT Members

- Tom Saltmarsh – Senior Investigation Officer (from December 2014)
- Merrilyn Williams – Investigation Officer

Appendix 2 – Treatment orders under the *Mental Health Act 2013*

Treatment orders

	2012-13	2013-14 ³	2014-15
Interim order made	N/A	222	552
Matters heard ¹	N/A	196	894
Treatment orders made		159	410
Treatment orders varied		30	361
Treatment orders renewed		7	123

Reviews of treatment orders

	2012-13	2013-14 ³	2014-15
Matters heard ²	N/A	154	777

- Notes:
1. Includes applications for treatment orders and renewal of treatment orders.
 2. Includes mandatory and discretionary reviews under s 181 of the Act, as well as transitional review under the *Mental Health (Transitional and Consequential Provisions) Act 2013*.
 3. Only includes data from 17 February to 30 June 2014

Appendix 3 – Forensic orders under the *Criminal Justice (Mental Impairment) Act 1999*

Number of forensic orders reviewed

	2012-13	2013-14	2014-15
Restriction orders	8	9	11
Certificate should issue	Nil	Nil	Nil
Certificate should not issue	7	9	11
Adjourned	1	Nil	2
Supervision orders	26	25	21
Certificate should issue	9	9	10
Certificate should not issue	13	16	11
Adjourned	4	Nil	3

Leave applications

	2012-13	2013-14	2014-15
Number of applications	11	5	6
Number of applications granted	11	5	6
Number of applications refused	Nil	Nil	Nil

Authorisation of treatment

	2012-13	2013-14	2014-15
Number of applications	1	4	3
Number of interim authorisations made	1	5	4
Treatment authorised at hearing	1	2	3
Treatment not authorised	Nil	Nil	Nil
Did not proceed to decision	Nil	1	Nil

Detention authorisations

	2012-13	2013-14	2014-15
Number of applications	1	1	1
Number of interim authorisations made	1	1	1
Detention authorised at hearing	1	1	1
Extension authorised at hearing	Nil	Nil	Nil
Matters adjourned	Nil	Nil	Nil
Did not proceed to decision	Nil	Nil	Nil

Transfers under the *Correction Act 1997*

	2012-13	2013-14	2014-15
Number of reviews	2	Nil	Nil
Number of transfers confirmed	2	Nil	Nil

Appendix 4 – Financial summary for 2014-15

	2012-13		2013-14 ¹		2014-15	
	Budget	Actual	Budget	Actual	Budget	Actual
Salaries	189,901.00	177,573.16	459,921.00	384,424.71	628,888.00	591,343.41
Tribunal member fees	148,000.00	142,923.44	294,500.00	300,751.68	531,250.00	608,338.03
Employee related expenses	30,736.00	37,988.95	70,497.00	98,229.59	93,174.00	137,901.36
Information technology	9,600.00	9,631.55	12,780.00	10,043.56	12,780.00	27,140.22
Office expenses	5,600.00	3,864.56	15,000.00	15,430.26	22,200.00	13,045.77
Travel expenses	29,550.00	22,667.95	29,900.00	20,840.21	29,900.00	24,739.73
Property expenses	41,700.00	41,493.15	42,000.00	65,550.75	100,500.00	94,611.25
Other expenses	(13,389.00)	24,022.93	12,447.00	200,576.27 ²	(480,826.00 ³)	46,142.18
Total	441,698.00	460,165.69	937,045.00	1,095,847.03	937,866.00	1,543,261.95

- 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.