Mental Health Review

TRIBUNAL

Northern Territory

Annual Report 2011 - 2012

The Northern Territory of Australia

The Mental Health Review Tribunal

The Honourable Mr John Elferink MLA
Attorney-General
GPO Box 3146
Darwin NT 0801

28 September 2012

Dear Attorney-General

Re: Mental Health Review Tribunal Annual Report

In accordance with section 140 of the *Mental Health Review Tribunal Act*, I have pleasure in providing you with the Annual Report on the operations of the Mental Health Review Tribunal for the period 1 July 2011 to 30 June 2012.

Yours faithfully

Mr Greg Cavanagh
President of the Mental Health Review Tribunal

President: Mr Greg Cavanagh
Level 3, Zone A, Nichols Place
Cnr Cavenagh & Bennett Streets
Darwin NT 0800
Website: http://www.nt.gov.au/justice/courtsupp/mentalhealth/index.shtml
E-mail: mentalhealth reviewtribunal.doj@nt.gov.au

GPO Box 2014
Darwin NT 0801
Telephone: (08) 8999 5001
Facsimile: (08) 8999 5005
Office open: 8:30am to 12noon - 1:00pm to 4:00pm

NORTHERN TERRITORY OF AUSTRALIA

MENTAL HEALTH REVIEW TRIBUNAL

ANNUAL REPORT

In accordance with section 140 of the Mental Health and Related Services Act 1998, I Greg Cavanagh, President of the Mental Health Review Tribunal, hereby submit my report on the exercise of the Tribunal's powers and the performance of its functions for the year ended 30 June 2012.

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SECTION A: INTRODUCTION

The Mental Health Review Tribunal (the Tribunal) was established under Part 15 of the Mental Health and Related Services Act 1998 (the Act).

The primary role of the Tribunal is to act as an independent decision making body to protect the interests of persons who cannot do so themselves due to mental illness. The exercise of that primary function largely involves the review of decisions made by Mental Health Services (MHS) relating to the admission, detention and treatment of persons admitted involuntarily to an Approved Treatment Facility (ATF) and determinations in relation to the involuntary treatment of patients in the community. Appendix 1 contains a statement of the Tribunal functions. Appendix 2 contains a more detailed description of selected functions carried out by the Tribunal.

The administration of the Act is shared between the Department of Justice (DoJ) and the Department of Health and Families (DoH). DoJ has responsibility for the administration of Part 15 of the Act which deals with the Tribunal. The Tribunal does not administer its own budget. Details of expenditure in relation to the Tribunal should be set out in the Annual Report of DoJ for the year ending 30 June 2011.

Section H of this Report sets out statistics relating to the Tribunal for the period covered by this Report. In a nutshell the available statistics show that:-

> The number of new clients has steadily increased over the last four years. In 2012 the number of new clients increased by 8.5% over the previous year. Total matters scheduled for determination by the Tribunal also increased significantly as well as total determinations made. That is to say, the workload of the Tribunal is increasing each year by a significant margin. Accordingly, there may have to be increases in Tribunal membership to reflect this increase.

SECTION B: OFFICEHOLDERS STAFF AND PREMISES

The Act requires the Administrator to appoint a President of the Tribunal from amongst the Legal Members. On the 26 June 2012 I was appointed a member of the Mental Health Review Tribunal as well as President.

The President is responsible for ensuring the proper exercise of the powers conferred on the Tribunal and the proper performance of the functions of the Tribunal.

The Act stipulates that a member of the public service is to be appointed as a Registrar and/or Deputy Registrar of the Tribunal. A full time Deputy Registrar has been appointed. The Deputy Registrar is Ms Alicia-Ann Heyworth; she is the only member of staff of the Tribunal and she concurrently acts as the Deputy Registrar of the Lands Planning and Mining Tribunal ("LPMT"). Ms Heyworth was granted "leave without pay" during the year and Ms Nikki Kastellorizios appointed acting Deputy Registrar. The functions of the Deputy Registrar are to exercise the powers and perform the functions conferred by the Tribunal. Presently, the Deputy Registrar provides most of the administrative support for the Tribunal.

Previous Annual Reports have commented on the minimal level of administrative staff provided to the Tribunal. The Tribunal has only one permanent member of staff which is the Deputy Registrar. The Deputy Registrar is also the Deputy Registrar of the LPMT and the Tribunal's offices are necessarily co-located with the offices of the LPMT. Until a common Deputy Registrar was appointed, each Tribunal had its own individual Deputy Registrar. However as offices were then also co-located, the practice developed that each Deputy Registrar would cover for the other during leave and other periods of absence. The pooling of resources whereby one person was appointed to concurrently be the Deputy Registrar of both Tribunals was a DoJ initiative and was essentially a cost saving measure. Both the previous Chairperson of LPMT and previous president agreed to that proposal but on the express stipulation that adequate back up arrangements would always be in place to cover for absences.

The offices of the Tribunal, which are shared with the LPMT, are located in floor 3 of Nichols Place. The Tribunal has very limited physical contact with the public or interested parties. All documents lodged with the Tribunal are lodged electronically and the dissemination of documents by the Tribunal to interested parties also occurs electronically. Therefore the current premises remain adequate for Tribunal needs.

SECTION C: MEMBERSHIP OF THE TRIBUNAL

The Act provides that the composition of the Tribunal is to consist of persons appointed by the Administrator and to be one each of three distinct categories.

Members eligible for appointment in the first of those categories, described as the Legal Members, are Magistrates, Judicial Registrars and lawyers who have more than five years experience. Other than the President, there are only two current Legal Members of the Tribunal who are not Magistrates or Judicial Registrars and in any event they are both retired Magistrates.

Members in the second category, vernacularly referred to as the Medical Members, must be a "medical practitioner" to qualify for appointment. The Interpretation Act defines this as a person registered under the national law to practise in the medical profession. All of the Tribunal's Medical Members satisfy this requirement. They are all interstate based consultant psychiatrists, four of whom reside in New South Wales and one in Victoria. All sit on the equivalent tribunal in their home State.

As mentioned in last year's annual report, this remains an ongoing concern. The new national registration laws do not provide for the category of registration similar to that under the former law which permitted a limited form of registration for retired professionals. The medical members of the Tribunal, as well as those in other jurisdictions, have voiced concerns as to whether they can satisfy the registration requirements while not practising full time. Ongoing professional development is a desirable requirement for obvious reasons but the instances of this recognised by the national law provide few options for retired medical practitioners.

Arrangements have been put in place in other jurisdictions, most notably Victoria, which may equally apply in the NT but there remains uncertainty. As most of the equivalent tribunals in other jurisdictions also rely heavily on retired medical practitioners as medical members, the issue is one of national concern. It is proposed to discuss this at national level in the near future and hopefully some strategies will be developed which will reduce or eliminate current concerns.

If the concerns become insurmountable, consideration may need to be given to amending the Act in respect of the qualification necessary for appointment as medical member.

The final category of member, referred to as the Community Member, is appointed based on having a special interest or expertise in mental illness or mental disturbance.

Since the 2007 amendments to the Act, the Tribunal has been able to sit with only two members in certain circumstances and as long as one of the members sitting is a Legal Member. This power has been utilised on some occasions, mostly to cover for unexpected unavailability of rostered members.

All members, other than persons employed in the public service, are entitled to be paid sitting fees. The sitting fees are paid in accordance with a determination of the Administrator on the recommendation of the Remuneration Tribunal.

The Tribunal's objective is to maintain membership numbers of each class of member at a level sufficient to meet legislative requirements. As some members rely on the income earnt from sitting fees, a balance needs to be struck when setting the number of members in each category. Too few may adversely affect the Tribunal's ability to meet the legislative requirements. Too many may lead some members to review whether their continuing involvement with the Tribunal is worthwhile. With this qualification and with ongoing monitoring of membership requirements, the Tribunal has sufficient members of each category to ensure that legislative requirements can be met in the foreseeable future.

The Tribunal acknowledges the work of its members and thanks all members for their continued valued expertise and commitment.

A General Meeting of all members was held in Alice Springs on 11 August 2011.

Appendix 3 contains a list of persons who are currently members of the Tribunal.

SECTION D: OBJECTIVES OF THE TRIBUNAL

The Tribunal's objectives are:-

1. To conduct hearings within legislative time-frames;

2. To maximise access to the Tribunal across the Northern Territory;

3. To provide quality service to patients and stakeholders by:-

   conducting hearings in an informal atmosphere;
   ensuring patients have legal representation where appropriate;
   ensuring that patient rights are met in regard to accessing records and reports that are before the Tribunal;
   ensuring the attendance at hearings of patients the subject of the review wherever practicable;
   encouraging the attendance of family and other support persons at Tribunal hearings, but only with the patient's consent;
   ensuring the provision of interpreter services where necessary;
   ensuring confidentiality of Tribunal proceedings;
   ensuring fair and equitable hearings and compliance with the principles of natural justice;

4. To maintain workable procedures with MHS legal representatives and other stakeholders;

5. To raise levels of awareness about the Tribunal and its operations.

These objectives have been met as far as is reasonably practicable.

Meetings and other communications, as and when required, occur between the President and appropriate MHS staff, both in Darwin and in Alice Springs, to ensure continuation of workable procedures.

SECTION E: HEARINGS

The Tribunal has continued to convene its hearings at the ATF, both in Darwin and Alice Springs. This is for the convenience of MHS staff and avoids the disruption to a patient's care which would result if the patient were required to travel to and from the ATF for hearing purposes.

Lawyers appearing on behalf of patients provide an invaluable service, primarily to their clients, but also indirectly to the Tribunal by helping to achieve efficiency in the hearing process. The Tribunal thanks all lawyers appearing at Tribunal hearings for their assistance and look forward to their continuing involvement.

Medical Members necessarily continue to sit via an audio visual link up. This is not likely to change in the immediate future. In most cases however, the Legal Member and the Community Member are both present at the hearing location with the patient, MHS staff, legal representatives and other relevant parties.

The exception is with respect to hearings for reviews of CMOs for patients living in remote communities. These are conducted with the patient, and usually the case manager, appearing by telephone link to the relevant community clinic. It would be preferable for the patient to appear in person. That would optimise the effectiveness of legal representation. A telephone link and a video link (for the Medical Member) in the same hearing is not ideal and presents difficulties for communication between the patient and the Medical Member often requiring relaying of questions and answers. However it is accepted that there are practical difficulties and expense in having the patient travel from a remote community to attend in person. Those considerations outweigh the preference of personal attendance.

The Tribunal has managed to meet legislative time frames in all of its cases in this year. In all cases heard by the Tribunal, a decision was delivered at the conclusion of the hearing.

SECTION F: STATISTICAL REPORT

Number of new Clients

	Number of new Tribunal clients by year			
	2009	**2010**	**2011**	**2012**
TOTAL	**191**	**222**	**253**	**272**

Case numbers by Location

Comprising:

Location	**Number of cancelled hearings**			
	2009	2010	2011	2012
Alice Springs	74	95	72	90
Darwin	291	436	421	793
TOTAL	**365**	**530**	**493**	**584**

Location	**Number of determinations made by the Tribunal**			
	2009	2010	2011	2012
Alice Springs	64	44	49	82
Darwin	377	314	523	607
TOTAL	**441**	**358**	**572**	**689**

Refer to following pages for breakdowns of cases by purpose, outcome and reasons for cancellation. Cancelled hearings relate to matters notified to the Tribunal that do not proceed to hearing.

Applications listed – by Location						
Purpose	**2011**			**2012**		
	ASP	**DRW**	**Combined**	**ASP**	**DRW**	**Combined**
Review long term voluntary admission	2	0	2	0	0	0
Review involuntary admission to mental health facility on the grounds of mental illness	57	423	480	63	443	506
Review involuntary admission to mental health facility on the grounds of mental disturbance	23	84	107	31	97	128
Review tribunal order for involuntary detention	24	211	235	33	159	192
Review interim Community Management Order	4	72	76	14	80	94
Review Community Management Order	6	89	95	7	204	211
Review Report	2	35	37	5	70	75
Determine application for specific treatment	2	14	16	1	35	36
Determine application for warrant to apprehend	0	0	0	0	33	33
Review on request (section 123(4))	1	16	17	0	13	13
Total matters scheduled for determination by the tribunal	**121**	**944**	**1065**	**154**	**1134**	**1288**

Hearing Outcomes by Location						
Cancelled hearings	**2011**			**2012**		
	ASP	**DRW**	**Combined**	**ASP**	**DRW**	**Combined**
Discharged from facility prior to hearing.	25	331	356	37	267	304
Changed status to voluntary patient prior to hearing.	47	87	134	51	190	241
Persons whereabouts unknown / AWOL	0	0	0	0	14	14
Person left NT	0	1	1	0	0	0
CMO revoked by Mental Health Services	0	0	0	0	1	1
Deceased during term of Order	0	0	0	0	0	0
CMO Expired	0	0	0	1	1	2
Other	0	2	0	1	20	20
Total hearings cancelled	**72**	**421**	**493**	**90**	**493**	**582**

Determined by Tribunal	2011			2012		
	ASP	DRW	Combined	ASP	DRW	Combined
Confirm admission as voluntary patient	1	6	7	0	0	0
Order for involuntary detention mental illness	28	234	262	48	187	235
Order for involuntary detention mental disturbance	2	6	8	3	8	11
Revoke admission and order person be discharged from facility	0	3	3	2	6	8
Community Management order	12	117	129	15	236	251
Review report – further action	1	0	1	0	2	2
Review report – no further action	2	37	39	5	74	79
Authorise electro convulsive therapy	1	25	26	0	35	35
Authorise non-psychiatric treatment	0	10	10	1	3	4
Authorise major medical procedure	0	2	2	0	0	0
Warrant to apprehend a person for assessment	2	4	6	0	0	0
Adjourned	1	34	35	8	56	64
Total determinations made	**50**	**538**	**588**	**82**	**607**	**689**

STATISTICS – OTHER

	2009	2010	2011	2012
Percentage of matters scheduled where client was female	33%	37%	43%	40%
Percentage of matters scheduled where client was male	67%	63%	57%	60%
Percentage of matters scheduled where client was of Aboriginal or Torres strait Islander background	46%	51%	53%	68.5%
Percentage of hearings conducted where Tribunal clients were legally represented	92%	98%	98%	100%
Percentage of Tribunal clients under Adult Guardianship Orders	3%	3%	2%	2%
Percentage of hearings conducted with an interpreter	25%	21%	5%	10%

APPENDICES

Appendix 1: Tribunal Functions

The functions of the Tribunal are mostly contained in Part 15 of the Act, but with incidental provisions in other parts of the Act. Those functions are:-

1. To conduct periodic reviews of:-

    1.1 the admission and treatment of voluntary patients;
    1.2 the admission and treatment of involuntary patients;
    1.3 patients subject to involuntary treatment in the community.

2. To determine applications to administer:-

    2.1 non-standard treatment (such as ECT);
    2.2 non-psychiatric treatment;
    2.3 major medical procedures;

3. To hear reviews on request in relation to admission and treatment.

4. To review decisions regarding the withholding of certain information from patients.

5. To determine whether a person has capacity to give informed consent.

6. To determine applications for warrants to apprehend persons for assessment purposes.

7. To review reports submitted to the Tribunal and to give any necessary directions to the Chief Executive Officer of DoH.

9. To make orders with regard to transfers of patients to and from the Northern Territory.

Appendix 2: Operations of the Tribunal

- **Continuing admission and treatment of long term voluntary patients (including prisoners).**

  The Tribunal may confirm the admission where it finds the person is able to give informed consent.

  If the Tribunal finds that the person fulfils the criteria for involuntary admission it may determine that the person be detained on those grounds for a period not exceeding 3 months and fixes a date for further review.

  If the Tribunal finds that the person meets the criteria for involuntary treatment in the community, it may make a CMO in relation to the person for no longer than six months. Prisoners may be made subject to a CMO whilst serving their sentence in prison.

  Where the Tribunal makes an order for involuntary treatment it must authorise the treatment that may be administered under the order.

  If the Tribunal is not satisfied that the person will benefit from continuing to be admitted as a voluntary patient, or does not fulfil the criteria for involuntary admission or involuntary treatment in the community, then it must order that the person be discharged. Prisoners will be discharged back to the prison if their sentence has not yet expired.

- **Continuing admission and treatment of involuntary patients, and community management orders.**

  The Tribunal must conduct a review within 14 days from the date that a person is admitted as an involuntary patient on the grounds of mental illness or is placed on an interim CMO. The Tribunal has a timeframe of seven days to conduct a review from the date a person is admitted as an involuntary patient on the grounds of mental disturbance.

  Following a review, if the Tribunal is satisfied that the person fulfils the criteria for admission on the grounds of mental illness, it may order that the person be detained as an involuntary patient on that basis for up to three months. It must also authorise the treatment that may be administered to the person during the term of the order.

  If the Tribunal is satisfied that the person fulfils the criteria for admission on the grounds of mental disturbance, it may order that the person be detained as an involuntary patient on that basis for up to 14 days. Again, it must authorise the treatment that may be administered to the person during the term of the order.

  If the Tribunal is satisfied that the person fulfils the criteria for involuntary treatment in the community, it may make a CMO in relation to the person for up to six months.

Where the Tribunal makes any of the aforesaid orders under any of the above-named criteria, it must fix a date for the order to be again reviewed and must then conduct a further review by that time.

If the Tribunal is not satisfied that a person fulfils either the criteria for admission as an involuntary patient or the criteria for involuntary treatment in the community, it must revoke the order admitting the person as an involuntary patient or revoke the interim CMO, as the case may be.

Where the Tribunal revokes an order it must then order that the person be immediately discharged, or discharged within seven days if arrangements need to be made for the patient's care.

- **Applications to administer non-standard or non-psychiatric treatment.**

The Act provides that, except in the case of emergency treatment, the approval of the Tribunal or another specified person or body is required in order to administer any of the following treatments to involuntary patients:

- Non-psychiatric treatment, such as a surgical procedure;
- Major medical procedure;
- Clinical trials and experimental procedures;
- Electro-convulsive therapy.

Sterilisation is not allowed to be performed on a person as a treatment for mental illness or mental disturbance.

The Act provides that psychosurgery and coma-therapy are prohibited in the Northern Territory irrespective of whether or not that treatment is intended to treat a mental condition.

- **Requests for reviews**

A request may be made to the Tribunal to review the decisions made under the Act and listed in section 127.

Following such a review the Tribunal may:

- Affirm, vary or set aside the decision or order;
- Make any decision or order that the authorised psychiatric practitioner may have made;
- Refer the matter back to the authorised psychiatric practitioner for further consideration; or
- Make any other order it thinks fit.

A request may also be made to the Tribunal to review an admission or any order made under the Act, see section 123(4).

- **Limitation on further reviews.**

  After conducting any review, the Tribunal may order that an application for another review in relation to the same matter may not be made before a date determined by the Tribunal.

- **Determining capacity for informed consent.**

  The Tribunal must determine whether a person is capable of giving informed consent on application by an authorised psychiatric practitioner.

- **Assessment warrants**

  Following an application by a medical practitioner or an authorised psychiatric practitioner or a designated mental health practitioner or a member of the Police, the Tribunal may issue a warrant to apprehend a person where it is satisfied that:

  - The person may be unable to care for himself or herself;
  - The person may meet the criteria for involuntary admission on the grounds of mental illness or mental disturbance; and
  - All other reasonable avenues to assess the person have been exhausted.

  A warrant authorises the police to apprehend the person named in the warrant and to take them to an ATF for assessment to determine whether they are in need of treatment under the Act.

  For the purposes of issuing a warrant to apprehend a person, the Tribunal may be constituted by the President, or by a Legal Member delegated to exercise the powers and perform the functions of the President.

- **Review of certain decisions of authorised psychiatric practitioners.**

  The Act provides that an authorised psychiatric practitioner must inform the Tribunal when it is decided that certain information about a patient's admission, treatment or discharge plan is to be withheld from the patient.

  The Tribunal must review the decision and may either uphold the decision or substitute its own decision for that of the authorised psychiatric practitioner.

- **Review of reports**

  The Tribunal must review a report forwarded to it under the Act as soon as is practicable.

  Following the review, the Tribunal:

  - may give a written direction to the Chief Executive Officer of DoH relating to a procedural matter, or an interpretation of the Act, in both cases arising out of the report; and

- where it considers that a person may be guilty of professional misconduct, must notify the relevant professional body.

- **Interstate mental health orders and interstate transfer orders**

  The Tribunal has jurisdiction under the Act to make orders in relation to the transfer of persons subject to involuntary orders in and out of the Territory.

  The Tribunal can only exercise its powers in these matters where inter-government agreements exist between the Northern Territory and other jurisdictions. Presently, arrangements are only in place with South Australia.

- **Appeals**

  Appeals against decisions made by the Tribunal may be made to the Supreme Court in accordance with section 142 of the Act.

Appendix 3: Current Tribunal Members

Legal Members	Location	Appointment Term
Mr David Bamber	(Alice Springs)	27 June 2011 – 26 June 2014
Mr Greg Borchers	(Alice Springs)	12 December 2009 – 11 December 2012
Mr Hugh Bradley	(Darwin)	31 January 2012 – 30 January 2015
Mr Michael Carey	(Darwin)	27 June 2011 – 26 June 2014
Mr Greg Cavanagh	(Darwin)	26 June 2012 – 26 June 2015
Mr Julian Johnson	(Darwin)	31 January 2011 – 30 January 2014
Mr John Lowndes	(Darwin)	31 January 2012 – 30 January 2012
Mr Alasdair McGregor	(Darwin)	31 January 2012 – 30 January 2015
Ms Sarah McNamara	(Alice Springs)	8 April 2012 – 8 April 2015
Ms Elizabeth Morris	(Darwin)	19 May 2010 – 18 May 2013
Mr John Neill	(Alice Springs)	25 January 2010 – 24 January 2013
Ms Sue Oliver	(Darwin)	12 December 2009 – 11 December 2012
Margaret Rischbieth	(Darwin)	22 July 2012 – 22 July 2012
Mr Greg Smith	(Katherine)	14 December 2009 – 13 December 2012
Mr Richard Wallace	(Darwin)	31 January 2012 – 30 January 2015

Medical Members		
Dr June Donsworth	(Sydney)	7 April 2011 – 6 April 2014
Prof Jim Greenwood	(Sydney)	31 January 2012 – 30 January 2015
Dr Janelle Miller	(Sydney)	7 April 2011 – 6 April 2014
Dr Barbara Taylor	(Melbourne)	24 August 2010 – 23 August 2013
Dr John Woodforde	(Sydney)	22 March 2012 – 7 April 2015

Community Members		
Ms Cherie Castle	(Alice Springs)	23 August 2011 – 7 September 2014
Ms Joan Cruse	(Darwin)	24 August 2010 – 23 August 2013
Ms Barbara Curr	(Alice Springs)	30 October 2009 – 29 October 2012
Ms Jennie Guinane	(Darwin)	22 March 2012 – 20 March 2015
Ms Jill Huck	(Darwin)	31 January 2012 – 30 January 2015
Ms S Kapetas	(Alice Springs)	7 April 2011 – 6 April 2014
Ms Patricia Kurnoth	(Darwin)	29 February 2012 – 28 February 2012
Ms Kim Lovatt	(Alice Springs)	31 March 2011 – 30 March 2014
Mr Paul Rysavy	(Darwin)	24 August 2010 – 23 August 2013
Ms Beth Walker	(Darwin)	31 January 2012 – 30 January 2015
Mr Don Zoellner	(Alice Springs)	27 June 2011 – 26 June 2014

Northern Territory Government