NORTHERN TERRITORY

Mental Health Review Tribunal

ANNUAL REPORT

2015 - 2016

The Northern Territory of Australia

The Mental Health Review Tribunal

The Honorable Natasha Fyles MLA
Attorney-General
GPO Box 3146
Darwin NT 0801

Dear Attorney-General

Re: Mental Health Review Tribunal – Annual Report 2014-2015

In accordance with section 140 of the *Mental Health and Related Services Act,* I have pleasure in providing you with the Annual Report on the operation of the Mental Health Review Tribunal for the period 1 July 2015 to 30 June 2016.

Yours faithfully

Judge Richard Bruxner
President

30 September 2016

NORTHERN TERRITORY OF AUSTRALIA
MENTAL HEALTH REVIEW TRIBUNAL
ANNUAL REPORT

In accordance with section 140 of the *Mental Health and Related Services Act*, I Richard Bruxner, President of the Mental Health Review Tribunal, hereby submit my report on the exercise of the Tribunal's powers and the performance of its functionsfor the year ended 30 June 2015.

DATED: 30 September 2016

JUDGE RICHARD BRUXNER

INDEX

SECTION

APPENDICES

SECTION A: INTRODUCTION

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

The primary role of the MHRT 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 the Attorney-General and Justice and the Department of Health. The Department of the Attorney-General and Justice has responsibility for the administration of Part 15 of the Act which deals with the MHRT. The MHRT does not administer its own budget. Details of expenditure in relation to the MHRT should be set out in the Annual Report of the Department of the Attorney-General and Justice.

Section F of this Report sets out statistics relating to the MHRT for the period covered by this Report.

SECTION B: OFFICEHOLDERS, STAFF & PREMISES

The Act requires the Administrator to appoint a President of the MHRT from amongst its legally qualified members.

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

I have held the appointment as President since 17 December 2014.

I accepted that appointment because I am also the President of the Northern Territory Civil and Administrative Tribunal (NTCAT) and because I understood at the time that NTCAT would soon be taking over the mental health review jurisdiction.

For the entire reporting period, the MHRT has been administered and staffed by officers of NTCAT.

The Act stipulates that a member of the public service must be appointed as a Registrar of the MHRT. The functions of the Registrar are to exercise the powers and perform the functions conferred by the Tribunal. Mr Demetrios (Jim) Laouris has been Registrar of the MHRT throughout the reporting period

The Act also includes provision for the appointment of Deputy Registrars. During the reporting period two NTCAT officers, Ms. Bree Hall (until 6 May 2016), Ms. Victoria Hall and Ms Jodie Shmutter (entire period) held appointments as Deputy Registrars. They are responsible for the bulk of the administrative workload of the MHRT. In addition the MHRT continues to receive invaluable assistance in the conduct of its Alice Springs hearings from Sandra Cronin.

The administration and management of the MHRT is carried out from the head office of NTCAT, which is located at The Met Building, level 1, 13-17 Scaturchio Street, Casuarina. MHRT's hearings are conducted at the Cowdy Ward, Royal Darwin Hospital and at Alice Springs Hospital.

SECTION C: MEMBERSHIP OF THE TRIBUNAL

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

The Act provides that the members of the MHRT are to be appointed by the Administrator and that, in the performance of its hearing functions, the tribunal is to comprise members from 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.

MHRT's members in the second category, vernacularly referred to as the medical members, are four interstate based consultant psychiatrists. Appointment of medical members from interstate is unavoidable. It is not practicable to recruit Northern Territory based members owing to the practical inevitability that professional associations with practitioners and patients involved in tribunal hearings will give rise to conflicts of interest.

MHRT's third category of members, referred to as Community Members, is appointed on the basis of special interest or expertise in mental illness or mental disturbance.

Since the 2007 amendments to the Act, the MHRT 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 was utilised on occasions during the reporting period; however, it is regarded as a last resort (and would not, for example, be invoked in circumstances where a hearing can be adjourned without risking injustice or endangering a patient or the community).

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 MHRT once again acknowledges the work of its members and thanks all members for their valued expertise and commitment.

SECTION D: OBJECTIVES OF THE TRIBUNAL

The Tribunal's objectives are:

1. to conduct hearings within legislative time-frames;

2. to maximize access to the Tribunal across the Northern Territory;

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

    - conducting hearings in an informal, respectful, atmosphere;
    - ensuring full effect is given to patients' rights under the Act to legal representation;
    - 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;
    - facilitating the attendance of family and other support persons at Tribunal hearings (where this is the patient's wish);
    - ensuring full effect is given to patients' rights under the Act to 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 a productive, cooperative working relationship with MHS, patients' legal representatives and other stakeholders, particularly in the context of pre-hearing procedures and arrangements on hearing days;

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

As was the case for the last reporting period, these objectives have largely been met.

Some particular observations are necessary.

Legal representation

The Act effectively guarantees MHRT patients the right to legal representation in connection with MHRT hearings. The Tribunal is obliged by section 131(2) to appoint a legal representative for an unrepresented person who requires representation and, by section 131(4) may order the Northern Territory to pay the costs of such representation. In other words, the Act expressly contemplates that the cost of legal representation for MHRT patients ought in most circumstances to be met by the

public purse.

In the 2014-15 Annual Report, I referred to ongoing issues regarding ensuring effective legal representation for patients appearing before the MHRT at its Darwin hearings.

As foreshadowed in that report, the North Australian Aboriginal Justice Agency ('NAAJA') no longer provides representation for indigenous patients at MHRT hearings. NAAJA involvement in MHRT matters ceased in October 2015.

For the remainder of 2015 and into early 2016, legal representation for MHRT patients at Darwin hearings was provided by two avenues.

One lawyer was made available each Wednesday by the Northern Territory Legal Aid Commission ('NTLAC'). The services of a second lawyer each week were able to be secured by the reinstatement an arrangement with the Northern Territory Bar Association ('NTBA') by which a panel of NTBA members acted on a roster basis

From early 2016 the NTLAC has made available two lawyers for the MHRT's weekly Darwin sittings, with the consequence that it has been unnecessary to continue calling upon the services of NTBA members.

Compared to the volatility that affected arrangements for legal representation throughout 2015, the arrangements now in place with the NTLAC have proven stable. This produces real advantages in terms of continuity of representation for patients. In addition, the NTLAC representatives are led by practitioners with extensive experience in mental health review matters, which can be of great assistance to the tribunal when dealing with more complicated cases.

Procedures and Forms

In the 2014-15 Annual Report, I noted as follows:

> "MHRT hearing days are necessarily a fluid affair. For a variety of reasons, matters before the Tribunal will rarely be able to be heard in a pre-arranged order or according to a set timetable. Despite this - and due to cooperation and patience on the part of all involved (doctors, nurses, lawyers, interpreters and MHRT staff) – hearing days tend to proceed without substantial delays between matters and without the need for matters to be adjourned.
>
> This is not to say that there is no room for improvement. MHRT will continue working with all stakeholders to ensure that its hearings proceed in a way best suited to producing outcomes for patients are medically and legally correct."

Those efforts have continued in 2015-16; however, it is fair to say that the impetus for substantial procedural changes is affected by the uncertainty as to when, if at all, NTCAT will be taking over the mental health review jurisdiction (see further below). Until there is some greater certainty about the transfer – as well as the broader changes to the jurisdiction that may result from the pending review of the Act – the practical utility of major alterations to the tribunal practices and procedures is limited.

It may be noted in this respect that the tribunal has had in place since 2012 a series of practice directions made under section 129(2A) of the Act. The practice directions are highly prescriptive and in many respects do not reflect the actual practice at MHRT hearings or the exigencies of those hearings. They plainly require attention, but the necessary investment of time and resources is difficult to justify if the jurisdiction is soon to transfer to NTCAT (which will be able to deal with such matters under its rules).

At an MHRT stakeholder forum conducted over two days (in Alice Springs and Darwin) in late February 2016 there was a general consensus that the forms currently in use in respect of MHRT matters are in need of an overhaul. Once again this is an area that is ideally attended to following the transfer of mental health review jurisdiction to NTCAT (assuming that is still to happen).

NTCAT

As I noted earlier in this report, I agreed to appointment as President of the MHRT on the assumption that the jurisdiction of the tribunal was soon to transfer to NTCAT. It is similarly on the basis of that assumption that NTCAT staff presently manage the administrative operations of the MHRT.

In late 2015 and early 2016 I was led to understand that the transfer of the mental health review jurisdiction to NTCAT - which was to be effected separately from, and prior to, a broader review of the Act - was to occur by mid-2016. At the time of writing this report, it has not occurred and, as far as I am aware, it is unlikely to occur in the immediate future.

The situation is far from ideal. The wearing of two hats (both by me and by NTCAT staff) is administratively inefficient. In addition, for the reasons I have explained above, the fact the transfer remains pending tends to act as a disincentive for close attention to existing practices and procedures of the MHRT.

SECTION E: HEARINGS

Venues

MHRT's hearings are conducted at the Cowdy Ward, Royal Darwin Hospital and at Alice Springs Hospital. A security review undertaken in August 2015 has led to improvements in the management of CMO patients.

Remote participation in hearings

In the 2014-15 annual report I noted as follows:

> "... all of MHRT's medical members are based interstate. In the majority of cases, the medical members participate in MHRT hearings by means of video conferencing facilities at the two hearing venues. There were also several MHRT lists during the reporting period where, for a variety of reasons (technical difficulties, absence of the member from his/her usual location) it was necessary for the medical member to participate in hearings by phone.
>
> Apart from remote participation by medical members, there are also regularly cases before the MHRT where the patient is at a remote location (for example a community clinic). In most such cases, the patient participates in the hearing by telephone (and quite often via an interpreter).
>
> Whilst in many MHRT hearings remote participation by one or more 'party' is unavoidable, it is also the case that quality of communication as between participants at hearings affects the quality of the hearing. Considerations of cost inevitably arise; however, I intend actively exploring options for improved remote participation at hearings, in particular by use of widely available, low cost options for video communication instead of telephone links."

Attention to these matters remain a priority.

SECTION F: STATISTICAL REPORT

Number of new Tribunal clients by financial year			
	2013/14	2014/15	2015/16
	363	351	413

Case Numbers by Location:

Number of cancelled hearings			
Location	2013/14	2014/15	2015/16
Alice Springs	106	104	136
Darwin	537	417	549
TOTAL	643	521	685

Number of determinations made by the Tribunal			
Location	2013/14	2014/15	2015/16
Alice Springs	113	131	166
Darwin	404	374	364
TOTAL	517	505	530

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									
	2013/14			2014/15			2015/16		
Purpose	ASP	DRW	Combined	ASP	DRW	Combined	ASP	DRW	Combined
Review long term voluntary admission	0	0	0	0	0	0	0	0	0
Review involuntary admission to mental health facility on the grounds of mental illness	84	358	442	85	370	455	112	393	505
Review involuntary admission to mental health facility on the grounds of mental disturbance	34	173	207	34	109	143	54	200	254
Review Tribunal order for involuntary detention	35	123	158	45	62	107	48	86	134
Review Interim Community Management Order (CMO)	19	27	46	11	36	47	14	37	51
Review CMO	39	128	167	46	150	196	59	122	181
Review Report	5	54	59	6	36	42	13	38	51
Determine application for specific treatment	2	16	18	1	22	23	0	17	17
Determine application for warrant to apprehend	0	37	37	2	7	9	1	12	13
Review on request (section 123(4))	1	25	26	2	3	5	1	8	9
Total matters scheduled for determination by the Tribunal	**219**	**941**	**1160**	**232**	**795**	**1027**	**302**	**913**	**1215**

Hearing Outcomes - by Location									
	2013/14			2014/15			2015/16		
Cancelled Hearings	**ASP**	**DRW**	**Combined**	**ASP**	**DRW**	**Combined**	**ASP**	**DRW**	**Combined**
Discharged from facility prior to hearing	35	285	320	49	220	269	63	320	383
Changed status to voluntary patient prior to hearing	70	250	320	55	183	238	73	225	298
Person's whereabouts unknown / AWOL	1	1	2	0	3	3	0	2	2
Person left NT	0	0	0	0	0	0	0	1	1
CMO revoked by Mental Health Services	0	0	0	0	0	0	0	0	0
Deceased during term of Order	0	0	0	0	0	0	0	1	1
CMO expired	0	0	0	0	0	0	0	0	0
Other	0	1	1	0	11	11	0	0	0
Total hearings cancelled	**106**	**537**	**643**	**104**	**417**	**521**	**136**	**549**	**685**

Determined by Tribunal									
	2013/14			2014/15			2015/16		
	ASP	DRW	Combined	ASP	DRW	Combined	ASP	DRW	Combined
Confirm admission as voluntary patient	0	0	0	0	0	0	0	6	6
Order for involuntary detention mental illness	41	132	173	44	108	152	65	112	177
Order for involuntary detention mental disturbance	5	8	13	13	7	20	7	9	16
Revoke admission & order person be discharged from facility	0	0	0	0	0	0	2	8	10
Community Management Order	43	141	184	43	133	176	50	128	178
Review Report – further Action	0	0	0	0	0	0	0	5	5
Review Report – no further action	6	54	60	10	35	45	13	38	51
Authorise electro convulsive therapy	0	13	13	0	16	16	0	12	12
Authorise non-psychiatric treatment	2	0	2	0	0	0	0	0	0
Authorise major medical procedure	0	3	3	0	5	5	0	1	1
Warrant to apprehend a person for assessment	0	37	37	2	7	9	1	11	12
Adjourned	16	16	32	19	63	82	28	34	62
Total determinations made	**113**	**404**	**517**	**131**	**374**	**505**	**166**	**364**	**530**

STATISTICS - OTHER

	2013/14	2014/15	2015/16
Percentage of matters scheduled where client was female	37%	23%	22%
Percentage of matters scheduled where client was male	63%	77%	77%
Percentage of matters scheduled where client was of Aboriginal or Torres strait Islander background	57%	59%	51%
Percentage of hearings conducted where Tribunal clients were legally represented	100%	100%	100%
Percentage of Tribunal clients under Adult Guardianship orders	4.17%	2%	2%
Percentage of hearings conducted with an interpreter	6%	14%	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 Community Management Order (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; or
- 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 intergovernmental agreements exist between the Northern Territory and other jurisdictions.

- **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 - LIST OF CURRENT TRIBUNAL MEMBERS

Legal Members	Location	Appointment Term
Mr Richard Bruxner (P)	(Darwin)	01 January 2015 – 01 January 2018
Mr Alasdair McGregor	(Darwin)	01 January 2015 – 01 January 2018
Ms Sarah McNamara	(Alice Springs)	29 October 2015 – 29 October 2018
Ms Ruth Brebner	(Darwin)	6 November 2012 – 5 November 2015
Ms Meredith Day	(Darwin)	6 November 2012 – 5 November 2015
Ms Kathryn Ganley	(Darwin)	29 October 2015 – 29 October 2018
Ms Jodi Mather	(Alice Springs)	29 October 2015 – 29 October 2018
Ms Sally Ozolins	(Darwin)	6 November 2012 – 5 November 2015
Mr Anthony Whitelum	(Alice Springs)	29 October 2015 – 29 October 2018
Mr Julian Johnson	(Darwin)	29 October 2015 – 29 October 2018Mr
Alan Woodcock	(Darwin)	1 September 2014 – 1 September 2017
John Birch	(Alice Springs)	30 June 2015 – 29 June 2018
Medical Members		
Prof Jim Greenwood	(Sydney)	17 December 2014 – 16 December 2017
Dr June Donsworth	(Sydney)	17 March 2014 – 17 March 2017
Dr Rosemary Howard	(Sydney)	1 September 2014 – 31 August 2017
Dr Peter O'Brien	(Sydney)	1 September 2014 – 1 September 2017
Dr Jagmohan Gilhorta	(Queensland)	1 September 2014 – 1 September 2017
Community Members		
Ms Jill Huck	(Darwin)	17 December 2014 – 17 December 2017
Ms Beth Walker	(Darwin)	17 December 2014 – 17 December 2017
Ms Patricia Kurnoth	(Darwin)	17 December 2014 – 17 December 2017
Ms Barbara Curr	(Alice Springs)	29 October 2015 – 29 October 2018
Mr Paul Rysavy	(Darwin)	26 August 2016 – 26 August 2019
Ms Kim Lovat	(Alice Springs)	17 March 2014 – 17 March 2017
Ms Suzi Kapetas	(Darwin)	30 June 2014 – 30 June 2017
Mr Don Zoellner	(Alice Springs)	30 June 2014 – 30 June 2017
Ms Cherie Castle	(Alice Springs)	1 September 2014 – 1 September 2017