The Mental Health Tribunal
ANNUAL REPORT
2018 | 19

Mental Health Tribunal

Safeguarding and protecting the rights and dignity of people being involuntarily treated for mental illness.

Mental Health Tribunal

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27 September 2019

The Hon. Elise Archer
Attorney-General
15 Murray Street
HOBART, TAS, 7000

Dear Attorney

I am pleased to present the Mental Health Tribunal's Annual Report in accordance with s 178 of the *Mental Health Act 2013* for the period 1 July 2018 to 30 June 2019.

Yours sincerely

Yvonne Chaperon
President, Mental Health Tribunal

CONTENTS

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', '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.

PRESIDENT'S MESSAGE

I am pleased to present the annual report of the Mental Health Tribunal (the Tribunal) for the 2018–19 financial year. This report provides an outline of the purpose, key activities, performance and financial reports of the Tribunal during this period.

The Tribunal has been continually growing and I believe open to adapt or change in order to better meet the expectations of those affected by our decisions and processes.

The Tribunal is now in its sixth year of operation under the *Mental Health Act 2013 (the Act)*. We have come a long way since the early days of operation in 2014.

Under Section 229 of the Act the Minister for Health is required to review the operation of the Act, and to complete the review within six years of the Act's commencement. The review is necessary to identify the extent to which the Act is operating as intended to facilitate assessment and treatment of people with mental illness.

This year the Tribunal, along with other stakeholders, began the initial work on the *Mental Health Act 2013* sixth year review. Under the guidance of a Steering Committee, there are four reference groups (made up of statutory officers, key stakeholders and others required to work with the Act). I am a member of the Statutory Reference Group. The reference groups were established to provide a forum through which their views on the operation of the Act may be identified. This will inform a report that identifies aspects of the Act's operation that may require further consideration by Government. At the time of writing this message, the Statutory Reference Group had met on four occasions and it is the intention of the group to conclude its work in December 2019. The review of the Act consultation document has been released for public consultation, with submissions due by early November 2019.

Last year the Tribunal participated in key stakeholder consultation on the operation of Section 47A of the Act. Section 47A provides for the re-admission of a patient to prevent possible harm. Under the Act, any person on a Treatment Order that became unwell and had to be re-admitted to hospital for treatment had to have a hearing before a three-member panel of the Tribunal within three days of their admission to hospital.

This was very onerous on the patient, their support network and the treating team, with the patient sometimes feeling they were being punished for becoming unwell. In the previous financial year, there were 93 re-admission hearings held and this financial year (up to May 2019) 115 re-admission hearings. A hearing by a three–member panel of the Tribunal was considered not necessary in most cases for a standard re-admission to hospital. After wide consultation, an Amendment Bill was drafted. The amended Act gained Royal Assent on the 8 May 2019 and Section 181 of the Act was amended to provide that the Tribunal can hold a review of Section 47A - Admissions to Prevent Possible Harm, within three days of notification, but need not hold a hearing. The amendment now provides that the review can be undertaken by one member of the Tribunal or if deemed necessary, by a panel of three members, if it is the view of the single member reviewing the admission that more information is required from the treating team regarding the re-admission.

This year I have been a member of the Prisoner Mental Health Care Task Force (the Taskforce). The Taskforce was established on 18 September 2018 to examine processes and procedures relating to prisoner mental health care, assessment, prisoner release and identification of options for ensuring that prisoner mental health care assessment and prisoner release processes are as rigorous as they can be.

The Taskforce was also tasked with providing advice to the Ministers for Corrections and Health on ways in which the delivery of mental health services to prisoners and detainees can be improved. The final report representing six months' work by the Taskforce, outlines the findings on the delivery of mental health care to prisoners and detainees and also makes a number of recommendations about the resources and processes required to improve the delivery of mental health services to prisoners and detainees.

As has been the trend over previous years, aspects of the Tribunal's workload continues to increase. This financial year the Tribunal held 3208 civil hearings, 335 more than last year and 82 forensic hearings.

At the civil hearings, 77% of presenting patients were not represented by a lawyer or advocate. Of those who were represented, the Legal Aid Commission represented 17% of patients and Advocacy Tasmania represented 6% of patients.

At the forensic hearings, 62% of presenting patients were not represented by a lawyer or advocate. Of those who were represented, the Legal Aid Commission represented 38% of patients and Advocacy Tasmania did not represent any patients.

The Tribunal's 40 members (two full time and 38 sessional) have continued to provide the highest quality of service. The members bring to the Tribunal commitment, professional expertise, and an appreciation of the very valuable role they are playing and its impact on people's lives. Whilst the MHT members are a relatively small group in number and most have full time work outside of the Tribunal, they always make themselves available when the Tribunal is in need. I extend my personal thanks to them all for their significant dedication.

I would like to congratulate Richard Grueber, Deputy President for his re-appointment for another five-year term, extend my thanks to him for his ongoing expertise and the support he provides to me, the Tribunal and Registry.

The Tribunal's staff members have all worked tirelessly again this year. They all work extremely well under the pressure of heavy workloads and their continuous enthusiasm for their roles amazes me. I thank them all for their dedication to the Tribunal, their professionalism and constant good humour.

I acknowledge the important work and support of the Legal Order Coordinators state-wide, who have the enormous task of coordinating the applications and orders under the Act within their services. They contribute to the streamlined processes of the Registry and I thank them.

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*.

I am very pleased to have been re-appointed as President for another five-year term. I am honoured to hold this position and would like to acknowledge the very significant role we play in so many vulnerable people's lives and will continue to work hard to enable better access to justice for all people subject to the *Mental Health Act 2013*.

Yvonne Chaperon
PRESIDENT

REGISTRAR'S REPORT

The Mental Health Tribunal (the Tribunal) began the 2018-19 year with continuing improvement to the Mental Health Tribunal's processes and system, after the implementation of the previous years' amendments. A project of work was undertaken to the McGirr's Case Management System (MCMS) to assist in reducing and eliminating system generated and end user errors, providing more efficiency and quality of service. MCMS also underwent a successful upgrade in early 2019.

The member's training day was held at the central location of Campbell Town in October 2018, with 35 members attending. Presentations included information regarding electro-convulsive therapy (ECT), medications and treatment the Tribunal authorises, admission under Section 47 and 47A of the Mental Health Act, matters reviewable by the Tribunal and unlawful treatment, and refresher content on Treatment Order criteria and hearing processes. The day also gave the members opportunity to consolidate consistency of practice.

The recruitment process for new and existing Tribunal members concluded in August 2018 with 18 being appointed. The Tribunal had one resignation through 2019. This year also saw the re-appointment of both the President and Deputy President for further five-year terms.

Safety and security continued to be an important aspect of the Tribunal's functions, which were reiterated in a report from an internal audit conducted by the Department of Justice for the Tribunal's 'Public Safety and Physical Security Emergency procedures'. The audit considered 93 criteria, assessed Public Safety and Physical Security threats, and the risk of violence against, women, vulnerable people, other staff and Department assets. Areas of improvement were identified however, the positive findings of the report included, 'Mental Health Tribunal management have an excellent understanding of the PSPS risks that apply to their work environment and are proactive in identifying and managing PSPS risks relevant to the Output. The MHT has implemented a range of safety and security systems and processes to address operational and building safety and security requirements. The measures implemented ensure PSPS risks within the workplace are effectively managed and support staff in their interactions with clients.'

Attendance by the President and Registrar at the national Council of Australasian Tribunals (COAT) conference in June 2019 and participation in the inaugural Registrar and Executive Officer round-table meeting continued the Tribunal's commitment to strategic development, currency of practice and identification of emerging issues. The Tribunal also hosted the President and Registrar from the Western Australian Mental Health Tribunal sharing ideas and information with opportunity for change and development in Tribunal processes and procedures.

The Tribunal continued to deliver an effective service through the continuing trend of consistently increasing work-flow, despite the strains on budget and resourcing. Staffing stability occurred for the majority of the year, assisting in increased work productivity and more streamlined processes due to retention of longer-term operational knowledge and the developing of deeper skills. The team again contributed to the community through wellbeing activities that raised funds to purchase swags for homeless Tasmanians necessary especially for cold winter months. Tribunal staff participated in Department of Justice activities including the Disability Action Plan working group, Internal Audit and Risk Management committee, the MCMS governance committee, the Health and Wellbeing committee and the White Ribbon working group.

I sincerely thank the Tribunal's staff for their ongoing hard work, dedication and professionalism to the stakeholders and consumers of the Tribunal's services.

Vanessa Fenton
REGISTRAR

OVERVIEW

THE LEGISLATIVE FRAMEWORK

The *Mental Health Act 2013* (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.

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.

The Act is due to be fully reviewed six years after its enactment, which is currently being undertaken.

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 *Mental Health Act 1996*.

OUR VISION

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

OUR 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.

OUR 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 re-appointed in June 2019 for a five-year term and the Deputy President, Mr Richard Grueber, was re-appointed in March 2019 for a five-year term.

At the end of the financial year, the Tribunal had 40 members (two full time and 38 sessional). Of these, 9 are psychiatrists, 13 are legal members and 18 are general members.

Of the Tribunal 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 Act is at **Appendix A.**

REGISTRY

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

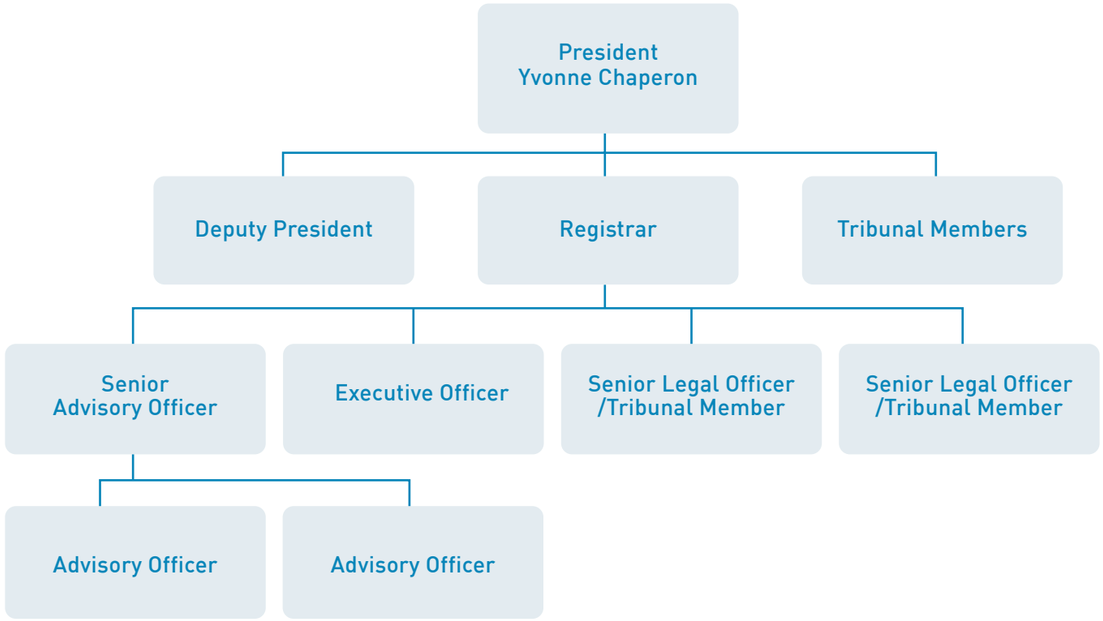


Chart 1. Mental Health Tribunal Organisational Structure

2018-2019 HIGHLIGHTS

MCMS IMPROVEMENT PROJECT

The MHT reviewed the case management system (MCMS) proposed upgrade and identified a suite of improvement areas to create efficiencies (time and cost) in its operations and improve accuracy in reporting. The improvements assisted the Registry functions by streamlining the processes to reduce manual labour enormously. Many of the improvements were fixes for the system to operate, as it should, however relate to legacy issues created from initial implementation of the system. To ensure cost efficiency the issues were prioritised and only the essential improvements were sought, and a considerable amount of work was undertaken by the staff of the Tribunal.

MEMBER TRAINING

Professional development is an important part of the Tribunal's operation to ensure that all Members are up to date with the legislation, occupational work health and safety, practice directions, topics relevant to the mental health jurisdiction and opportunities for reflective practice. Training occurs throughout the year via practice direction updates, the President's Topic of the Month and an annual Training Day.

The Training Day was held at The Grange Conference Centre in Campbell Town with the majority of members from around the state in attendance. Presentations included information concerning medications and treatment the Tribunal authorises, Section 47 and 47A of the Mental Health Act, especially the change to three-member hearings after re-admission, matters reviewable by the Tribunal and unlawful treatment, and refresher content on Treatment Order criteria and hearing processes. The guest speaker was Dr Matthew Fasnacht, Psychiatrist, Older Persons Mental Health Services.

Dr Fasnacht provided a detailed summary of the evolution of electro-convulsive therapy (ECT) and the modern day use, risks and efficacy of the treatment. ECT forms part of the suite of treatment the Tribunal members are required to consider from time to time in discharging their duties under the *Mental Health Act 2013*.

PRISONER TASKFORCE

The President sat as a member of the Prisoner Mental Health Care Task Force (the Taskforce). The Taskforce was established on 18 September 2018 to examine processes and procedures relating to prisoner mental health care, assessment, prisoner release and identification of options for ensuring that prisoner mental health care assessment and prisoner release processes are as rigorous as they can be.

The Taskforce was also responsible for providing advice to the Ministers for Corrections and Minister for Health on ways in which the delivery of mental health services to prisoners and detainees can be improved. The final report representing six months' work by the Taskforce, outlines the findings on the delivery of mental health care to prisoners and detainees and also makes a number of recommendations about the resources and processes required to improve the delivery of mental health services to prisoners and detainees.

WHITE RIBBON ACCREDITATION

The Department of Justice has achieved White Ribbon Workplace Accreditation and is proudly working with White Ribbon to create a safer workplace and prevent violence against women. The Tribunal's staff participated in the Department's working group and training for manager's program.

S47A AMENDMENT

A number of amendments were made to the *Mental Health Act 2013* (the Act), commencing in July 2017. One of the most significant amendments was in relation to the re-admission to hospital of patients who were subject to a Treatment Order. Section 47A - Admission to Prevent Possible Harm, of the Act, allowed a patient who was subject to an Order to be re-admitted in the event that his or her mental state deteriorated despite compliance with the order. Under section 181(1) (d) of the Act, the Tribunal was required to review those re-admissions within three days of being notified of a patient's return to hospital. The review was also required to be conducted by a three-member panel of the Tribunal. This was very onerous on the patient, their support network and the treating team, with the patient sometimes expressing feeling they were being punished for becoming unwell, particularly where an initial hearing for application of a Treatment Order or review hearing had been held only weeks or days prior.

In the previous financial year, there were 93 re-admission hearings held and this financial year (up to May 2019) 115 re-admission hearings. Historically a hearing by a three–member panel of the Tribunal was considered not necessary in most cases for a standard re-admission to hospital. After wide consultation, an Amendment Bill was drafted. The amended Act gained Royal Assent on the 8 May 2019 and Section 181 of the Act was amended to provide that the Tribunal can hold a review of Section 47A of the Act, within three days of notification, but need not hold a hearing. The amendment now provides that the review can be undertaken by one member of the Tribunal or if deemed necessary, by a panel of three members, if it is the view of the single member reviewing the admission that more information is required from the treating team regarding the re-admission.

COUNCIL OF AUSTRALASIAN TRIBUNAL CONFERENCE 2019

The conference, held in Canberra on 6 and 7 June 2019, was attended by the President and Registrar. The theme of the conference was Communicating Justice – Tribunals in the community, and was an opportunity to look to enhance the Tribunals capability in meeting the needs of clients and stakeholders, and its focus on best practice service delivery of the Tribunal in the community.

The focus of the conference was on communication; and how Tribunals can look to understand the communication needs, issues and barriers in providing clear information to the community. An important presentation was how we can communicate decisions well, both in writing and orally. This is an issue we place a lot of importance on in developing the skills of the members, particularly given the Tribunal's stakeholders so it was very pertinent to learn about key strategies being implemented by Tribunals around the nation.

We also attended sessions presenting on providing the best environment for effective communication, working with interpreters, improving access for groups with particular communication needs and communicating with self-represented litigants – what is required to ensure procedural fairness. The learnings from these presentations is disseminated to members through training on an annual basis.

The Heads of Mental Health Tribunals meeting preceded the conference and the states and territories represented this year were Tasmania, New South Wales, Victoria, Queensland, Australian Capital Territory, Western Australia, South Australia and the Northern Territory. A jurisdictional report outlining workload, work pressures and challenges was presented by each Tribunal President.

FUNCTIONS & PROCEDURES

TRIBUNAL FUNCTIONS

The Tribunal's primary functions are established under the *Mental Health Act 2003* 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 psychiatrist treatment
- to determine applications for leave of 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.

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

MENTAL HEALTH TRIBUNAL ORDERS

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

CIVIL[2] MATTERS

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 to determine whether the assessment and/or treatment criteria are met.

An Approved Medical Practitioner (AMP) 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 person's; 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 lasts for 24 hours, unless an approved medical practitioner affirms the Assessment Order, in which case the order may be extended once, by a period not exceeding 72 hours.

[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.

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 ten days of being lodged with the Tribunal and must be heard by a panel of three Tribunal members.

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

Renewal of an Order

A Treatment Order will be in effect for the period determined by the Tribunal and be renewed for up to six months, on first renewal and up to twelve months on second renewal. A Treatment Order 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 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.

FORENSIC MATTERS

Tribunal Review of Forensic Orders

The Supreme Court may make a person subject to a Forensic Order (Restriction or Supervision Order) if that person has been found unfit to stand trial or found not guilty of an offence by reason of insanity. Forensic Orders may apply to those with mental impairment or other condition or disability, including intellectual/ cognitive impairment.

A Restriction Order requires the person subject to the Order to be admitted and detained in a Secure Mental Health Unit (SMHU) until the Order is discharged by that Court. A Supervision Order releases the person subject to the Order to the community under the supervision of the Chief Forensic Psychiatrist and the person is subject to conditions specified in the Order.

Section 37 of the *Criminal Justice (Mental Impairment) Act 1999* mandates that the Tribunal;

- review each Forensic Order under the *Mental Health Act 2013*, within 12 months after the Order was made; and
- at least once every 12 months after that, until the Order is discharged/revoked by the Supreme Court.

At each review hearing, the Tribunal must apply the principle set out in the Criminal Justice Mental Impairment Act that restriction on the person's freedom and personal autonomy should be kept to a minimum consistent with the safety of the community. The Tribunal is also to have regard to:

- the nature of mental impairment or other condition or disability, and
- whether the person is, or would if released be, likely to endanger another person or persons generally, and
- whether there are adequate resources available for the treatment and support of the person in the community, and
- whether the person is likely to comply with conditions of an Order imposed; and
- any other relevant matters.
- The Tribunal on review, may determine that;
- The Order is still warranted and the conditions remain appropriate
- The Order is no longer warranted, or that the conditions of the Order are now inappropriate. If that is the determination, the Tribunal must issue a certificate to that effect. This enables a defendant to apply to the Supreme Court to have the Order discharged, revoked or varied. If a certificate is issued, the Tribunal may recommend to the Supreme Court that another type of Order be made in respect of the defendant and/or conditions on discharge/ revocation that may be appropriate.
- The Supervision Order should be revoked, and instead a Restriction Order should be made. In that event, the Tribunal is to recommend to the Secretary of the Department of Health to apply to the Supreme Court to have the Supervision Order revoked and a Restriction Order be made.

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. If a person prescribed under that Act believes, 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 person's mental health.

Once a person is apprehended for breach of Supervision Order, he or she is taken to Wilfed Lopes Centre (the only SMHU in Tasmania) and may be detained for up to four days with no oversight of the Tribunal. If the person is required to be held longer than four days, an application for further detention must be made to the Tribunal. One member of the Tribunal can authorise the further detention of the person until the application for extension of detention can be determined by the Tribunal at hearing. If further periods of extension of detention are required, further application must be made to the Tribunal for extension(s) of period detention. The Tribunal determines all applications for further periods of detention.

Forensic Patients

In addition to those who have been made subject to Restriction Orders, a forensic patient is defined as any person who has been admitted to a SMHU, and who has not yet been discharged from that unit. This may include:

- persons who have been ordered by a Court to be detained in a SMHU, 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 SMHU for assessment)
- 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 SMHU (see above)
- sentenced prisoners and remandees who have been admitted from prison
- sentenced detainees who have been admitted from Ashley Youth Detention Centre.

Authorisation of Treatment

- Under Section 88 of the *Mental Health Act 2013*, 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 if the forensic patient:

FUNCTIONS & PROCEDURES

- 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, and
- The patient does not have the decision making capacity.

A single Tribunal member can authorise treatment on an interim basis for a maximum of 14 days in relation to the application. A three-member panel hearing must be held within that period to determine the application.

Leave of Absence

Section 78 of the Mental Health Act makes provision for leave of absence from a SMHU for a forensic patient subject to a Restriction Order. If leave of absence is granted by the Tribunal, the Tribunal (under Section 79) may extend or vary the leave.

The Tribunal must notify the Victim Support Service (VSS) of all leave applications. A search of the Eligible Persons Register is conducted by VSS and any persons registered in relation to the offence are notified of the application and are able to make submissions 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 of the right to make a written submission regarding the application. The Tribunal must consider these submissions prior to granting or refusing the leave.

Admission to SMHU of prisoner or youth detainee

When a prisoner, a person on remand or youth detainee is transferred to the SMHU the Tribunal must review the admission within seven days of being notified of the admission. At hearing of the review the Tribunal may

- Affirm the admission; or
- Recommend consideration be given to returning the patient to prison or detention centre;
- Direct the patient be discharged from the SMHU and returned to prison or detention centre.

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:

- 60 day review – The Tribunal must undertake a review of a Treatment Order within 60 days of it being made if it has not been discharged or expires
- 180 day review – The Tribunal must undertake a review of a Treatment Order within 108 days of a Treatment Order being further renewed, and every 180 days thereafter until it is discharged or expires
- 60 day review – The Tribunal must undertake a review of an Authorisation of Treatment within 60 days of it being made if it has not been discharged
- 180 day review – The Tribunal must undertake a review of an Authorisation of Treatment within 180 days of it being made, and every 180 days thereafter until it is discharged
- 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 the Treatment Order or an admission to prevent possible harm
- 3 day review of involuntary admission to the SMHU – the Tribunal must review the admission (or extension of admission) within 3 days after being notified of the admission (or extension)
- 7 day review of admission of prisoner or detainee to SMHU
- 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
- 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 B.**

MENTAL HEALTH TRIBUNAL HEARINGS

CONDUCT OF HEARINGS AND PROCEDURE

The Act provides that the Tribunal may sit in divisions. A division consists of one Tribunal member or three or more members to hear and determine matters within the jurisdiction of the Tribunal.

Each three-member decision is made up of a legal member (the Chair), a psychiatrist member and a general member.

The Act provides a framework for Tribunal hearing procedures but allows discretion in the manner in which hearings are conducted. 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 harming 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.

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 function. There are currently practice directions.

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.

ADJOURNMENTS

The Tribunal may adjourn proceedings on any particular matter.

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, a required report has not been undertaken or the patient has not been assessed; or time is needed for engagement of (or further instructions given to) a legal representative.

In 2018–19 there were 68 civil and 9 forensic hearings adjourned **(Figure 1)**.

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, the treating medical practitioner and case manager (if applicable) once it has been processed by the Registry and signed by the Registrar.

STATEMENT OF REASONS

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

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

Any statement that is written is provided to all parties to the proceedings 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.

FUNCTIONS & PROCEDURES

The Tribunal always 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 to assist a patient to apply to the Supreme Court to discharge, vary or revoke their order.

In 2018-19 there were 87 written statements of reasons for civil hearings and 10 written for forensic matters **(Figure 2).**

ADJOURNMENTS

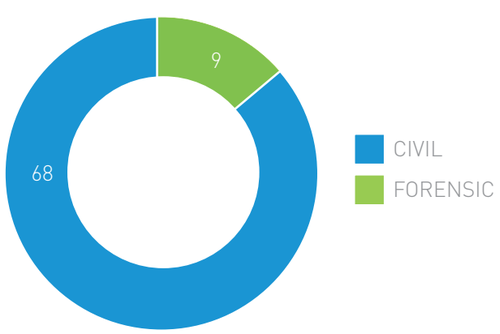


Figure 1. Adjournments

STATEMENT OF REASONS PROVIDED

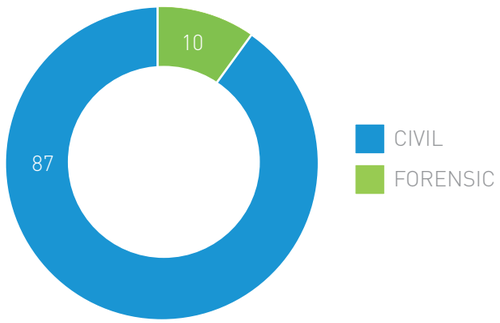


Figure 2. Statement of Reasons Provided

OWN MOTION REVIEWS (INVESTIGATIONS)

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

The Tribunal receives documentation and/or mandatory reports in relation to matters concerning patients (see **Table 1**). All documentation and reports are analysed. Where discrepancies are found in the actions by other parties in relation to patients the Tribunal corresponds with the relevant party for an explanation as to circumstances leading to that.

The Tribunal may refer any of these matters to the Chief Civil and Forensic Psychiatrist for further investigation. For more serious anomalies investigation results can be forwarded to the Director of Public Prosecutions (DPP) for advice as to whether prosecution by the DPP is warranted.

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

In 2018-19, the Tribunal conducted 42 own motion reviews, **(Figure 3).**

STATUTORY PROVISION OF THE ACT	AREA OF REVIEW
s114	Rights of Forensic Patients in SMHU
s180(a)	Assessment Orders (AO)
s181(1) (e)	Treatment Orders (TO)
s182(b)	Involuntary Admission to SMHU
s183(a)	Refusal to return forensic patient to external custodian
s184(d)	Status of voluntary patient
s185(b)	Admission to SMHU of prisoner or youth detainee
s186(1) (a)	Urgent circumstances Treatment
s187(a)	Seclusion and Restraint
s188(a)	Force
s189(a)	Withholding of information from patient
s190(a)	Involuntary patient or forensic patient transfer within Tasmania
s191(a)	Determination relating to Leave of Absence (LOA)
s192(a)	Exercise of visiting, telephone or correspondence right
s194(a)	Other reviews

Table 1. Matters the Tribunal has the Power to Conduct an Own Motion Review

OWN MOTION REVIEWS

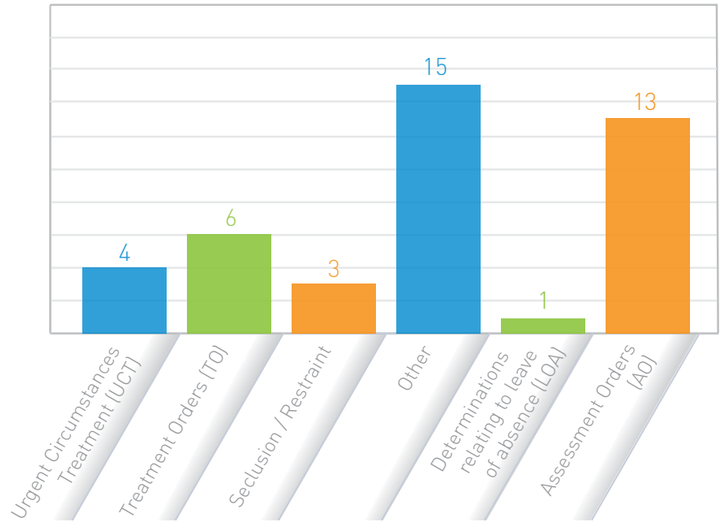


Figure 3. Own Motion Reviews Conducted 2018-19

APPEALS

Under s174 of the Act, 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.

One appeal was lodged with the Supreme Court of Tasmania during the 2018-19 financial year.

FUNCTIONS & PROCEDURES

REGISTRY AND ADMINISTRATIVE PROCEDURES

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 run simultaneously with other regular sessions. Scheduling of hearings is undertaken via the Tribunal's case management system.

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 also contacts all parties prior to a hearing by email or telephone to determine their attendance and hearing contact sheets are provided to sitting members for each hearing.

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 relevant hearing. Subsequent to a matter heard, the Registry staff process the draft documents, entering into the case management system or other manual system and producing the formal Order and any other required correspondence, which is then distributed to the relevant parties.

CASE MANAGEMENT SYSTEM

The Tribunal currently uses the McGirr's Case Management System (MCMS) product to support its civil and forensic functions and processes. The Registry is 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.

RECORDINGS

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

The recordings are used for the purpose 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
- To be listened to by a legal representative or other relevant person upon request.

VENUES AND VIDEO CONFERENCE

The Tribunal sits at ten different venues around the state:

HEARING SESSION TYPE	FACILITY/VENUE
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
	Wilfred Lopes Centre, Risdon
In the Community Hearings	Level 4/144 Macquarie Street, Hobart
	52 Frankland Street, Launceston (ACMHS)
	1 Strahan Street, Burnie (BACMHS)
	Flinders Island Community Centre, Flinders Island

Table 2. Hearing Venues State-wide

Whenever possible the Tribunal conducts in-person hearings with all parties in attendance. Where all parties cannot be present in person 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.

ROSTERING MEMBERS

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

INTERPRETERS

The Tribunal provides the services of an interpreter whenever requested by the patient or the Tribunal considers an interpreter is required, to ensure that the patient is given every opportunity to understand and participate in the hearing process. In 2018–19 there were five requests made for an interpreter.

PERFORMANCE

CIVIL HEARINGS

A total of 3208 hearings were listed during the reporting period 2018-19. The Tribunal received 588 Treatment Order applications with 421 matters proceeding to hearing by a three-member panel. The Tribunal continued to effectively operate within statutory timeframes. Table 3 shows the key statistics for civil matters.

REVIEW OF TREATMENT ORDERS

The Tribunal carries out a range of reviews, including:

- Reviewing decisions about a patients' Treatment Order;
- Reviewing whether a patient still needs to be on an Order.

The Tribunal is required by law to carry out certain reviews, for example reviewing Treatment Orders at 60 and 180 days of the duration of the Order. The number of these reviews increased in 2018–19 **(see Table 3)**. The Tribunal also responds to requests for reviews to be carried out.

VARIATIONS TO TREATMENT ORDERS

The Tribunal varies Treatment Orders when a patient has been discharged from or re-admitted to hospital or authorised treatment needs changing. These variations to Orders are usually determined by a single Tribunal member hearing. The number of variation hearings increased significantly this financial year **(see Table 3)**.

RE-ADMISSION TO APPROVED FACILITY AND FAILURE TO COMPLY WITH TREATMENT ORDER

With the implementation of the amendments to the Act from 1 July 2017, patients re-admitted to an approved facility required a one member variation hearing to change the treatment setting. These variation hearings occurred prior to listing the matter for a three-member panel to consider the reason for re-admission by way of either Failure to Comply Application or an Admission to Prevent Possible Harm Application under Section 47 and 47A of the Mental Health Act.

RENEWAL OF TREATMENT ORDERS

The number of Applications to renew Treatment Orders continues to increase reflecting the cohort of patients with long term illness who do not have capacity to consent to treatment.

FREQUENCY OF REVIEW

The Tribunal reviews Treatment Orders with an initial review at 60 days and 180 day reviews for the life of the Treatment Order. Please see the Key Civil Statistics Overview **(Table 3)** for details.

CIVIL HEARING DECISIONS	2016-17	2017-18	2018-19
Interim Treatment Orders Made	486	435	540
Treatment Orders Made	394	429	421
Treatment Orders Affirmed at 60 & 180 Day Review Hearings	x	321	353
Treatment Orders Renewed - 1st	x	98	123
Treatment Orders Renewed Further	x	141	158
Treatment Orders Varied From Application	678	753	944
Treatment Order Applications Refused	x	8	1
Order Affirmed at Descretionary Review Hearings	x	x	10
Own Motion Reviews Completed	x	64	35
Failure to Comply Affirmed	x	x	43
Failure to Comply Varied	x	x	9
Admission to SMHU Affirmed	x	x	13
Admission to Prevent Possible Harm	x	67	80
Adjournments	67	51	68
Treatment Orders Discharged at Hearing	x	50	75
TOTAL DECISIONS	**1625**	**2412**	**2873**
Treatment Orders Discharged by Medical Team	x	381	327
Treatment Orders Allowed to Expire	x	337	197
Treatment Orders Discharged (Patient Deceased)	x	2	0
TOTAL ORDERS ENDED	**x**	**720**	**524**

Table 3. Key Civil Statistics Overview

CIVIL HEARINGS HELD

In 2018-19, the Tribunal heard a total of 3208 civil matters. These were conducted by a combination of one and three-member panels. A breakdown of the matters that went to a three-member hearing can be seen in **Figure 5**.

TOTAL CIVIL HEARINGS HELD

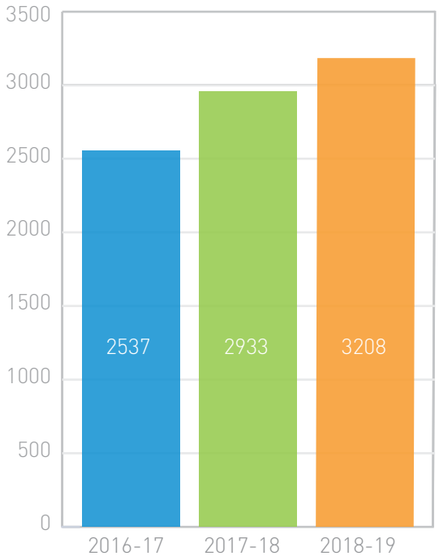


Figure 4. Total Civil Hearings

TOTAL CIVIL HEARINGS DECISIONS

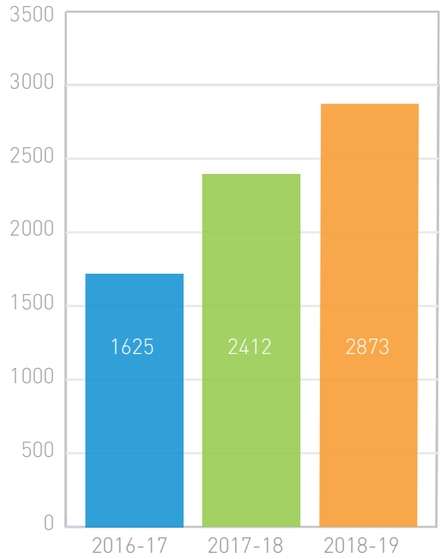


Figure 4a. Total Civil Hearing Decisions

CIVIL HEARINGS HELD BY A THREE-MEMBER TRIBUNAL

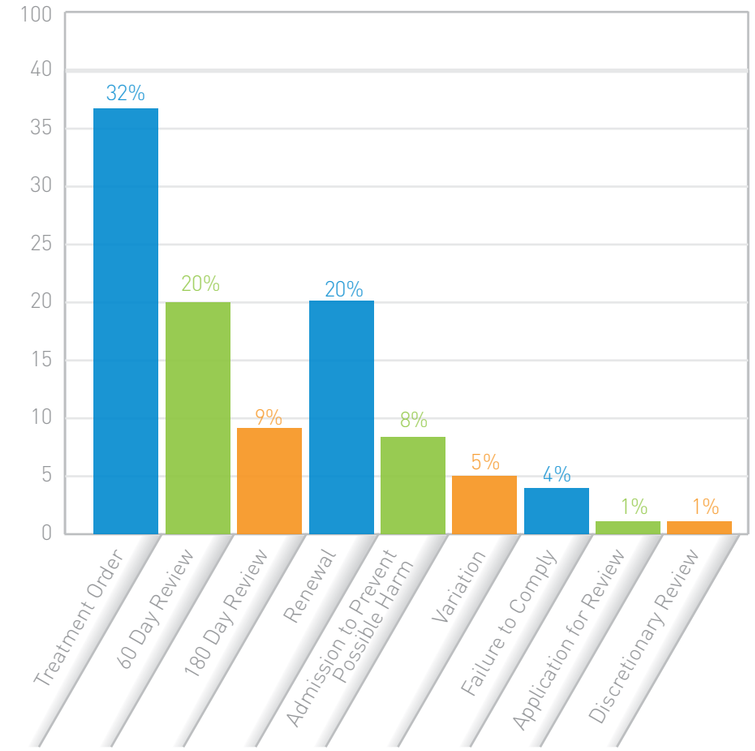


Figure 5. Civil Hearings Held by a Three-Member Tribunal

DURATION OF TREATMENT ORDERS

An initial Treatment Order, unless sooner discharged under Section 49 or Section 181 of the Act, cannot be made for a period greater than six months. Applicants request a six month Order in the majority of applications.

A large percentage of initial Treatment Orders continue to be in place for 2–6 months. A renewal of a Treatment Order can be made for up to six months (first renewal) and subsequent renewals for up to 12 months. 89% of Treatment Orders are renewed at 2nd renewal hearing.

DURATION OF TREATMENT ORDERS ISSUED

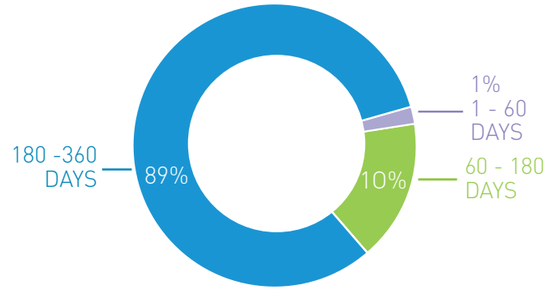


Figure 6. Duration of Treatment Orders Issued

CIVIL PATIENT ATTENDANCE AT HEARINGS

Patient attendance at civil hearings has decreased slightly this financial year (from 2017–2018), but has remained at an average attendance rate of 63% over the last three years.

CIVIL PATIENT ATTENDANCE

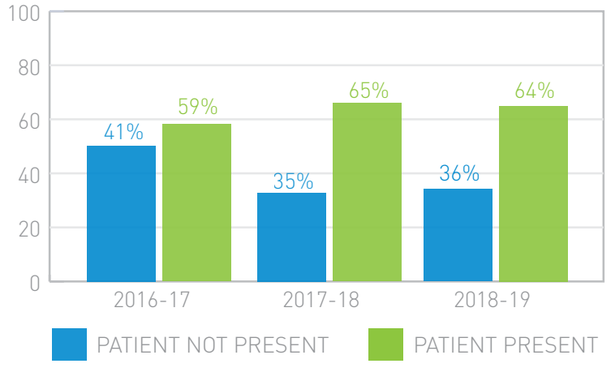


Figure 7. Civil Patient Attendance Comparison at Hearings 2016-17, 2017-18 and 2018-19

CIVIL PATIENT REPRESENTATION AT HEARINGS

The percentages indicate representation of Legal Aid Commission and Advocacy Tasmania at patient hearings and the percentage of those patients not represented. 77% of civil patients were not represented in 2018-19; of those who were represented, Legal Aid Commission represented 17% of patients and Advocacy Tasmania represented 6% of patients.

CIVIL PATIENT REPRESENTATION

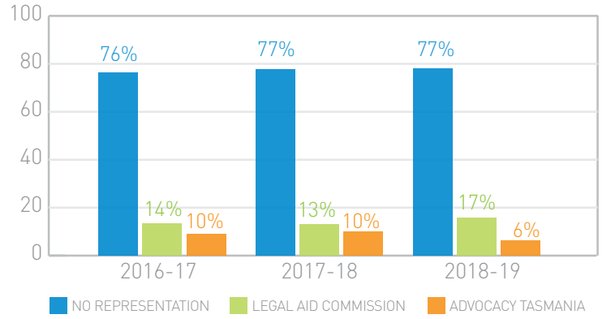


Figure 8. Civil Patient Representation Comparison 2016-17, 2017-18 and 2018-19

GENDER OF CIVIL PATIENTS

In 2018-19 civil patients were more likely to be male (63%) compared to female (37%).

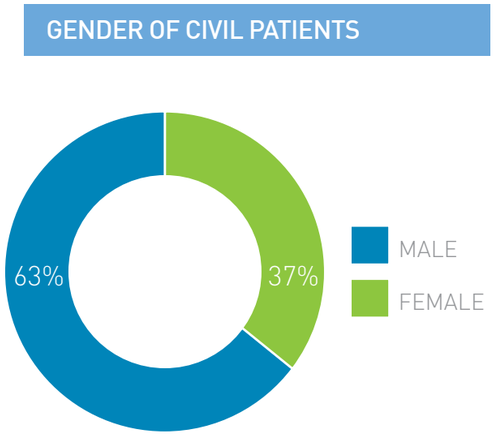


Figure 9. Gender of Civil Patients in 2018 - 2019

AGE OF CIVIL PATIENTS

The statistics in **Figure 10** below shows that the majority of civil patients (48%) on Treatment Orders in Tasmania are aged between 31 and 50.

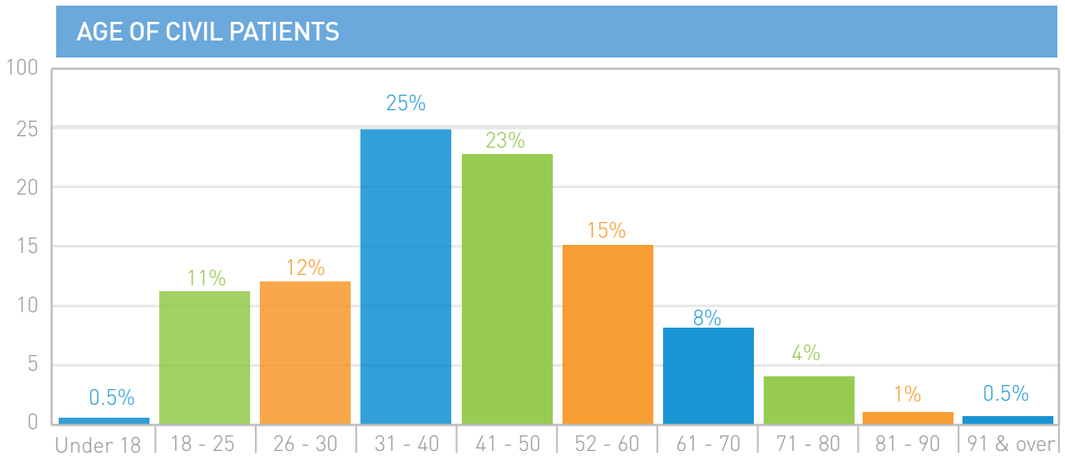


Figure 10. Age Range of Civil Patients in 2018-19

PRIMARY DIAGNOSIS – CIVIL PATIENTS

The percentages in **Figure 11** indicate the primary diagnosis of patients who had Tribunal hearings in 2018–19. Schizophrenia continues to be the most prevalent mental illness affecting 58% of civil patients within the financial year. This is an increase of 4% as evident from the comparison in **Figure 12.**

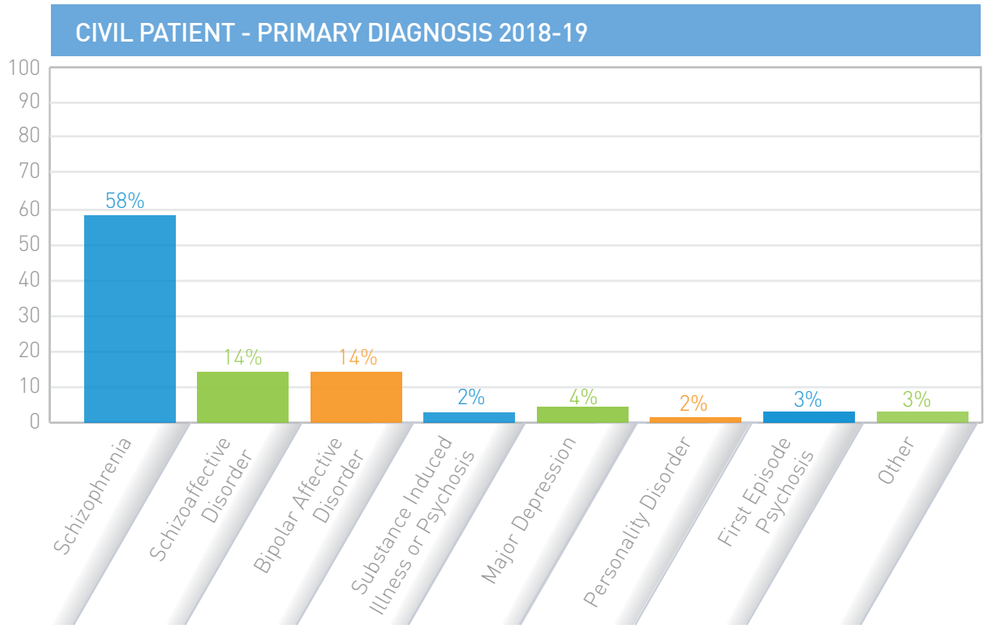


Figure 11. Civil Patient Primary Diagnosis 2018-2019

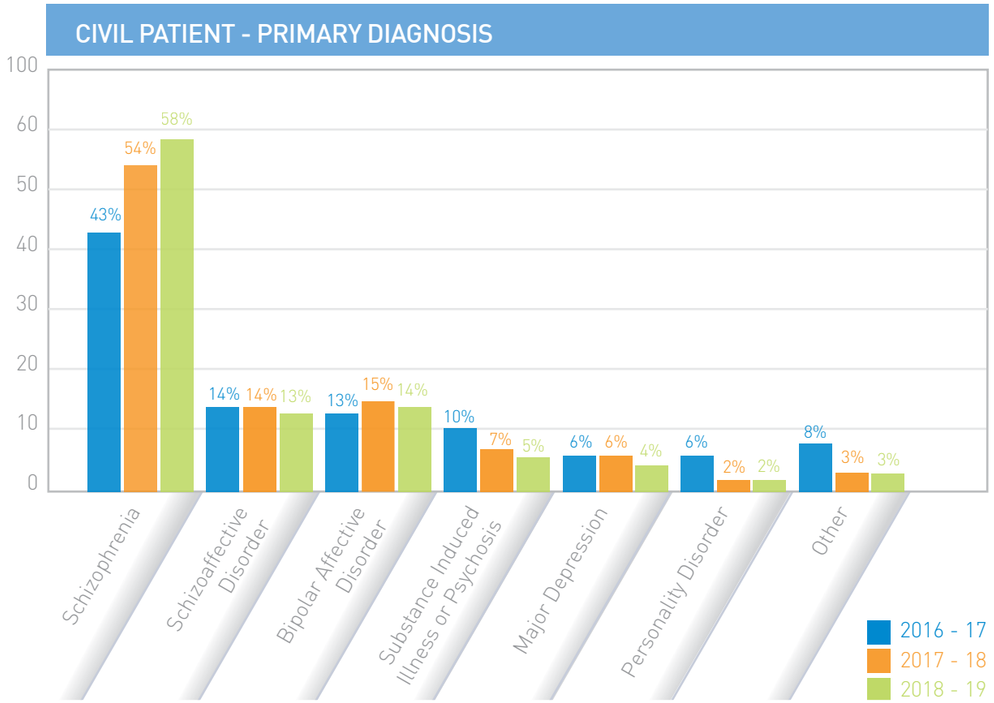


Figure 12. Civil Patients Primary Diagnosis Comparison 2016-17, 2017-18 and 2018-19

Examples of "other" include cerebral haemorrhage, head injury, hyperthyroidism, kidney failure, autistic spectrum, acquired brain injury, intellectual disability and polysubstance abuse.

COMORBID CONDITIONS - CIVIL PATIENTS

The presence of one or more conditions, disorders or substance use co-occurring with the primary mental illness diagnosis is common. 88% of civil patients had a comorbid condition in 2018-2019. Substance Use continues to be the most common comorbidity **(Figure 13)**.

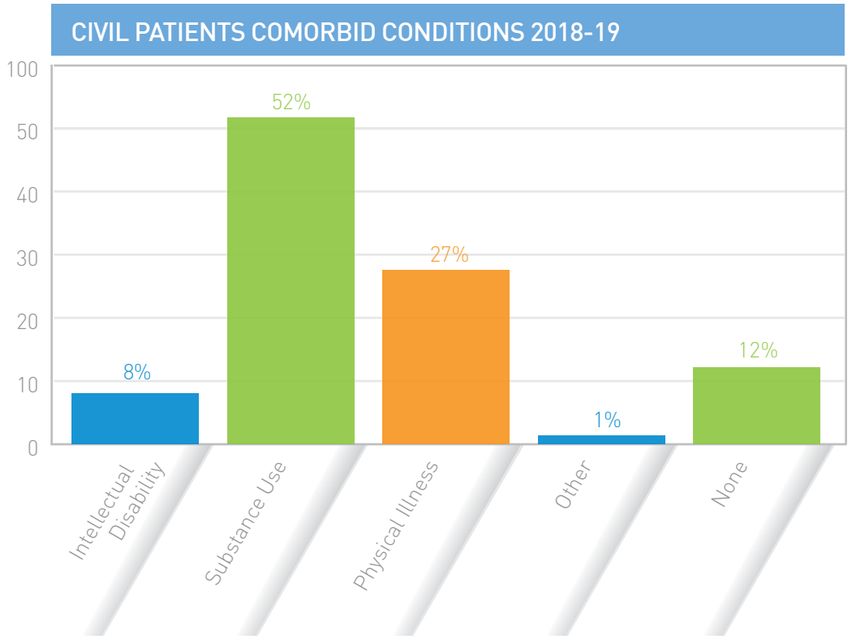


Figure 13. Civil Patients Comorbid Conditions 2018-19

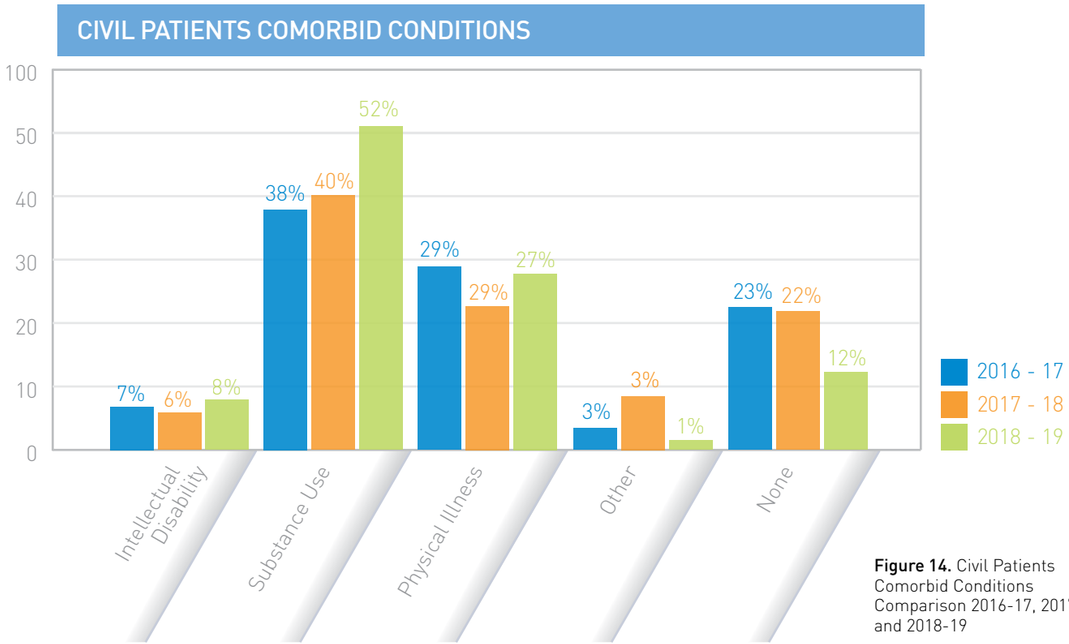


Figure 14. Civil Patients Comorbid Conditions Comparison 2016-17, 2017-18 and 2018-19

Examples of "other" include cerebral haemorrhage, head injury, hyperthyroidism, kidney failure, autistic spectrum, acquired brain injury, intellectual disability and polysubstance abuse.

ELECTRO-CONVULSIVE THERAPY (ECT) – CIVIL PATIENTS

During 2018-19, 81% were granted ECT as a treatment option.

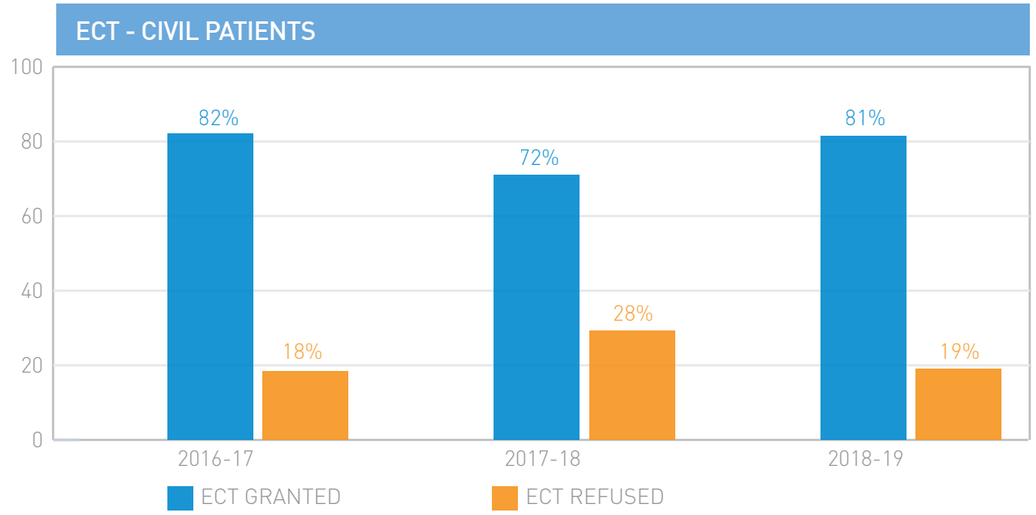


Figure 15. Electro-Convulsive Therapy (ECT) for Civil Patients Comparison 2016-17, 2017-18 and 2018-19

FORENSIC HEARINGS

This 2018-19 year a total number of 82 forensic hearings were held, 20 less than last year. The decrease was attributable to a number of factors. There was a decrease in Authorisation of Treatment Hearings, Reviews of Prisoner Transfers to SMHU and Leave of Absence Hearings. The Tribunal has streamlined processes for capturing data within the case management system which allows more detailed analysis of forensic hearing outputs. Table 4 shows the key statistics for civil hearings.

SUPERVISION ORDER HEARINGS

The Tribunal issued nine certificates to allow patients on Supervision Orders to apply to the Supreme Court for revocation of their order. One patient made application to the Supreme Court and the application was successful.

RESTRICTION ORDER HEARINGS

This year the Tribunal issued two certificates to allow forensic patients on Restriction Orders to apply to the Supreme Court for discharge of their order. The number of applications for leave decreased and in all cases the Tribunal granted the leave.

FORENSIC HEARINGS DECISIONS	2016-17	2017-18	2018-19
Restriction Order Warranted	x	8	10
Certificate Issues - Restriction Order	2	0	2
Supervision Order Warranted	x	15	11
Certificate Issues - Supervision Order	13	10	9
Authorisation for Detention in SMHU	x	3	7
Extension of Detention Authorised	x	4	1
Interim Authorisations Made	11	11	6
Application for Authorisation of Treatment - Refused	x	3	1
Application for Authorisation of Treatment - Authorised	x	11	5
Authorisation of Treatment - 60 Day Review - Varied	x	0	0
Authorisation of Treatment - 60 Day Review - Affirmed	x	2	1
Authorisation of Treatment 180 Day Review - Varied	x	2	3
Authorisation of Treatment 180 Day Review- Affirmed	x	7	7
Leave of Absence - Extended	x	x	2
Leave of Absence - Granted	x	1	0
Leave of Absence - Varied	x	8	7
Admission to SMHU Affirmed	x	2	2
TOTAL DECISIONS*	**x**	**98**	**74**
Adjournments	2	9	9

FORENSIC ORDERS ENDED/SUSPENDED*	2016-17	2017-18	2018-19
Restriction Orders Revoked	0	0	1
Supervision Orders Revoked	4	2	4
Supervision Orders Suspended while in Prison - Depending on the 'Type'	x	2	1
TOTAL ORDERS ENDED OR SUSPENDED*	**4**	**4**	**6**

Table 4. Key Forensic Statistics Overview

FORENSIC HEARINGS HELD

In 2018-19, the Tribunal heard 82 forensic matters that were conducted by a combination of one and three-member panels.

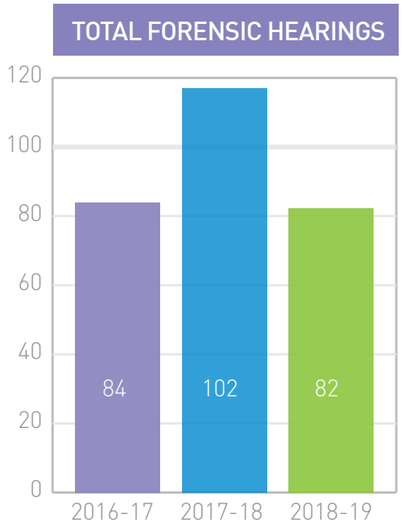


Figure 16. Total Forensic Hearings

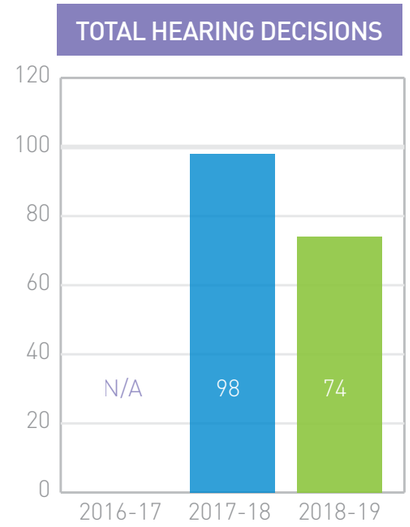


Figure 16a. Total Forensic Decisions

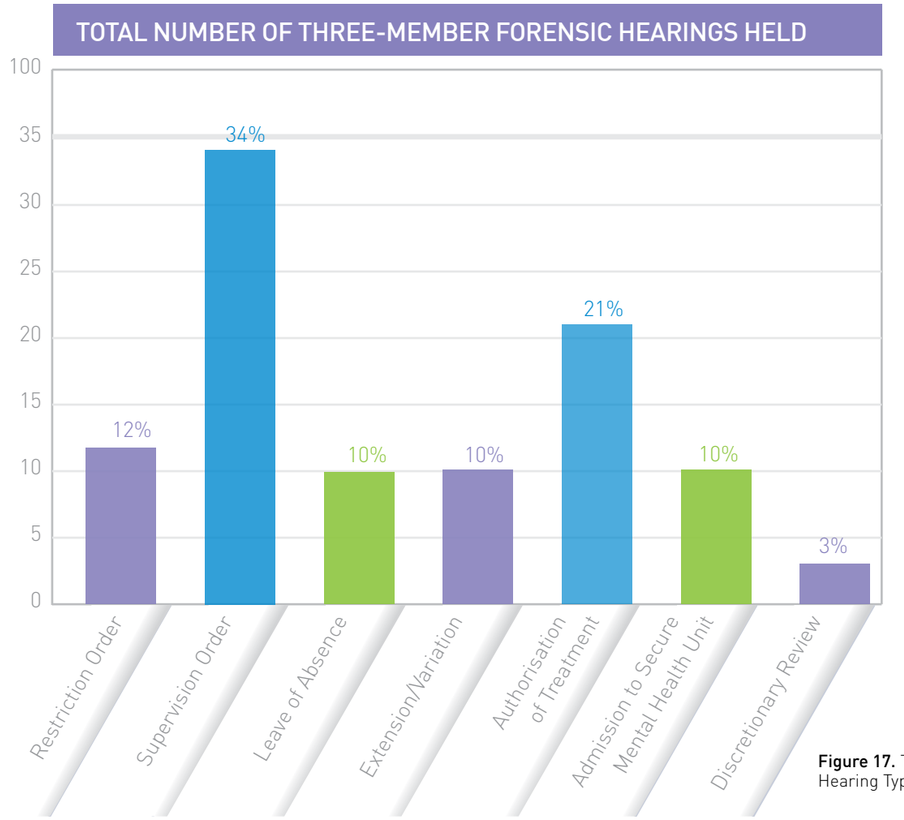


Figure 17. Three-Member Forensic Hearing Types Held 2018-19

FORENSIC PATIENT ATTENDANCE AT HEARINGS

In 2018–19, 73% of forensic patients did not attend their hearings.

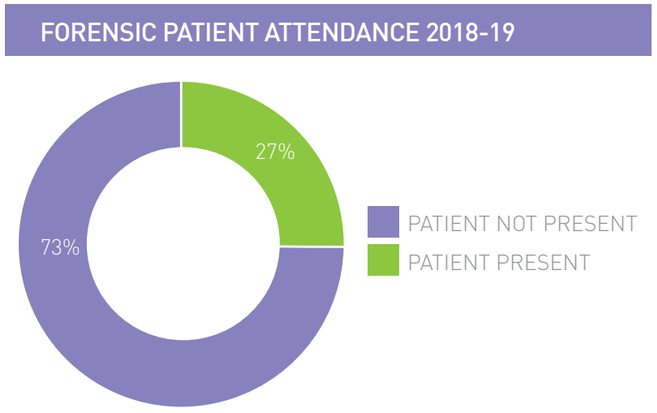


Figure 18. Forensic Patient Attendance 2018–19

FORENSIC PATIENT REPRESENTATION AT HEARINGS

The percentages in **Figure 19** indicate representation of Legal Aid Commission and Advocacy Tasmania at forensic patient hearings and the percentage of those patients not represented.

62% of forensic patients were represented by Legal Aid Commission at their hearing and Advocacy Tasmania did not represent any forensic patients during 2018-19.

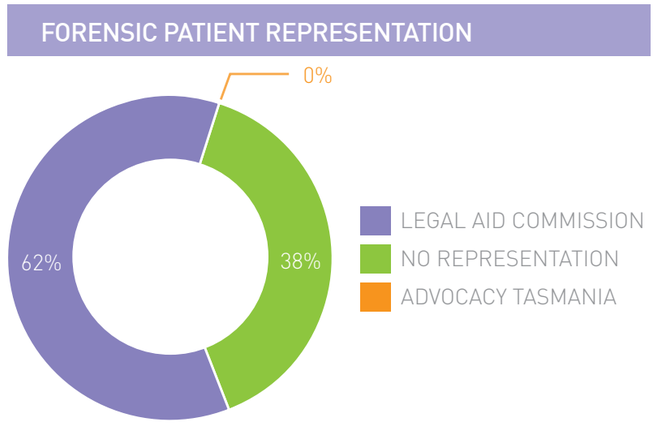


Figure 19. Forensic Patient Representation at Hearings 2018-19

GENDER OF FORENSIC PATIENTS

In 2018-19, 90% of forensic patients were male,10% were female.

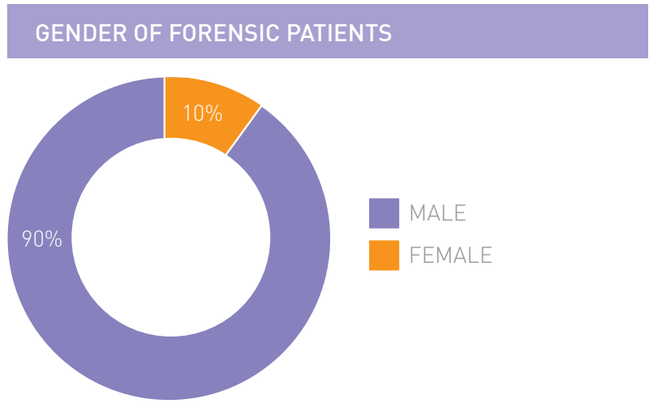


Figure 20. Gender of Forensic Patients 2018-19

AGE OF FORENSIC PATIENTS

The percentages in **Figure 21** show that the majority of patients on forensic orders (54%) in Tasmania during 2018-19 are aged between 31 and 50.

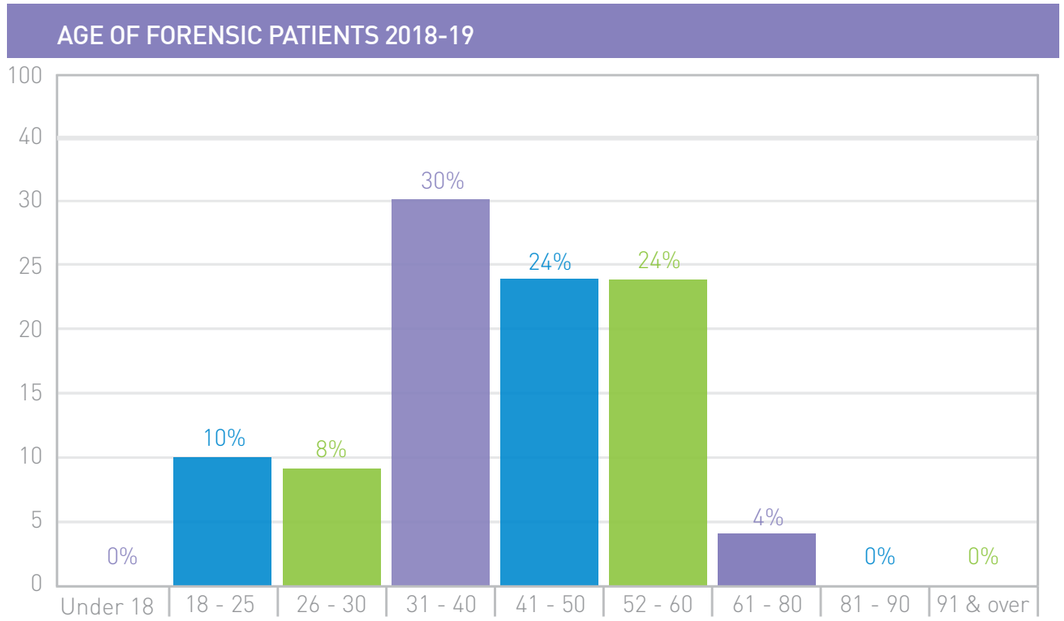


Figure 21. Age of Forensic Patients 2018-19

PRIMARY DIAGNOSIS – FORENSIC PATIENTS

The percentages in **Figure 22** indicate the primary diagnosis of forensic patients who had Tribunal hearings in 2018-19. Schizophrenia was the most prevalent mental illness affecting 51% of forensic patients.

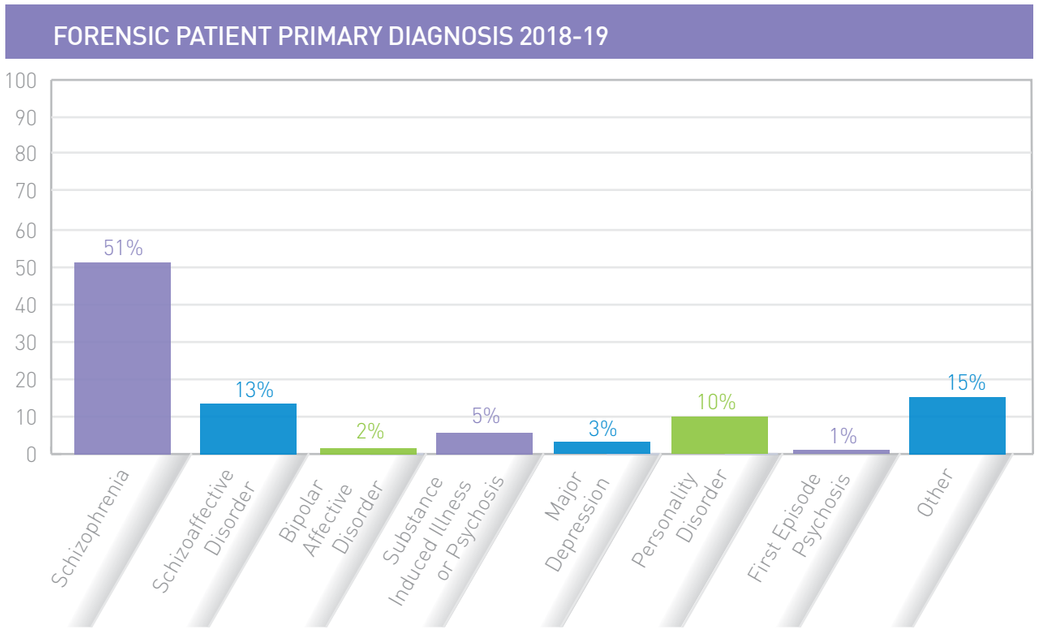


Figure 22. Forensic Patients' Primary Diagnosis 2018-19

COMORBID CONDITIONS – FORENSIC PATIENTS

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 87% of forensic patients.

FORENSIC PATIENT COMORBID CONDITIONS

Figure 23. Forensic Patients' Comorbid Conditions 2018-19

ELECTRO-CONVULSIVE THERAPY (ECT) REQUESTED – FORENSIC PATIENTS

During 2018-19 there were 6% requests for ECT. 100% of ECT requests were granted as a treatment option for forensic patients.

GENDER OF FORENSIC PATIENTS

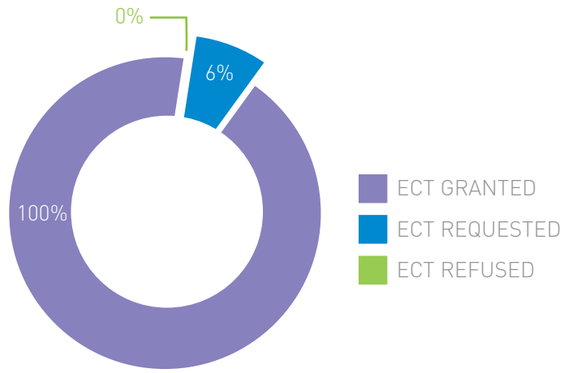


Figure 24. Forensic Patients that requested and were granted Electro-Convulsive Therpy (ECT) during 2018-19

Examples of "other" include cerebral haemorrhage, head injury, hyperthyroidism, kidney failure, autistic spectrum, acquired brain injury, intellectual disability and polysubstance use.

PERFORMANCE FORENSIC

FINANCIALS

The 2018-19 budget allocation for the Tribunal was $1,558,247 million. The Tribunal's operating costs were $1,965,670 million with a deficit of $407,423.

Approximately 89 per cent of the Tribunal's expenses ($1.7 million out of total expenses of $1.9 million) relate to salaries for staff, and fees and associated sitting costs for Tribunal members, which include:

- Salaries for the President, two Senior Legal Officers, a Registrar, an Executive Officer and three Registry staff
- Fees for the Tribunal members who sit sessionally on eight to nine sitting sessions per week and for writing statement of reasons under Chapter 5, Schedule 4, Part 6 of the *Mental Health Act 2013*.

This year the Tribunal experienced stable staffing arrangements for approximately six months of the year, and to address shortages was required to engage sessional members, temporary and contract staff which resulted in increased salary expenditure. The current budget allocation for the Tribunal enables the minimum level of service the Tribunal should provide. The present resource structure allows the Tribunal to adequately meet its statutory obligations, however where absences arise the Tribunal has almost no ability to provide cover or continue operating proficiently.

Low staff levels again reduced the Tribunal's capacity to progress a number of necessary projects: for example, the documentation of policies and procedures, case management system maintenance, information management systems (including capturing corporate information and a retention and disposal system), website redevelopment, and a Tribunal best practice framework. Significant disruption has occurred where the Tribunal has a number of key-person dependencies.

Fluctuating staff levels also contributed to an increase in the use of Tribunal members for single member determinations and sittings during leave absences, as well as the payment of staff seconded elsewhere in the Department of Justice, which account for the majority of the increase in the actual expenditure.

Other expenses **(see Table 5)** include work undertaken for maintenance on the McGirrs Case Management System; guidance material reprints; temporary staff; workers compensation insurance premiums and legal library services.

Overall, the Tribunal hearing numbers continued on the past few years trend and again reported an increase consistent with increased expenditure. The introduction of the three-member panel hearing for Section 47A 'admission to prevent possible harm' (where a patient is re-admitted to hospital), and 60 and 180 day review hearings in the forensic jurisdiction, during the previous year, contributed to the rise and associated costs. Section 47A however, was reviewed throughout 2018-19, and was removed from the Act by May 2019. Savings from this amendment and a reduction in three-member panel hearings for s47A admissions should be observed in the next financial year.

	2016 - 17		2017-18		2018-19	
	Budget	**Actual**	**Budget**	**Actual**	**Budget**	**Actual**
Salaries	849,984.00	812,430.93	858,959.00	867,006.66	957,115.00	1,064,499.48
Tribunal Member Fees	450,000.00	563,419.96	572,000.00	569,386.25	570,000.00	612,194.92
Employee Related Expenses	8,500.00	8,539.19	8,500.00	13,892.59	13,500.00	11,081.84
Information Technology	50,150.00	35,612.17	35,820.00	42,849.85	40,195.00	43,703.71
Office Expenses	11,550.00	15,824.14	12,600.00	25,092.77	13,750.00	15,290.17
Travel Expenses	20,600.00	24,270.78	26,380.00	34,380.72	33,950.00	34,794.41
Property Expenses	94,000.00	105,547.40	106,320.00	107,734.72	100,900.00	92,290.05
Other Expenses	8,608.00	130,323.99	62,417.00	114,299.27	87,421.00	91,815.43
	1,493,392.00	**1,695,968.56**	**1,532,706.00**	**1,774,642.83**	**1,816,831.00**	**1,965,670.01**
BUDGET ALLOCATION	**1,493,392.00**	**1,695,968.56**	**1,532,706.00**	**1,532,706.00**	**1,558,247.00**	**1,558,247.00**
END OF YEAR POSITION	**0.00**	**-202,576.56**	**-150,290.00**	**-241,936.83**	**-258,584.00**	**-407,423.01**

Table 5. Financial Summary

[1] In 2017-18, the Tribunal's budget allocation was increased to meet costs in line with increases in the Consumer Price Index.

APPENDIX A

MEMBERSHIP LIST

	EXPIRATION OF APPOINTMENT
President **Ms Yvonne Chaperon**	18 June 2024
Deputy President **Mr Richard Grueber**	18 March 2024

LEGAL	EXPIRATION OF APPOINTMENT
Steve Bishop	14 Feb 2020
Amber Cohan	19 Aug 2021
Kate Cuthbertson	14 Feb 2020
Kim Hambly	19 Aug 2021
Jackie Hartnett	19 Aug 2021
Sarah House	14 Feb 2020
Anna Jordan	14 Feb 2020
Elizabeth Maclaine-Cross	14 Feb 2020
Kate Mooney	14 Feb 2020
Stuart Roberts	14 Feb 2020
Matthew Verney	19 Aug 2021
Merrilyn Williams	19 Aug 2021
Peter Wise	14 Feb 2020

GENERAL	EXPIRATION OF APPOINTMENT
Sue Aylett	19 Aug 2021
Charlotte Brown	19 Aug 2021
Kym Child	14 Feb 2020
Elizabeth Dalgleish	14 Feb 2020
Tanya Dargaville	19 Aug 2021
Caroline Dodson	14 Feb 2020
Frank Ederle	19 Aug 2021
Marion Hale	14 Feb 2020
Kate Halton	19 Aug 2021
Rowena Holder	16 Feb 2020
Kylie McShane	19 Aug 2021
Alison Merridew	14 Feb 2020
David Parsons	14 Feb 2020
Leon Peck	19 Aug 2021
Kim Steven	14 Feb 2020
Michael Stoddart	16 Feb 2020
Geoff Storr	14 Feb 2020
Amy Washington	14 Feb 2020

PSYCHIATRIST	EXPIRATION OF APPOINTMENT
Joanna Bakas	19 Aug 2021
Nicky Beamish	19 Aug 2021
Julian Davis	19 Aug 2021
Mike Jordan	19 Aug 2021
Fiona Judd	16 Feb 2020
Rita Kronstorfer	19 Aug 2021
Martin Morrissey	14 Feb 2020
Milford McArthur	14 Feb 2020
Ian Sale	14 Feb 2020
Elizabeth Walker	19 Aug 2021

APPENDIX A

APPENDIX B

MENTAL HEALTH TRIBUNAL REVIEW FUNCTIONS

Mental Health Act 2013

SECTION	REVIEW
180	Review of Assessment Order
181	Review of Treatment Order
181 (1) (a)	60 day review of Treatment Order
181 (1) (b)	180 day review of Treatment Order
181 (1) (c)	Further 180 day review of Treatment Order
181 (1) (d)	Failure to comply (s.47) & Admission to Prevent Possible Harm (s.47a)
181 (1) (e)	Own motion review / Application to Review TO
181 (2)	Review of Application to vary Treatment Order
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 (a) (1) (a)	Review of forensic patient's treatment authorisations – 60 day review
192 (a) (1) (b)	Review of forensic patient's treatment authorisations – 180 day review
192 (a) (1) (c)	Review of forensic patient's treatment authorisations – further 180 day review
192 (a) (1) (d)	Review of Forensic patients' treatment authorisations – own motion review / application review
193	Other reviews
197	On paper reviews by Registrar
197	On paper reviews by Registrar

Criminal Justice (Mental Impairment) Act 1999

SECTION	REVIEW
31	Application of defendant on Supervision Order
36B (4)	Appeal against direction under section 36A
37	Restriction Orders and Supervision Orders made under the Act

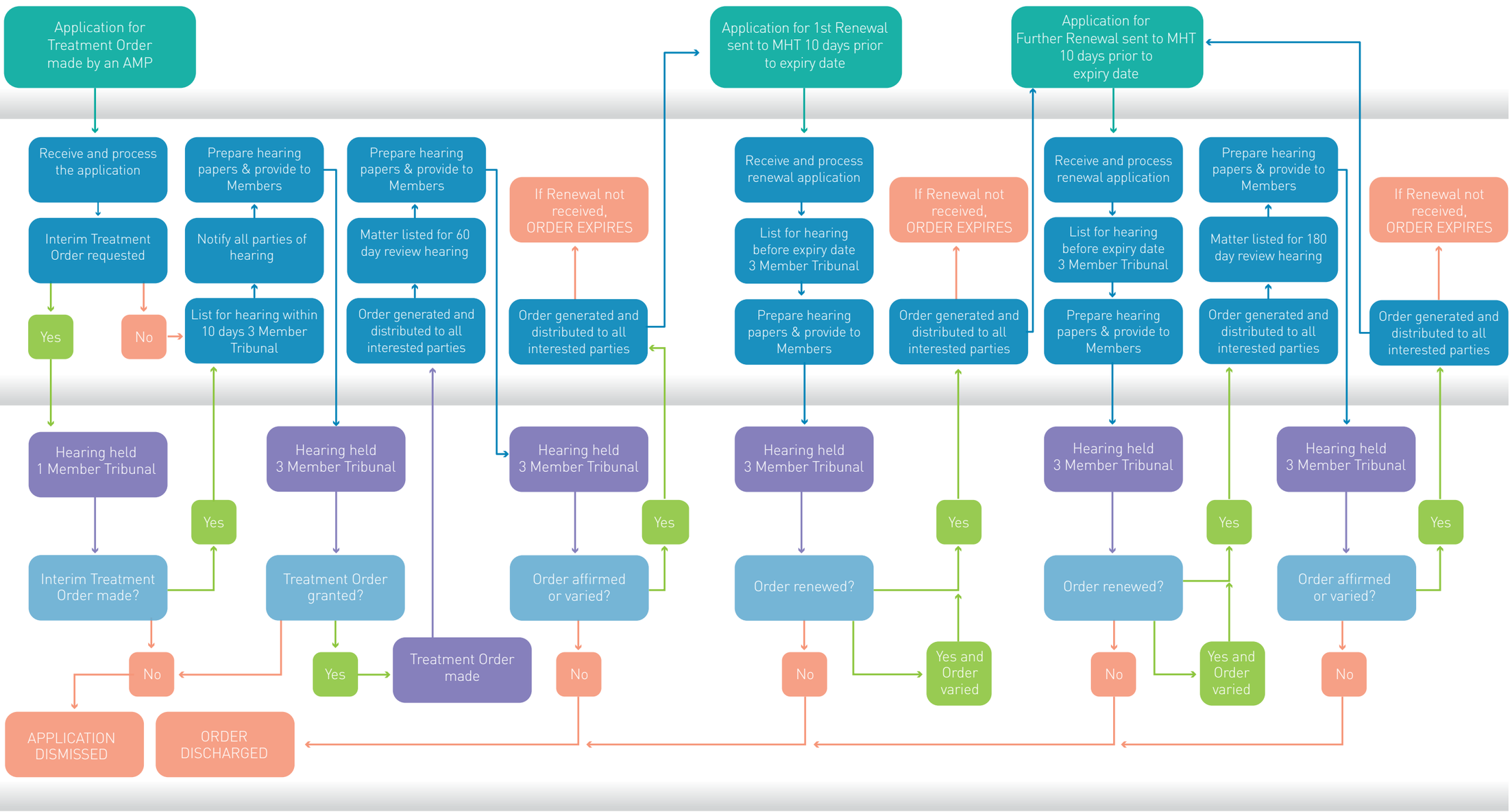
APPENDIX C

STANDARD TREATMENT ORDER WORKFLOW

MENTAL HEALTH SERVICES

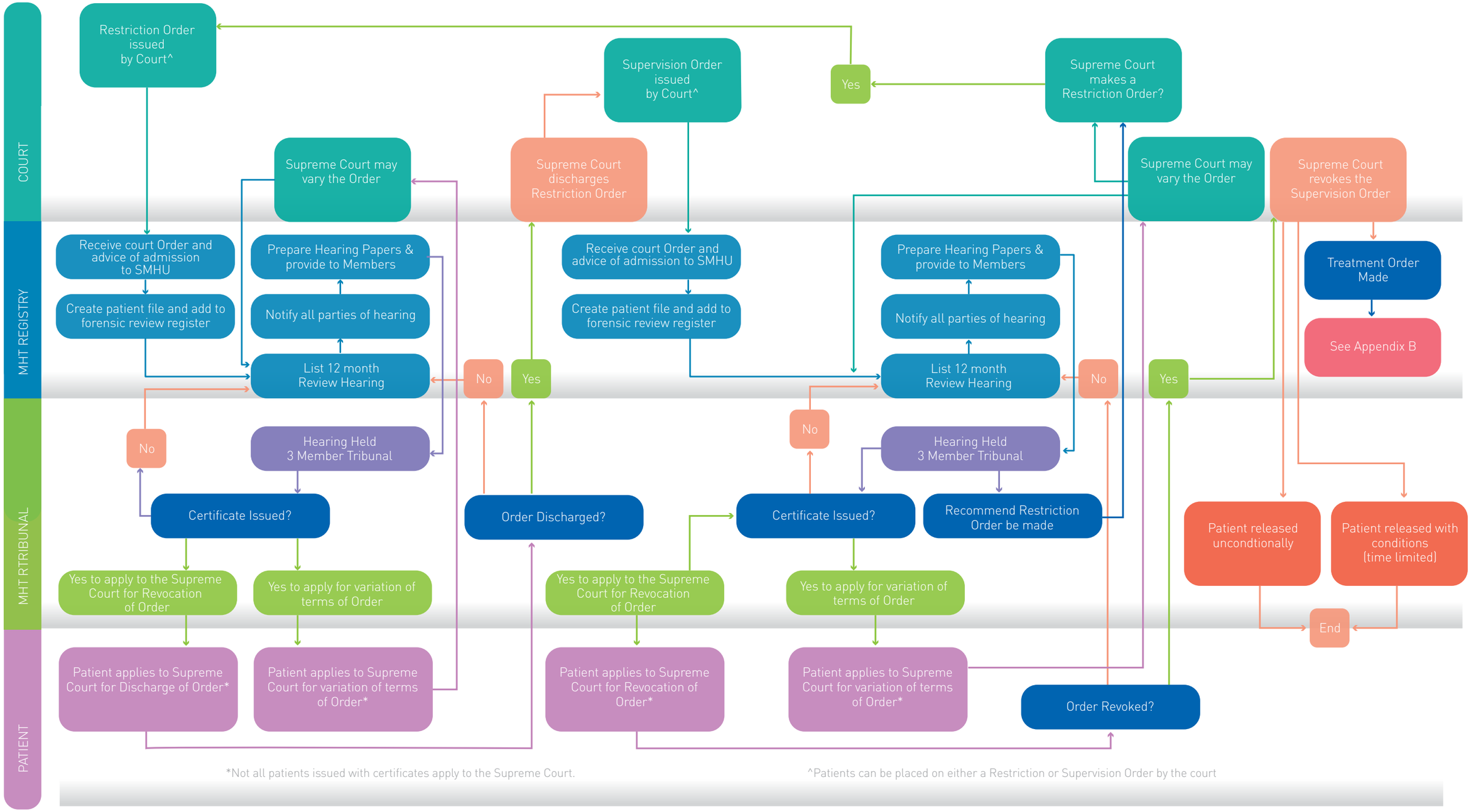
MHT REGISTRY

MHT TRIBUANL



APPENDIX D

RESTRICTION AND SUPERVISION ORDER WORKFLOW



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

^Patients can be placed on either a Restriction or Supervision Order by the court

Mental Health Tribunal

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