



Inquiry into the opportunities to improve mental health outcomes for Queenslanders Submission – February 2022

mhrt

Mental Health Review Tribunal



Queensland
Government

The Mental Health Review Tribunal (**MHRT**) supports the Inquiry and any initiatives that improve the mental health and wellbeing of Queenslanders.

Background

The MHRT was established under the *Mental Health Act 2000* and continued under the *Mental Health Act 2016 (Act)*. The MHRT is an independent decision-making body. Its primary purpose is to review the involuntary status of persons with a mental illness and/or intellectual disability. The MHRT also provides approval for the performance of electroconvulsive therapy in some cases and non-ablative neurosurgical procedures in all cases. In exercising its jurisdiction, the MHRT must act independently and is not subject to direction or control by any entity, including any Minister.

MHRT structure

In accordance with the Act, the MHRT operates with a President, Deputy President and Executive Officer.

Staff

The MHRT has 26.14 full-time equivalent staff members (as at 31 December 2021). The MHRT's staff are public servants appointed under the *Public Service Act 2008*. A diagram of the MHRT's staff structure appears in **Attachment A**.

Members

In accordance with the Act, members of the MHRT are appointed by the Governor in Council. The MHRT operates with three categories of members – legal, medical and community, each with specific criteria set out in section 707 of the Act. These criteria are:

- a lawyer of at least five years standing.
- a psychiatrist.
- is not a lawyer or doctor and has other qualifications and experience the Minister considers relevant to exercising the MHRT's jurisdiction.

In addition, prior to recommending a person for appointment to the Governor in Council, the Minister must be satisfied that the person has the competencies developed by the President relating to:

- administrative law.
- the operation of the Act.
- mental health and intellectual disability issues, including forensic mental health and forensic disability issues.

The MHRT has three full-time members, being the President, the Deputy President and one full-time legal member. All other members are part-time, or what is known as, sessional members.

As at 1 January 2022, there were 106 sessional members categorised as appears in Table 1.

Table 1. Breakdown of MHRT members

	Female	Male	
Legal	23	13	36
Medical	19	23	42
Community	21	7	28
	63	43	106

What the MHRT does and does not do

The MHRT's powers and functions are contained in the Act. The Act also sets out the criteria and tests that the MHRT applies when making its decisions.

MHRT's jurisdiction

The MHRT has authority to *review* the following:

- treatment authorities.
- treatment support orders.
- forensic orders.
- the fitness for trial of persons who have been found temporarily unfit for trial by the Mental Health Court.
- the detention of minors in high security units (currently none).

The MHRT has authority to hear the following *applications*:

- examination authorities.
- to perform regulated treatments (electroconvulsive therapy and non-ablative neurosurgical procedures).
- approval to transfer a person on an involuntary order into or out of Queensland.

The MHRT has authority to hear appeals against:

- particular decisions of the Chief Psychiatrist in relation to information notices and certain decisions regarding forensic patients.
- decisions of Administrators of Authorised Mental Health Services (**AMHS**) to refuse to allow a person to visit a patient in their service.

The MHRT also has authority to make treatment authorities, treatment support orders and forensic orders in limited circumstances.

What is outside the MHRT's scope

- Treatment – the MHRT does not decide what treatment a person should have, including what medication they take or who is part of their treating team. While the MHRT may approve electroconvulsive therapy for a person, this is only in response to an application from a doctor in circumstances where the patient is an adult who cannot consent to the treatment or is a minor.
- Review of clinicians – the MHRT does not assess or evaluate clinician's practice or decision-making for a particular patient. The MHRT does not diagnose a patient or 'peer-review' the clinician's approach. The MHRT also cannot investigate or respond to complaints about clinicians.
- Service – the MHRT does not provide any health services itself. It's operations are limited to the conduct of hearings.
- Compliance with the Act – the MHRT does not have a regulatory role and does not monitor or enforce compliance with the Act.

Relationship with Queensland Health

The MHRT is a separate entity to Queensland Health save for the purposes of the *Financial Accountability Act 2009*, where the MHRT is considered “part of” Queensland Health. The MHRT receives its funding from Queensland Health and is required to comply with its policies and procedures regarding matters relating to financial accountability.

Given the relatively small size of the MHRT, and since Queensland Health provides its funding, the MHRT has made administrative arrangements with Queensland Health for the provision of some corporate services, including payroll processing, human resources and IT support.

MHRT’s key stakeholders

The MHRT recognises that it plays an important part within the broader Queensland mental health system.

Identification of stakeholders

The MHRT has identified the following as key stakeholders:

- persons the subject of involuntary mental health treatment in Queensland.
- families, carers and supporters of persons the subject of involuntary mental health treatment.
- advocates and consumer groups relevant to the provision of mental health services in Queensland.
- victims of offences relevant to forensic orders and treatment support orders and the Queensland Health Victim Support Service.
- Minister for Health and Ambulance Services.
- Mental Health Alcohol and Other Drugs Branch, Queensland Health.
- Office of the Chief Psychiatrist, Queensland Health.
- AMHSs, in particular, Administrators, Administrator Delegates, treating teams.
- Director of Forensic Disability and Administrator of the Forensic Disability Service.
- Legal Aid Queensland, Queensland Law Society, Bar Association of Queensland, legal representatives and advocates.
- Attorney-General’s Office and Crown Law.
- Office of the Public Guardian.
- Office of the Public Advocate.
- Mental Health Court and Mental Health Court Registry.

Communication methods

To maintain open channels of communication, the MHRT participates in regular, standing meetings with the following stakeholders:

- Office of the Chief Psychiatrist.
- Legal Aid Queensland.
- Office of the Public Guardian.
- Mental Health Court Registry.

The President and Deputy President make annual visits to the AMHSs to meet with Administrators and senior clinicians to discuss any concerns, issues or trends. In addition, staff of the MHRT will present to stakeholders about the role and operation of the Tribunal, and answer questions. Communication with other stakeholders is on an as needed basis.

The MHRT also makes information available to stakeholders via its public website, including information specifically for:

- patients.
- families, carers and nominated support persons.
- victims.
- clinicians at AMHSs.
- legal representatives.
- interpreters.

Perspective of MHRT

Independence

The MHRT is aware of the need to maintain its independence and not engage with stakeholders in relation to the decision-making of any individual matters.

The MHRT also avoids advocating or lobbying for matters of policy in respect of the mental health system in Queensland as this is outside the scope of its jurisdiction as set out in the Act.

Disability

The MHRT is limited in its exposure to the Queensland disability sector is through:

- persons who have a dual disability, being an intellectual disability and a mental illness.
- persons who are on a forensic order (disability) because they were found to be of unsound mind or not fit for trial due to their intellectual disability.

Mental health population

The MHRT reviews authorities and orders for persons who meet the criteria to continue receiving involuntary treatment and/or care. It is acknowledged that overall this represents a very specific proportion of the total population of persons experiencing mental illness in Queensland. Therefore the experience of the MHRT is limited to only those persons who are significantly unwell and/or are within the forensic system.

Representation and advocacy before the MHRT

Recommendations of the Productivity Commission

The Australian Government's Productivity Commission Inquiry Report into Mental Health from June 2020 contained two recommendations regarding legal representation and advocacy services:

- State and Territory Governments should ensure that people appearing before mental health tribunals, and other tribunals hearing matters arising from mental health legislation, have a right to access legal representation. To facilitate this, State and Territory Governments should adequately resource legal assistance services for this purpose (Action 21.8).
- Supported decision making by and for people with mental illness should be promoted through improved access to individual non-legal advocacy services (Action 21.9) and mental health advice directives (Action 21.10).

Current position

The Act provides that all persons who are the subject of a proceeding may be represented at the hearing of the proceeding by the nominated support person, a lawyer or another person¹. If the person is not represented by a lawyer or another person at the hearing, the MHRT²:

- *may* appoint a lawyer or another person to represent the person if the MHRT considers it would be in the person's best interests to be represented at the hearing.
- *must* appoint a lawyer to represent the person at the hearing if:
 - the person is a minor.
 - the hearing is for a review under Chapter 12, Part 6 of the person's fitness for trial or for an application under Chapter 12, Part 9, Division 1 for approval to perform electroconvulsive therapy on the person.
 - the Attorney-General is to appear or be represented at the hearing.

In order to be able to provide independent legal representatives, the MHRT engages Legal Aid Queensland (LAQ). Under this arrangement, on request of the MHRT, LAQ sources a legal representative for persons appearing before the MHRT. These legal representatives may be in-house at LAQ or from one of their panel firms. All representatives allocated by LAQ must be competent and able to adequately perform the role of a legal representative before the MHRT.

In the 2020-21 financial year, the MHRT arranged the appointment of legal representatives for 2,722 hearings, 170 of which involved in a minor. As noted above, the MHRT may appoint a legal representative at its cost and the MHRT has done so in a range of circumstances. The total cost to the MHRT was approximately \$3.1million.

Potential implications

The MHRT is supportive of opportunities to increase representation and advocacy support for persons appearing before mental health tribunals and other jurisdictions. However, extending the current arrangements under the Act for representation before the MHRT would come at a significant cost.

During the 2021-21 financial year, the MHRT held 15,193 hearings. If each hearing required the appointment of a legal representative by the MHRT, costs would increase to over \$17million. Those approximate costs do not include fees payable for hearings that do not proceed post the appointment of a legal representative. For example, the MHRT held 11,765 treatment authority review hearings in that period but there were an additional 7,129 treatment authorities revoked by the treating doctor prior to hearing. In addition to the above, we anticipate an annual increase in costs of around 2.5%.

Based on the above, appointment of legal representation for each hearing would increase cost to the MHRT to in excess of \$17million (not including the estimated treatment authority revocations referenced above) or in excess of \$25million (including the estimated treatment authority revocations), noting that neither of these figures take account of any increase in hearing numbers year on year.

Experience from the introduction of increased legal representation at the commencement of the Act suggests that legal representative involvement can extend the time required for that hearing. Increases in hearing times will naturally mean that less hearings can occur in one sitting day and, therefore, additional sitting days will be required from many of the AMHSs. Given the significant implications of such a change on the time of clinical staff and availability of facilities within AMHSs, this would require stakeholder consultation and the commitment of AMHSs. That requirement is in addition to the increase in fees payable by the MHRT to its members due to increased sitting days.

¹ Section 739.

² Section 740.

MHRT initiatives

Investigation of the introduction of electronic audio recording

The MHRT is required to comply with the *Recording of Evidence Act 1962* in relation to the recording of its proceedings. That Act does not define recording as electronic recording alone and gives an example of 'shorthand' as an acceptable recording method. As has been the case since the inception of the MHRT, it records its hearings by way of handwritten notes made by the members hearing the matter. The MHRT recognises the benefits of electronic audio recording and has been investigating the availability of this option of recording for a number of years. The MHRT has published two reports on its website relating to the project – the results of its consultation survey and the results of its electronic recording trial.

The MHRT has come up against some obstacles in the project, the results of which mean that the MHRT does not have certainty that it would be able to proceed with its proposal for electronic audio recording in a way that is lawful for its staff and practical within its resources and budget. The MHRT continues to work with Queensland Health to investigate options to amend the *Mental Health Act 2016* to overcome these obstacles to allow electronic audio recording in the future.

Consumer Engagement Strategy

The MHRT's Consumer Engagement Officer is currently developing a consumer engagement strategy and associated consumer engagement guidelines for staff and members. This strategy will have regard to feedback from a range of sources, including consumers, carers, Independent Patient Rights Advisors and advocates/legal representatives.

Tribunal Reference Group

To assist the MHRT to obtain the views of consumers of mental health services in Queensland in a timely way, the MHRT established a Tribunal Reference Group (**TRG**). The purpose of the TRG is to provide a mechanism for the MHRT to engage with its stakeholders regarding the initiatives of the MHRT. The membership of the TRG is comprised of different types of consumers and carers who have experience with the Queensland mental health system. We hope to bring together diverse, locally relevant perspectives on issues relevant to consumers.

Sharing of expertise

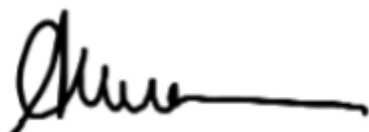
The MHRT maintains regular contact with mental health tribunals in other jurisdictions in Australia both at a Presidential and Executive Officer/Registrar level. This contact allows the MHRT to exchange information about initiatives and practices that promote consumer engagement.

Participation in Human Rights in Mental Health Committee

Staff of the MHRT represent the MHRT on Human Rights in Mental Health group. The group was established by the Queensland Human Rights Commission as an advisory group to support the Human Rights in Mental Health project. The purpose of the stakeholder group is to promote and support the implementation of the *Human Rights Act 2019* across mental health services in Queensland.

Member learning and development

The MHRT maintains a comprehensive learning and development framework for its members. This framework includes ensuring members are provided with information and perspectives from a range of sources, including clinicians, victims, the Queensland Human Rights Commission and Independent Patient Rights Advisors.



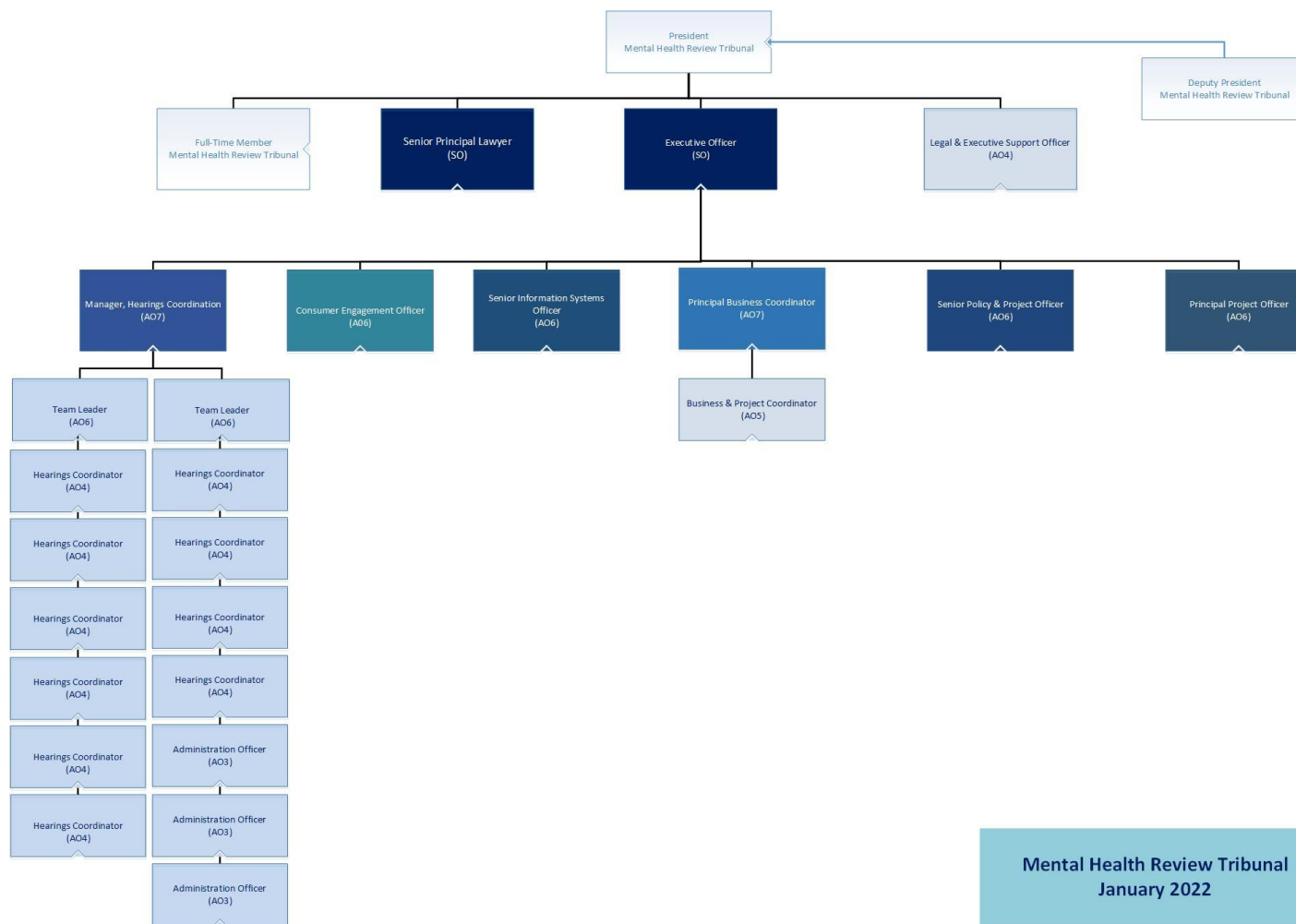
Annette McMullan
President
Mental Health Review Tribunal

Glossary

Act	<i>Mental Health Act 2016</i>
AMHS	Authorised Mental Health Service
LAQ	Legal Aid Queensland
MHRT	Mental Health Review Tribunal
TRG	Tribunal Reference Group

Attachment A – Structure

Tribunal structure as at 1 January 2022



Mental Health Review Tribunal
January 2022

