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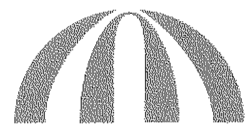

Mental Health
Review Tribunal

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18 July 2007

The Senate Standing Committee on Community Affairs
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Parliament House
CANBERRA ACT 2600
Email community.affairs.sen@aph.gov.au

Dear Committee

Re: Submission to the Senate Community Affairs Committee

This submission outlines the response of the NSW Mental Health Review Tribunal (MHRT) to the call for submissions by the Senate Community Affairs Committee.

The Tribunal is a specialist quasi-judicial body established under the *Mental Health Act 1990* (NSW) (soon to be superseded by the *Mental Health Act 2007*). It has a wide range of powers that enable it to make and review orders and to hear appeals about the treatment and care of people with a mental illness. The Tribunal has a President, two full-time and 4 part-time Deputy Presidents, a Registrar and approximately 100 part time members. Each Tribunal panel consists of three members: a lawyer who chairs the hearing, a psychiatrist, and another suitably qualified member. All Tribunal members have extensive experience in mental health and some have personal experience with a mentally ill person or caring for a person with mental illness.

The Tribunal conducts hearings involving both civil and forensic patients, i.e. those treated in the Health system and the Justice system respectively. The Tribunal makes decisions about a person's care and treatment both in hospital and also in the community. Decisions about specific treatments for patients and also decisions about the management of a patient's estate are made by the Tribunal.

In performing its role, the Tribunal actively seeks to pursue the objectives of the *Mental Health Act 1990*, including delivery of the best possible kind of care to each patient in the least restrictive environment and the requirements of the United Nations' *Principles for the Protection of Persons with Mental illness and the Improvement of Mental Health Care* as well the National Mental Health Service Standards. The Tribunal seeks to maintain the balance between the Act's objectives while minimizing the risks of harm to the individual and the community.

The Tribunal's Civil Jurisdiction

The Tribunal can make orders to detain mentally ill persons as temporary patients and as continued treatment patients. The Tribunal also hears applications for the

granting, variation, and revocation of Community Orders. It hears applications for the administration of Electro Convulsive Therapy (ECT) and consents to surgical procedures.

The Tribunal reviews the care and detention of continued treatment patients every six months, and the care of informal (voluntary) patients who have been hospitalized for a year or more, every twelve months. The Tribunal must also hear appeals against the refusal by the Medical Superintendent to discharge a temporary or continued treatment patient, or of a Magistrate's decision to place a person on a Community Order.

The MHRT hears applications made under the *Protected Estates Act 1983* (NSW) for the appointment of financial managers for persons unable to make competent financial decisions for themselves because of mental illness.

The Forensic Jurisdiction

In the forensic jurisdiction, the Tribunal has a number of responsibilities under both the *Mental Health Act 1990* and the *Mental Health (Criminal Procedure) Act 1990* (NSW). There are three main categories of forensic patients who come within the Tribunal's jurisdiction, namely:

- Those who have been found unfit to be tried;
- Those found not guilty on the grounds of mental illness; and
- Those transferred from prison to hospital.

The main significance of being a forensic patient is that until such time that forensic status is brought to an end that patient's situation is constantly reviewed and monitored by the Tribunal. Forensic patients are detained in secure or medium secure psychiatric units or are conditionally released in the community. The patient's disposition, leave and other circumstances, can only be changed after the Tribunal has reviewed the patient's case and made a recommendation to the Minister for change. In the case of conditional release, or variation of the conditions of release, this can only occur after review by the Tribunal and approval by the Governor on the advice of the Executive Council of the Tribunal's recommendation.

The Tribunal's perspective on issues raised by the Committee

The Tribunal does not have a role in the delivery of clinical services to mentally ill or mentally disordered persons and is therefore unable to comment on the extent to which the Action Plan assists in achieving the aims and objectives of the National Mental Health Strategy. Nor is the Tribunal in a position to comment on the overall contribution of the Action Plan to the development of a co-ordinate infrastructure to support community based care, or the progress towards implementing the recommendations of the Select Committee.

However, the Tribunal, through its role in its civil and forensic jurisdictions, is able to make some general observations about identifying gaps and shortfalls in the range of services available for persons with a mental illness.

As the Tribunal's interaction with persons with a mental illness and/or mental disorder occurs in the context of its hearings, its comments about the quality of treatment and care in the community and in gazetted hospitals are necessarily limited to this relatively small group, who represent only a small percentage of persons who have mental health issues. In 2006 the Tribunal made 4,661 Community Orders, conducted 1,733 reviews of Temporary Patients, 832 reviews of Continued Treatment Patents and 61 reviews of Informal Patients. Currently, there are 85 forensic patients on conditional release and 223 detained forensic patients.

Before turning from these general observations, it is necessary to briefly consider recent legislative developments because those changes are consistent with the objectives of the Action Plan.

<u>Recent legislative developments</u>

The law that presently governs the Tribunal is contained in the *Mental Health Act 1990*. On 15 June 2007, the new Mental Health Act was assented to and is due to commence operation in late 2007. The new Act, (as did the old) contains a comprehensive legislative statement concerning the general rights of persons who suffer from a mental illness and their entitlement to appropriate treatment and care.

It also provides a system whereby mentally ill or mentally disordered persons, as defined in the Act, can only receive involuntary treatment if that is necessary for the person's own protection from serious harm, or for the protection of others from such harm. It is a requirement that this treatment must be provided in the least restrictive environment possible. A set of checks and balances is also established to ensure that decisions made about treatment are reviewed on a regular basis by independent and impartial bodies including the Tribunal.

It is relevant to outline the events leading to the enactment of the New Mental Health Act. During 2005 – 2006, the NSW Government had conducted a wide-ranging review of the *Mental Health Act 1990*. That review resulted in the new Act and reform of the provisions relating to civil patients. Detailed Discussion Papers were released.

Proposed legislative changes to the forensic provisions of the *Mental Health Act 1990* and the *Mental Health (Criminal Procedure) Act 1990* led to the President being required by the Attorney General, Minister of Health and the Minister Assisting the Minister for Health (Mental Health) to undertake a review of the legislation and a review of the Tribunal's administration.

A Consultation Paper was released shortly prior to the end of 2006 that dealt with the major areas of principle and a Task Force of 25 members appointed by the Ministers was convened to advise. The consultation and advisory process will be undertaken in the early part of 2007 with a view to reporting to the relevant Ministers by 1 August 2007. It is expected that further legislation will be passed in the light of the recommendations made.

The impetus for changes reflected in the new Act came from many sources, including family and carers of mentally ill persons and recognition that the 1990 Act no longer reflected the changes to the way care was delivered in NSW. It was considered that service delivery could be made more effective and responsive to the needs of patients and the community.

During the period of community consultation that took place after the Discussion Paper was released, it became apparent that carers and family members sought greater recognition of their role in the care plan for persons subject to the Act. The new Act now provides for such recognition and includes primary carers, relatives and friends in treatment decisions and care plans. The Act also provides for information sharing of the patient's care and treatment plan, with the carer being notified of when patients are admitted, discharged, transferred or absent. The subject person can nominate or exclude carers where they have capacity to do so.

Provision has been made to consolidate Community Treatment Orders (CTO) and Community Counselling Orders (CCO) into a single order, and these can be made for persons in a mental health facility or in the community. The maximum duration of orders has been extended from 6 to 12 months.

The new Act builds on the rights of subject persons under the 1990 Act and establishes principles of care and treatment as follows:

- Care and treatment is to be designed to assist subject persons to live, work and participate in the community;
- Medications are to be prescribed to meet a patient's therapeutic and diagnostic needs only;
- Patients are to be given appropriate information about treatment, alternative treatments and the effects of treatment;
- That there be recognition of the religious, cultural, linguistic, age, gender and other special needs; and
- That patients be involved in the development of ongoing care and treatment plans.

It is submitted that these legislative changes, which emphasise the right to appropriate treatment and care of a holistic kind to address the vocational, social and cultural aspirations of persons with a mental illness or disorder, including recognition of the vital role of carers and families, represents a positive step towards the realisation of the aims of the National Mental Health Strategy.

The Tribunal's observations

There is substantial anecdotal information gathered from many hundreds of Tribunal hearings that a significant proportion of the clients appearing before the Tribunal have a dual diagnosis of mental illness and substance dependence. The Tribunal considers that many of those who receive involuntary treatment for their mental illness, whether in detention or in the community, also require some form of rehabilitative therapy for their drug and alcohol-related problems.

The mental health system is at present neither tasked nor resourced to deal with this therapeutic need. As a result, a relapse often occurs in the person's mental state because they resume drug and alcohol use once released from the constraints of involuntary detention.

There is a need to develop a co-ordinated approach to treatment across the spectrums of mental illness and drug and alcohol-related health conditions.

Involuntary patients can be subject to CTOs and are discharged into the community. The Tribunal must consider any application for an extension of that order by the local treating agency. CTOs can only be made for persons who are first detained in a hospital. Community Counselling Orders (CCOs) may be made for persons who are not detained.

The success of CTOs and CCOs are dependent upon the provision of adequate resources in the community to manage and fulfil treatment plans. From the Tribunal's perspective there appears to be a great lack of consistency amongst health care agencies as to the standard of care that can be provided under such orders. Where sufficient resources are not available, the outcome can be relapse and readmission of the patient to hospital on a continuing basis.

It is thought by the Tribunal's members that what is crucial in the recovery of a patient from an episode of mental illness is more than basic case management in the form of pre-arranged meetings for the giving of medication and periodic or occasional review by a treating psychiatrist. It is strongly felt that a holistic recovery plan that addresses meaningfully the social and vocational aspirations, together with an effective therapeutic relationship, is more likely to result in recovery and prevention of a further relapse. In the cases of first episode diagnosis of a mental illness, the Tribunal considers that comprehensive support and treatment must be invested to ensure, as far as is possible, that a further relapse of the illness could be avoided.

It is submitted that the above observations of the Tribunal are consistent with the objectives of the National Action Plan on Mental Health (2006) and the Select Committee's recommendation which emphasize the policy imperatives of:

- prevention and early intervention;
- the need to deliver better resources and accessible community services;
- the right of people with mental illness to access service in the least restrictive environment; and
- to be actively engaged in determining their treatment and assisted in social integration and to underpin those rights in legislation.

Please contact me should you wish to discuss any matters arising from our response.

Yours sincerely,

The Hon. Greg James, QC
PRESIDENT