



annual report

2020/21



22 September 2021

The Honourable Stephen Dawson MLC  
Minister for Mental Health  
12th Floor  
Dumas House  
2 Havelock Street  
WEST PERTH WA 6005

Dear Minister

I am pleased to present the Mental Health Tribunal's Annual Report in accordance with section 488 of the *Mental Health Act 2014* for the period 1 July 2020 to 30 June 2021.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Karen Whitney', with a stylized, cursive script.

Karen Whitney  
President  
Mental Health Tribunal

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# Overview of the Mental Health Tribunal

The Mental Health Tribunal (Tribunal) is an independent decision-making body established by the *Mental Health Act 2014* (WA) (the Act) to safeguard the rights of involuntary mental health consumers in Western Australia.

In Western Australia, the Act permits psychiatrists to treat some mental health consumers without their consent. The Act refers to these consumers as 'involuntary'. A psychiatrist makes a consumer 'involuntary' by making an 'involuntary treatment order'. Without adequate safeguards, this power to make involuntary treatment orders could be abused. Parliament created the Tribunal to protect consumers from potential abuse of the powers under the Act.

## The Tribunal's role

The Tribunal's main role is to review all involuntary treatment orders made by psychiatrists in Western Australia within 35 days (10 days for children) from the day each order is made. The Tribunal reviews all orders again every three months (every 28 days for children) whilst they remain in place. The purpose of the Tribunal's review is to determine whether the consumer still needs the involuntary treatment order. The Tribunal also has other powers under the Act. Consumers or treating teams can apply to the Tribunal to decide other questions by completing an application.

The Tribunal makes decisions based on information provided at a hearing. A hearing is a meeting where the Tribunal listens to participants' views on a question and then makes an independent decision on the question. The Tribunal usually holds its hearings at the hospital or health service treating the consumer. This is for the convenience of participants only. The Tribunal is independent and is not part of the treating team or the health service.

At the hearing, the Tribunal considers a medical report prepared by the consumer's psychiatrist and treating team in advance of the hearing. The Tribunal also expects the consumer's psychiatrist and treating team to attend the hearing to answer questions about the report. The Tribunal strongly encourages consumers and their supporters to attend hearings as well. Consumers may bring an advocate or a lawyer to speak for them if they choose.

At the end of a hearing after considering all the relevant information, the Tribunal decides the question in issue. The Tribunal tells the participants its decision, and the reasons for its decision.

## The Tribunal's structure

The Tribunal has a President and Tribunal members who make decisions under the Act. When the Tribunal holds hearings, it usually sits in panels of three members. One member is a lawyer, the second is a psychiatrist member, and the third is a community member. Tribunal members are independent statutory officers appointed by the Governor on the recommendation of the Minister. They do not work for the hospital or health service treating the consumer.

The current President of the Tribunal is Karen Whitney. She is a legal member, appointed as President on 30 December 2017 for five years.

On 30 June 2021, the Tribunal also had:

- Seven active legal members (two full-time, three part-time and two sessional members);
- Thirteen active sessional psychiatrist members; and
- Eleven active community members (one full-time, three part-time and seven sessional members).

A further 23 part-time or sessional members are currently inactive. Members become inactive if they are not available for hearings because of extended leave, ongoing potential conflicts of interest, or other extended unavailability. A full list of Tribunal members is at Appendix One.

The Tribunal also has a Registry. The Registry is the office that supports the Tribunal members by scheduling hearings and processing hearing materials. It has a Registrar and several public sector officers appointed to assist the Registrar in performing functions under the Act. The Registrar is responsible under the Act for scheduling hearings on a timely basis. The Registrar is also responsible for notifying parties when and where hearings will take place.

## **The Tribunal's strategic objectives**

The Tribunal has four primary strategic objectives:

- to achieve high quality consumer-centred outcomes in every matter;
- to support stakeholder participation in the hearing process;
- to improve how we work and maximise our use of technology; and
- to build our capacity and make best use of our resources.

The Tribunal's Strategic Plan (including its vision, mission and values) is at Appendix Two.

# President's Report

During financial year 2020/21 the Tribunal continued its progress towards achieving the objectives identified in its Strategic Plan. The COVID-19 public health emergency continued to impact upon Tribunal operations by limiting the number of in-person hearings the Tribunal was able to conduct. Despite the ongoing challenges, the Tribunal continued to safeguard human rights and promote compliance and accountability under the Act. This report highlights the Tribunal's key achievements, its most significant issues and noteworthy events during the past financial year.

## Key achievements

### Significant increase to the Tribunal's baseline funding and Registry FTE resources

The Tribunal's baseline funding will receive a much-needed increase in financial year 2021/22. The Tribunal's appropriation will increase by \$796,000 (29%) to \$3.577M. Forward estimates show this figure increasing to \$3.969M by 2024/25. This funding helps to offset historical underfunding of the Tribunal resulting from workload increases arising from implementation of the current Act in 2015.

In 2014/15 (the last financial year of operations under the *Mental Health Act 1996* (WA) (the 1996 Act)), the Mental Health Review Board (MHRB) (the Tribunal's predecessor body) listed 1,967 hearings at a total cost of \$1.999M (an appropriation of \$1,016 per listing). By 2020/21, the Tribunal had listed 4,007 hearings per annum on an appropriation of \$2.74M (an appropriation of \$684 per listing). Accordingly, between 2014/15 and 2020/21, the Tribunal's per listing appropriation reduced by \$332 (33%). Although the Tribunal achieved significant savings through the restructure of its membership (discussed below) it still needed a significant boost to Registry funding to ensure high quality service provision. The increase will bring the ongoing appropriation to about \$892 per listing.

This increase is welcome. It will bring the Tribunal back into a balanced budget. It also will provide the resources necessary to adequately fund the Registry and to resource initiatives such as translation of Tribunal brochures into multiple languages, upgrades to the Tribunal's hearing room, and optimising the Registry structure and workforce.

### Achievement of significant ongoing savings through the appointment of full-time and part-time Tribunal members

As reported in the previous Annual Report, in late 2019 the Tribunal restructured its member appointments from exclusively casual (sessional) to a mixture of full-time, part-time and sessional appointments. The goals of this restructure included:

- building a workforce of available and highly professional Tribunal members committed to developing the specialised knowledge and technical skills of administrative decision-making through consistent daily practise rather than by occasional participation on an *ad hoc* basis;



- building a community of practice based at the Tribunal's Registry where Tribunal members work in an environment in which they can share their experiences, develop and discuss areas of interest and build collegiality; and
- decreasing the escalating costs of casual salaries which threatened the Tribunal's ability to fund its operations.

In its first full financial year (2020/21), the restructure resulted in significant savings. In 2020/21, the Tribunal listed 532 hearing days at a total member remuneration cost of \$1,591,714. Member remuneration for listing 532 hearing days using an exclusively sessional workforce would have cost the Tribunal \$1,839,661. Thus, the savings achieved from the member restructure in the first financial year was \$247,947. This is a significant percentage of the Tribunal's overall budget. The Tribunal is now better placed to manage the increasing number of hearings it conducts per annum within its appropriation.

### **Improvements to technology**

As reported in earlier Annual Reports, the Tribunal's existing case management system (Microsoft Dynamics CRM 2013, known as 'ICMS') was inherited from the Tribunal's predecessor body the MHRB. It was developed in 2013 and configured for the 1996 Act. ICMS functions primarily as a consumer database and basic scheduling tool. It lacks configuration for member rostering, electronic order production and distribution, document generation, and other key functions of contemporary 'end-to-end' case management systems.

PricewaterhouseCoopers conducted an IT system analysis and case management system option review for the Tribunal in 2019. The results of these reviews were that the Tribunal's case management system was obsolete and needed replacement. Since then the Tribunal has canvassed all available options for funding the system but no funding has been made available. The Tribunal remains hopeful that this important funding proposal will be approved through other funding sources during 2021/22 to ensure that the Tribunal can improve its level of service delivery to consumers and treating teams.

In the meanwhile, the Tribunal has been exploring other options. In June 2021, the Tribunal commenced a project to develop a 'proof of concept' using Microsoft Customer Voice to define and set up its case management business rules and workflows. The goal of this project is to set the groundwork for an eventual production solution using the Microsoft Office 365 product suite. This project will allow the Tribunal to automate the production of hearing outcomes notices and create a single-source database for extraction of statistical data. This project will continue during the first half of 2021/22.

Despite the delaying effects of COVID-19, the Tribunal also made significant progress towards preparing to use its approved electronic document and records management system (EDRMS). Staff commenced their training for the rollout, and the Tribunal finalised its Business Classification Scheme for its corporate records. Full use of the EDRMS is anticipated in the first half of 2021/22, as soon as the function-based classification system is complete. The Tribunal continues to work on the areas for improvement identified in its Record Keeping Plan to maintain and improve compliance with the *State Records Act 2000* (WA).

## Improvements to service delivery: consumers

This year the Tribunal implemented several new initiatives to increase the voice of consumers in hearings and to improve their understanding of Tribunal processes.

Firstly, the Tribunal developed a new document called 'My Views and Wishes' to facilitate consumer engagement with the Tribunal. The Tribunal is required by the Act to consider the views and wishes of consumers when making decisions under the Act. This can be difficult because consumers are not always comfortable speaking in the hearing context, and some find hearings distressing so they do not attend. The 'My Views and Wishes' document provides consumers with the questions they may be asked by Tribunal members at a hearing and gives them an opportunity to consider and plan their responses. Such questions include:

- Do you agree with the doctor that you have a mental illness? If not, why not?
- Tell us about your current treatment. Have you improved? If so, how does the treatment help you feel better?
- Has your health or safety been at risk when you were not well? Tell us about this.
- Has anyone else been at risk when you were not well?
- What treatment decision would you make today if you were a voluntary patient? Why?
- If you are in hospital, should you be treated in the community instead? Why?
- Would you take your medication or attend appointments without an order? Tell us about this.
- What else do you want the Tribunal to know?

A copy of the document is sent to consumers with their notice of hearing. It also is available on the Tribunal's website and at hospitals and health services.

Consumers may complete the document and submit it to the Tribunal 24 hours in advance of their hearing. Alternatively, they may wish to give it to the Tribunal at the hearing. The document can also be used as 'speaking points' for the consumer at the hearing. If a consumer is unwilling or unable to attend the hearing, submission of the 'My Views and Wishes' document gives the consumer a voice in their absence. Case managers, families and advocates are encouraged to assist consumers in using the document to ensure the consumer's voice is heard.

Secondly, this year the Tribunal also completed its transition to a one-hour booking for every hearing. This was in response to feedback from stakeholders that the hearing time should be increased to provide consumers with more time to express their views and to respond to the psychiatric evidence during the hearing. Some hearings were increased to one hour in 2019/20, with the full roll out of this process completed this year. All Tribunal hearings are now listed for at least one full hour.

Thirdly, this year the Tribunal also added a new Frequently Asked Questions page to its website specifically for consumers and supporters. This page provides answers to common questions asked by consumers. These include simple explanations of the meaning of key terms in the Act which are used by Tribunal members and Registry staff, as well as an explanation of what the consumer should do after receiving a notice of hearing. It also provides detailed explanations for supporters about how they can participate in the hearing process,

and provides the procedure for disclosing information which may be harmful to the consumer (known as 'restricted information').

Finally, the Tribunal also continued its consumer and carer outreach program which involves presentations by the President and Registrar to carer and consumer groups. The President and Registrar spoke to Carers WA on the Rights of Involuntary Mental Health Consumers in September 2020. The President also met with the Rockingham Peel Mental Health Consumer Advisory Group in March 2021. The Registrar spoke to Mental Health Matters 2 on Treatment, Support and Discharge Plans in November and December 2020.

### **Improvements to service delivery: clinicians**

During 2020/21, the Tribunal launched several initiatives to improve service delivery to clinicians to assist them in complying with their obligations under the Act. This included the launch of several new resources as well as a program of hospital visits to meet directly with clinicians to discuss the Tribunal, explain its processes and hear clinicians' concerns. This is in addition to the President's ongoing program of clinical liaison directly with the clinical heads of each hospital and health service, which continues to yield positive outcomes.

After significant refinement and consultation with treating psychiatrists, the Tribunal rolled out the final version of the Tribunal's medical report template. The medical report template included several technical improvements to assist ease of use, as well as improvements to organisation and clarity. In September 2020 the President also launched a companion 'Guidance Notes' to the medical report template. The Guidance Notes annotate the template to clarify for clinicians specifically what the Tribunal needs to know during hearings. The Guidance Notes provide a 'one stop shop' for clinicians in preparing the report, incorporating hyperlinks to relevant legislation and the Chief Psychiatrists Guidelines. Both the medical report template and the Guidance Notes are available on the Tribunal's website.

Additionally, the Tribunal added further resources for clinicians to its website, including a new Frequently Asked Questions page specifically for clinicians. This resource provides information and clear guidance to clinicians for managing situations commonly arising in preparing for hearings, such as the procedure for managing access to information which may be harmful to the consumer ('restricted information').

The Tribunal's program of hospital visits with clinicians involves the President and Registrar attending hospitals and clinics to:

- deliver information directly to clinicians about the Tribunal's processes and procedures;
- introduce clinicians to the resources the Tribunal provides;
- answer clinicians' questions and hear any concerns that have arisen in hearings; and
- offer clinicians the opportunity to contact the President or Registrar at any time for information or support on the Tribunal's processes.

During 2020/21, the President and Registrar attended numerous hospitals throughout the metropolitan area to meet with clinicians of all levels of experience. They also participated in orientation programs for new Registrars and presented to the Postgraduate Training in Psychiatry program.

In addition, the President continued liaising with clinical heads as required to address specific issues arising. This helped achieve a greater alignment of the Tribunal's processes with the needs of hospitals and health services. For example, the Tribunal received feedback from several clinics that Tribunal hearings listed for 4 pm were raising logistical issues as well as security concerns for clinics because clinic operating hours finished at 4.30 pm. To accommodate this, the Tribunal now conducts all hearings at one-hour intervals between 9 am and 4 pm. This permits the Tribunal to conduct up to six one-hour hearings each day (at 9 am, 10 am, 11 am, 1 pm, 2 pm and 3 pm). The Tribunal only lists during the 4 pm time slot for urgent matters arising in hospital settings (such as ECT or inpatient children).

As a result, the Tribunal reduced its target of seven hearings listed each day to six. In 2021/22 this will require an increase in the number of hearing panels scheduled each week, and recruitment of more psychiatrist members.

### **Contribution to the Statutory Review of the Mental Health Act 2014**

In November 2020, the Minister for Mental Health commenced a statutory review of the operation and effectiveness of the Act pursuant to section 587 of the Act. The Mental Health Commission (Commission) leads the review process, and the review is guided by a Steering Group. The President of the Tribunal is a member of the Steering Group along with other key stakeholders. The process involved release of a discussion paper and opening of the consultation process in 2021, with a view to production of a final report to the Minister for Mental Health in mid-2022.

### **Professional development**

Finally, the Tribunal continued its focus on professional development generally to ensure high calibre, procedurally-fair and consistent decision-making in a therapeutic setting.

The Tribunal's November 2020 whole-of-Tribunal training day involved Tribunal members participating in an external one-day retreat at Graylands Health Campus. The day included a workshop facilitated by Cheryl Smith, Director of Aboriginal Health for North Metropolitan Health Service (NMHS) entitled 'The Third Space – Working effectively with Aboriginal people'. Dr Samir Heble, Medical Co-director North Metropolitan Adult Inpatient Mental Health, also led a mindfulness exercise for members. Members also engaged in a strategic planning workshop to inform revision of the Strategic Plan 2018-2020.

The Tribunal's May 2021 whole-of-Tribunal training focused on de-escalation training to address the needs of Tribunal Members encountering potential aggression in hearings. This training was provided by NMHS. The day also included a presentation on Recovery Colleges by Naomi Carter, Principal of the WA Recovery College, as well as an interactive session on the Act facilitated by the full-time members.

In addition to formal whole-of-Tribunal training days, members continue to meet periodically within their specialist areas to discuss issues. Legal members participate in a formal continuing professional development program monthly, during which they discuss relevant legal issues arising in the Tribunal. Psychiatrist members also participate in monthly peer review meetings.

Finally, five Tribunal members completed the Council of Australasian Tribunals' (COAT) eight-week online member induction program this year. COAT's online interactive training program offers practical guidance on carrying out the challenging role of a Tribunal member in a collegial and supportive environment.

## Significant issues

The most immediate issue for the Tribunal's operations remains the case management system. The Tribunal requires a funding commitment of at least \$700K for investment in a contemporary end-to-end case management system. This investment is essential for the Tribunal to efficiently and effectively ensure compliance with its statutory functions. The Tribunal remains hopeful that this important funding proposal will be approved through other funding sources during 2021/22 to ensure that the Tribunal can improve its level of service delivery to consumers and treating teams. In the meanwhile, the Tribunal continues to innovate low-cost temporary solutions to advance its strategic objectives.

## Notable events and thanks

During the 2020/21 financial year, the Tribunal farewelled the following members:

- Dr Hannah McGlade (legal member resigned on 24 September 2020)
- Dr Anthony Zorbas (psychiatrist member resigned on 12 January 2021)
- Dr Paul O'Hara (psychiatrist member resigned on 14 January 2021)
- Dr Elizabeth Moore (psychiatrist member resigned on 18 January 2021)
- Dr Lynne Cunningham (psychiatrist member resigned on 6 February 2021)
- Ted Ellis (community member resigned on 26 April 2021)
- Dr Sally Kelderman (psychiatrist member resigned on 21 June 2021)

Also, during 2020/21, the Tribunal welcomed the following members:

- Nicola Findson (formerly sessional legal member now part-time legal member from 30 November 2020)
- Pearl Chaloupka (appointed part-time community member on 4 May 2021)

Finally, thank you to all Tribunal members, the Registrar and Registry staff for continuing support during the 2021/21 financial year.

The Tribunal remains grateful to the former Minister for Mental Health the Honourable Roger Cook MLA, the current Minister for Mental Health the Honourable Stephen Dawson MLC, the Mental Health Commissioner Jennifer McGrath, and the staff of the Commission (particularly the Corporate Services team) for their support during 2020/21.



Karen Whitney  
President

## The Tribunal's Functions

The Tribunal is an independent decision-making body established by the Act to safeguard the rights of involuntary mental health consumers in Western Australia.

In Western Australia, the Act permits psychiatrists to treat some mental health consumers without their consent. The Act refers to these consumers as 'involuntary'. A psychiatrist makes a consumer 'involuntary' by making an 'involuntary treatment order'. There are two types of involuntary treatment orders. An inpatient treatment order requires the consumer to stay in hospital for treatment without consent. A community treatment order requires treatment without consent, but in the community rather than in hospital.

The Tribunal's main role is to review all involuntary treatment orders made by psychiatrists in Western Australia. However, the Tribunal also has powers to determine other questions under the Act. This section outlines the Tribunal's hearing process and the types of decisions the Tribunal makes.

### Conducting hearings

The Tribunal makes decisions based on information provided at a hearing. A hearing is a meeting where the Tribunal listens to participants' views on a question and then makes an independent decision on the question.

The Act provides many rules for the hearing process. The hearing must be as informal as possible. It must not be overly technical. It must only be as long as it needs to be. The hearing must be procedurally fair. It must also be private. The Act limits publication of private consumer information and provides criminal penalties for unauthorised disclosure of such information.

When the Tribunal holds hearings, it usually sits in panels of three members. One member is a lawyer, the second is a psychiatrist member, and the third is a community member. The legal member is always the 'presiding member'. This means that the legal member manages the hearing and delivers the decision on behalf of the three Tribunal members. Legal members also decide all questions of law (including questions about how the law applies to the facts). A majority of the three members decides other questions.

Tribunal proceedings are free. The Tribunal does not charge application or hearing fees.

The Tribunal usually holds its hearings at the hospital or health service treating the consumer. This is for the convenience of participants only. The Tribunal is independent and is not part of the treating team or the health service. Sometimes, hearings will be by videoconference rather than at the hospital or health service. Participants can attend using their computer, tablet or phone.

At the hearing, the Tribunal considers a medical report prepared by the consumer's psychiatrist and treating team in advance of the hearing. The Tribunal also expects the consumer's psychiatrist and treating team to attend the hearing to answer questions about the report. The Tribunal strongly encourages consumers and their supporters to attend hearings as well. Consumers may bring an advocate or a lawyer to speak for them if they choose. Where required, the Tribunal provides interpreters.

At the hearing, the Tribunal allows each party to call evidence, examine or cross-examine witnesses, and make submissions. The formal rules of evidence do not apply.

In conducting hearings and making decisions, the Tribunal must have regard to the objects of the Act (s 10) and the Charter of Mental Health Care Principles (Charter). The objects of the Act and the Charter are reproduced at Appendix Three.

At the end of each hearing, the Tribunal tells the participants its decision and the reasons for its decision. Parties who request reasons are given a transcript of the oral reasons provided at the hearing.

## **Types of hearings**

### **Initial and periodic reviews**

The Tribunal's main role is to review all involuntary treatment orders made by psychiatrists in Western Australia within 35 days (10 days for children) from the day the order is made. This is an 'initial review' (s 386). The Tribunal reviews each order again every three months (every 28 days for children) whilst the order remains in place. This is a 'periodic review' (s 387). For consumers who have been on a community treatment order for more than a year, the Tribunal reviews the order every six months.

The purpose of the Tribunal's initial and periodic reviews is to determine whether the consumer still needs the involuntary treatment order.

### **Requested reviews**

Consumers and other interested persons can also apply to the Tribunal to review certain types of orders. The Tribunal will then list a hearing to review the order. These are 'requested reviews' (s 390). The Tribunal can review:

- involuntary treatment orders, to decide whether the consumer still needs the order (s 390(1)(a));
- inpatient treatment orders, to decide whether the consumer still needs the order (s 390(1)(b));
- community treatment orders, to decide whether the terms of the order are appropriate (s 390(1)(c));
- orders authorising transfer of involuntary consumers to, or between, authorised hospitals (s 390(1)(d));
- orders transferring consumer responsibility between supervising psychiatrists (s 390(1)(e));
- orders transferring consumer responsibility between treating practitioners (s 390(1)(f)); and
- orders transferring certain inpatients interstate (s 390(1)(g)).

The Tribunal can also review some of these orders on its own initiative (s 391).

## **Applications for declaration about the validity of treatment orders**

Consumers and other interested persons can apply to the Tribunal to declare that certain orders are (or were) valid or invalid (ss 398 and 400). These include:

- involuntary treatment orders;
- continuation orders; or
- variation orders.

If the order is no longer in force at the hearing date, the Tribunal may decide to proceed with the application if satisfied the application raises a question of law or a matter of public interest (s 403).

## **Applications to review admission of long-term voluntary inpatients**

Consumers and other interested persons can also apply to the Tribunal to review the admission of long-term voluntary inpatients (s 405(1)). A long-term voluntary inpatient is:

- an adult who has been a voluntary inpatient for more than six months; or
- a child who has been a voluntary inpatient for more than three months (s 404).

After completing such a review, the Tribunal may recommend the treating psychiatrist:

- reconsider the need for the admission;
- prepare and regularly review a treatment, support and discharge plan for the consumer; or
- discharge the consumer (s 408).

The Tribunal has the power to make recommendations only.

## **Applications to approve electroconvulsive therapy**

Psychiatrists cannot use electroconvulsive therapy (ECT) on certain consumers without the Tribunal's approval. These consumers include:

- children aged between 14 and 17; and
- adult involuntary consumers or mentally impaired accused (s 409).

If a psychiatrist recommends ECT for one of these consumers, the psychiatrist must apply to the Tribunal for permission to perform ECT (s 410). The application must identify why the consumer's psychiatrist recommends ECT, and provide a treatment plan.

In deciding whether to approve ECT, the Tribunal must have regard to the *Chief Psychiatrist's Guidelines for the use of Electroconvulsive Therapy in Western Australia* (s 413). The Tribunal must also have regard to all the factors in section 414 of the Act, including:

- the consumer's wishes;
- the views of the consumer's parent or guardian (for children);
- the views of the consumer's close family member, carer, and/or nominated person;
- why ECT should be performed;
- the consequences of not performing ECT;
- any significant risk of performing ECT;



- whether ECT will promote and maintain the health and wellbeing of the consumer; and
- whether any alternative treatment is available and any significant risks of alternative treatment.

## Applications to approve psychosurgery

Psychosurgery cannot be performed without the Tribunal's approval. With the Tribunal's approval, psychosurgery may be performed only on adults or children between the ages of 16 and 18 who consent to the treatment (s 208).

If a consumer's psychiatrist recommends psychosurgery, the psychiatrist must apply to the Tribunal for permission (s 417). The application must set out why the psychiatrist recommends psychosurgery and include a treatment plan.

The Tribunal cannot approve the psychosurgery unless satisfied that:

- the consumer gives informed consent;
- the psychosurgery has clinical merit and is appropriate;
- all alternatives have been appropriately trialled but have not resulted in a sufficient and lasting benefit to the consumer;
- the neurosurgeon is suitably qualified and experienced; and
- the proposed hospital is a suitable place.

In deciding whether to approve psychosurgery, the Tribunal must have regard to:

- the views of the consumer's carers, close family members, and/or personal supporters;
- the consequences of not performing the psychosurgery;
- the nature and degree of the risks of the psychosurgery; and
- whether the psychosurgery will promote and maintain the health and wellbeing of the consumer.

The Tribunal has not yet considered an application for psychosurgery.

## Applications to issue compliance notices

Consumers and other interested persons can apply to the Tribunal to issue a *service provider* with a *compliance notice* for non-compliance with a *prescribed requirement* of the Act (s 423).

A 'service provider' is the person required by the Act to comply with a 'prescribed requirement' (s 422).

A 'prescribed requirement' is a requirement under the Act to:

- give a document or provide information to someone, or include a document or information on a consumer's medical record, or comply with a request; or
- ensure a consumer's treatment, support and discharge plan is prepared, reviewed or revised (s 422).

If after the hearing the Tribunal thinks the service provider has not complied with the prescribed requirement, the Tribunal may issue a compliance notice. The compliance notice may direct the service provider to:

- act within a set period to comply with the prescribed requirement; and
- report to the Tribunal about the outcome.

Before deciding to issue a compliance notice, the Tribunal must consider whether to refer the matter to one or more of the following:

- the Mental Health Commissioner;
- the Director General of the Health Department;
- the Chief Psychiatrist; or
- a relevant registration board (s 423).

The President of the Tribunal must include in the Annual Report the name of each service provider issued with a compliance notice during that year and the number of compliance notices issued during that year.

During 2020/21, the Tribunal did not issue any compliance notices. However, the Tribunal issued 36 recommendations to psychiatrists to review a consumer's treatment support and discharge plan (TSDP) to ensure the TSDP fully complied with the Act and the Chief Psychiatrist's guidelines.

Section 423 arises most frequently around TSDPs. To facilitate greater compliance with TSDPs, before every periodic review the Tribunal writes to the responsible practitioner or case manager asking for an updated and compliant TSDP (one that complies with both the Act and the Chief Psychiatrist's Guidelines). The Tribunal attaches an extract from the Chief Psychiatrist's Guidelines to its request. The Tribunal also asks that the treating teams send a copy of the TSDP to the consumer and the Tribunal at least three days before the hearing date.

## **Applications to review orders restricting a consumer's freedom of communication**

Section 261 of the Act provides that consumers have the right of freedom of lawful communication, including the freedom to:

- see and speak with other people in the hospital;
- have uncensored communications with people, including visits, telephone calls, mail and electronic communications; and
- receive visits and other contact from legal practitioners, mental health advocates and others.

Nevertheless, in certain circumstances a psychiatrist may make an order limiting or preventing the exercise of these rights (s 262). These orders must be in the approved form, placed on the consumer's file, and a copy given to the consumer and personal supporters.

Consumers and other interested persons can apply to the Tribunal to review a psychiatrist's order limiting or preventing exercise of these rights (s 427). After completing the hearing, the Tribunal can confirm, amend, or revoke the psychiatrist's order.

## **Applications to resolve certain questions arising in respect of nominated persons**

Consumers may nominate a person to assist them to ensure their rights are observed, and their wishes and interests are considered. Consumers and other interested persons can apply to the Tribunal to make declarations about the validity of a nomination, or to revoke a nomination (s 430).

On an application for a declaration about validity, the Tribunal may declare that a nomination is valid or invalid. The Tribunal may also vary the terms of the nomination to give effect to the intention of the nomination (s 431).

On an application to revoke a nomination, the Tribunal may revoke a nomination if satisfied that the nominated person is not appropriate because they are:

- likely to adversely affect the interests of the consumer; or
- not capable of performing that role because of mental or physical incapacity; or
- not willing or able to perform the role (s 432).

## **Applications to review any other decision affecting a consumer's rights**

Consumers and other interested persons can apply to the Tribunal to review other decisions made under the Act that affect a person's rights and that cannot be heard by the Tribunal under another provision (s 434).

On completing the review, the Tribunal may make any orders, and give any directions, the Tribunal considers appropriate.

## **Determinations, orders, and reasons for decision**

At the end of each hearing, the Tribunal tells the participants its decision, and the reasons for its decision. Tribunal members provide parties with oral reasons which contain enough information for the parties to understand the outcome. The reasons need to be in terms the consumer is likely to understand. However, the reasons must also have enough detail to identify, for the State Administrative Tribunal (SAT), the factual and legal basis for the decision and the Tribunal's reasoning.

The Tribunal sends a Notice of Decision to the parties by post or email shortly after the hearing. This is the Tribunal's written notice of the decision made at the hearing. The Tribunal's order informs the party of the right to seek reasons for Tribunal's decision, and the right to apply to the SAT for a review of the Tribunal's decision. Parties who request reasons are given a transcript of the oral reasons provided at the hearing. The Tribunal does not otherwise provide written reasons for decision unless the member has not provided adequate oral reasons at the hearing. Such matters are referred to the President for further action.

## Review by the SAT

Decisions of the Tribunal are reviewable by the SAT. Such matters fall within the SAT's review jurisdiction and are conducted by way of a hearing *de novo*. In other words, the SAT is not confined to matters that were before the Tribunal and may consider new material regardless of whether it existed at the time of the Tribunal hearing. The purpose of the SAT's review is to produce the correct and preferable decision at the time of the decision upon review.

The SAT may affirm, vary, or set aside the Tribunal's decision. Where it sets aside the Tribunal's decision, the SAT may either substitute its own decision or send the matter back to the Tribunal for reconsideration.

A decision to revoke or set aside a decision of the Tribunal does not necessarily indicate error on the part of the Tribunal in deciding the matter. This is because the SAT determines matters based on the evidence available at the date of its hearing, rather than the materials before the Tribunal at the original hearing.

## Performance and Statistics

### What the Tribunal measures

The Tribunal measures the number of hearings listed each year (hearings listed) as well as the number of hearings conducted (hearings conducted).

The Tribunal measures both because in about one-third of matters, the psychiatrist will revoke the involuntary treatment order a few days or hours before the hearing. When this happens, the consumer no longer requires the hearing and the Tribunal must discontinue it.

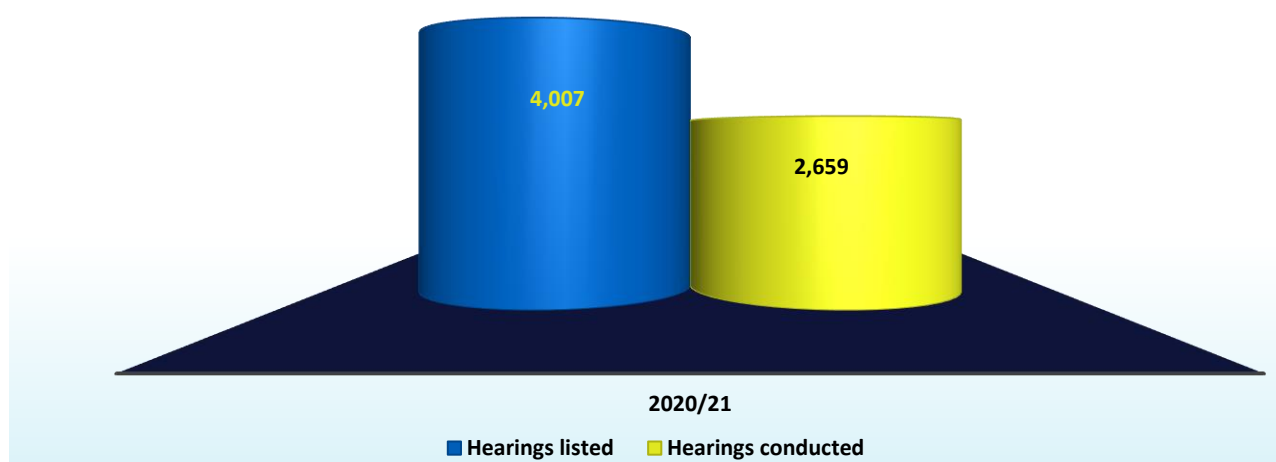
In many cases, the Tribunal cannot fill this vacancy with another hearing because it cannot give the participants enough notice to attend. In these circumstances, the Tribunal has used its resources to list and prepare for the hearings which proceeded as well as those which were discontinued. These resources are reflected in, and accounted for by, the number of hearings listed.

There is no reliable way to predict which orders will be revoked and which will proceed to hearing. The nature of the Tribunal's hearings means the Tribunal cannot fully address the issue by 'over-listing' or by using 'rolling lists' such as those used by Magistrates Courts. This is an issue which is common to Mental Health Tribunals in other states, which also report on both hearings listed and hearings conducted.

### Hearing numbers

In 2020/21, the Tribunal listed 4,007 hearings, a decrease of 246 (5.8%) from 2019/20. This is an overall increase of 20.7% since 2016/17. Of the 4,007 hearings listed in 2020/21, 2,659 (66.4%) proceeded to a hearing.

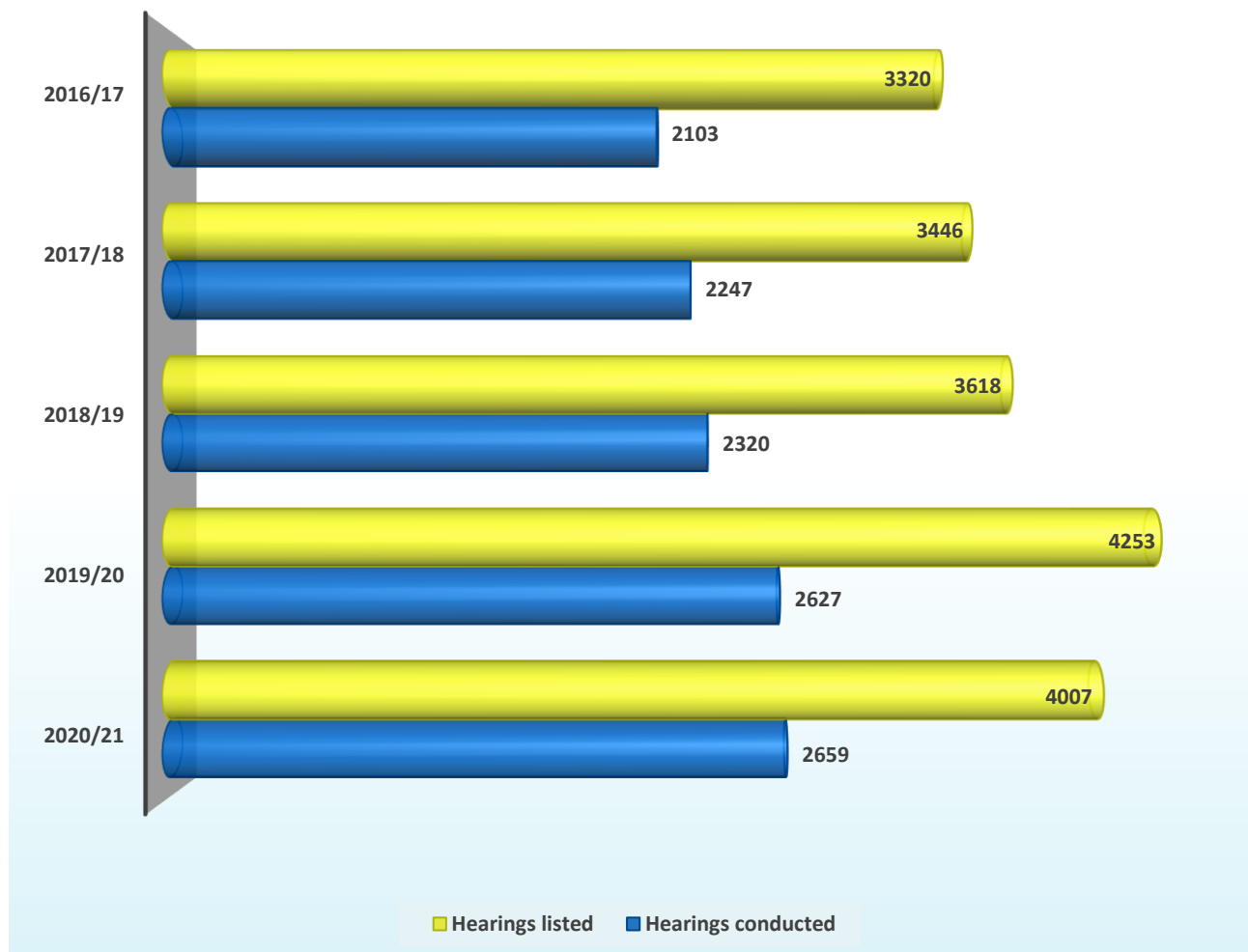
**Figure 1: 2020/21 hearings listed vs hearings conducted**



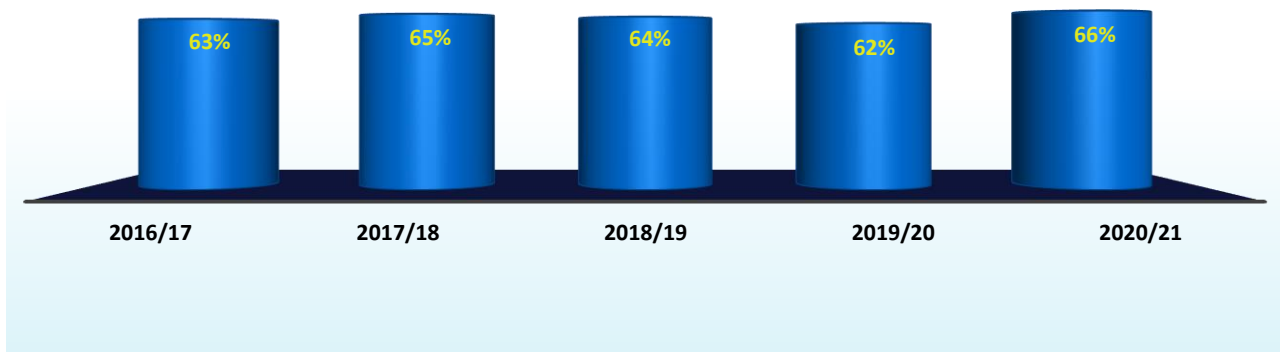
This first decrease in hearing numbers since 2011/12 was a result of three factors. Firstly, as noted in the President's Report, the Tribunal was required to reduce the number of hearings it lists each day from seven to six to align with clinic operating hours. This reduced the number of hearings conducted each day. Secondly, as also noted in the President's report, this year the Tribunal completed its transition to a one-hour hearing booking for every hearing. In response to stakeholder feedback all Tribunal hearings are now listed for a full hour. This too reduced the number of hearings conducted each day.

Finally, restrictions imposed in response to outbreaks of COVID-19 required the Tribunal to conduct most of its hearings by videoconference, many of them from home. Conducting hearings by videoconference was challenging for some members, who chose not to sit until hearings returned to normal. This and other factors created member shortages from time to time, particularly for psychiatrist members.

**Figure 2: Yearly comparison of hearings listed vs hearings conducted**



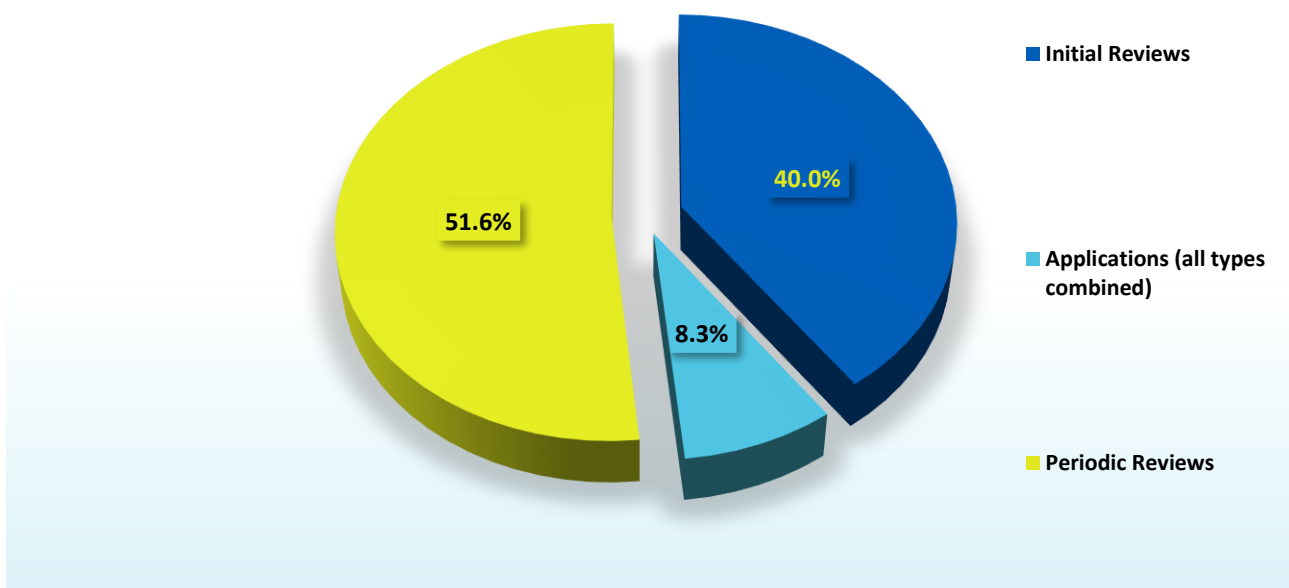
**Figure 3: Yearly comparison of percentage of hearings conducted**



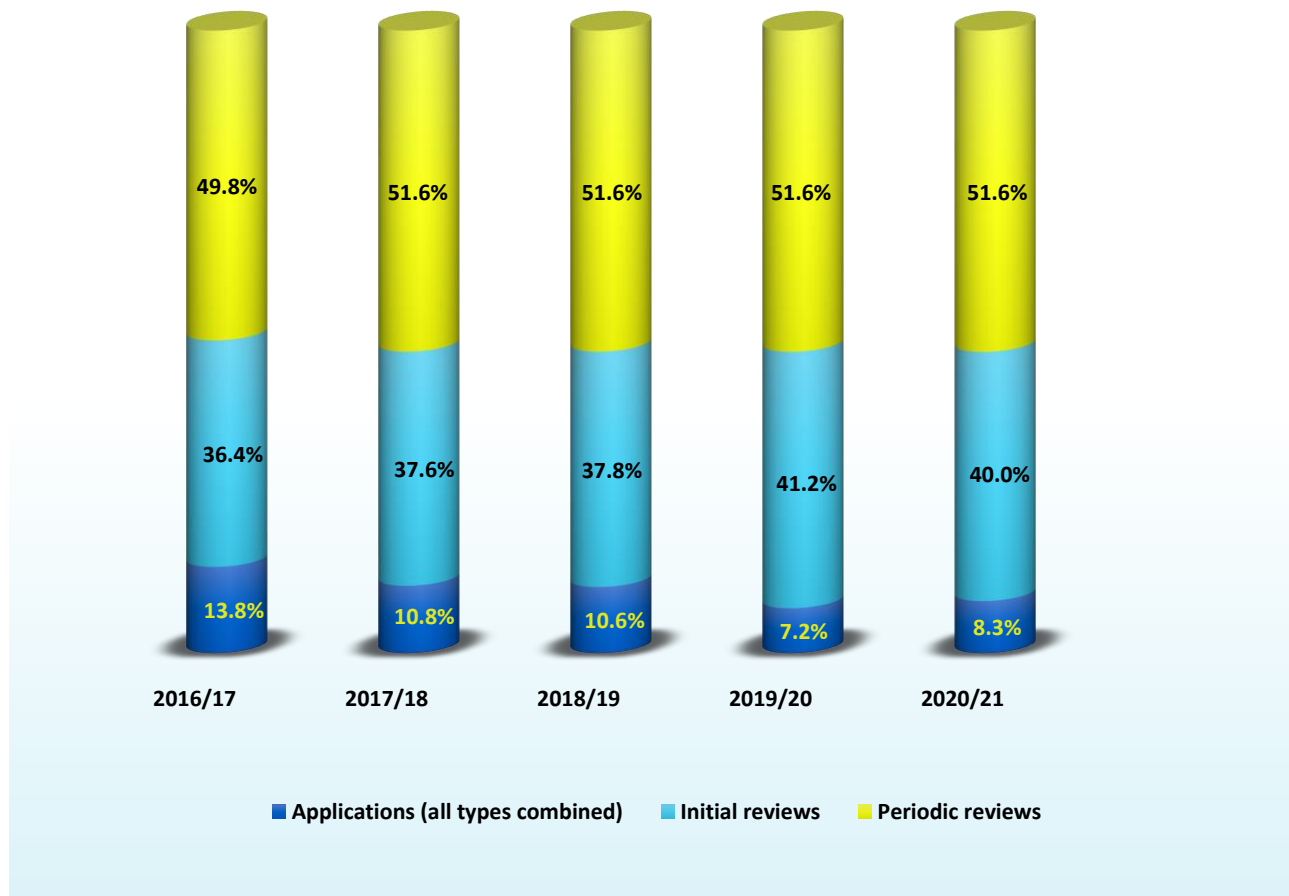
### Hearings conducted by matter types

In 2020/21, the Tribunal conducted 2,659 hearings. Of these, 1,064 (40%) were initial review hearings conducted pursuant to section 386 of the Act. A further 1,373 (51.6%) were periodic review hearings conducted pursuant to section 387 of the Act. The balance of 222 (8.3%) were applications made to the Tribunal by consumers or psychiatrists.

**Figure 4: 2020/21 percentage of hearings conducted by matter type**



**Figure 5: Yearly comparison of percentage of hearings conducted by matter type**



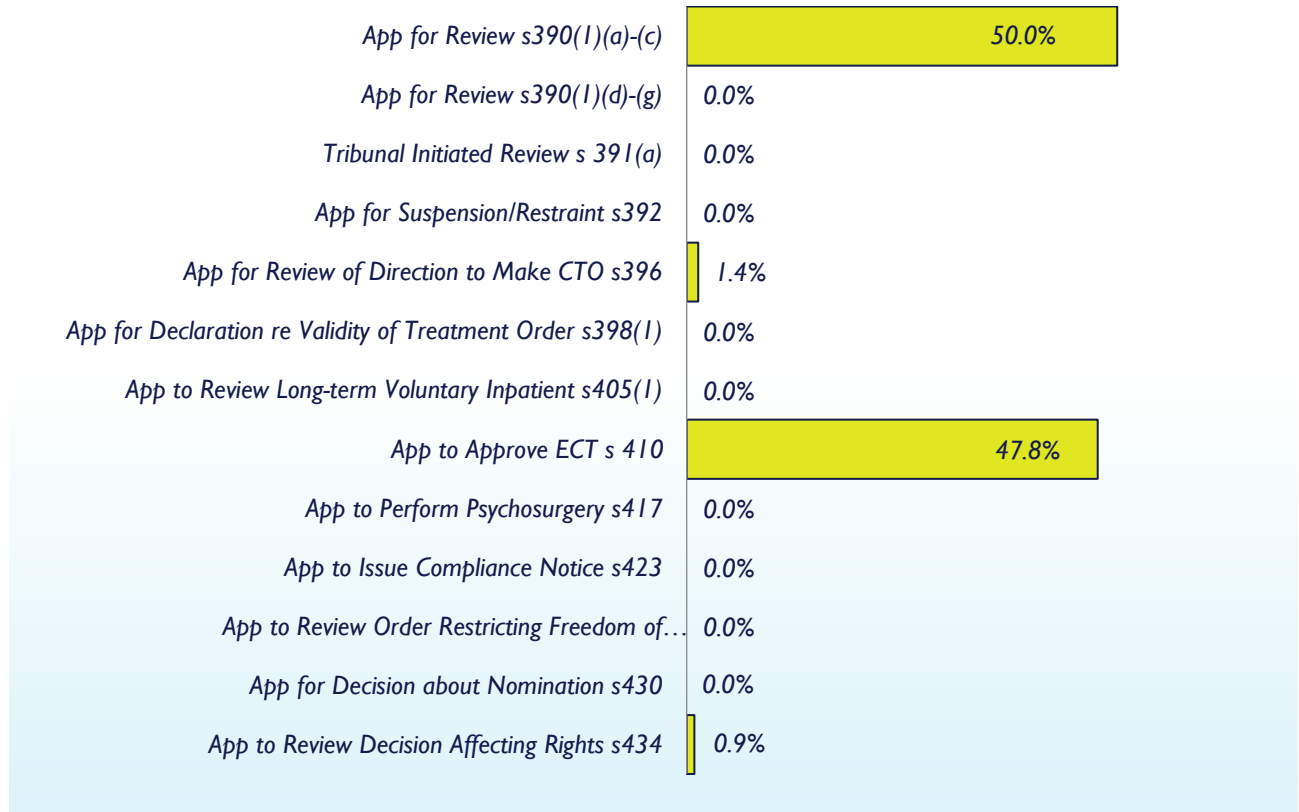
The Tribunal's case management system ICMS remains configured for the 1996 Act. Accordingly, it records all the applications made under sections 390 – 434 of the Act as 'requested reviews'. Consequently, ICMS cannot break down the numbers of each type of application heard by the Tribunal. The Tribunal's requests for funding to purchase a new case management system have not been granted.

Considering the importance of this information, during 2019/20 the Tribunal resorted to manually collecting certain statistics which cannot be obtained from ICMS. The Tribunal can now report in detail on how many applications were made under sections 390 – 434 of the Act during the financial year, and the outcomes of those applications.

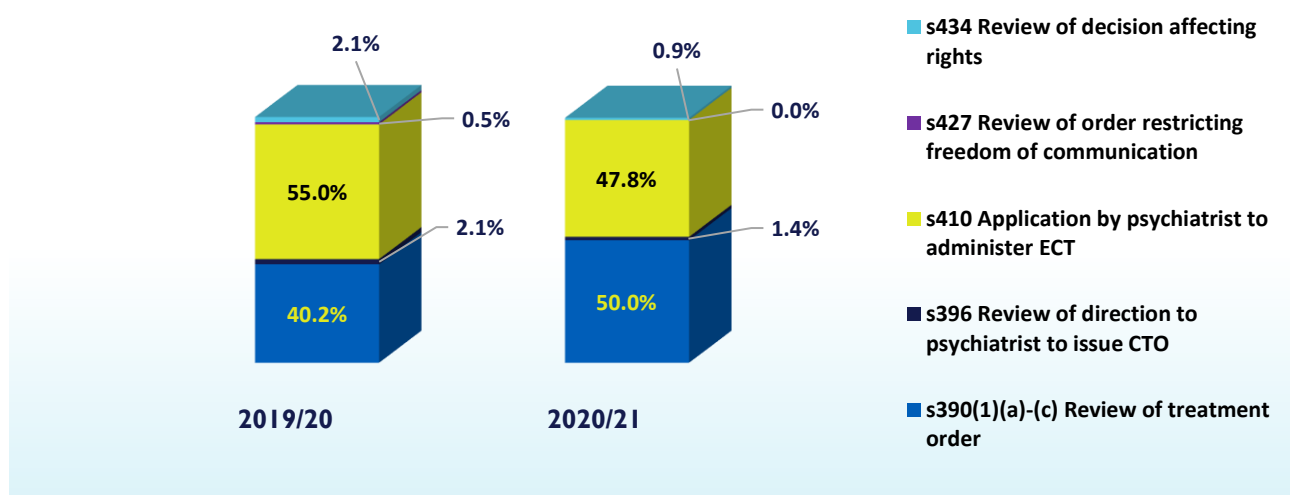
As demonstrated in Figure 6, 47.8% of the 222 applications made to the Tribunal were applications by a consumer's psychiatrist seeking approval to perform electroconvulsive therapy on the consumer pursuant to section 410 of the Act. A further 50% were applications made by (or on behalf of) consumers to review an involuntary treatment order pursuant to section 390(1)(a)-(c) of the Act.



**Figure 6: 2020/21 types of applications made (as a percentage of total applications)**



**Figure 7: Yearly comparison of types of applications made (as a percentage of total applications)**



Note: data for previous years is not available

It is evident that many application types are not widely used. The Tribunal continues to promote the range of application options available to consumers through its website and through liaison with the Mental Health Advocacy Service (MHAS) and the Mental Health Law Centre (MHLC).

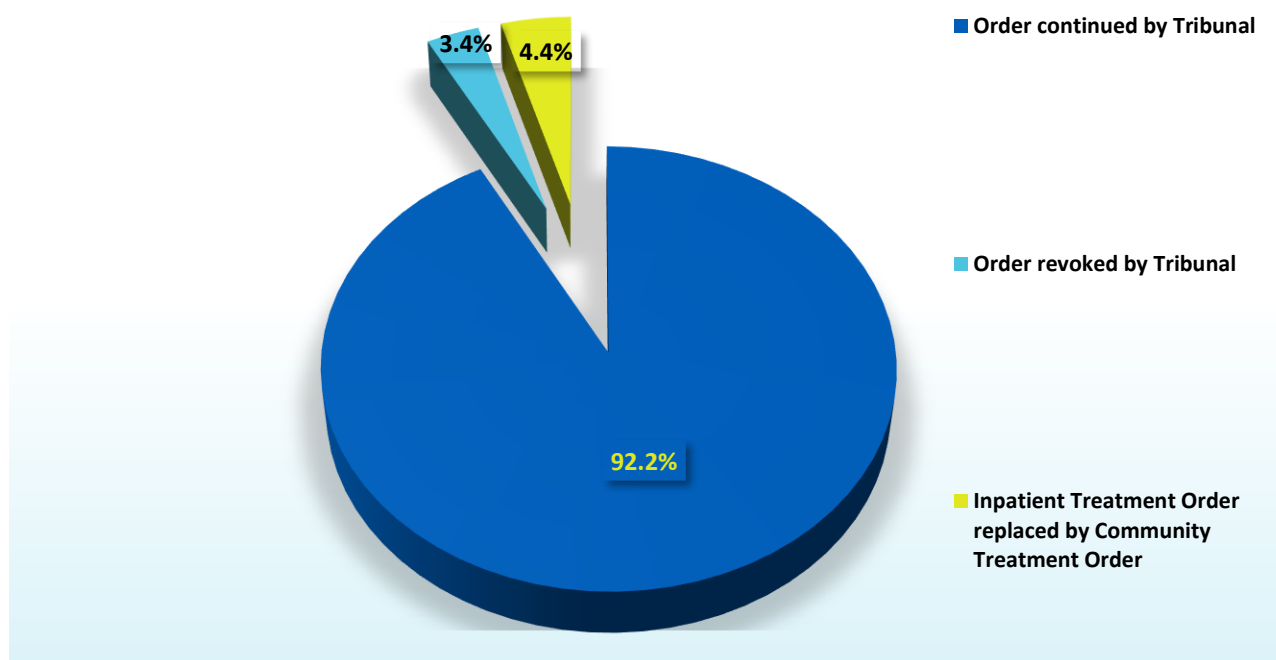
## Hearings completed by outcome

Because of the Tribunal's new process of manually recording hearing outcomes, since 2019/20 the Tribunal has been able to report in detail on the outcomes of the different types of hearings completed by the Tribunal.

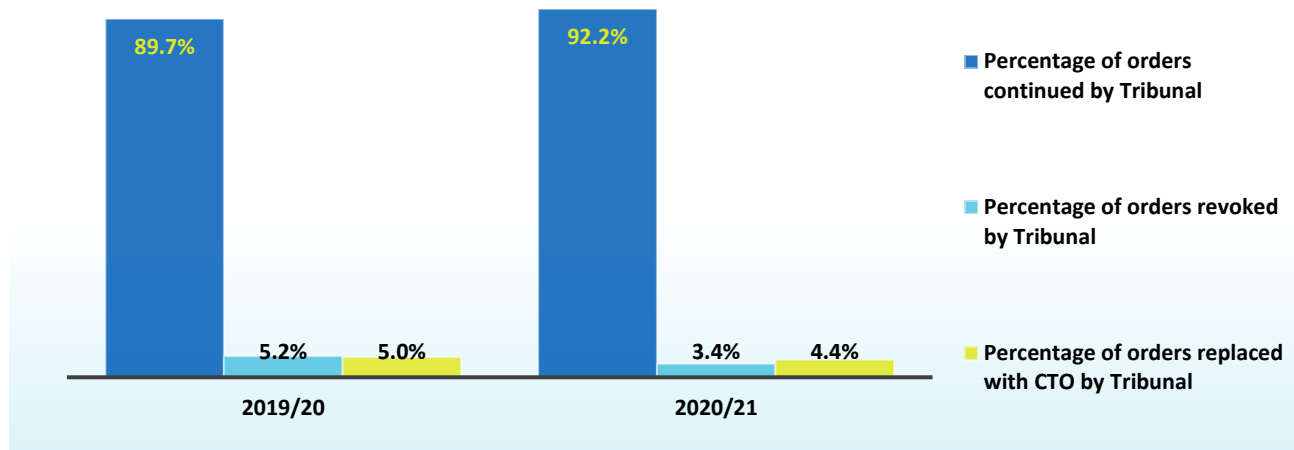
### 2020/21 Initial review hearing outcomes (s 386)

Of the 1,064 initial review hearings conducted in 2020/21, 229 hearings were adjourned or vacated at the hearing (adjournments are discussed separately). The remaining 835 hearings were completed. Of those completed, in 770 matters (92.2%) the Tribunal was satisfied that the involuntary consumer remained in need of the involuntary treatment order and continued the order. In 28 matters (3.4%) the Tribunal was not satisfied the involuntary consumer remained in need of the involuntary treatment order and revoked the order. In 37 matters (4.4%) the Tribunal was not satisfied the involuntary consumer remained in need of an inpatient treatment order and directed the psychiatrist to issue a community treatment order instead.

**Figure 8: 2020/21 outcomes of initial review hearings as a percentage of completed matters**



**Figure 9: Yearly comparison of outcomes of initial review hearings as a percentage of completed matters**

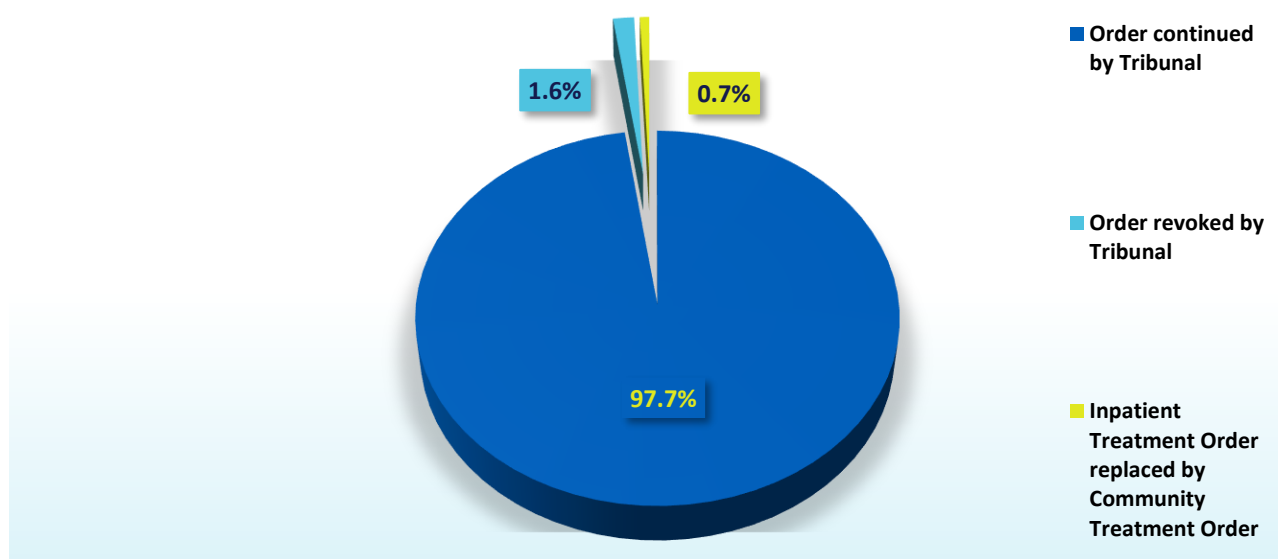


Note: data for previous years is not available.

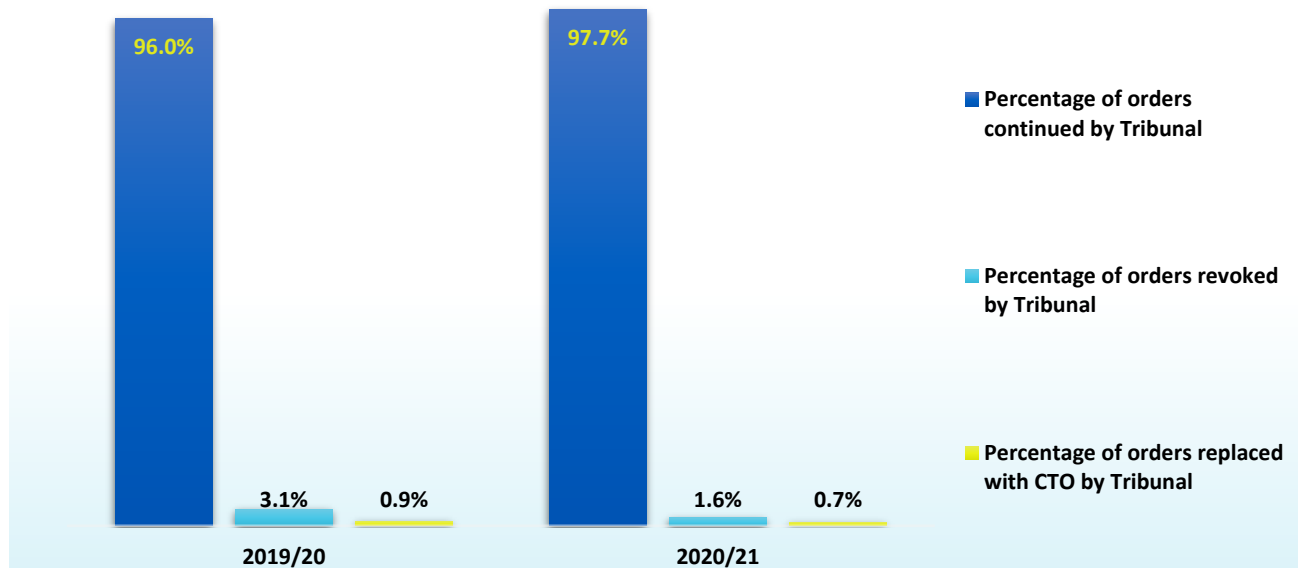
#### 2020/21 Periodic review hearing outcomes (s 387)

Of the 1,373 periodic review hearings conducted in 2020/21, 238 hearings were adjourned or vacated at the hearing (adjournments are discussed separately). The remaining 1,135 hearings were completed. Of those completed, in 1,109 matters (97.7%) the Tribunal was satisfied that the involuntary consumer remained in need of the involuntary treatment order and continued the order. In 18 matters (1.6%) the Tribunal was not satisfied the involuntary consumer remained in need of the involuntary treatment order and revoked the order. In 8 matters (0.7%) the Tribunal was not satisfied the involuntary consumer remained in need of an inpatient treatment order and directed the psychiatrist to issue a community treatment order instead.

**Figure 10: 2020/21 outcomes of periodic review hearings as a percentage of completed matters**



**Figure 11: Yearly comparison of outcomes of periodic review hearings as a percentage of completed matters**

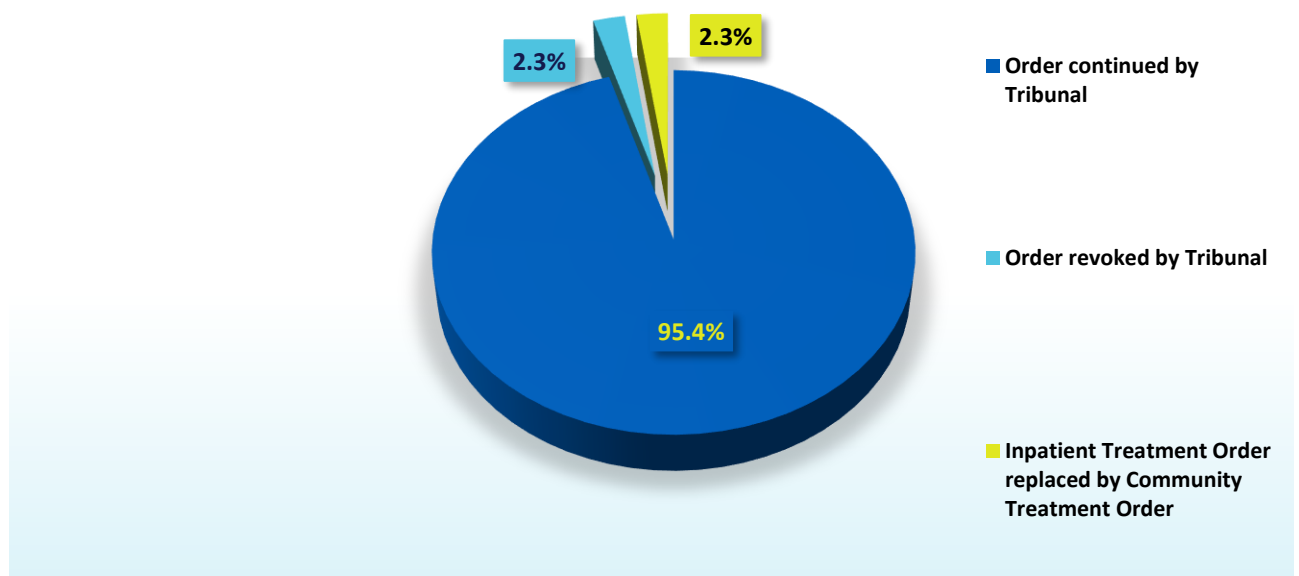


Note: data for previous years is not available.

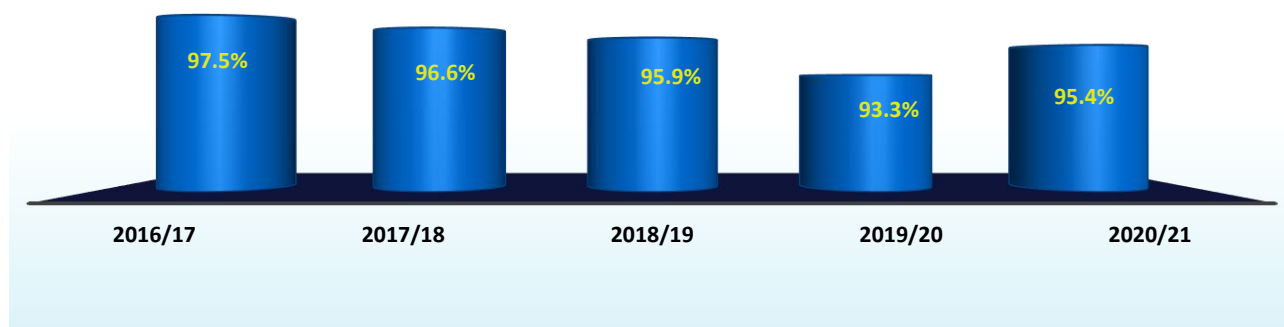
### 2020/21 Initial and periodic review hearing outcomes combined

In previous years, the Tribunal reported on initial and periodic review hearings combined. This is continued for comparative purposes.

**Figure 12: 2020/21 outcomes of initial and periodic review hearings (combined) as a percentage of completed matters**



**Figure 13: Yearly comparison of initial and periodic review orders (combined) continued as a percentage of completed matters**

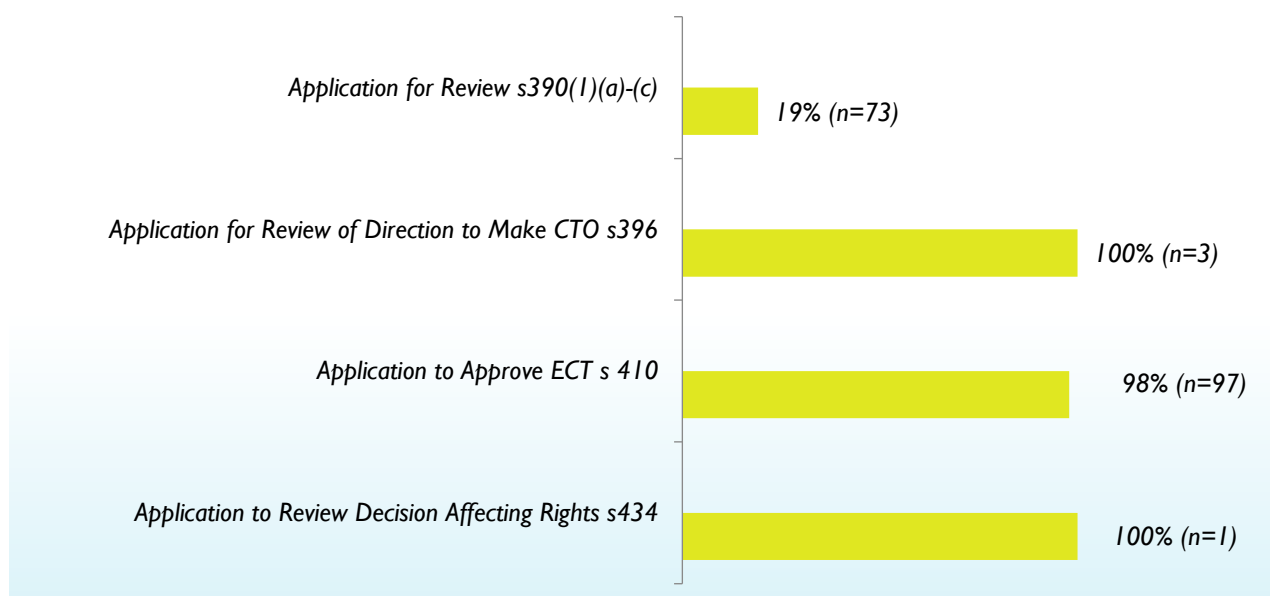


#### **Applications made under sections 390 – 434 of the Act: ‘successful’ applications by type**

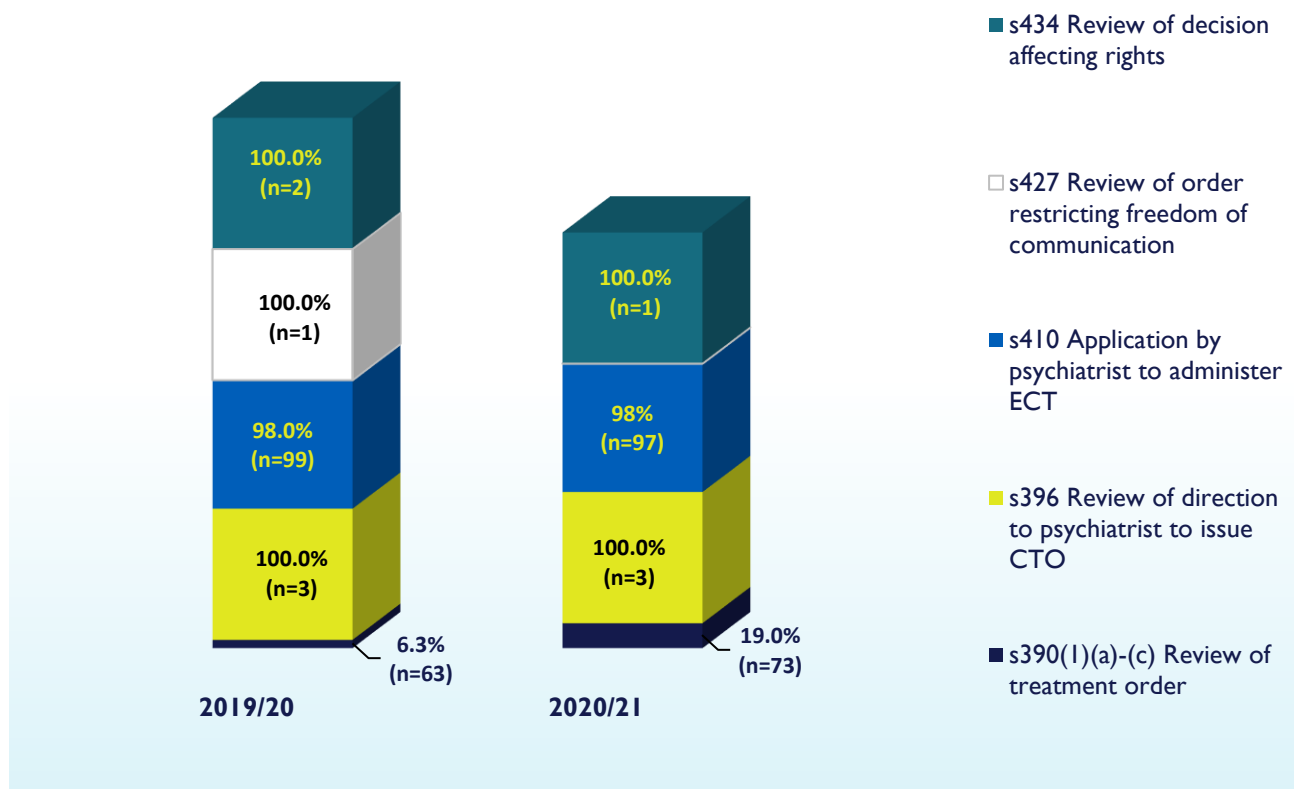
Applications to the Tribunal pursuant to sections 390 – 434 of the Act may be made by a range of interested persons, such as the psychiatrist, the consumer, or in some cases a third party. For the purposes of reporting, an application is ‘successful’ if the Tribunal grants orders in favour of the applicant. Accordingly, a ‘successful application’ is not necessarily one that is decided in favour of the consumer.

Because of the small numbers of some types of applications, the total number of completed applications for each type of hearing is identified in the label.

**Figure 14: 2020/21 ‘successful’ applications as a percentage of number of completed applications of that type**



**Figure 15: Yearly comparison of 'successful' applications by type**



Note: data for previous years is not available.

## Adjournments

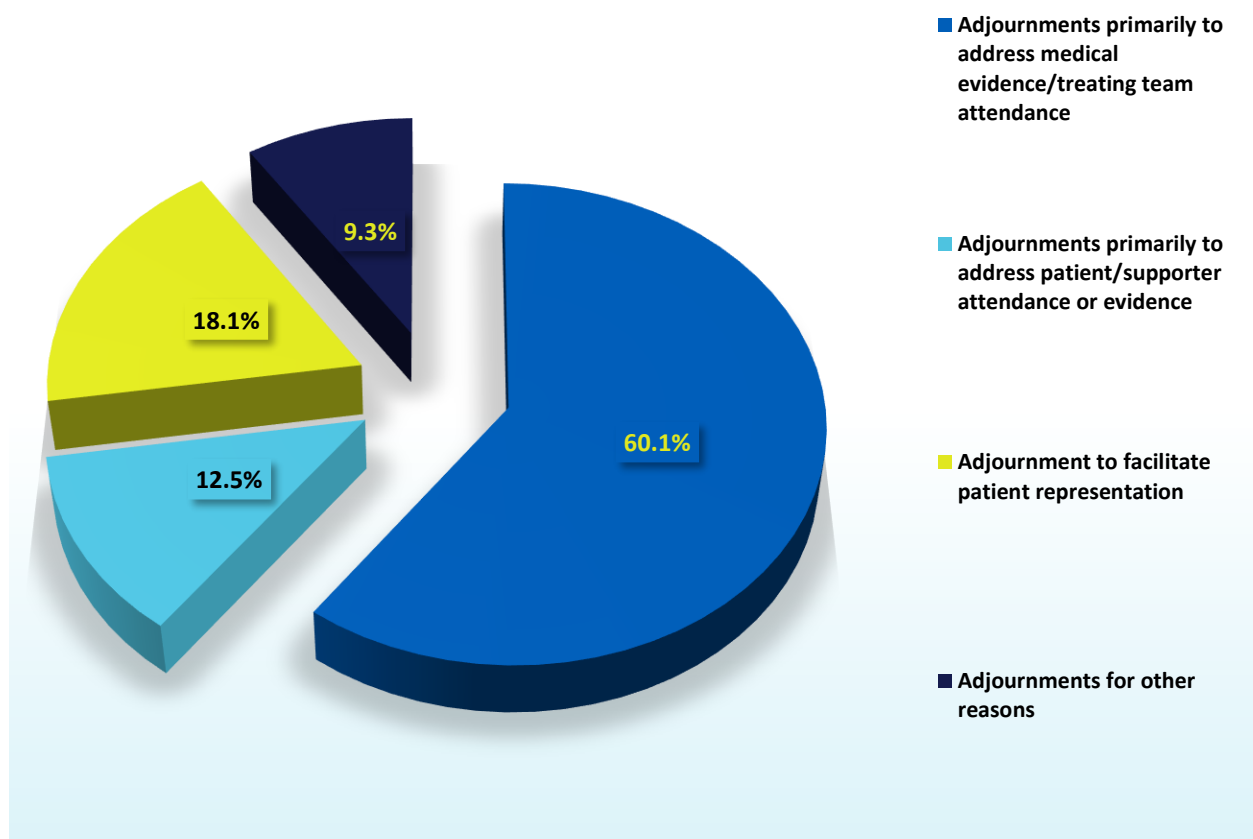
Out of the 2,659 hearings conducted during 2020/21, 514 (19.3%) were adjourned at the hearing.

Adjournments are distressing and inconvenient for consumers and their supporters, and a significant burden on public resources for hospitals, treating teams, the MHAS, the MHLC, and the Tribunal. Accordingly, the Tribunal generally will not adjourn a hearing except where necessary to ensure procedural fairness or to obtain further essential evidence.

The reasons for an adjournment generally fall into one of four categories:

- adjournments primarily to ensure the Tribunal receives adequate medical evidence or to permit the attendance of the treating psychiatrist or other key medical witness;
- adjournments primarily to permit the attendance of the consumer, a key supporter or a lay witness;
- adjournments to facilitate the consumer receiving advice and/or representation by the MHAS or the MHLC; or
- adjournments for any other reason (this year, these were primarily technological issues arising during videoconferences necessitated by COVID-19).

**Figure 16: 2020/21 reasons for adjournment as a percentage of all adjournments**



In 2020/21, most adjournments (60.1%) were primarily to address the adequacy of medical evidence or the attendance of members of the treating team. The President continues to liaise with the executives and clinical heads of health service providers to find ways to address this issue.

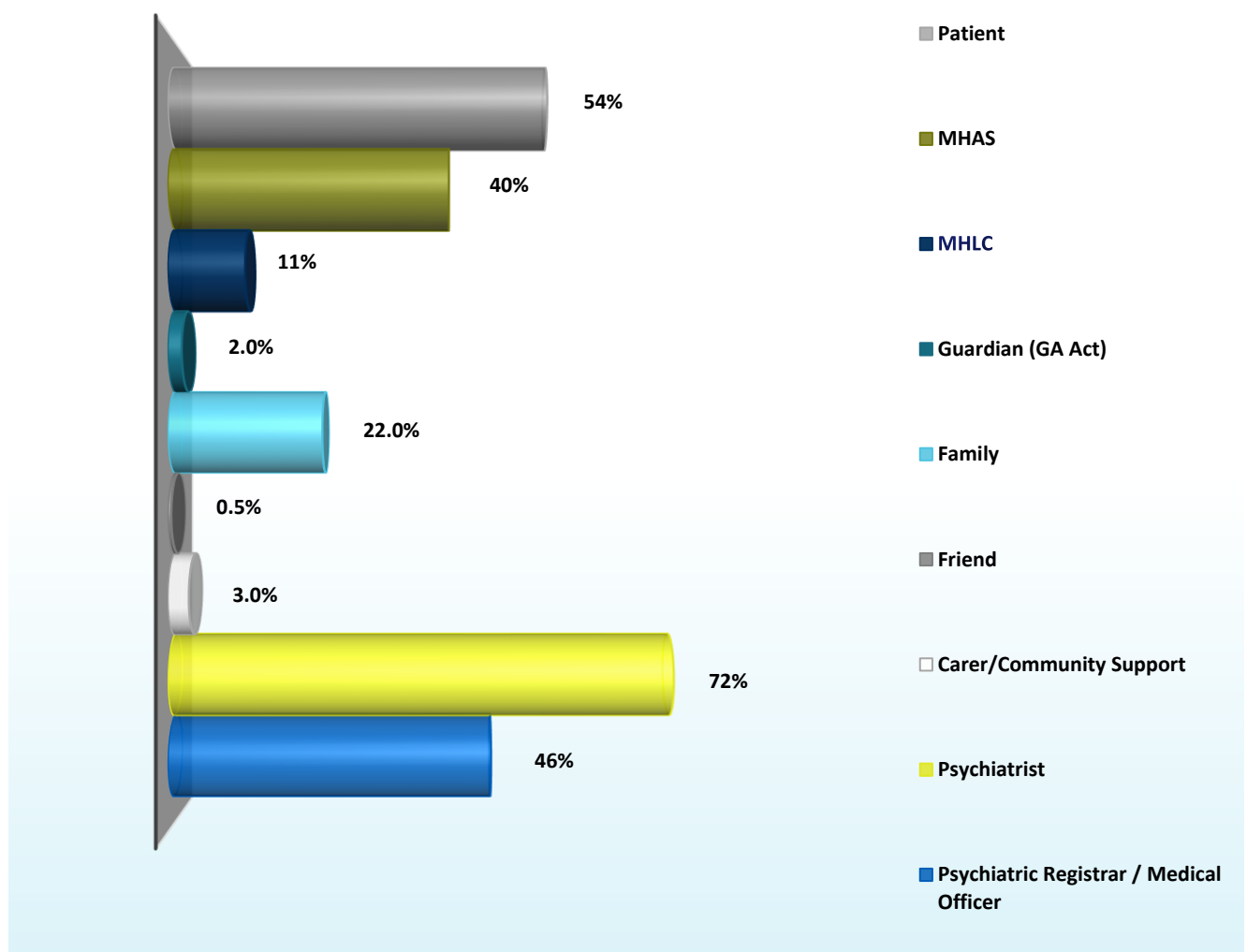
Adjournments to address consumer/supporter attendance reduced significantly during 2020/21, from 27.1% to 12.5%. This is likely attributable to the Tribunal's increased use of technology in the hearing. Consumers and supporters now have the option to attend hearings by videoconference using their computer, tablet or smartphone. This initiative commenced this year as part of the Tribunal's commitment to providing participants with a convenient range of participation options.

Unfortunately, adjournments for technical reasons concomitant with increased use of technology also increased in 2020/21, from 5.1% to 9.3%. During periods of high demand, the Statewide Telehealth Service struggled to cope and video connectivity suffered. In some cases, where the quality of the hearing connection was so poor that it interfered with procedural fairness, the Tribunal was forced to adjourn the hearing.

## Attendance at hearings

In 2020/21, the Tribunal conducted 2,659 hearings. Consumers attended hearings 53.6% of the time. Consumers were represented by the MHAS at 40% of hearings. Consumers were represented by the MHLC at 10.6% of hearings. Guardians appointed under the *Guardianship and Administration Act 1990* (WA) (GA Act) were present at 1.9% of hearings, and family members were present at 21.6% of hearings. Consumers attended the hearing with a friend at 0.5% of hearings and a carer at 2.9% of hearings. Psychiatrists attended 71.5% of hearings, and psychiatric registrars/medical officers attended 46% of hearings (either with a psychiatrist or alone).

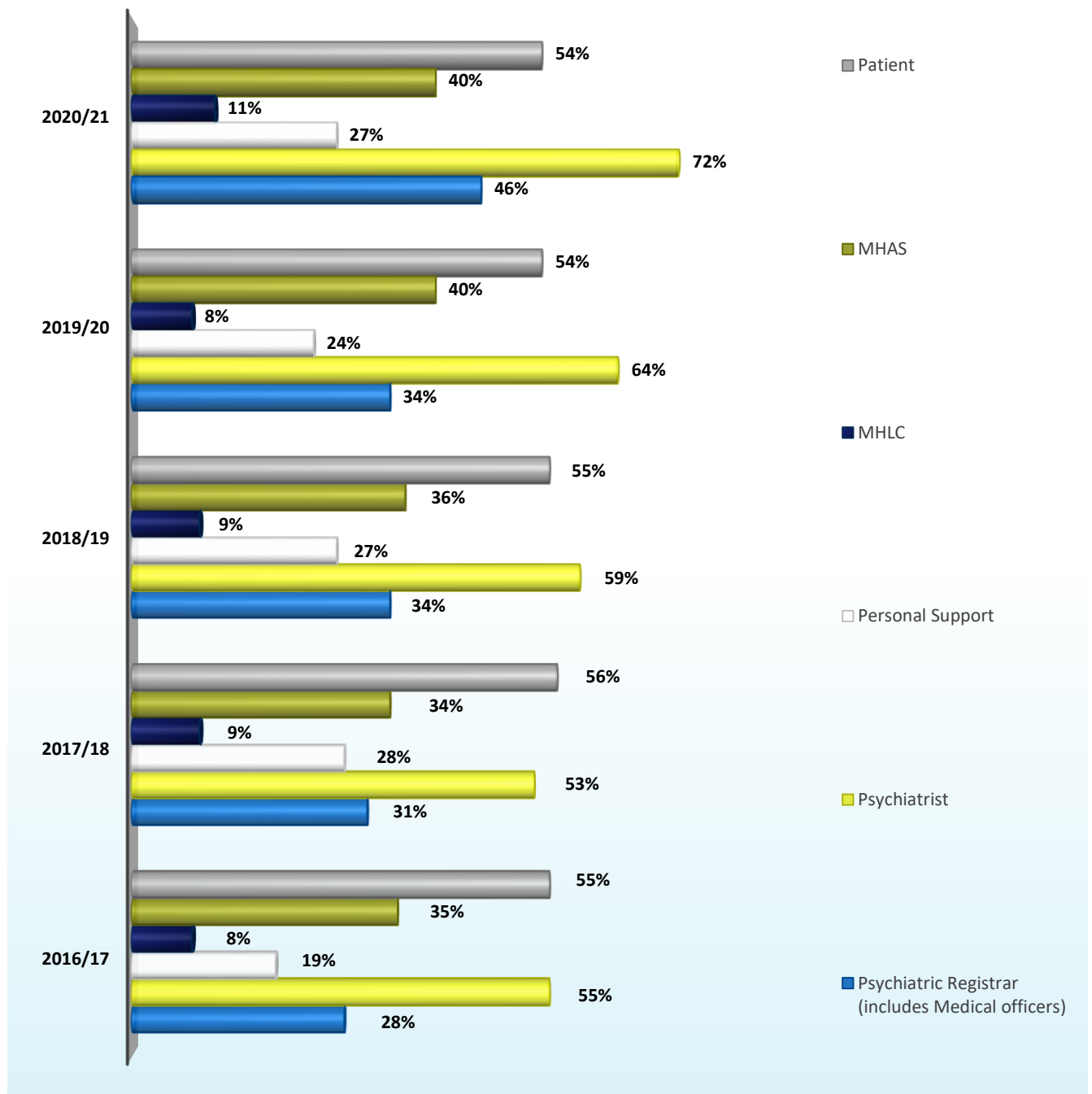
**Figure 17: 2020/21 frequency of hearing attendance by participant type (rounded)**



*Note: multiple parties attend most hearings.*



**Figure 18: Yearly comparison of frequency of hearing attendance by participant type (rounded)**



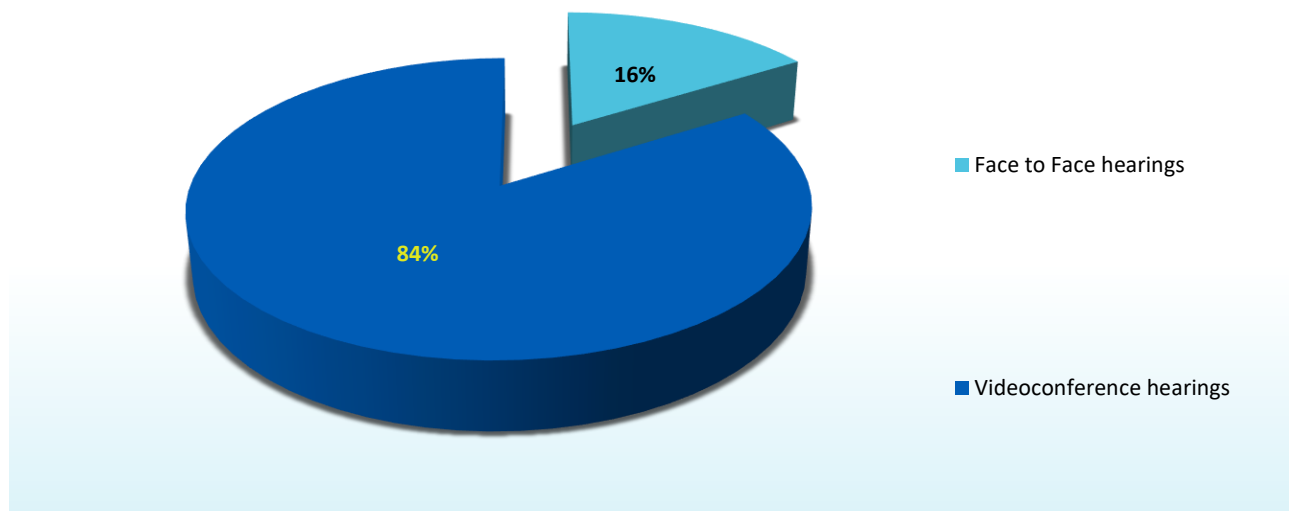
*Note: multiple parties attend most hearings. In 2016/17, separate figures for attendance by guardians, family, friends, and carer/community support were not reported. As all four categories were combined, direct comparisons are not available for these categories. For the purposes of comparison between 2016/17 and future years, a combined category of 'Personal Support' has been used.*

As demonstrated in Figure 18 there was a significant increase in participation by psychiatrists, psychiatric registrars and medical officers in 2020/21. There were small increases in participation by the MHLC and personal supporters. Attendance by patients and the MHAS were consistent with last year.

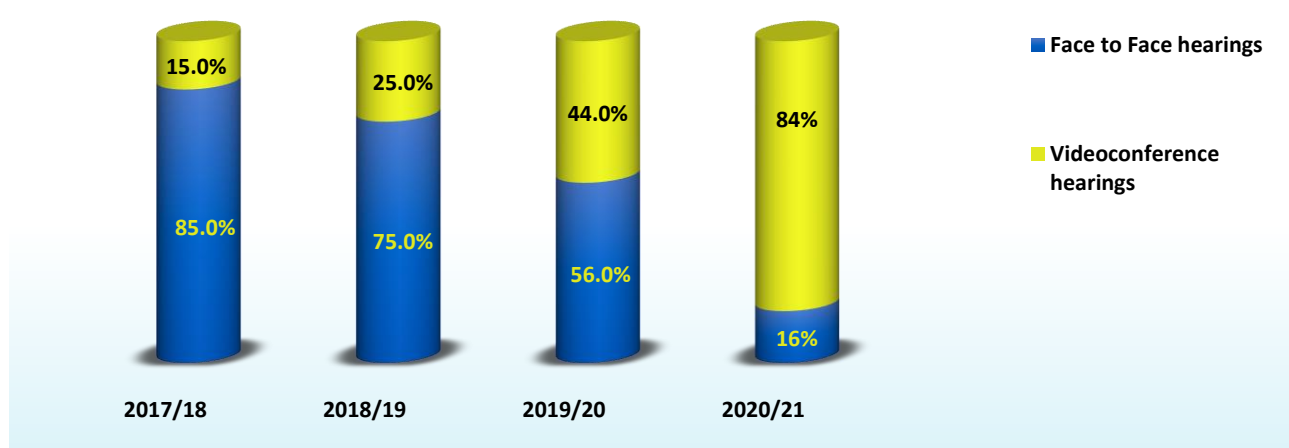
## Hearing mode

In 2020/21, the Tribunal conducted only 428 of its 2,659 hearings (16%) in-person at a health service. The Tribunal conducted 2,231 hearings by videoconference (84%). The Tribunal conducted hearings predominantly by videoconference during the year in response to the continuing impact of the COVID-19 pandemic and periodic lockdowns.

**Figure 19: 2020/21 hearing mode (rounded)**



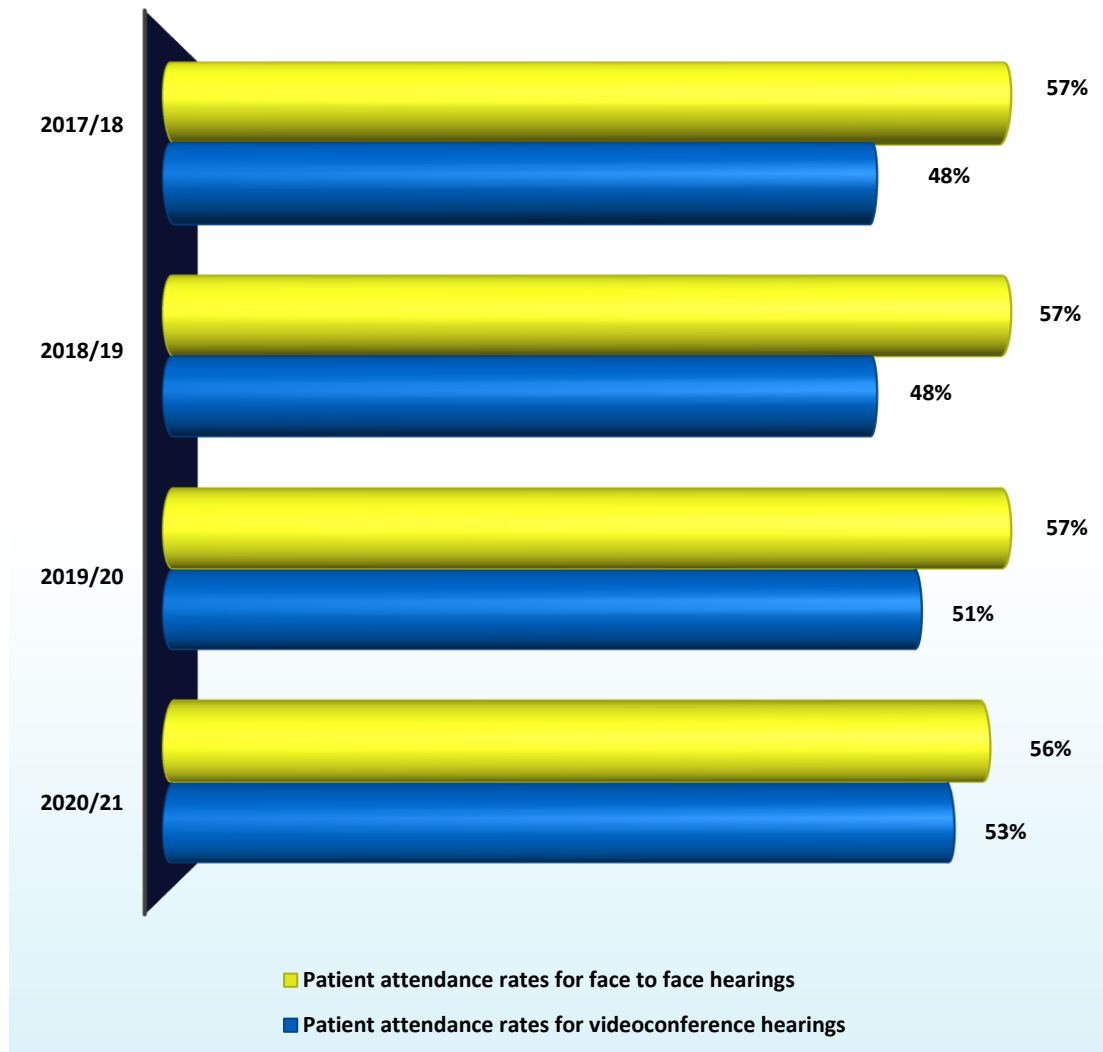
**Figure 20: Comparison of hearing mode by year (rounded)**



Note: data for previous years is not available.

In 2020/21, consumers attended in-person hearings at a rate of 56% and attended videoconference hearings at a rate of 53%. As demonstrated by Figure 21, consumer attendance at videoconference hearings increased in 2020/21, and consumer attendance at in-person hearings reduced slightly.

**Figure 21: Yearly comparison of consumer attendance at hearings by hearing mode**



*Note: data for previous years is not available.*

## Timeliness

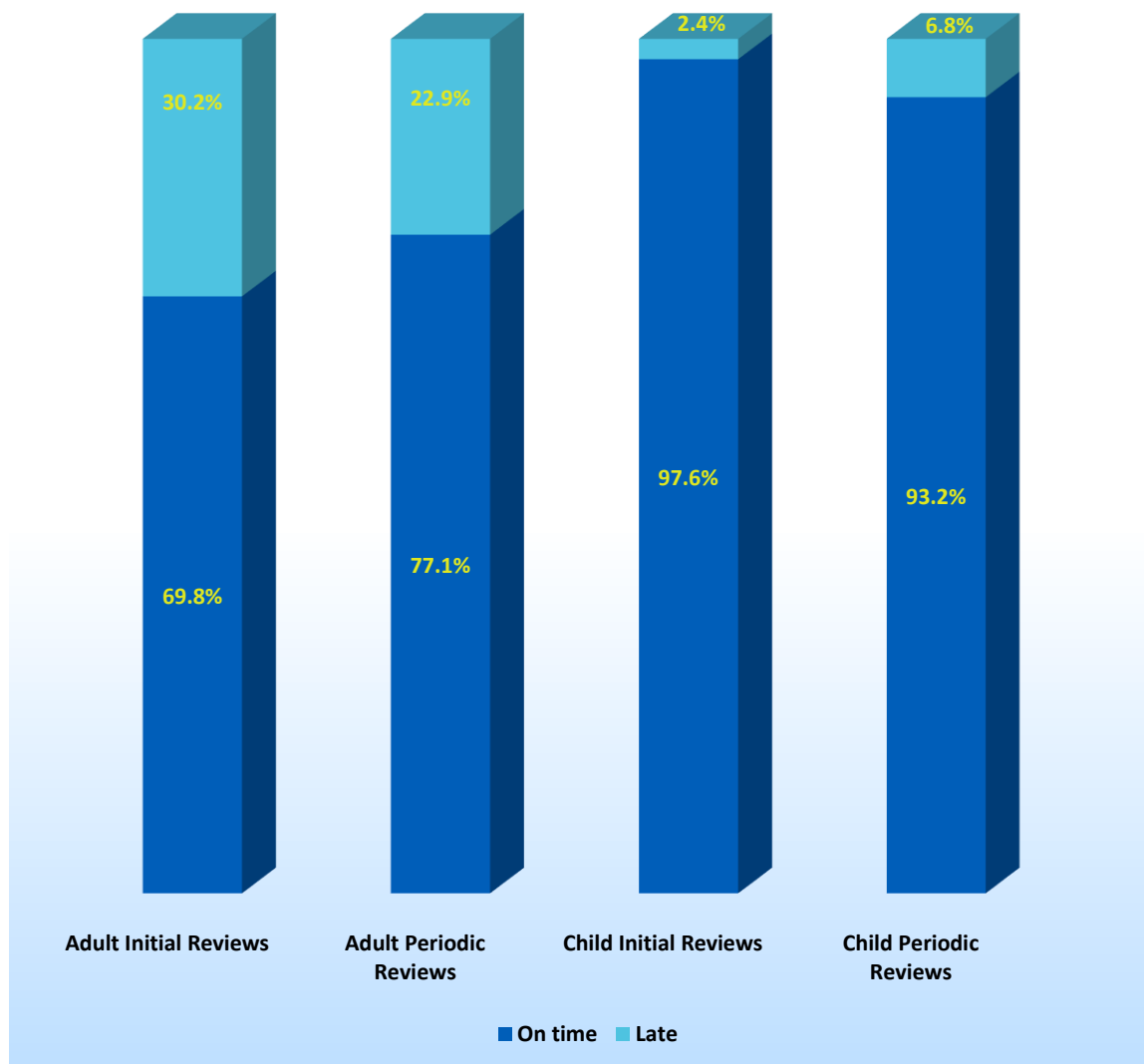
The Act requires that the Tribunal conduct an initial review of every involuntary treatment order made by a psychiatrist in Western Australia within 35 days (10 days for children) from the day the order is made (s 386). The Tribunal conducts a periodic review of each order again every three months (every 28 days for children) whilst the order remains in place (s 387). For consumers who have been on a community treatment order

for more than a year, the Tribunal reviews the order every six months. These statutory timeframes set out in the Act are the Tribunal's key performance indicators (KPIs).

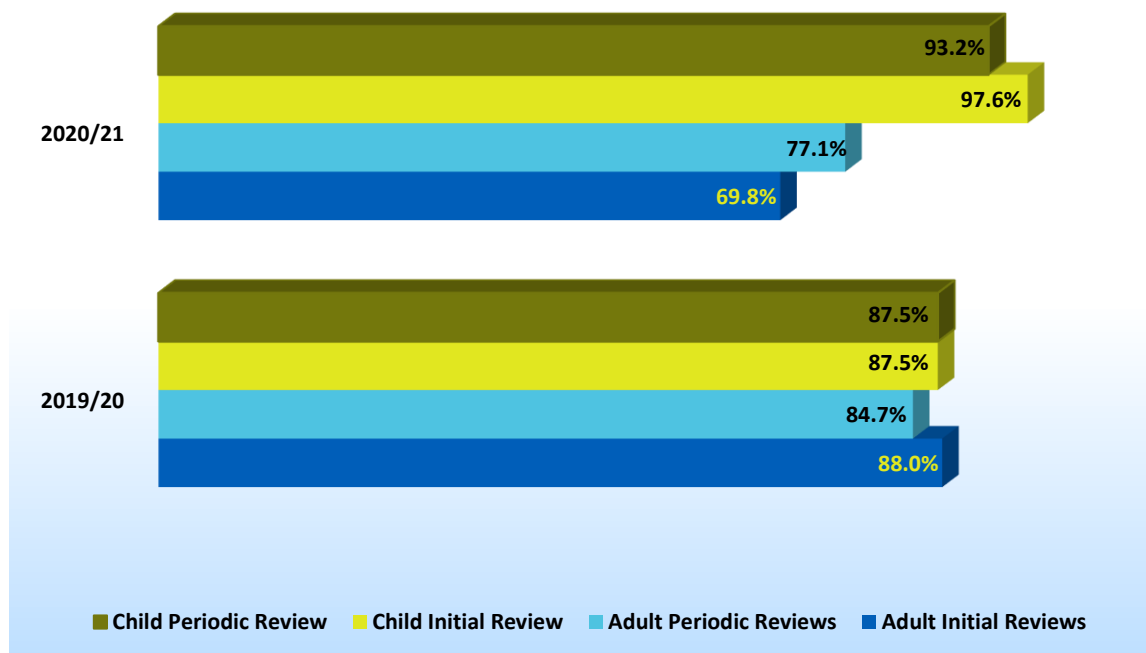
Because the Tribunal's case management system ICMS is obsolete, the Tribunal has never been able to extract timeliness data. In 2019/20, when the Tribunal resorted to manual collection of certain statistics, it began to collect data about the Tribunal's compliance with its statutory timeframes. Until now, the Tribunal has never had been able to reliably report its performance in respect of KPIs.

In 2020/21, the Tribunal conducted 69.8% of its initial review hearings for adult patients on time. For children, the Tribunal conducted 97.6% of initial review hearings on time. For periodic review hearings, adult hearings were conducted on time in 77.1% of matters. Children's periodic review hearings were timely in 93.2% of matters.

**Figure 22: 2020/21 hearing timeliness**



**Figure 23: Comparison of percentage of hearings conducted on time by year**



*Note: data for previous years is not available.*

The Tribunal aims for 100% compliance with its statutory timeframes. However, there are barriers to achieving this.

As noted above, in response to stakeholder feedback the Tribunal was required to reduce the number of hearings it lists each day and increase the time for each hearing to a full hour. This reduced the number of hearings conducted each day. Furthermore, restrictions imposed in response to outbreaks of COVID-19 have contributed to member shortages from time to time, particularly for psychiatrist members. These factors have impacted upon the Tribunal's hearing timeliness over the past two financial years.

At the end of quarter three 2019/20 (the last 'normal' quarter before COVID-19 impact), the Tribunal had considerably higher levels of timeliness in its Adult reviews:

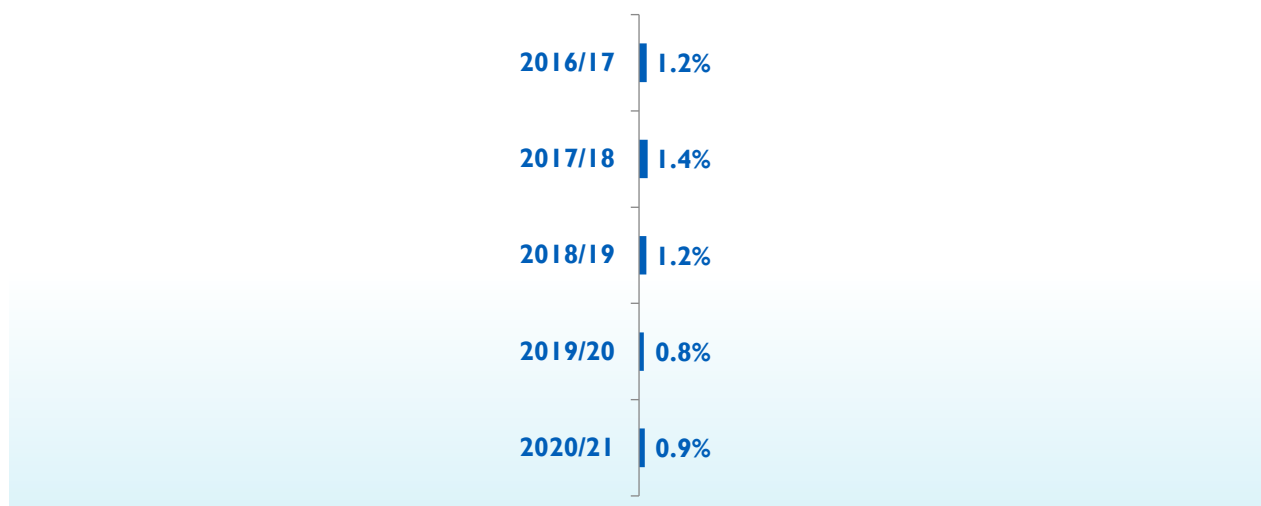
- Adult Initial Reviews: 97.1%
- Adult Periodic Reviews: 96.9%

In response to the 2020/21 data, the Tribunal continues to work to increase the number of hearings it conducts per week but is limited by the availability of its sessional psychiatrist members. Member recruitments will proceed in 2021/22 to address this.

## Requests for reasons for decisions

Consumers request reasons for the Tribunal's decision in only a small percentage of hearings. In 2020/21, the consumers or the SAT requested a transcript or an audio recording of the oral reasons for decision in 25 out of 2,659 matters (0.9%). This compares with 0.8% in 2019/20, 1.2% in 2018/19, 1.4% in 2017/18 and 1.2% in 2016/17.

**Figure 24: Comparison of percentage of requests for written reasons for decision by year**



## Review by the SAT

Decisions of the Tribunal are reviewable by the SAT.

The SAT may affirm, vary, or set aside the Tribunal's decision. Where it sets aside the Tribunal's decision, the SAT may either substitute its own decision or send the matter back to the Tribunal for reconsideration.

Because the SAT determines matters based on the evidence available at the date of its hearing, rather than the materials before the Tribunal at the original hearing, a decision by the SAT to revoke or set aside a decision of the Tribunal does not necessarily indicate error on the part of the Tribunal in deciding the matter.

Starting in 2019/20, the Tribunal changed how it reported the number and outcome of applications for review by the SAT. The purpose of this change was to improve the clarity and accuracy of the Tribunal's reporting.

The Tribunal now counts and reports on the following matters:

- the number of Tribunal decisions which are the subject of an application to the SAT for review under section 494 of the Act during the current financial year. This number will also be compared with previous years. The reporting year for *applications made* will be determined by the date of lodgement (see Figure 25).

- the outcome of the applications made during the current financial year, to the extent that those matters are resolved (see Figure 26); and
- the number of applications determined by the SAT in each financial year. The reporting year for *applications determined* will be the date of decision (see Figure 27).

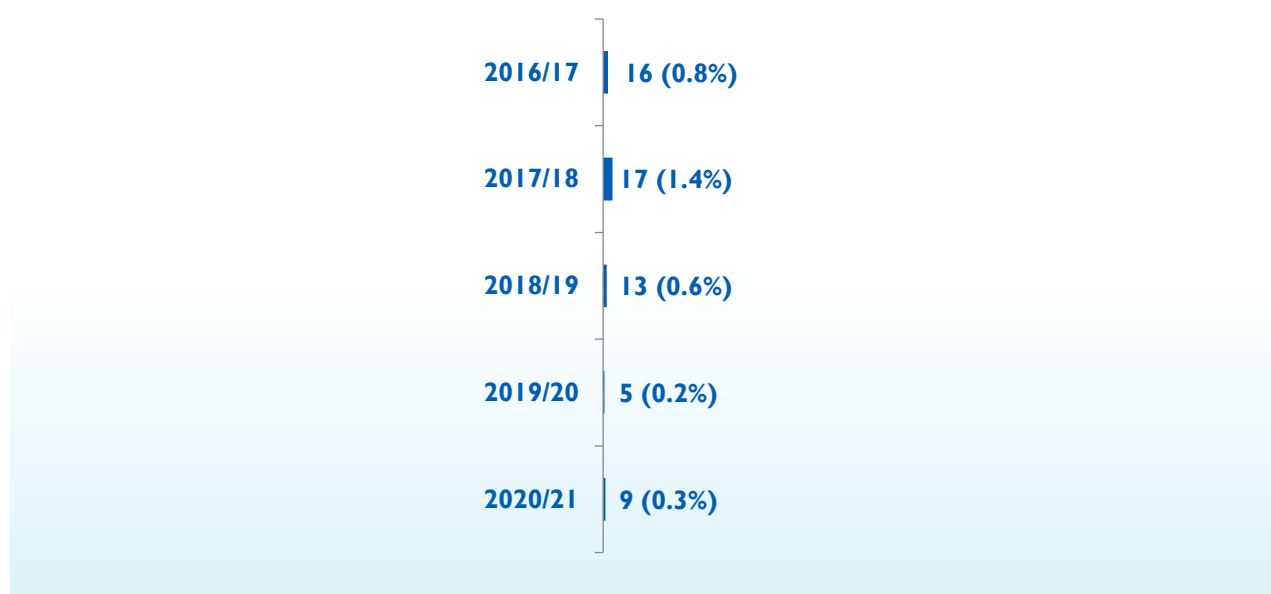
This means that the number of *applications made* in a financial year will not necessarily equal the number of *applications determined* in a financial year. Some applications are made in one financial year and determined by the SAT in the next.

All data reported in this report has been recounted using the new methodology (including data from earlier financial years). In previous Annual Reports, the reporting year for *applications made* and *applications determined* were not clearly articulated, resulting in ambiguity.

### Number of applications for review made to the SAT in 2020/21

In 2020/21, only nine out of 2,659 Tribunal decisions (0.3%) were the subject of an application to the SAT for review under section 494 of the Act. As shown in Figure 25, this number has increased from 2019/20 but has decreased significantly overall since 2017/18.

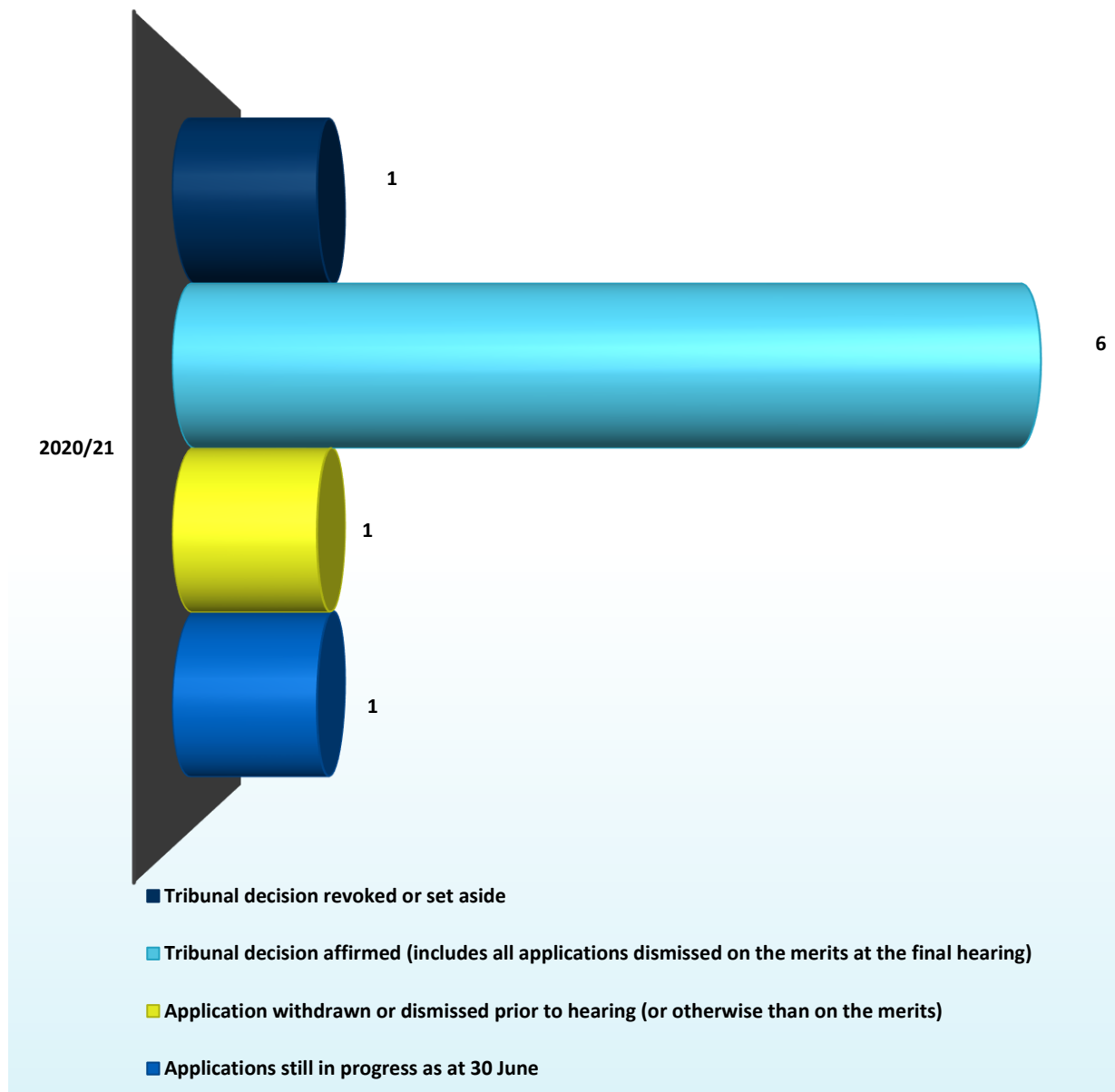
**Figure 25: Comparison of number and percentage of review applications made to the SAT during each financial year**



### Outcome of applications for review made to the SAT in 2020/21

In 2020/21, eight applications made to the SAT were resolved during the financial year (the ninth matter remained in progress as at 30 June 2021). The SAT revoked the Tribunal's decision in one matter, affirmed the Tribunal's decision in six matters, and one matter was withdrawn or dismissed prior to hearing.

**Figure 26: Outcome of applications for review made to the SAT during 2020/21**

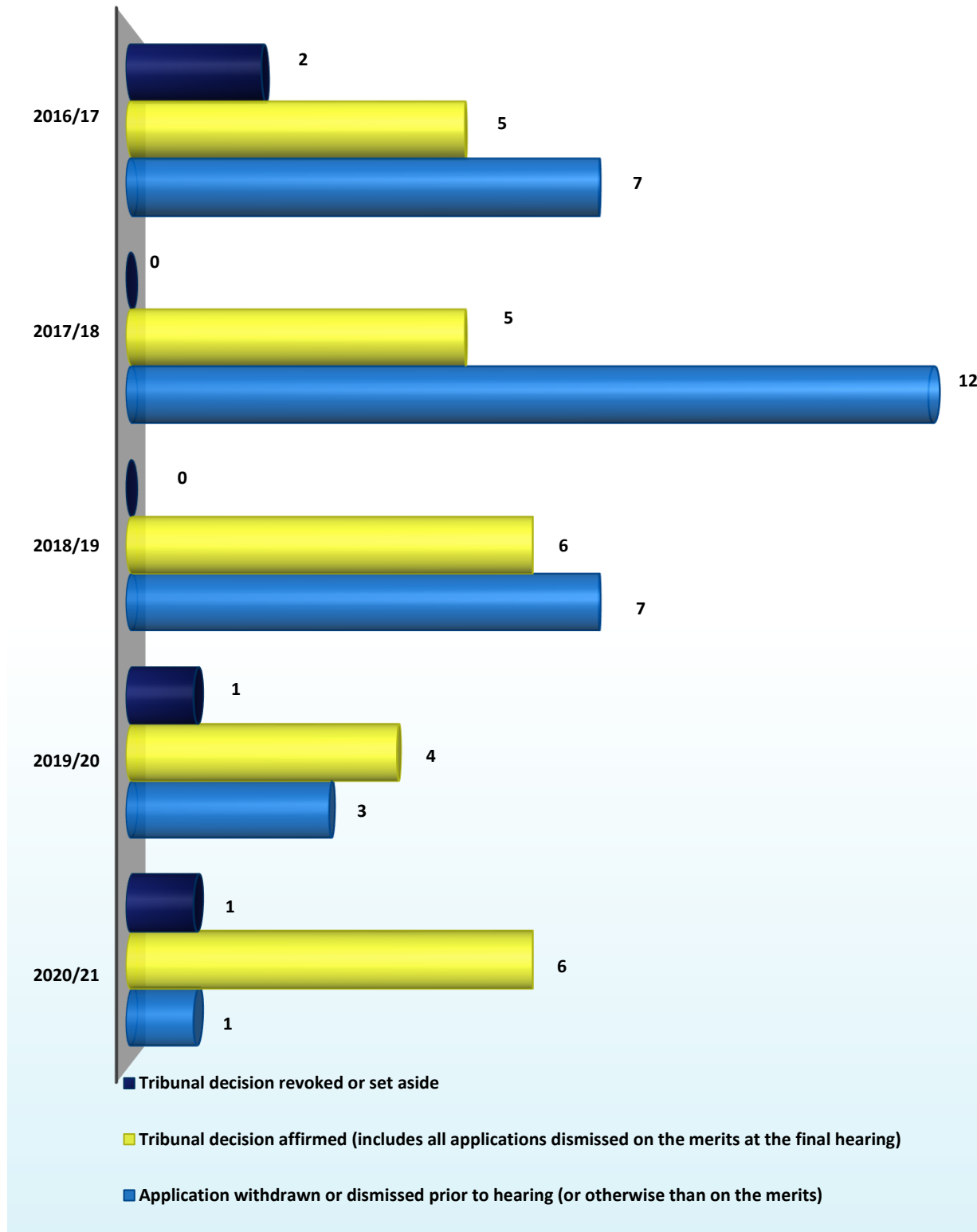


### **Outcome of all applications for review determined by the SAT by financial year**

The SAT determines matters based on the evidence available at the date of its hearing, rather than the materials before the Tribunal at the original hearing.



**Figure 27: Outcome of all applications for review determined by the SAT by financial year**



## Financial Report

In 2020/21, the Tribunal was funded by Parliamentary appropriation of \$2.781M.

The Tribunal is an affiliated body of the Mental Health Commission within the meaning of section 60(1)(b) of the *Financial Management Act 2006* (WA). The Tribunal's Parliamentary appropriation is paid directly to, and administered by, the Mental Health Commission.

The Mental Health Commission includes in its Annual Report a financial statement for the Tribunal.

# Appendix One: Tribunal Members at 30 June 2021

## Legal Members

Tribunal Member Name	Type	Commencement of Current Term	Expiry of Current Term
Karen Whitney	President	30 December 2017	29 December 2022
Jeanette De Klerk	Full-time	29 October 2019	28 October 2024
Camille Woodward	Full-time	1 February 2020	31 January 2025
Nicola Findson	Part-time	1 December 2020	30 November 2025
Christine Kannis	Part-time	29 October 2019	28 October 2024
Her Honour Catherine 'Kate' O'Brien	Part-time	29 October 2019	28 October 2024
Andrea McCallum	Sessional	2 May 2017	1 May 2022
Merran Strauss	Sessional	2 May 2017	1 May 2022

## Psychiatrist Members

Tribunal Member Name	Type	Commencement of Current Term	Expiry of Current Term
Dr Dawn Barker	Sessional	1 May 2018	30 April 2023
Dr Ann Bell	Sessional	1 May 2018	30 April 2023
Dr Nadine Caunt	Sessional	29 October 2019	28 October 2024
Dr Rowan Davidson	Sessional	20 December 2016	19 December 2021
Dr Daniel De Klerk	Sessional	1 May 2018	30 April 2023
Dr Kevin Dodd	Sessional	2 May 2017	1 May 2022
Dr Fiona Krantz	Sessional	1 May 2018	30 April 2023
Dr David Lord	Sessional	20 December 2016	19 December 2021
Dr Helen Milroy	Sessional	29 October 2019	28 October 2024
Dr Mircea Schineanu	Sessional	1 May 2018	30 April 2023
Dr Bryan Tanney	Sessional	2 May 2017	1 May 2022
Dr Kavitha Vijayalakshmi	Sessional	29 October 2019	28 October 2024
Dr Helen Ward	Sessional	1 May 2018	30 April 2023

## Community Members

Tribunal Member Name	Type	Commencement of Current Term	Expiry of Current Term
Dr Michael 'Lenney' Lenney	Full-time	29 October 2019	28 October 2024
Pearl Chaloupka	Part-time	4 May 2021	3 May 2026
Manjit Kaur	Part-time	29 October 2019	28 October 2024

The Hon. Keith Wilson AM	Part-time	29 October 2019	28 October 2024
Alan Alford	Sessional	2 May 2017	1 May 2022
Jennifer Bridge-Wright	Sessional	2 May 2017	1 May 2022
John Gardiner	Sessional	2 May 2017	1 May 2022
David Rowell	Sessional	2 May 2017	1 May 2022
Leone Shiels	Sessional	2 May 2017	1 May 2022
Anthony Warner AM LVO	Sessional	2 May 2017	1 May 2022
Ann White	Sessional	2 May 2017	1 May 2022

## Inactive Members

*(Inactive members are not available for hearings because of extended leave, ongoing potential conflicts of interest, or other extended unavailability.)*

Tribunal Member Name	Type	Commencement of Current Term	Expiry of Current Term
Geoffrey Abbott	Sessional Legal	20 December 2016	19 December 2021
Kathryn Barker	Sessional Legal	2 May 2017	1 May 2022
Harriette Benz	Sessional Legal	2 May 2017	1 May 2022
Reverend Rodger Bull	Sessional Community	2 May 2017	1 May 2022
Dr Emma Crampin	Sessional Psychiatrist	1 May 2018	30 April 2023
Peter Curry	Part-time Legal	29 October 2019	28 October 2024
Donna Dean	Sessional Community	2 May 2017	1 May 2022
Stuart Flynn	Sessional Community	2 May 2017	1 May 2022
Susan Grace	Sessional Community	2 May 2017	1 May 2022
Emeritus Prof. David Hawks AM	Sessional Community	2 May 2017	1 May 2022
John James	Sessional Community	2 May 2017	1 May 2022
Dr Aleksandra Jaworska	Sessional Psychiatrist	20 December 2016	19 December 2021
Lorrae Loud	Sessional Community	20 December 2016	19 December 2021
Dr Roland Main	Sessional Psychiatrist	20 December 2016	19 December 2021
Dr Ahmed Munib	Sessional Psychiatrist	1 May 2018	30 April 2023
Dr Steven Patchett	Sessional Psychiatrist	2 May 2017	1 May 2022
Michael Nicholls QC	Sessional Legal	2 May 2017	1 May 2022
Anne Seghezzi	Sessional Legal	2 May 2017	1 May 2022
Dr Gordon Shymko	Sessional Psychiatrist	20 December 2016	19 December 2021
Dr Helen Slattery	Sessional Psychiatrist	20 December 2016	19 December 2021
Dr Alexander Tait	Sessional Psychiatrist	20 December 2016	19 December 2021
Dr Gabor Ungvari	Sessional Psychiatrist	20 December 2016	19 December 2021
Jennifer Wall	Sessional Legal	29 October 2019	28 October 2024

## Appendix Two: Strategic Plan 2018 – 2020

### our vision

Accessible justice for those whose rights are affected by decisions made under the *Mental Health Act 2014*.

### our mission

Safeguarding rights and promoting compliance and accountability under the *Mental Health Act 2014* by:

- Ensuring involuntary treatment authorised under the Act strictly complies with the provisions and objects of the Act;
- Determining applications for treatment by electroconvulsive therapy and psychosurgery;
- Addressing non-compliance with prescribed requirements under the Act; and
- Providing independent review of the validity of involuntary treatment orders, the admission of long-term voluntary patients, the validity and appropriateness of nominated persons, and the reasonableness of certain decisions under the Act restricting freedoms and affecting rights.

### our values

- |                           |                |                  |              |
|---------------------------|----------------|------------------|--------------|
| ▪ Respect for the law     | ▪ Fairness     | ▪ Accessibility  | ▪ Competence |
| ▪ Equality before the law | ▪ Impartiality | ▪ Efficiency     | ▪ Integrity  |
|                           | ▪ Independence | ▪ Accountability |              |

### strategic objectives and action plan

We will achieve high quality patient-centred outcomes in every matter.

- The Tribunal will conduct a respectful, fair hearing resulting in a consistent, just decision in every matter by:
  - ✓ conducting hearings in accordance with the principles of procedural fairness;
  - ✓ deciding matters solely on the application of the relevant law to the facts of the case;
  - ✓ making factual findings based on an independent assessment of the quality and weight of the evidence presented, including the expert evidence;
  - ✓ interpreting the law consistently, impartially and independently;
  - ✓ treating everyone with fairness, courtesy, tolerance and compassion.
- The Tribunal will meet statutory objects, functions, obligations and timeframes in every matter by:
  - ✓ ensuring the Tribunal is validly constituted in every matter;
  - ✓ conducting every matter in accordance with the timeframes set out in the Act;
  - ✓ ensuring Tribunal proceedings, notices, orders and reasons are consistent with the Act;
  - ✓ having regard to the mandatory statutory factors required for each matter type;
  - ✓ ensuring Registry functions comply with the Act.

We will support stakeholder participation in the hearing process.	<ul style="list-style-type: none"> <li>▪ The Tribunal will provide patients, carers, families and supporters with the information they need to actively participate in hearings.</li> <li>▪ The President will make rules and or publish practice directions to ensure that hearing materials (including medical reports) are available to participants sufficiently in advance of hearings to facilitate proper consideration.</li> <li>▪ The Tribunal will provide a range of convenient participation options (including telephone, videoconference, or in-person).</li> <li>▪ The Tribunal will ensure participants know their participation at hearings is valuable and contributes to the outcome.</li> <li>▪ The Tribunal will make information about the Tribunal's processes publicly available and will refer participants to these sources of information.</li> </ul>
We will improve how we work and maximise our use of technology.	<ul style="list-style-type: none"> <li>▪ The Tribunal will implement a case management system which facilitates, monitors, and reports on compliance with statutory functions and statutory timeframes and supports the transition to electronic delivery of hearing materials.</li> <li>▪ The Tribunal will enhance its website to provide greater access to information and Tribunal forms.</li> <li>▪ The Tribunal will conduct video/tele-conference hearings as required to meet urgent timeframes and maximise Tribunal efficiency.</li> <li>▪ The Tribunal will transition to an electronic records management system to comply with its statutory record-keeping obligations.</li> </ul>
We will build our capacity and make best use of our resources.	<ul style="list-style-type: none"> <li>▪ The Tribunal will recruit and reappoint members solely on merit through an open recruitment process.</li> <li>▪ The President will develop and implement a mandatory continuing professional development program for members.</li> <li>▪ The Tribunal will appoint members on a full time, part time, or sessional basis as required to ensure availability and to maximise Tribunal efficiency.</li> <li>▪ Tribunal members will demonstrate mastery of the core competencies identified in the COAT Tribunal Competency Framework, conduct themselves in accordance with relevant Codes of Conduct, and demonstrate commitment to ongoing development.</li> <li>▪ The Tribunal Registry will utilise best practice in case flow management.</li> <li>▪ The Tribunal Registry will articulate its administrative processes in a manual which will be publicly available.</li> <li>▪ The President will commence implementation of the COAT Tribunal Excellence Framework.</li> <li>▪ The President will maintain links and exchange ideas with Mental Health Tribunals and other Tribunals throughout Australia.</li> <li>▪ All members and staff will demonstrate a commitment to best practice and maximising Tribunal efficiency.</li> </ul>

## Appendix Three: Relevant Principles

### **Mental Health Act s 10 - Objects of the *Mental Health Act 2014***

- (1) The objects of this Act are as follows —
- (a) to ensure people who have a mental illness are provided the best possible treatment and care —
    - (i) with the least possible restriction of their freedom; and
    - (ii) with the least possible interference with their rights; and
    - (iii) with respect for their dignity;
  - (b) to recognise the role of carers and families in the treatment, care and support of people who have a mental illness;
  - (c) to recognise and facilitate the involvement of people who have a mental illness, their nominated persons and their carers and families in the consideration of the options that are available for their treatment and care;
  - (d) to help minimise the effect of mental illness on family life;
  - (e) to ensure the protection of people who have or may have a mental illness;
  - (f) to ensure the protection of the community.
- (2) A person or body performing a function under this Act must have regard to those objects.

### **Mental Health Act Schedule 1 - Charter of Mental Health Care Principles**

#### **Purpose**

The Charter of Mental Health Care Principles is a rights-based set of principles that mental health services must make every effort to comply with in providing treatment, care and support to people experiencing mental illness.

The Charter is intended to influence the interconnected factors that facilitate recovery from mental illness.

#### **Principle 1: Attitude towards people experiencing mental illness**

A mental health service must treat people experiencing mental illness with dignity, equality, courtesy and compassion and must not discriminate against or stigmatise them.

#### **Principle 2: Human rights**

A mental health service must protect and uphold the fundamental human rights of people experiencing mental illness and act in accordance with the national and international standards that apply to mental health services.

#### **Principle 3: Person-centred approach**

A mental health service must uphold a person-centred focus with a view to obtaining the best possible outcomes for people experiencing mental illness, including by recognising life experiences, needs, preferences, aspirations, values, and skills, while delivering goal-oriented treatment, care, and support.

A mental health service must promote positive and encouraging recovery-focused attitudes towards mental illness, including that people can and do recover, lead full and productive lives and make meaningful contributions to the community.

#### **Principle 4: Delivery of treatment, care and support**

A mental health service must be easily accessible and safe and provide people experiencing mental illness with timely treatment, care and support of high quality based on contemporary best practice to promote recovery in the least restrictive manner that is consistent with their needs.

#### **Principle 5: Choice and self-determination**

A mental health service must involve people in decision-making and encourage self-determination, cooperation and choice, including by recognising people's capacity to make their own decisions.

#### **Principle 6: Diversity**

A mental health service must recognise and be sensitive and responsive to, diverse individual circumstances, including those relating to gender, sexuality, age, family, disability, lifestyle choices and cultural and spiritual beliefs and practices.

#### **Principle 7: People of Aboriginal or Torres Strait Islander descent**

A mental health service must provide treatment and care to people of Aboriginal or Torres Strait Islander descent that is appropriate to, and consistent with, their cultural and spiritual beliefs and practices and having regard to the views of their families and, to the extent that it is practicable and appropriate to do so, the views of significant members of their communities, including elders and traditional healers, and Aboriginal or Torres Strait Islander mental health workers.

#### **Principle 8: Co-occurring needs**

A mental health service must address physical, medical, and dental health needs of people experiencing mental illness and other co-occurring health issues, including physical and intellectual disability, and alcohol and other drug problems.

#### **Principle 9: Factors influencing mental health and wellbeing**

A mental health service must recognise the range of circumstances, both positive and negative, that influence mental health and wellbeing, including relationships, accommodation, recreation, education, financial circumstances and employment.

#### **Principle 10: Privacy and confidentiality**

A mental health service must respect and maintain privacy and confidentiality.

#### **Principle 11: Responsibilities and dependants**

A mental health service must acknowledge the responsibilities and commitments of people experiencing mental illness, particularly the needs of their children and other dependants.

#### **Principle 12: Provision of information about mental illness and treatment**



A mental health service must provide, and clearly explain, information about the nature of the mental illness and about treatment (including any risks, side effects, and alternatives) to people experiencing mental illness in a way that will help them to understand and to express views or make decisions.

### **Principle 13: Provision of information about rights**

A mental health service must provide, and clearly explain, information about legal rights, including those relating to representation, advocacy, complaints procedures, services and access to personal information, in a way that will help people experiencing mental illness to understand, obtain assistance, and uphold their rights.

### **Principle 14: Involvement of other people**

A mental health service must take a collaborative approach to decision making, including respecting and facilitating the right of people experiencing mental illness to involve their family members, carers and other personal support persons in planning, undertaking, evaluating, and improving their treatment, care and support.

### **Principle 15: Accountability and improvement**

A mental health service must be accountable, committed to continuous improvement and open to solving problems in partnership with all people involved in the treatment, care and support of people experiencing mental illness, including their family members, carers and other personal and professional support persons.

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