annual report 2021/22

15 August 2022

The Honourable Amber-Jade Sanderson MLA
Minister for Health; Mental Health
5th 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 2021 to 30 June 2022. This will be my last report as President, and I thank you for your support in this role this past year.

Yours faithfully

Karen Whitney
President
Mental Health Tribunal

This page intentionally left blank

Contents

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 patients' (although we prefer the language 'involuntary consumers' and will use that term instead). A psychiatrist makes a consumer 'involuntary' by making an 'involuntary treatment order'. Without adequate safeguards, the 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 the order remains 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 the participants' views on a question and then makes an independent decision on that 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 before the hearing. The Tribunal expects the consumer's psychiatrist and the 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 legal member, 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 2022, the Tribunal also had:

- six active legal members (two full-time, two part-time and two sessional members);
- nine active sessional psychiatrist members; and
- eight active community members (one full-time, three part-time and four sessional members).

A further eight 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 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

Financial year 2021/22 marks the fifth and final year of my term as the President of the Tribunal. During this year, the Tribunal continued to make significant advances in technology, resources, professionalism and quality assurance. This year the COVID-19 public health emergency again challenged the Tribunal's ability to conduct in-person hearings. It also resulted in delays to some hearings, when consumers, treating teams and Tribunal members were ill or were required to isolate as close contacts. Nevertheless, the Tribunal continued to conduct hearings and promote compliance and accountability under the Act. In this report I highlight the Tribunal's key achievements, its most significant issues and noteworthy events during 2021/22.

Key achievements

Funding and development of new case management system

As reported in earlier Annual Reports, the Tribunal's existing case management system (a Microsoft Dynamics CRM 2013, known as 'ICMS') was inherited from the Tribunal's predecessor body the Mental Health Review Board. Following an IT system analysis in 2019, PriceWaterhouseCoopers reported that the case management system was obsolete and required replacing. Between 2019 and 2021, the Tribunal canvassed all available options to fund a new system, but no funding was available. In the meanwhile, the Tribunal explored other options.

In June 2021, the Tribunal commenced a project to develop a 'proof of concept' using Microsoft Dynamics 365 CRM and Microsoft Customer Voice to define and record the Tribunal's case management business rules and workflows. The goal of this project was to set the groundwork for an eventual production solution using the Microsoft Dynamics 365 product suite.

The project focused on automating the production of hearing outcome notices and creating a single-source database to record the Tribunal's statistical data. It commenced preliminary operation in May 2022. A concurrent project, to extract and visualise the data flowing into the database using Microsoft Power BI, commenced in late 2021 and is currently being tested. The goal is to improve the Tribunal's reporting capacity, with increased data available to the Tribunal to monitor compliance with the Act.

The two components of this project work together to achieve the following high priority needs of the case management system project:

- automating the production of timely, accurate, clear and concise notifications to consumers and treating teams;
- automating the process of accurately recording the outcomes for every type of consumer hearing;
- increasing the number of data points collected to facilitate vastly improved reporting of Tribunal data commencing in the financial year 2022/23; and
- reducing manual processing and increasing reliability of data.

In the financial year 2021/22 state budget, the McGowan Government announced a $500 million Digital Capability Fund for the purpose of upgrading legacy IT systems and streamlining government services. The

Tribunal was encouraged to apply for funding for the new case management system from this fund. I am pleased to report that the financial year 2022/23 budget papers revealed an appropriation from the Digital Capability Fund for the Tribunal's case management system in the amount of $920,000. This will comprise allocation of $700,000 in the financial year 2022/23 and a further $200,000 in the financial year 2023/24, with $10,000 each year during 2024/25 and 2025/26. This is in addition to the ongoing increase to the Tribunal's annual appropriation announced in September 2021, which brings the Tribunal's financial year 2022/23 annual funding to $3.7 million, up from $3.577 million in 2021/22. This is a truly outstanding outcome.

Completion of Tribunal member restructure

As reported in earlier Annual Reports, the Tribunal underwent a major restructure of its member appointments in late 2019. The restructure involved a shift from the use of exclusively casual (sessional) members to a mix of full-time, part-time and sessional members. Whilst the restructure resulted in considerable cost savings and improvements in service delivery, there was a transition period during which the Tribunal had more sessional members than it required to meet operational needs. As a result, the Tribunal was unable to fully utilise all sessional members, particularly Community Members and Legal Members.

During the financial year 2021/22, the Tribunal had 30 sessional members whose terms were scheduled to expire, providing a chance to optimise the number of sessional members to the Tribunal's operational needs. In December 2021, the Tribunal advertised for expressions of interest for appointment of members. The process was once again competitive, with 109 expressions of interest received from many highly qualified candidates, including existing members seeking reappointment. On 2 May 2022, the Governor in Council appointed the following sessional members to the Tribunal:

- Ms Kristy Bradshaw, Sessional Legal Member;
- Ms Andrea McCallum*, Sessional Legal Member;
- Dr Rowan Davidson*, Sessional Psychiatrist Member;
- Dr Kevin Dodd*, Sessional Psychiatrist Member;
- Dr David Lord*, Sessional Psychiatrist Member;
- Dr Nicola Simmonds, Sessional Psychiatrist Member;
- Dr Bryan Tanney*, Sessional Psychiatrist Member;
- Ms Jennifer Bridge-Wright*, Sessional Community Member;
- Ms Renee McLennan, Sessional Community Member;
- Ms Leone Shiels*, Sessional Community Member; and
- Ms Ann White*, Sessional Community Member.

**denotes reappointment*

This brings the Tribunal membership down to a more manageable 23 active members (plus the President). Having fewer sessional members means that the Tribunal will be better able to equip and train sessional members. It will also mean more frequent sitting opportunities for sessional members. We will continue to monitor member numbers with a view to balancing hearing coverage and administrative costs.

Unfortunately, as has been the trend in this and other jurisdictions, the recruitment process resulted in very few applications from psychiatrists (other than existing psychiatrist members applying for reappointment). I am aware that the nationwide psychiatrist shortage has made it extremely difficult to find experienced psychiatrists willing to sit on Tribunals. Moreover, the Tribunal's experience is that irrespective of the number of sessional psychiatrist members appointed, there are still days of the week (particularly Mondays and Fridays) and periods of the year (particularly during summer in both the northern and southern hemispheres) where few psychiatrist members are available to sit.

The obvious solution is the appointment of up to three full-time psychiatrist members to the Tribunal, to ensure there is adequate coverage on all days of the week. Positions were created for this purpose in 2019 but to date, despite two nationwide searches, the Tribunal has not received a single application for a full-time psychiatrist member. This is likely because the salary for a full-time psychiatrist member is set by the Public Sector Commissioner at the same level as a full-time legal member. Whilst this reflects that the responsibility and experience required for both roles are equal, it does not reflect the significant salaries available to psychiatrists in the current market.

I note that in most other Australian jurisdictions, it is not mandatory to have a psychiatrist member on every decision-making panel of their Mental Health Tribunals. As long as the statutory requirement for a psychiatrist member on every panel remains in Western Australia, this issue will continue to jeopardise the Tribunal's ability to meet its statutory obligations.

Registry restructure

The Tribunal's Registrar is the Executive Officer of the Tribunal and has statutory responsibility for ensuring that parties are notified of hearings and that hearings are conducted within their statutory timeframes. The Registrar is also responsible for ensuring that the Tribunal's decisions are accurately documented and communicated to parties. The Registrar has public sector staff to assist in fulfilling these statutory functions.

Because of significant constraints on the Tribunal's financial resources between 2015 and 2021, Registry resources were limited. Nevertheless, the workload increased greatly because of changes to the Act which came into effect in 2015. Additionally, Registry staff duties increased as the number of manual 'work arounds' (necessitated by the inability of the case management system to function in a manner which met the Tribunal's operational needs) escalated.

To ensure optimisation of Registry resources, in mid-2021 the Mental Health Commission (MHC) engaged Price Consulting Group to review and report on Registry roles and functions. After a careful review of Registry workflows, processes and staffing, in September 2021 the MHC approved the following changes to the Registry structure:

- the level 3 Case Management Officer positions were retitled Registry Officer, with a broadening of duties to align the role with Public Sector Commission (PSC) competency standards;
- the level 4 Senior Case Management Officer position was retitled Senior Registry Officer, with a broadening of duties to align the role with PSC competency standards;

- a level 5 Registry Operations Coordinator position was created, based on duties performed by previous temporary roles such as level 5 Project Officer and level 5 Business Support Officer; and
- a level 6 Deputy Registrar position was created, to address requirements in Registry workflow and to align the structure and workflows with other tribunals and courts.

During late 2021 and early 2022, all positions were advertised and underwent a merit-based selection process. All positions other than the Senior Registry Officer were filled. A review of the L3 Executive Assistant position remains in progress.

Additionally, in April 2022, the level 7 Registrar-Manager position (which had not been reviewed since 2012) was reviewed and reclassified to reflect significant changes in the role and level of responsibility. The position was reclassified as level 8 Registrar-Executive Officer. Re-advertisement of the position was not required under the relevant Public Sector Commissioner's instruction.

The restructure removed the previous flat structure of Registry's staffing profile and changed existing position titles to more accurately reflect the duties and to better align with PSC standards and the Act. As a result of these changes, Registry staff have clear career progression and easy access to a direct supervisor at an appropriate decision-making level. The Registrar has more opportunity to focus on strategic leadership and stakeholder engagement. Ultimately the Registry is better resourced to fulfil its primary function of supporting the Tribunal.

Other improvements to technology

The Tribunal has made further progress in the preparation of its approved electronic document and records management system (EDRMS), most notably the finalisation of its dataset and record types. Investigations regarding security and access have been undertaken and the Tribunal is close to migrating all records into the EDRMS. MHC has supported the Tribunal throughout this process. The Tribunal anticipates full use of the EDRMS in the first half of 2022/23. This will ensure that the Tribunal aligns with the requirements set out in its Record Keeping Plan and improve compliance with the *State Records Act 2000* (WA).

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 leads the review process, and the review is guided by a Steering Group. As President of the Tribunal, I am a member of the Steering Group along with other key stakeholders. During 2021/22, the Steering Group continued to meet on a monthly basis with a view to production of a final report to the Minister by early 2023.

Professional development

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

The Tribunal's November 2021 whole-of-Tribunal training day featured a presentation by the Chief Psychiatrist Dr Nathan Gibson on 'The Role of the Office of the Chief Psychiatrist in Influencing Change'.

Dr Kelly McKenna-Kerr also spoke to Tribunal members on Autism Spectrum Disorder. Members engaged in a discussion on the ongoing statutory review of the Act.

The Tribunal's May 2022 whole-of-Tribunal training involved an update on new developments in the Tribunal's case management system and included step-by-step training for members in the changes to processes for recording hearing outcomes. The Tribunal also facilitated professional mask-fitting for members to ensure they are adequately protected when they conduct hearings on-site at hospitals and health services. Tribunal members held a forum discussion 'Conundrums, interesting cases and the Mental Health Act' in which they discussed interesting cases, ethical issues, and powers under the Act. Finally, psychiatrist member (and 2021 WA Australian of the Year) Dr Helen Milroy presented on 'Trauma and Recovery: Implications for the Mental Health and Tribunal Systems.'

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, during which they discuss relevant legal issues arising in the Tribunal. Psychiatrist members also participate in peer review meetings.

Finally, six Tribunal members as well as the President, Registrar and the Deputy Registrar attended the annual online conference for the Council of Australasian Tribunals (COAT) in June 2022. Because of the uplift to the Tribunal's 2021/22 budget, the Tribunal was able to invite all members to express interest in attending the conference for the first time, and all those who expressed an interest were invited to attend.

Significant issues

Now that the Tribunal has been provided with funding for its new case management system, the Tribunal's most immediate issue is proceeding to tender for development of the new system. The Tribunal is liaising with the MHC and Department of Finance to ensure this process is managed in a timely manner.

Notable events and thanks

As discussed above, during the 2021/22 financial year, the following Tribunal members left the Tribunal following the expiration of their terms:

- Geoff Abbott, Sessional Legal Member
- Kathryn Barker, Sessional Legal Member
- Harriette Benz, Sessional Legal Member
- Michael Nicholls, Sessional Legal Member
- Anne Seghezzi, Sessional Legal Member
- Merranie Strauss, Sessional Legal Member
- Dr Aleksandra Jaworska, Sessional Psychiatrist Member
- Dr Roland Main, Sessional Psychiatrist Member
- Dr Steve Patchett, Sessional Psychiatrist Member
- Dr Gordon Shymko, Sessional Psychiatrist Member
- Dr Helen Slattery, Sessional Psychiatrist Member

- Dr Alexander Tait, Sessional Psychiatrist Member
- Dr Gabor Ungvari, Sessional Psychiatrist Member
- Alan Alford, Sessional Community Member
- Rodger Bull, Sessional Community Member
- Donna Dean, Sessional Community Member
- Stuart Flynn, Sessional Community Member
- John Gardiner, Sessional Community Member
- Susan Grace, Sessional Community Member
- David Hawks, Sessional Community Member
- John James, Sessional Community Member
- Lorrae Loud, Sessional Community Member
- David Rowell, Sessional Community Member
- Anthony Warner, Sessional Community Member

Additionally, Her Honour Catherine 'Kate' O'Brien, part-time Legal Member, retired from the Tribunal in March 2022.

On behalf of the Tribunal I thank these members for their involvement over many years and wish them well for the future.

Finally, I thank all Tribunal members, the Registrar and Registry staff for their continuing support during the 2021/22 financial year.

I remain grateful to the Minister for Health; Mental Health the Honourable Amber-Jade Sanderson MLA, the former Minister for Mental Health the Honourable Stephen Dawson MLC, the Mental Health Commissioner Jennifer McGrath, and the staff of the Mental Health Commission (particularly the Corporate Services team) for their ongoing support.

This will be my last annual report as I retire from full-time work at the end of my term on 29 December 2022. I am grateful to everyone who contributed to the transformation of the Tribunal during the past five years. Our vision during this journey has been 'accessible justice for those whose rights are affected by decisions made under the *Mental Health Act 2014*'. I hope the Tribunal experience has improved for the consumers, families and carers who rely on the Tribunal to safeguard their rights under the Act.

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. We refer to these consumers as 'involuntary consumers'. A psychiatrist makes a consumer 'involuntary' by making an 'involuntary treatment order'. There are two types of involuntary treatment orders:

- an inpatient treatment order, which requires the consumer to stay in hospital for treatment without consent; and
- a community treatment order, which also 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 the participants' views on a question and then makes an independent decision on that 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 for 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 legal member, 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 always attend using their computer, tablet or phone.

At the hearing, the Tribunal considers a medical report prepared by the consumer's psychiatrist before the hearing. The Tribunal expects the consumer's psychiatrist and treating team to attend the hearing. 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 an interpreter is needed for the hearing, the Tribunal or the treating team will arrange for the interpreter to attend.

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 (section 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 written 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' (section 386). The Tribunal also reviews each order again every three months (every 28 days for children) whilst the order remains in place. This is a 'periodic review' (section 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 may 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' (section 390).

The Tribunal can review:

- involuntary treatment orders, to decide whether the consumer still needs the order (section 390(1)(a));
- inpatient treatment orders, to decide whether the consumer still needs the order (section 390(1)(b));
- community treatment orders, to decide whether the terms of the order are appropriate (section 390(1)(c));
- orders authorising transfer of involuntary consumers to, or between, authorised hospitals (section 390(1)(d));
- orders transferring consumer responsibility between supervising psychiatrists (section 390(1)(e));

- orders transferring consumer responsibility between treating practitioners (section 390(1)(f)); and
- orders transferring certain inpatients interstate (section 390(1)(g)).

The Tribunal can also raise some of these issues on its own initiative (section 391).

Applications for declaration about the validity of treatment orders

Consumers and other interested persons may apply to the Tribunal to declare that certain orders are (or were) valid or invalid (sections 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 (section 403).

Applications to review admission of long-term voluntary inpatient consumers

Consumers and other interested persons may also apply to the Tribunal to review the admission of long-term voluntary inpatient consumers (section 405(1)). A long-term voluntary inpatient consumer 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 (section 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 (section 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 (section 409).

If a psychiatrist recommends ECT for one of these consumers, the psychiatrist must apply to the Tribunal for permission to perform ECT (section 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* (section 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 (section 208).

If a consumer's psychiatrist recommends psychosurgery, the psychiatrist must apply to the Tribunal for permission (section 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 may apply to the Tribunal to issue a *service provider* with a *compliance notice* for non-compliance with a prescribed requirement of the Act (section 423). A 'service provider' is the person required by the Act to comply with a 'prescribed requirement' (section 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 (section 422).

If after the hearing the Tribunal is of the view that 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 (section 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 2021/22, the Tribunal did not issue any compliance notices. However, the Tribunal issued 23 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 requests the treating team provide an updated and compliant TSDP[1] to the consumer and the Tribunal at least three days before the hearing date.

[1] A compliant TSDP is one that complies with both the Act and the Chief Psychiatrist's Guidelines.

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 (section 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 may apply to the Tribunal to review a psychiatrist's order limiting or preventing exercise of these rights (section 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 may apply to the Tribunal to make declarations about the validity of a nomination, or to revoke a nomination (section 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 (section 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 (section 432).

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

Consumers and other interested persons may 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 (section 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 oral reasons for decision which contain enough information for them 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 participants by post or email shortly after the hearing. This is the Tribunal's written notice of the decision made at the hearing. It informs of the right to seek reasons for the Tribunal's decision, and the right to apply to the SAT for a review of the Tribunal's decision. Parties who request reasons for the decision are given a transcript of the oral reasons provided at the hearing. The Tribunal does not otherwise provide written reasons for the decision unless the Tribunal 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 revokes 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 jurisdiction 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 this reporting year, the Tribunal conducted its highest number of hearings ever. The Tribunal conducted 2,742 hearings in 2021/22, an increase of 83 over 2020/21 figures. The Tribunal also increased its efficiency by conducting more than 70% of the 3,908 hearings listed. Last year the Tribunal conducted 66.4% of the hearings listed.

Figure 1: 2021/22 hearings listed vs hearings conducted

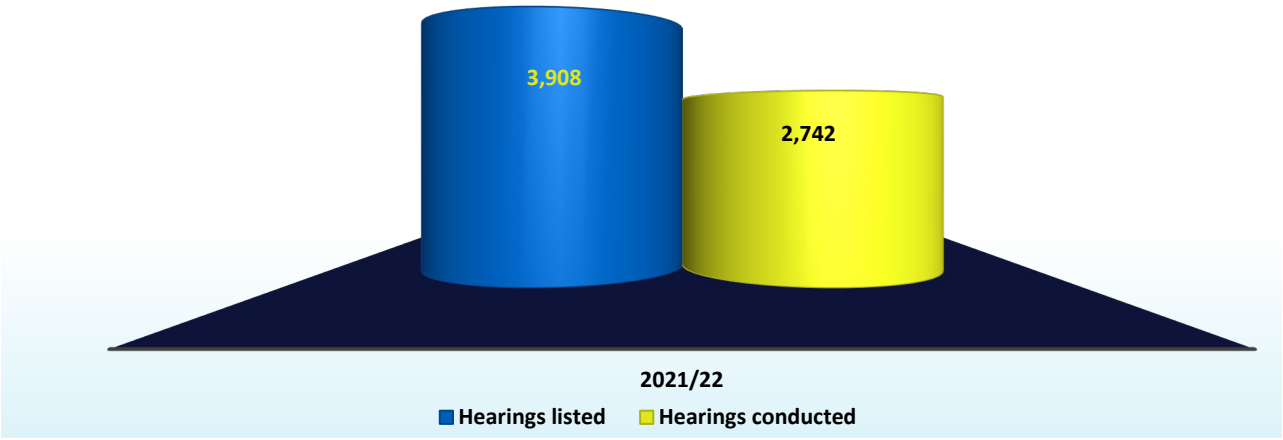


Figure 2: Yearly comparison of hearings listed vs hearings conducted

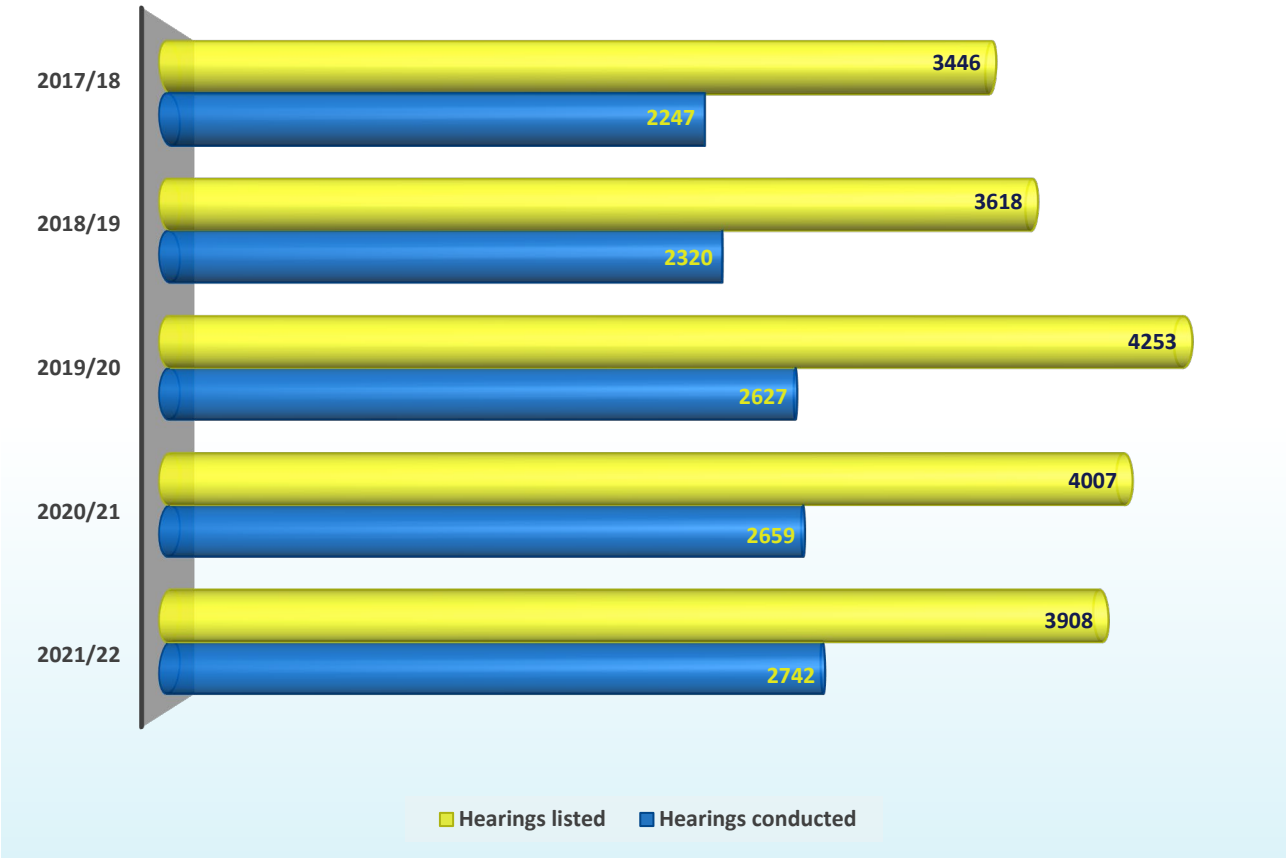
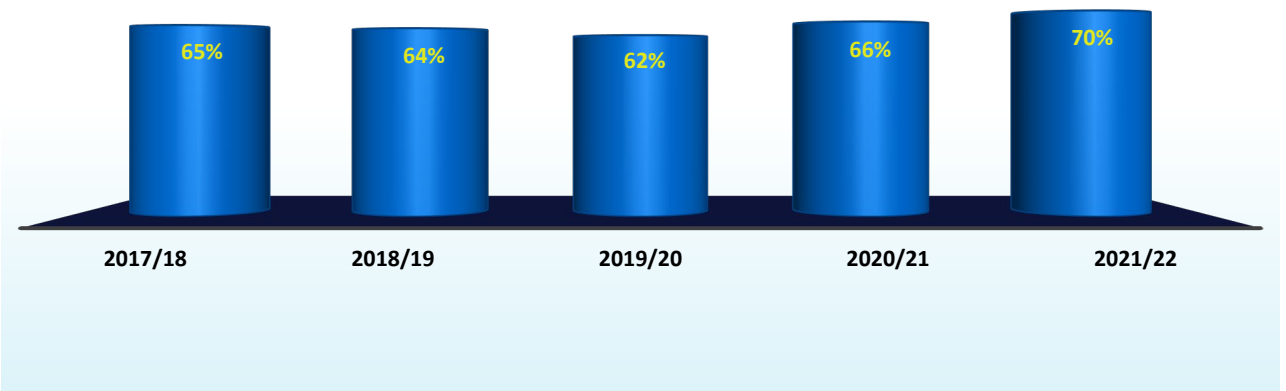


Figure 3: Yearly comparison of percentage of hearings conducted (rounded)



Hearings conducted by matter types

In 2021/22, the Tribunal conducted 2,742 hearings. Of these, 1,101 (40.2%) were initial review hearings conducted pursuant to section 386 of the Act. This is a 3.47% increase over 2020/21 numbers.

This financial year the Tribunal also conducted 1,476 (53.8%) periodic review hearings pursuant to section 387 of the Act. This is a 7.5% increase over 2020/21 numbers.

The number of applications made to the Tribunal by consumers or psychiatrists dropped significantly in 2021/22, from 222 to 165. This reflects a decrease of 25.67% over 2020/21 numbers.

Figure 4: 2021/22 percentage of hearings conducted by matter type

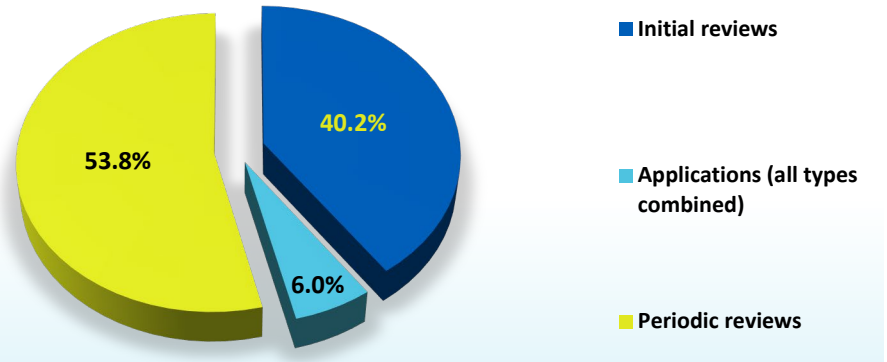
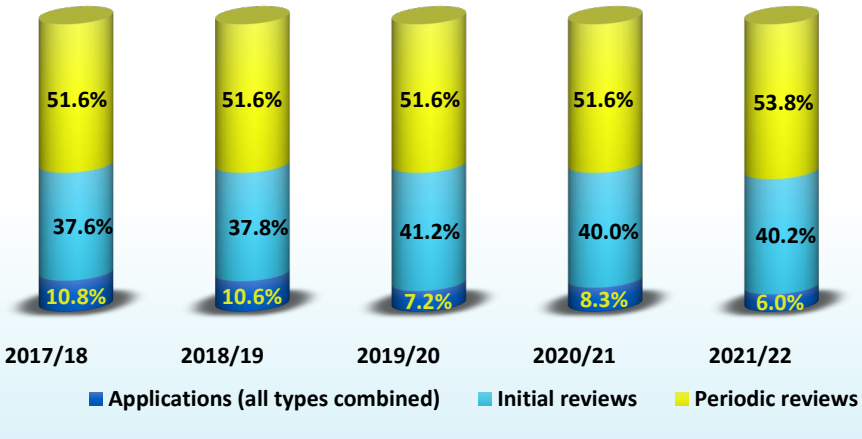


Figure 5: Yearly comparison of percentage of hearings conducted by matter type



Unfortunately, the Tribunal's case management system ICMS remains configured for the 1996 Act[2], and accordingly, it records all applications made under sections 390 – 434 of the Act as 'requested reviews'. This means ICMS cannot break down the numbers of each type of application heard by the Tribunal. Considering the importance of this information, during 2019/20 the Tribunal resorted to manually collecting certain statistics which could not 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, 103 (62.4%) of the 165 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. This is similar to the number of ECT applications made in 2020/21 (106).

The number of applications made by (or on behalf of) consumers to review an involuntary treatment order pursuant to section 390(1)(a)-(c) of the Act was 56 (33.9%) in 2021/22. This is a 49.54% decrease from the 111 applications made in 2020/21. This category accounts for most of the reduction in applications during the current financial year. The significant decrease appears to be a reduction in the number of section 390(1)(a)-(c) review requests received during the lead up to a scheduled hearing. This reduction in paperwork duplication resulted from improved communication with stakeholders concerning listing timeframes.

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).

[2] In 2022/23, the Tribunal will receive an allocation of $920,000 from the McGowan Government's Digital Capability Fund for a new case management system (see also the "President's Report" in this Annual Report).

Figure 6: 2021/22 types of applications made (as a percentage of total applications made)

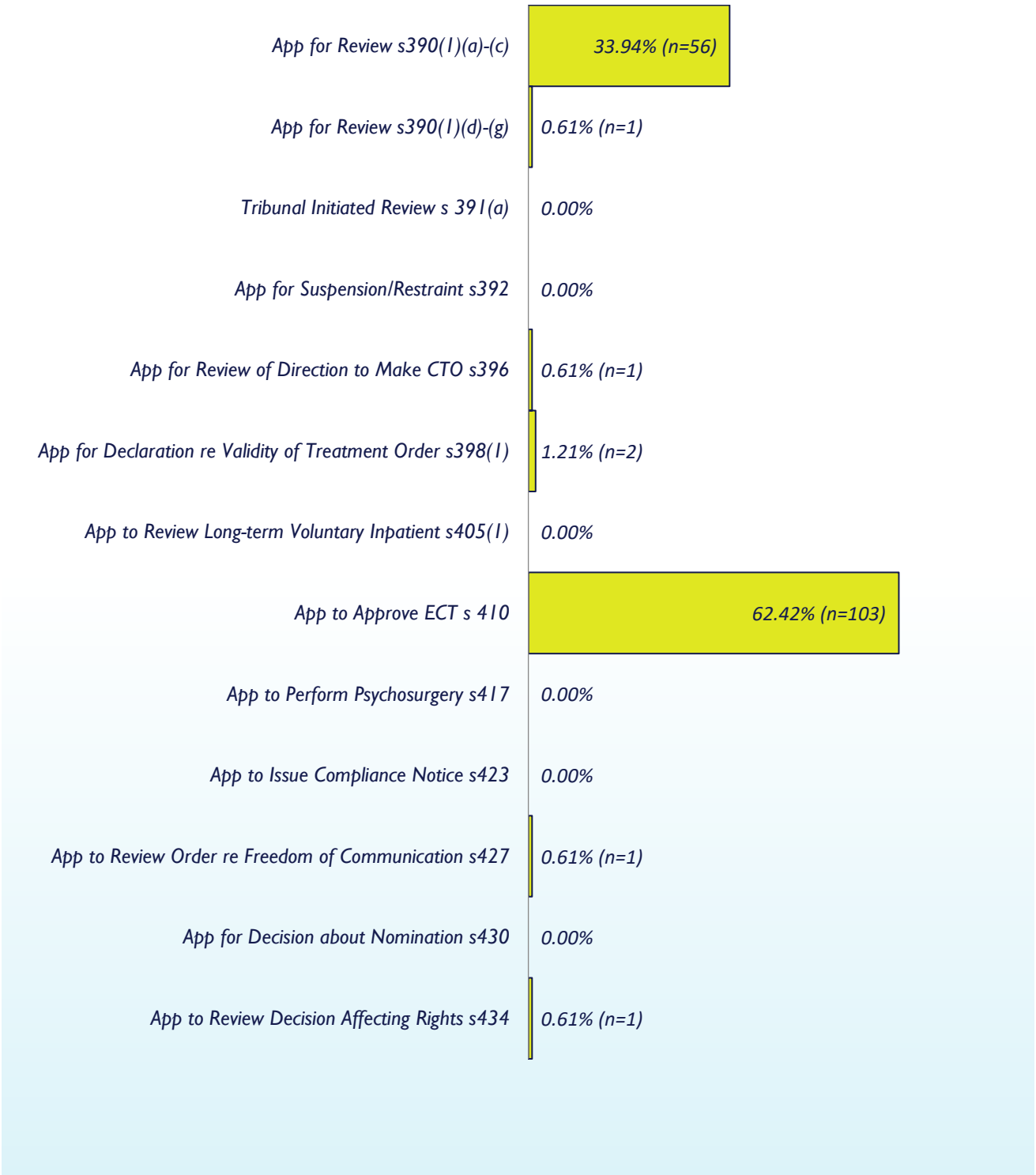
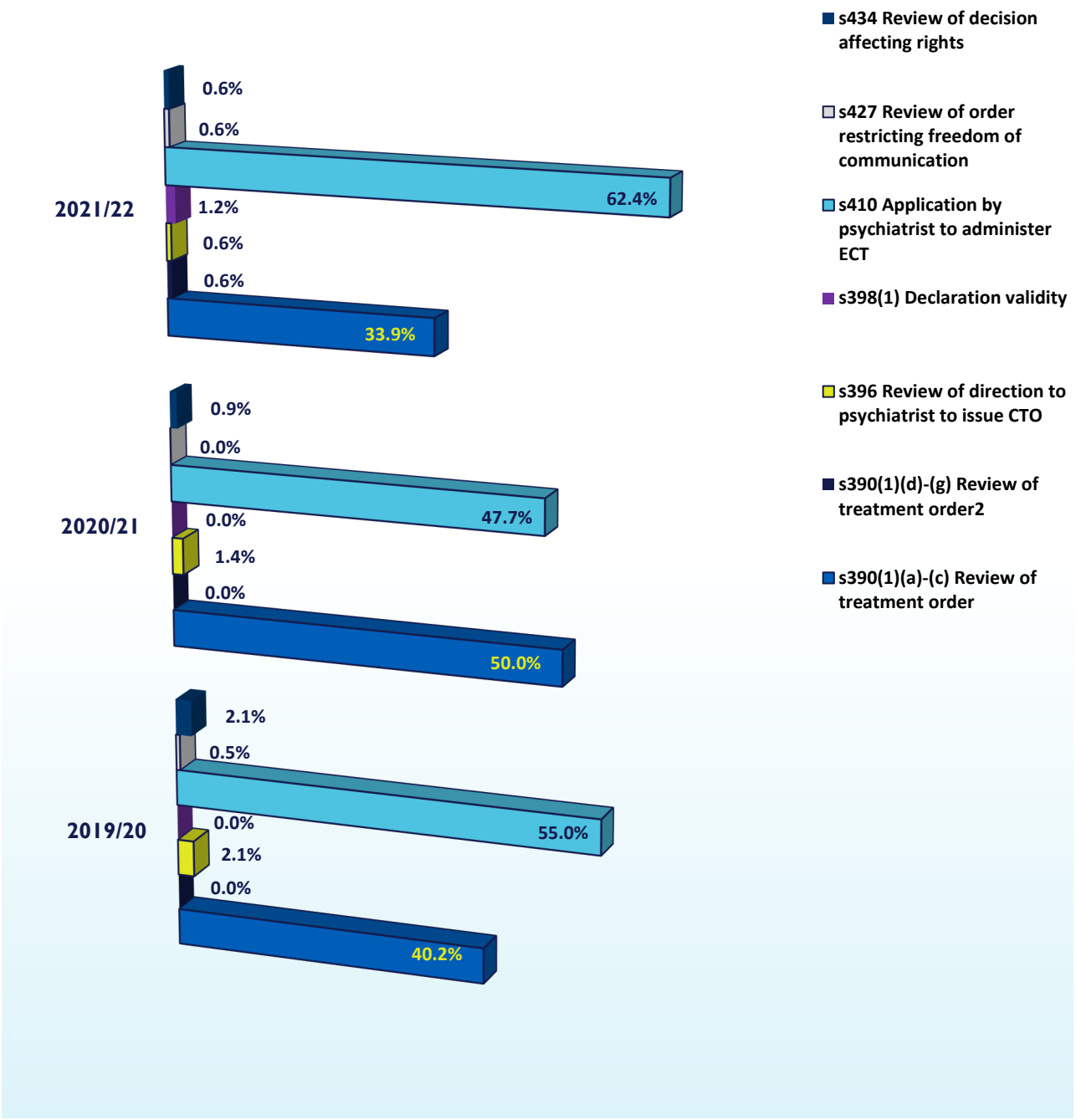


Figure 7: Yearly comparison of types of applications made (as a percentage of total applications)



Note: data for previous years is not available.

Hearings conducted by outcome

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

2021/22 Initial review hearing outcomes (section 386 of the Act)

Of the 1,101 initial review hearings conducted in 2021/22, 335 hearings were adjourned or vacated at the hearing (adjournments are discussed separately). The remaining 766 hearings were completed. Of those completed, in 716 matters (93.5%) the Tribunal was satisfied that the involuntary consumer remained in need of the involuntary treatment order and continued the order. In 18 matters (2.3%) the Tribunal was not satisfied the involuntary consumer remained in need of the involuntary treatment order and revoked the order. In 32 matters (4.2%) 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: 2021/22 outcomes of initial review hearings as a percentage of completed matters

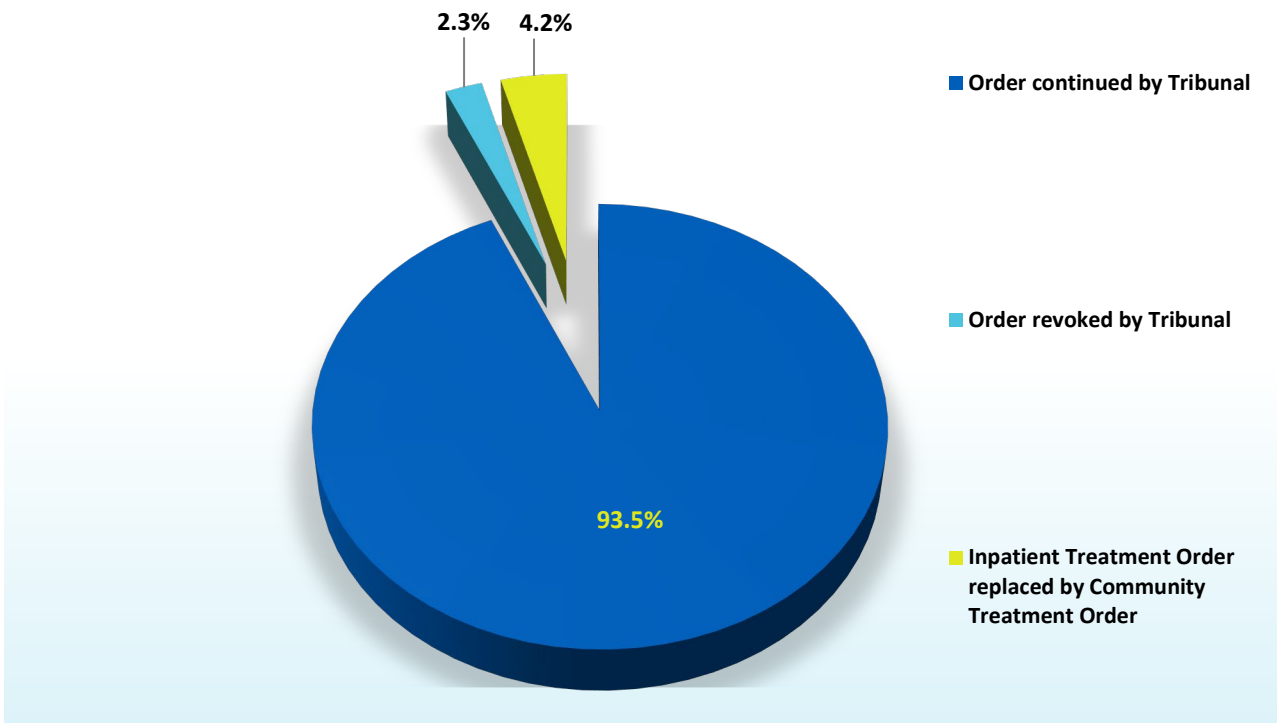
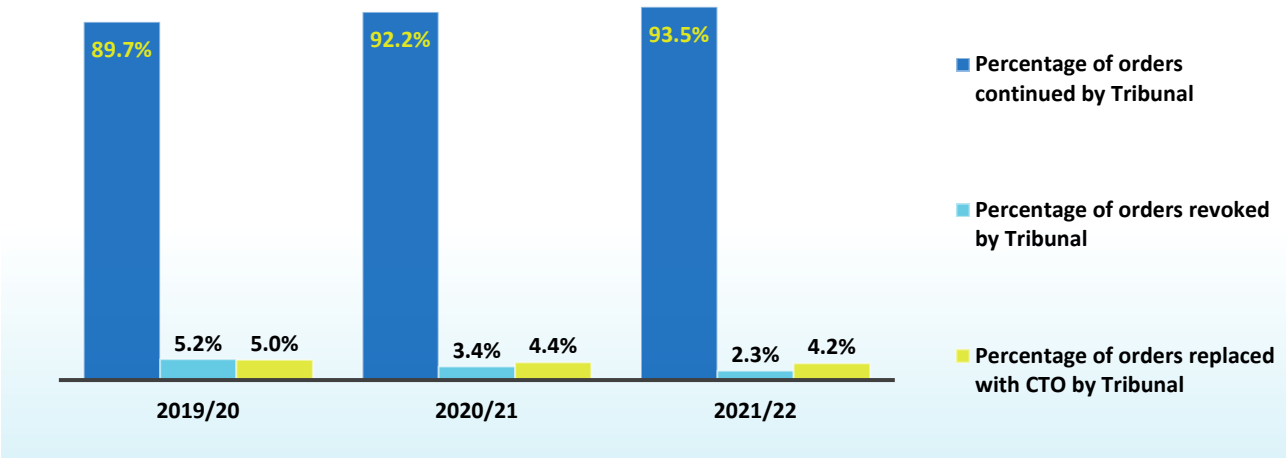


Figure 9: Yearly comparison of outcomes of initial review hearings as a percentage of completed matters



Note: data for previous years is not available.

2021/22 Periodic review hearing outcomes (section 387 of the Act)

Of the 1,476 periodic review hearings conducted in 2021/22, 300 hearings were adjourned or vacated at the hearing (adjournments are discussed separately). The remaining 1,176 hearings were completed. Of those completed, in 1,160 matters (98.6%) the Tribunal was satisfied that the involuntary consumer remained in need of the involuntary treatment order and continued the order. In 9 matters (0.8%) the Tribunal was not satisfied the involuntary consumer remained in need of the involuntary treatment order and revoked the order. In 7 matters (0.6%) 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: 2021/22 outcomes of periodic review hearings as a percentage of completed matters

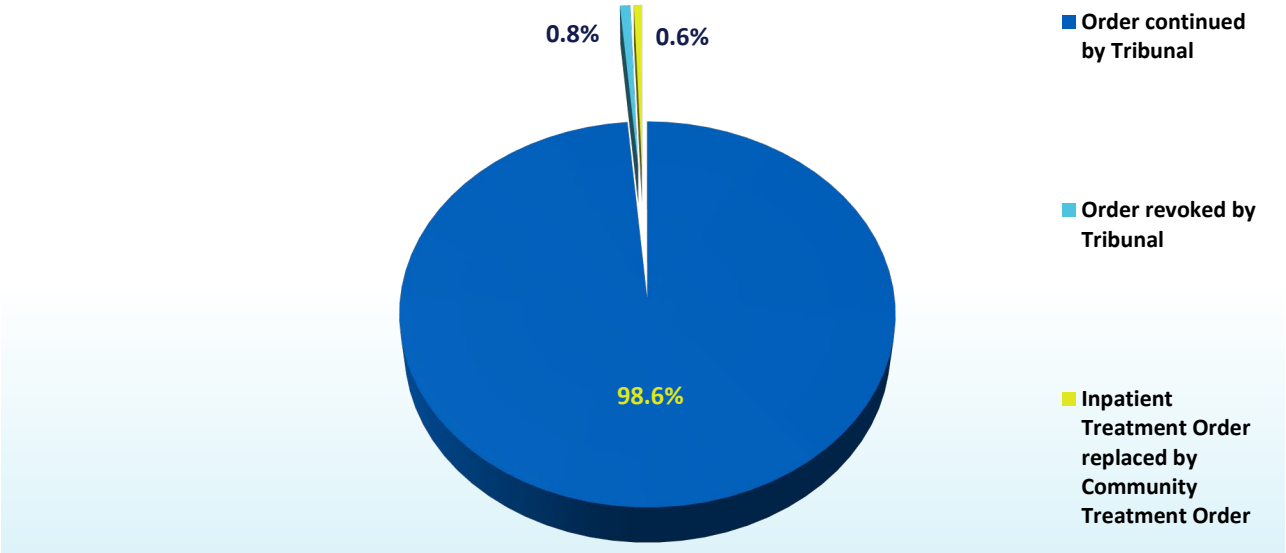
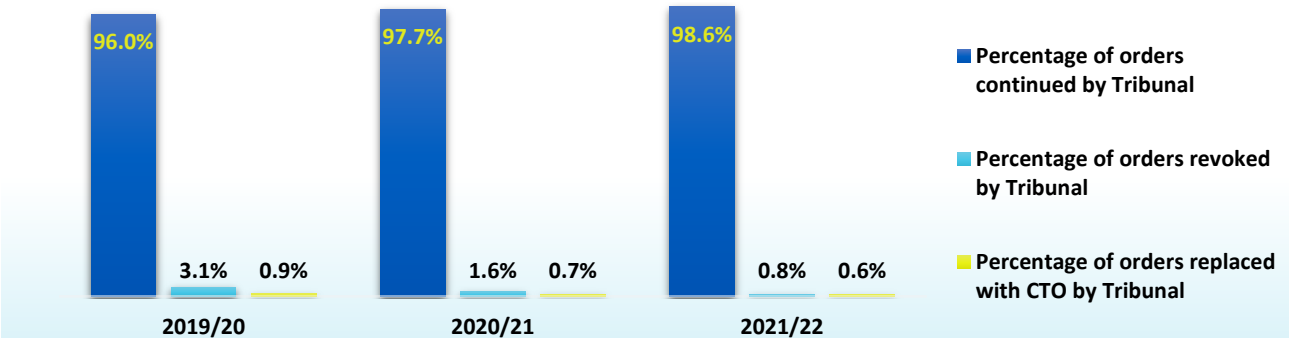


Figure 11: Yearly comparison of outcomes of periodic review hearings as a percentage of completed matters



Note: data for previous years is not available.

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 12: 2021/22 'successful' applications as a percentage of number of completed applications of that type

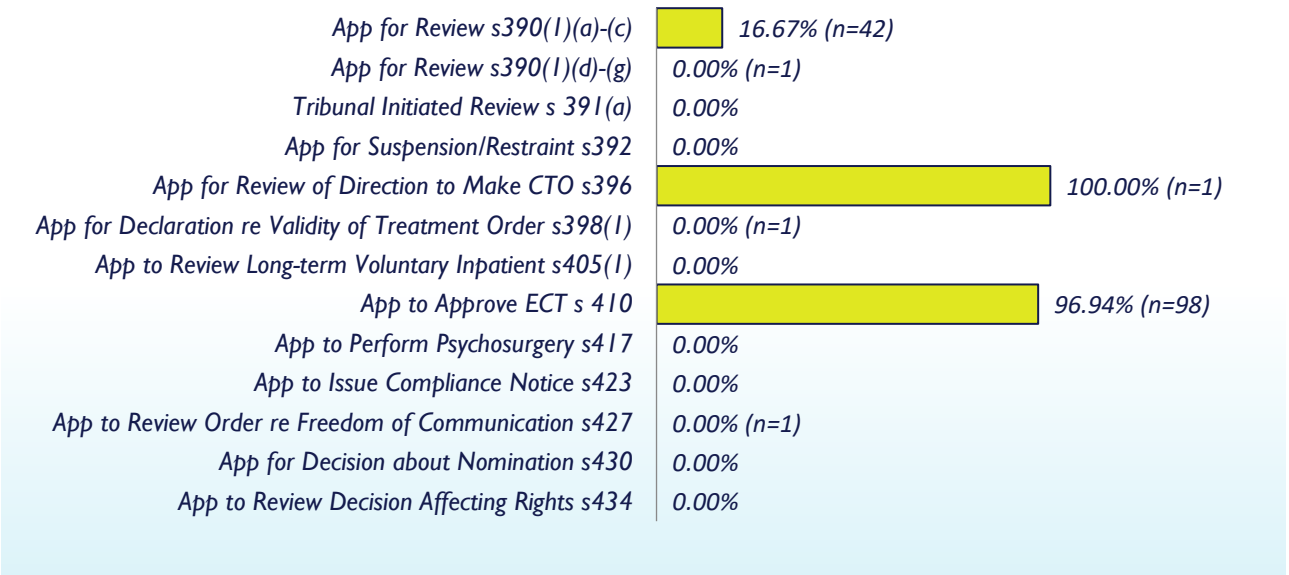
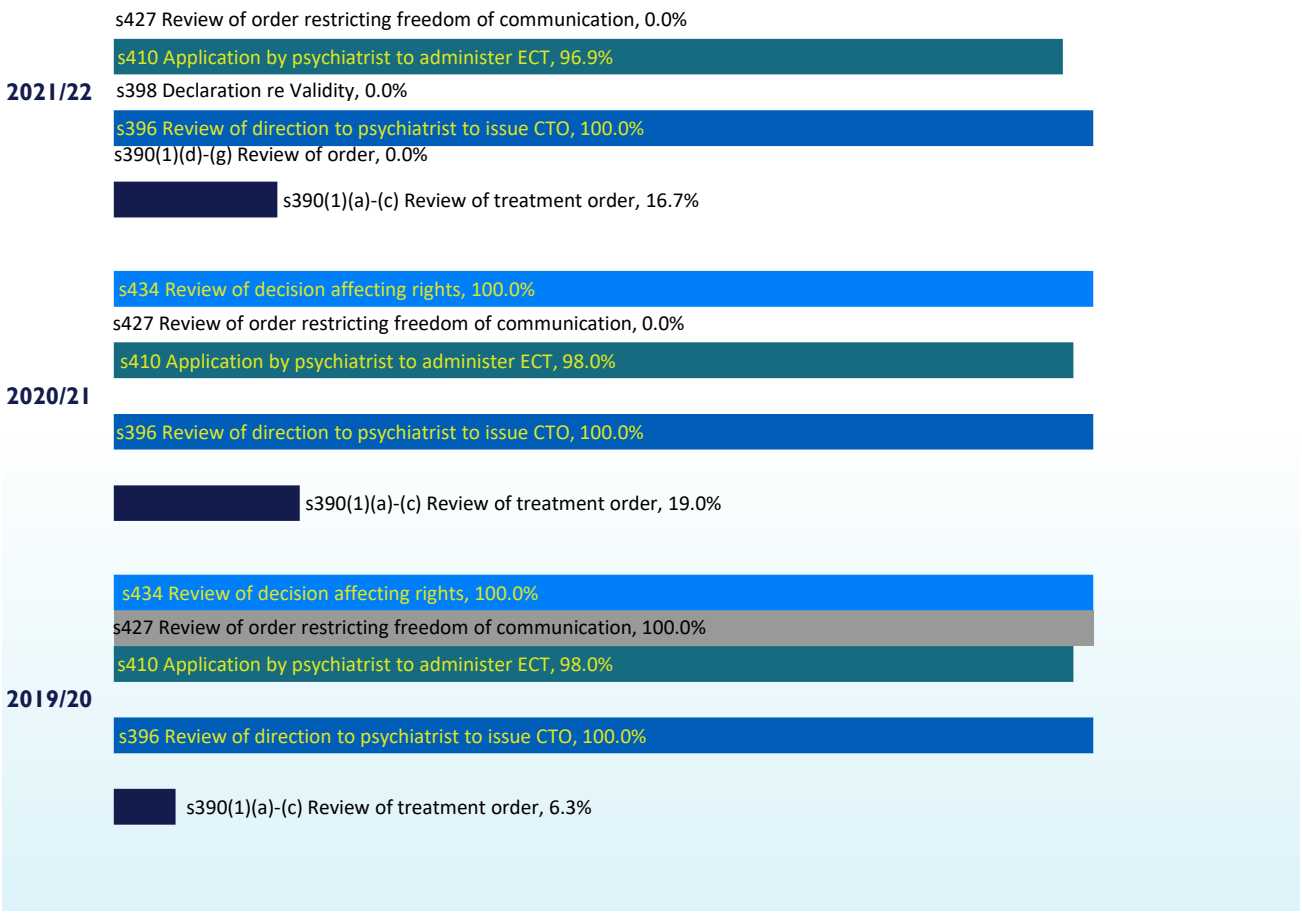


Figure 13: Yearly comparison of 'successful' applications by type



Note: data for previous years is not available.

Adjournments

Out of the 2,742 hearings conducted during 2021/22, 655 (23.8%) were adjourned at the hearing.

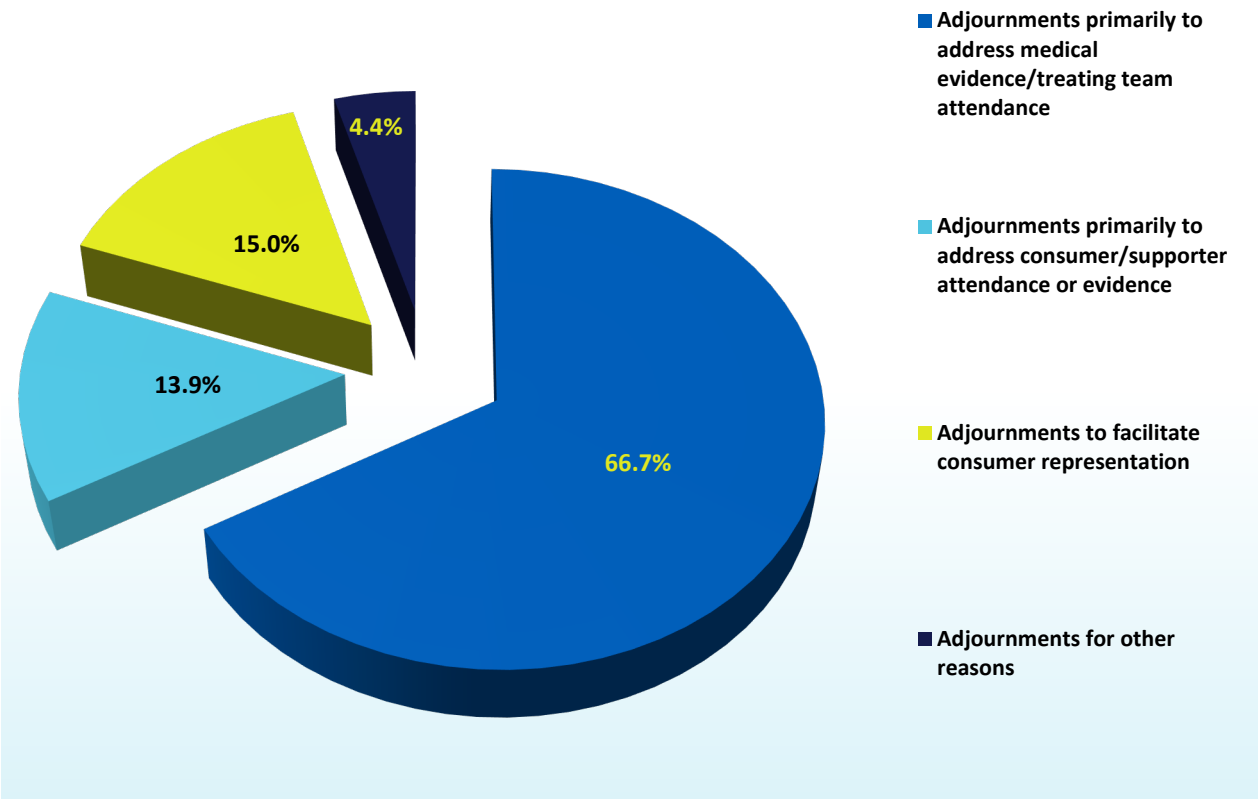
Adjournments are distressing and inconvenient for consumers and their supporters, and a significant burden on public resources for hospitals, treating teams, the MHAS, the MHLC, and the Tribunal. Accordingly, the Tribunal generally will not adjourn a hearing except where necessary to ensure procedural 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 14: 2021/22 reasons for adjournment as a percentage of all adjournments



In 2021/22, most adjournments (66.7%) were primarily to address the adequacy of medical evidence. The President continues to liaise with the executives and clinical heads of health service providers to encourage psychiatrists to prepare a timely and comprehensive medical report using the Tribunal's medical report template and to send it to the Tribunal and the consumer at least three days before the hearing.

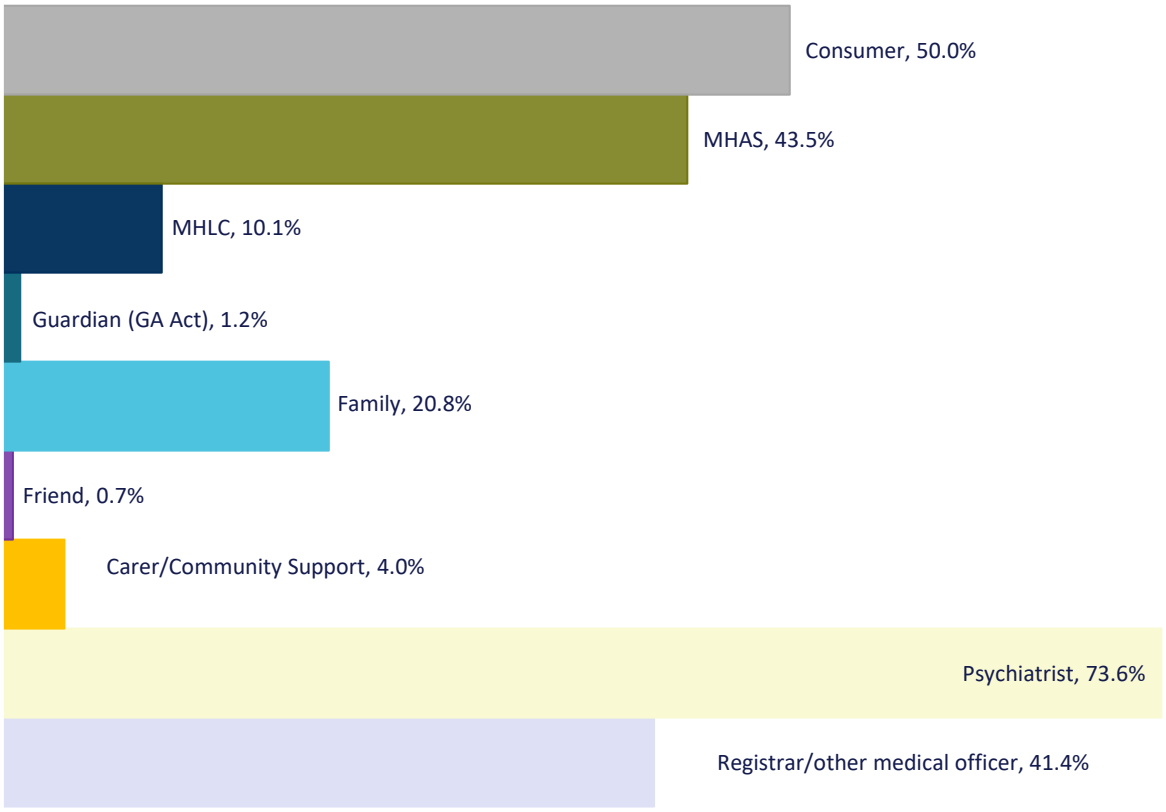
Adjournments for technical reasons have significantly reduced during 2021/22 by more than half, from 9.3% to 4.4%. This is a significant improvement, considering that almost 70% of the hearings this reporting year were conducted by videoconference due to movement restrictions resulting from COVID-19 outbreaks.

Attendance at hearings

In 2021/22, the Tribunal conducted 2,742 hearings. Consumers attended 50% of these hearings. Consumers were represented by the MHAS at 43.5% of hearings. Consumers were represented by the MHLC at 10.1% of hearings. Guardians appointed under the *Guardianship and Administration Act 1990* (WA) (GA Act) were

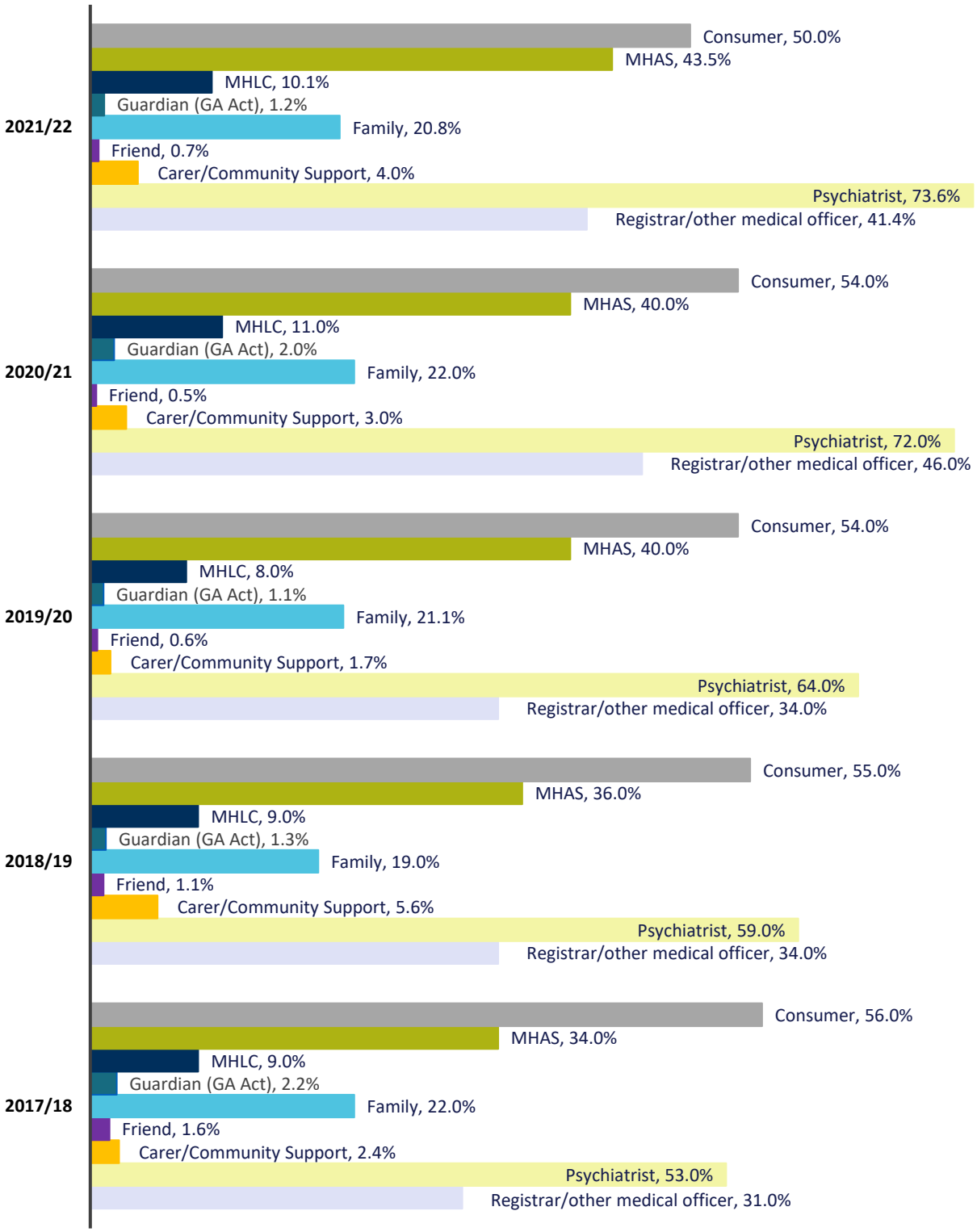
present at 1.2% of hearings, and family members were present at 20.8% of hearings. Consumers attended the hearing with a friend at 0.7% of hearings and a carer at 4% of hearings. Psychiatrists attended 73.6% of hearings, and psychiatric registrars/medical officers attended 41.4% of hearings (either with a psychiatrist or alone).

Figure 15: 2021/22 frequency of hearing attendance by participant type (rounded)



Note: multiple parties attend most hearings.

Figure 16: Yearly comparison of frequency of hearing attendance by participant type (rounded)



Note: multiple parties attend most hearings.

As demonstrated in Figure 16 there has been a significant increase in attendance at hearings by psychiatrists, psychiatric registrars and medical officers between 2017/18 and 2021/22, particularly in 2020/21 and 2021/22. This increase corresponds with the commencement of the Tribunal's outreach program to clinicians. The program involves the President and the Registrar attending at hospitals and clinics to discuss Tribunal processes and procedures and to gather feedback from clinicians regarding Tribunal processes.

Hearing mode

In 2021/22, the Tribunal conducted only 835 of its 2,742 hearings (30.5%) in-person at a health service and 1,907 hearings by videoconference (69.5%). The Tribunal conducted hearings predominantly by videoconference during the year in response to the continuing impact of the COVID-19 pandemic.

Figure 17: 2021/22 hearing mode (rounded)

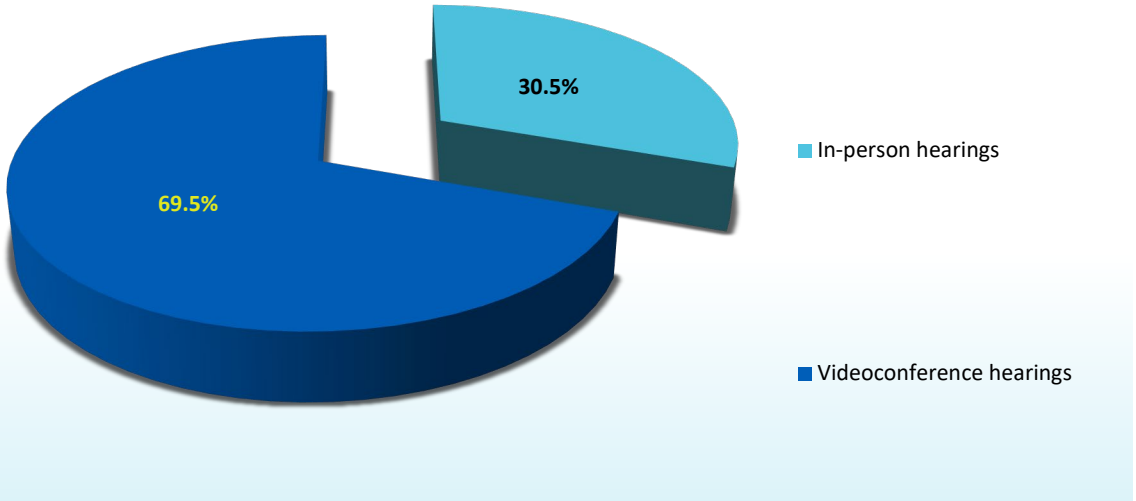
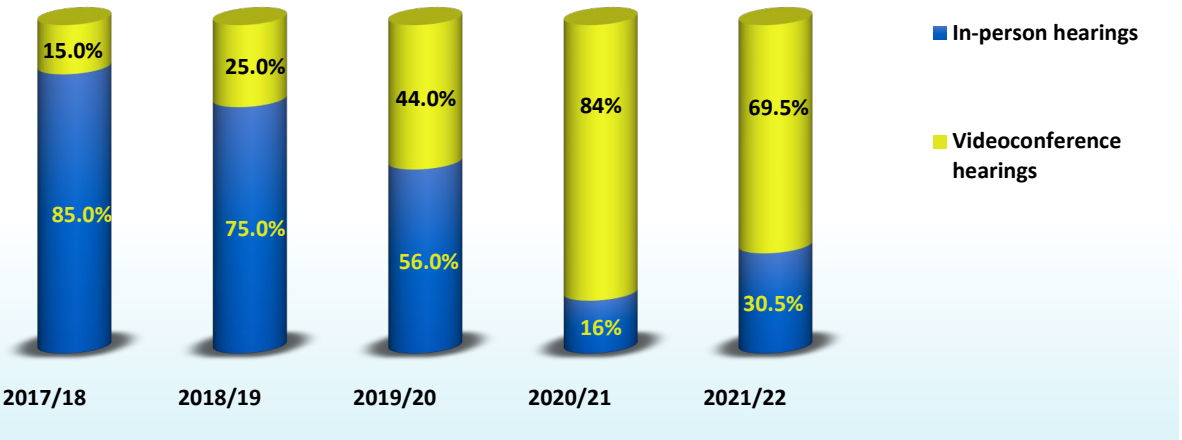


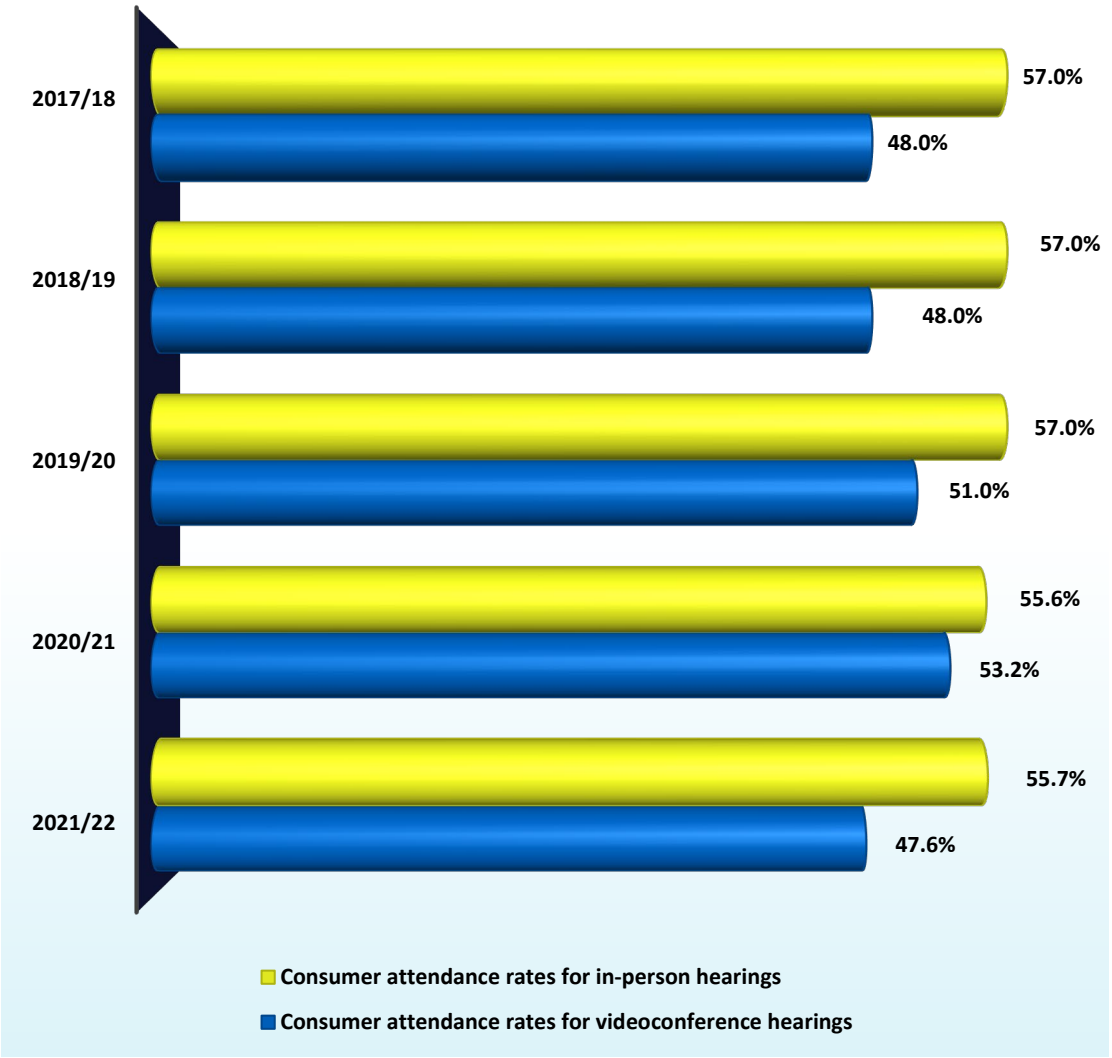
Figure 18: Comparison of hearing mode by year



Note: videoconference hearings significantly increased from 2010/20 during the COVID-19 pandemic.

In 2021/22, consumers attended in-person hearings at a rate of 55.7% and videoconference hearings at a rate of 47.6%. As demonstrated by Figure 19, consumer attendance at videoconference hearings slightly decreased in 2021/22, whereas consumer attendance at in-person hearings remained the same.

Figure 19: Yearly comparison of consumer attendance at hearings by hearing mode (rounded)



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 (section 386 of the Act). The Tribunal conducts a periodic review of each order again every three months (every 28 days for children) whilst the order remains in place (section 387 of the Act). 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 form the Tribunal's key performance indicators (KPIs).

Because the Tribunal's case management system ICMS is obsolete, prior to 2019/20, the Tribunal was not 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. The Tribunal is now able to report its performance in respect of KPIs. Unfortunately, most of that time the data has been significantly impacted upon by COVID-19.

In 2021/22, the opening of the State's borders dramatically impacted upon the Tribunal's ability to conduct hearings on a timely basis. Once the borders opened and COVID-19 became widespread, it became very difficult to conduct hearings. Unexpected illness required cancellation of numerous hearings as consumers, clinicians, and Tribunal members became unwell and could not work. Furthermore, the nationwide shortage of psychiatrist members meant that on many weeks, the Tribunal could not schedule enough hearings to meet its statutory timeframes.

Consequently, the Tribunal was only able to conduct 52.4% of adult initial review hearings and 49.8% of adult periodic review hearings on time. For children's hearings, the Tribunal was able to conduct 73.7% of initial review hearings and 84.8% of periodic review hearings on time.

Figure 20: 2021/22 hearing timeliness

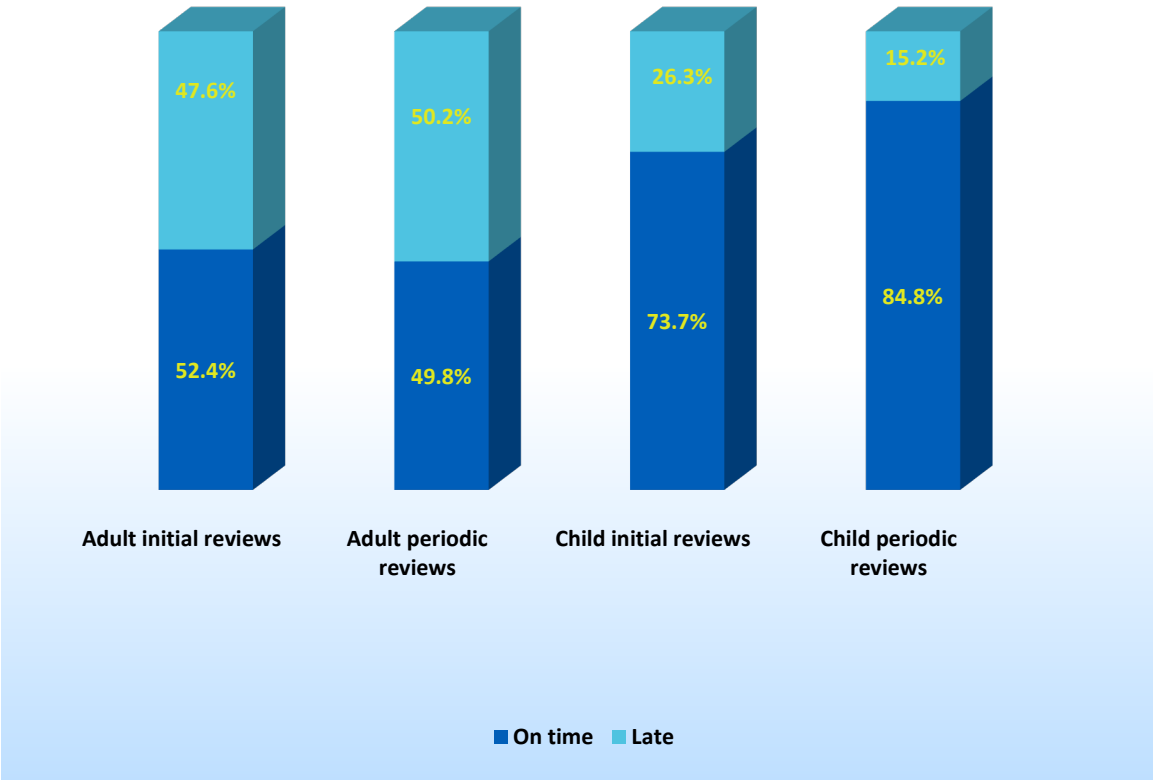
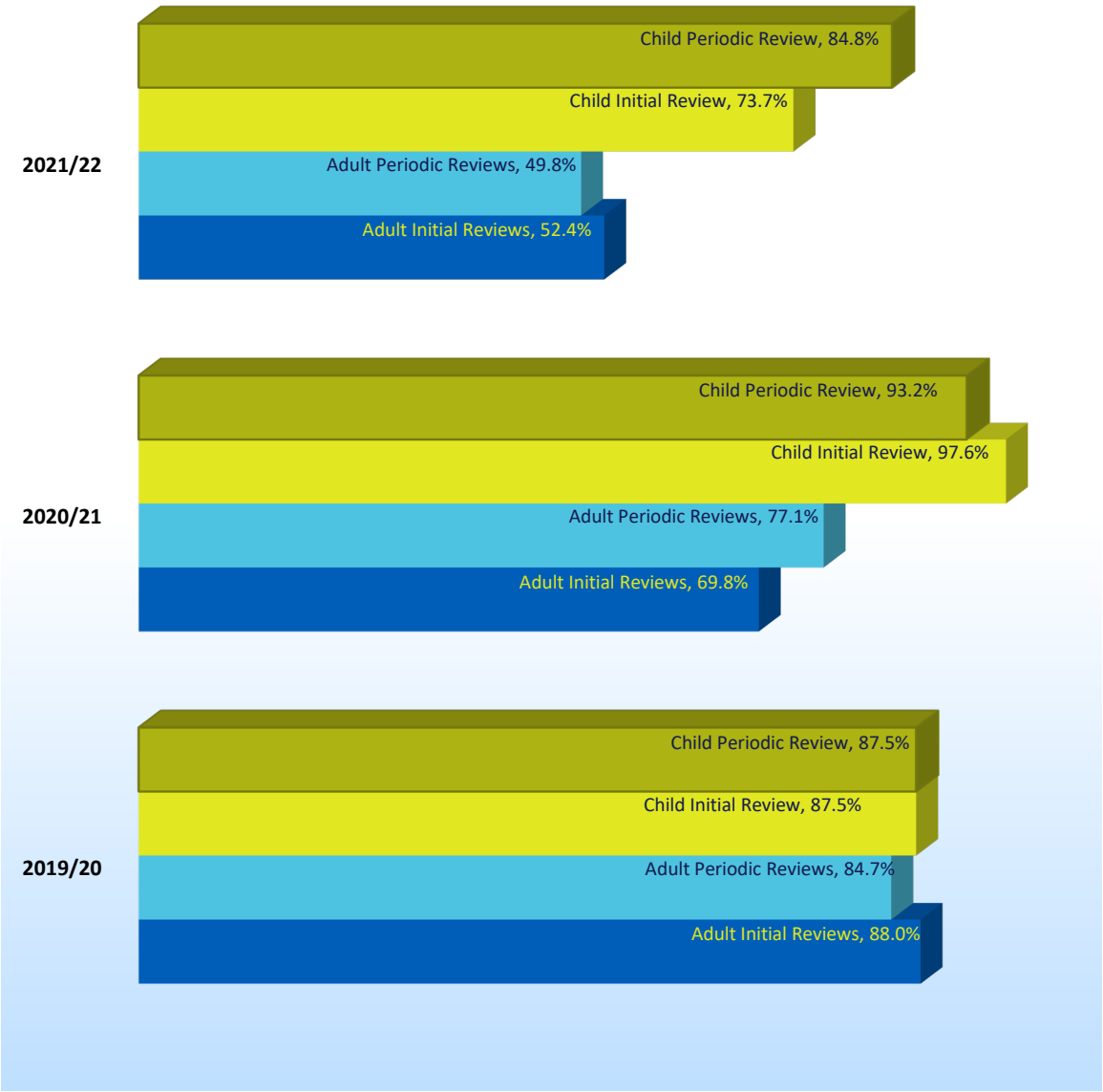


Figure 21: Comparison of percentage of hearings conducted on time by year



Note: data for previous years is not available.

However, it is important to note that 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:

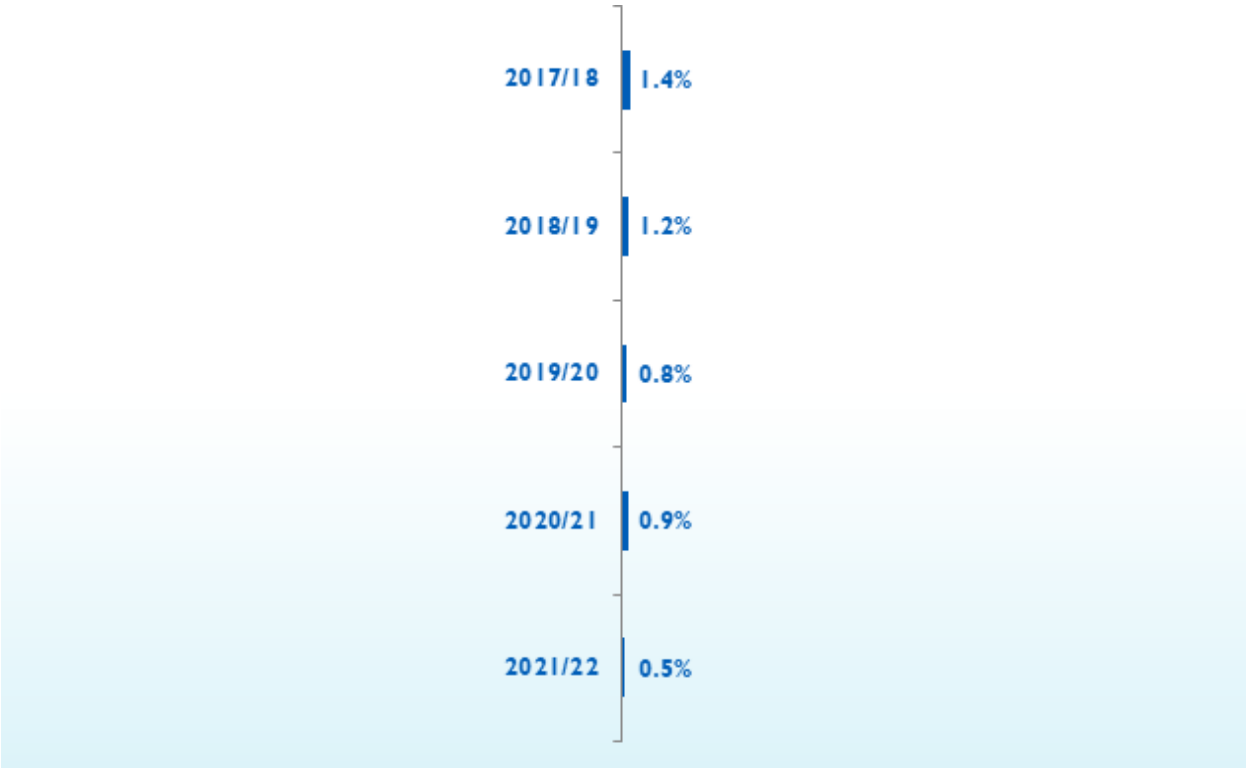
- Adult Initial Reviews: 97.1%
- Adult Periodic Reviews: 96.9%

The Tribunal will need to work diligently to return to its pre-COVID timeliness levels during the coming years.

Requests for reasons for decisions

Consumers request reasons for the Tribunal's decision in only a small percentage of hearings. In 2021/22, the consumers or the SAT requested a transcript or an audio recording of the oral reasons for decision in 15 out of 2,742 matters (0.5%). This compares with 0.9% in 2020/21, 0.8% in 2019/20, 1.2% in 2018/19, and 1.4% in 2017/18.

Figure 22: 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.

The Tribunal 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 23).

- the outcome of the applications made during the current financial year, to the extent that those matters are resolved (see Figure 24); 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 25).

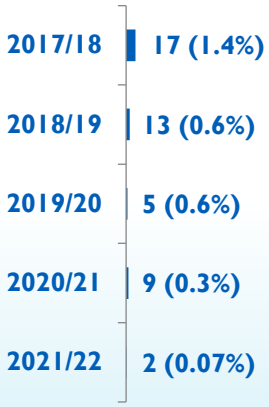
This means that the number of *applications made* in a financial year will not necessarily equal the number of *applications determined* in a financial year. Some applications are made in one financial year and determined by the SAT in the next.

All data reported in this report has been recounted using this 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 2021/22

In 2021/22, only two out of 2,742 Tribunal decisions (0.07%) were the subject of an application to the SAT for review under section 494 of the Act. As shown in Figure 23, this number has significantly decreased since 2017/18. Although it is impossible to know definitively why the number of consumers dissatisfied with the Tribunal's decision has decreased so dramatically, it coincides with numerous improvements implemented in accordance with our strategic objectives to achieve high quality consumer-centred outcomes in every matter. This is a very positive sign that the Tribunal's 2018 strategic plan is working to improve outcomes.

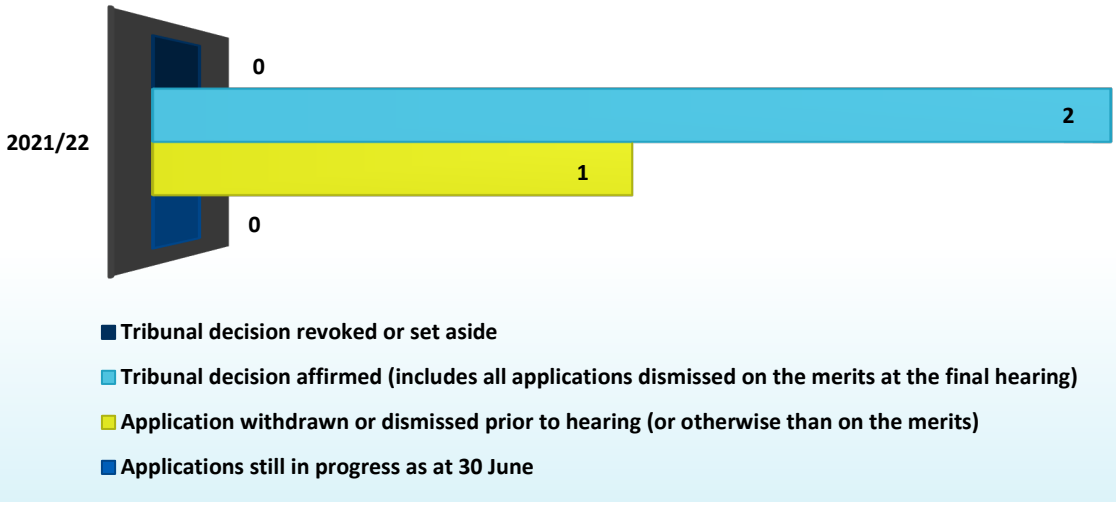
Figure 23: Comparison of number and percentage of review applications made to the SAT during each financial year



Outcome of applications for review made to the SAT in 2021/22

In 2021/22, 3 applications made to the SAT were resolved during the financial year. The SAT affirmed the Tribunal's decision in 2 matters, and one matter was withdrawn or dismissed prior to hearing.

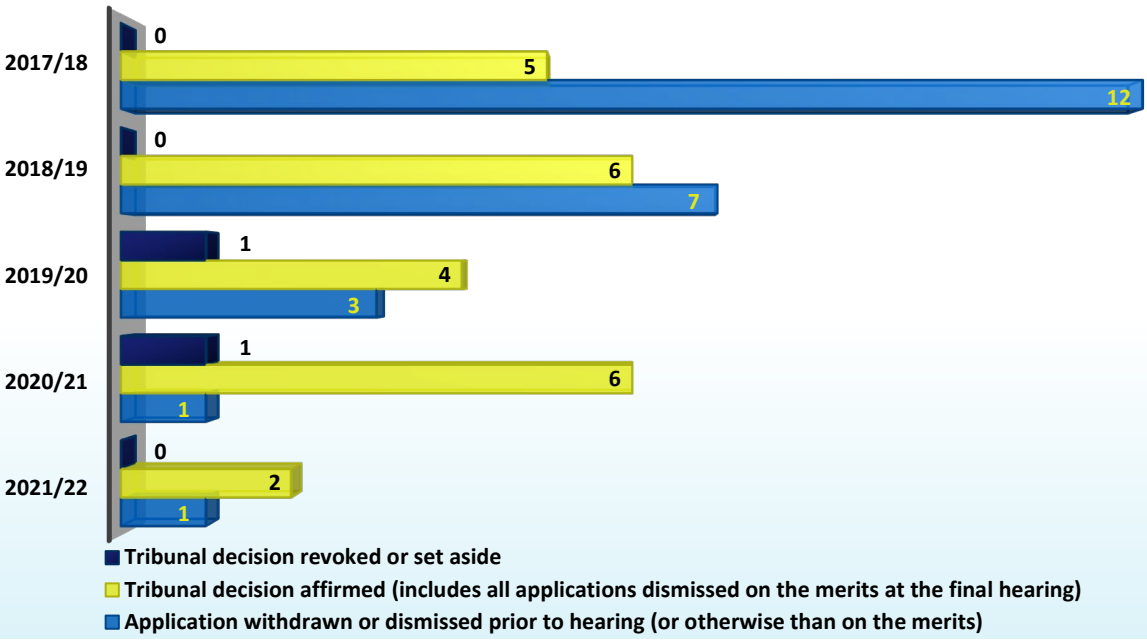
Figure 24: Decisions made by the SAT during 2021/22



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 25: Decisions by the SAT by financial year



Financial Report

In 2021/22, the Tribunal was funded by Parliamentary appropriation of $3.577M.

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 2022

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
Kristy Bradshaw	Sessional	2 May 2022	1 May 2027
Andrea McCallum	Sessional	2 May 2022	1 May 2027

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 Rowan Davidson	Sessional	2 May 2022	1 May 2027
Dr Kevin Dodd	Sessional	2 May 2022	1 May 2027
Dr Fiona Krantz	Sessional	1 May 2018	30 April 2023
Dr David Lord	Sessional	2 May 2022	1 May 2027
Dr Mircea Schineanu	Sessional	1 May 2018	30 April 2023
Dr Bryan Tanney	Sessional	2 May 2022	1 May 2027
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
Jennifer Bridge-Wright	Sessional	2 May 2022	1 May 2027
Leone Shiels	Sessional	2 May 2022	1 May 2027
Renee Joy McLennan	Sessional	2 May 2022	1 May 2027
Ann White	Sessional	2 May 2022	1 May 2027

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
Dr Nadine Caunt	*Sessional Psychiatrist*	*29 October 2019*	*28 October 2024*
Peter Curry	*Part-time Legal*	*29 October 2019*	*28 October 2024*
Dr Daniel De Klerk	*Sessional Psychiatrist*	*1 May 2018*	*30 April 2023*
Dr Helen Milroy	*Sessional Psychiatrist*	*29 October 2019*	*28 October 2024*
Dr Ahmed Munib	*Sessional Psychiatrist*	*1 May 2018*	*30 April 2023*
Dr Nicola Simmonds	*Sessional Psychiatrist*	*2 May 2022*	*1 May 2027*
Dr Kavitha Vijayalakshmi	*Sessional Psychiatrist*	*29 October 2019*	*28 October 2024*
Jennifer Wall	*Sessional Legal*	*29 October 2019*	*28 October 2024*

Appendix Two: Strategic Plan 2018 – 2022

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 consumers, 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
- Equality before the law
- Fairness
- Impartiality
- Independence
- Accessibility
- Efficiency
- Accountability
- Competence
- Integrity

strategic objectives and action plan

We will achieve high quality consumer-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.	▪ The Tribunal will provide consumers, carers, families and supporters with the information they need to actively participate in hearings. ▪ 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. ▪ The Tribunal will provide a range of convenient participation options (including telephone, videoconference, or in-person). ▪ The Tribunal will ensure participants know their participation at hearings is valuable and contributes to the outcome. ▪ The Tribunal will make information about the Tribunal's processes publicly available and will refer participants to these sources of information.
We will improve how we work and maximise our use of technology.	▪ 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. ▪ The Tribunal will enhance its website to provide greater access to information and Tribunal forms. ▪ The Tribunal will conduct video/tele-conference hearings as required to meet urgent timeframes and maximise Tribunal efficiency. ▪ The Tribunal will transition to an electronic records management system to comply with its statutory record-keeping obligations.
We will build our capacity and make best use of our resources.	▪ The Tribunal will recruit and reappoint members solely on merit through an open recruitment process. ▪ The President will develop and implement a mandatory continuing professional development program for members. ▪ The Tribunal will appoint members on a full time, part time, or sessional basis as required to ensure availability and to maximise Tribunal efficiency. ▪ 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. ▪ The Tribunal Registry will utilise best practice in case flow management. ▪ The Tribunal Registry will articulate its administrative processes in a manual which will be publicly available. ▪ The President will commence implementation of the COAT Tribunal Excellence Framework. ▪ The President will maintain links and exchange ideas with Mental Health Tribunals and other Tribunals throughout Australia. ▪ All members and staff will demonstrate a commitment to best practice and maximising Tribunal efficiency.

Appendix Three: Key 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: Choiceand 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.

This page intentionally left blank

This page intentionally left blank

T (08) 6553 0060
E registry@mht.wa.gov.au
W mht.wa.gov.au

Mental Health Tribunal
PO Box Z5272
Perth St Georges Terrace WA 6831