



Productivity Commission Mental Health Inquiry

**Submission by the Victorian Mental Health
Tribunal in response to the draft report**

January 2020

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Unless otherwise specified all references to statutory provisions are to provisions of the *Mental Health Act 2014 (Vic)*.

EXECUTIVE SUMMARY

This brief submission by the Victorian Mental Health Tribunal (Tribunal) is in response to the Productivity Commission's draft recommendation 16.6 *Legal Representation at Mental Health Tribunals* – that the availability of legal services for people who have hearings before mental health tribunals be increased. The Tribunal also noted the Productivity Commission's interest in this issue in the most recent round of public hearings in Melbourne in November 2019.

The Tribunal welcomes and supports the draft recommendation. The Tribunal appreciates the important contribution of legal representation and we would welcome increased levels of representation. People experiencing severe mental illness often experience cumulative disadvantage and disempowerment attributable to a range of causes. Legal representation and advocacy more broadly (such as Victoria Legal Aid's Independent Mental Health Advocacy service) can reduce disempowerment both objectively, as well as in relation to individual consumers' subjective experience of various processes and discussions related to their treatment.

In recent years there has been periodic interest in the issue of legal representation – particularly before this Tribunal – in various fora. The Tribunal welcomes this interest but does have an overarching concern that the associated discussion and analysis proceeds from an assumption that is narrow and warrants expansion. Inherent in the way data is framed and discussed is the assumption that the value of legal representation is to be identified or quantified by the extent to which consumers who are legally represented have hearing outcomes that do not involve the making of orders.

To be fair this assumption is understandable given the broader discourse about the extremely high levels of compulsory / involuntary treatment in Australia and particularly Victoria. In our submission to the Royal Commission into Victoria's Mental Health System the Tribunal did not shy away from this issue. We acknowledge the impact of the *Mental Health Act 2014* (the Act) on the levels of compulsory treatment has been minimal and disappointing. We also acknowledge that as the entity that makes Treatment Orders under the Act the Tribunal's approach should be examined by the Royal Commission.

At the same time the Tribunal's view is that this jurisdiction is not one that should be viewed through a binary lens of outcomes that are good or bad; a win or a loss. Such an approach fails to appreciate the multiple dimensions to the principles that are enshrined in the Act. It also risks under-estimating the contribution that legal representation can make to mental health tribunal hearings. When broader objectives of participation and supported decision making are taken into account there can be a far richer appreciation of the place of tribunal hearings, and the potential contribution of all hearing participants, including lawyers. The Tribunal is also concerned that the way in which this important issue is explored should not inadvertently act to discourage people who do not have legal representation from attending their hearing, by creating an unintended misapprehension that the Tribunal's processes are legalistic, or that legal representation is needed to ensure fair treatment.

Despite these overarching concerns, this submission engages with and contributes to the data as it has been presented and framed to date. This submission:

- Identifies concerns that the Tribunal has about some of the data that has already been presented to the Productivity Commission.
- Provides the data that we have been able to extract from our case management system relating to the preceding five years that confirms legal representation is one of multiple factors that bear upon hearing outcomes.
- Identifies a range of possible biases that need to be borne in mind when considering data that expresses hearing outcomes by reference to the presence or absence of legal representatives.
- Provides comparative data from the New South Wales and Queensland Mental Health Review Tribunals which have much higher levels, and in some matters even mandatory legal representation, but a profile of hearing outcomes that cautions against drawing too definitive conclusions about the link between legal representation and hearing outcomes.

1. BACKGROUND

1.1 The Role of the Mental Health Tribunal

The Mental Health Tribunal (Tribunal) was established under the *Mental Health Act 2014* (the Act) and commenced operation on 1 July 2014, replacing the former Mental Health Review Board (Board). The Tribunal is an essential safeguard under the Act to protect the rights and dignity of people with mental illness. The Tribunal has a range of functions, the most relevant to the Productivity Commission's inquiry being:

- determining whether to make or revoke a Treatment Order that requires a person to have compulsory treatment for a mental illness either in an inpatient setting, or while living in the community; and
- determining whether to make an Electroconvulsive Treatment Order that authorises the use of electroconvulsive treatment (ECT) in the treatment of adults who lack capacity to provide informed consent (whether voluntary, compulsory, security or forensic patients), and in any instance where the person being treated is less than 18 years old.

Since commencement the Tribunal has conducted more than 34,000 hearings, and every year has seen an increase in its caseload. In 2018/19 the Tribunal conducted more than 8,500 hearings, an increase of 4.3% on the previous year. The majority of these hearings are conducted in-person which means the Tribunal visits 57 mental health inpatient units and community clinics across Victoria on a regular basis. Consumers and carers / support people are always encouraged to attend hearings. In 2018/19 consumers did so in 56% of hearings, and carers / support people attended in 26%. Raising attendance levels of consumers and carers is a constant focus of the Tribunal and in consultation with consumers, carers and advocates the Tribunal recently finalised an *Action Plan for Increasing Participation in Tribunal Hearings*.¹

1.2 Focus of this submission

The Productivity Commission's inquiry coincided with the Royal Commission into Victoria's Mental Health System (Royal Commission). The Tribunal had to prioritise its engagement with the Royal Commission and did not make a submission in response to the Productivity Commission's issues paper. A copy of the Tribunal's submission to the Royal Commission is available on our website.²

This brief submission is in response to the Productivity Commission's draft recommendation 16.6 *Legal Representation at Mental Health Tribunals* – that the availability of legal services for people who have hearings before mental health tribunals be increased. The Tribunal also noted the Productivity Commission's interest in this issue in the most recent round of public hearings in Melbourne in November 2019.

As will be emphasised throughout this submission, the Tribunal fully supports legal representation and would welcome more of it. However, it is concerned about the accuracy, completeness and interpretation of some of the statistical data provided to the Productivity Commission. The Tribunal is also concerned that the welcome attention to, and important discourse around this issue should not inadvertently act to discourage people who do not have legal representation from attending their hearing, by creating an unintended misapprehension that the Tribunal's processes are legalistic, or that legal representation is needed to ensure fair treatment.

¹ The Action Plan is available at: <https://www.mht.vic.gov.au/news/action-plan-increasing-participation-tribunal-hearings>.

² The Tribunal's submission to the Royal Commission into Victoria's Mental Health System is available at: <https://www.mht.vic.gov.au/news/our-submission-royal-commission-victorias-mental-health-system>.

2. THE TRIBUNAL'S APPROACH TO THE PERFORMANCE OF ITS FUNCTIONS

2.1 Solution-focused hearings

When the Tribunal commenced operation, it understood that there were high expectations that it would be focused on promoting the rights of consumers and carers. These extended beyond diligent performance of our decision-making functions, to include the expectation that all aspects of our operation and our culture would reflect, embed and promote the principles enshrined in the Act.

A key initiative developed in response to this expectation was the adoption of a framework to conduct solution-focused hearings.³ This framework draws upon the theories and practice of therapeutic jurisprudence, non-adversarial justice and problem-solving courts. A solution-focused approach is not about miscasting the Tribunal as a source of solutions, but rather about recognising that hearings can be conducted in a manner that enables and encourages participants to discuss, identify and commit to solutions or future actions. A solution-focused approach is based on the premise that the best outcomes are achieved when hearing participants are key players in the formulation and implementation of plans to address underlying issues. An assumption at the core of solution-focused hearings is that while a compulsory Treatment Order may need to be made at a specific point in time, compulsory treatment should never be regarded as the norm or permanent arrangement for a person, and there should always be a pathway to voluntary engagement – even if that pathway is tentative or just beginning to be articulated. In other words, solution-focused hearings seek to include a sense of hope for the future.

Solution-focused hearings are also one of the ways in which the Tribunal seeks to embed the mental health principles within its operations. In particular, this framework of practice assists the Tribunal to manage an inherent tension that exists between the principles and our statutory functions. The Act seeks to promote supported decision making; however, the Orders made by the Tribunal allow substitute decisions to be made regarding a person's treatment. A solution-focused approach does not erase this tension, but it can ameliorate it. Patients' active participation in the hearing process and the outcome can be a meaningful step towards supported decision making and autonomy.

A lynchpin in the operation and evolution of the Tribunal was the establishment of a dedicated consumer and carer engagement role that is part of both the Leadership and Governance groups in the Tribunal, meaning that person plays an equal and critical role in both strategic and operational decision making in the Tribunal. In addition, a significant focus of that role has been the establishment and facilitation of our Tribunal Advisory Group (TAG), comprising consumers, carers and members of the lived-experience workforce. There is a close and extremely effective working partnership between the TAG and the Tribunal. None of our service improvement initiatives over the past five years could have been achieved without the TAG. Some initiatives would never have been thought of, others might have been thought of and pursued, but the end results would not be close to those achieved in partnership with the TAG.

The Tribunal has also sought to foster effective working relationships with mental health service providers. Each service has a dedicated liaison member who, alongside relevant Registry staff, acts as a key point of contact to ensure administrative arrangements for hearings operate effectively, and if issues do arise, they are resolved as quickly as possible and ideally at a local level. The Tribunal also delivers education sessions to staff in mental health services on an annual or biannual basis. The focus of these sessions is on the principles of the Act, and how to prepare for and participate in a solution-focused Tribunal hearing.

2.2 Legal representation in Tribunal hearings

Each Australian state and territory has its own mental health legislation which gives rise to several differences including, as the draft report notes, different arrangements or entitlements regarding legal representation in hearings before mental health tribunals (or their equivalent). In Victoria a person who is the subject of a proceeding before the Tribunal can authorise any person to represent them.⁴ While this right to representation is broad, in that it captures both legal and non-legal representation, it is simultaneously narrow, in that it doesn't establish a right to access representation. In other words, a person's right to representation is only realised if they have been able to secure access to the services of a lawyer or other representative.

³ The Tribunal has published *Guide to Solution-Focused Hearings in the Mental Health Tribunal* that is available on our website at <https://www.mht.vic.gov.au/guides-policies-and-procedures>.

⁴ Section 184(3).

Victoria has two providers of free legal representation for Tribunal hearings – Victoria Legal Aid (VLA) and the Mental Health Legal Centre (MHLC). In the Tribunal's first year of operation legal representatives appeared in 19% of hearings, this fell to approximately 15% in each of the following three years, and most recently in 2018/19 fell further to 13%. Table 1 in the appendix to this submission provides more detailed figures relating to legal representation in Victoria over the past five years.

In other fora it has been asserted that the Tribunal is unconcerned by the low rates of legal representation in hearings, which is not correct.⁵ The Tribunal values legal representation but cannot expand the pool of legal resources. In this context the Tribunal notes that:

- As part of our strategic and business planning processes, and also informally, we liaise regularly with VLA and MHLC about strategies or arrangements that can facilitate and maximise access by consumers to the legal representation services that are available. Furthermore, in individual cases, while the power of the Tribunal to adjourn hearings is narrow compared to many other tribunals and courts,⁶ if a consumer advises the Tribunal that they are trying but have not been able to access legal support we will, where it is permissible, adjourn their hearing to allow more time for them to do so. In 2018/19, 171 hearings were adjourned for this reason (accounting for 20% of all adjournments).
- Knowing that access to legal services is limited, we deliberately design our hearing processes and associated information and resource materials (including our website) to be accessible to and cater for consumers who do not have legal representation. Unlike the adversarial process in courts and some tribunals, where it is up to each party to present evidence themselves or through their lawyer, the Tribunal is inquisitorial, exploring the relevant issues proactively through questions and discussion with hearing participants: the person receiving treatment, the people who support them and their treating team. The Tribunal embraces this role. We are also resourced at a level that enables us to allocate one hour to each hearing, considerably more than was possible for the former Board and, we have been advised, a number of our interstate counterparts. We use this time to conduct solution-focused hearings, asking questions to understand the full breadth of a consumer's situation, including their goals and preferences, and to explore how impediments to less restrictive treatment might be resolved. When in attendance legal representatives are valuable contributors to this process, but it happens when consumers are not represented. In 2018 the Tribunal conducted its first survey to explore consumers' and carers' experience of Tribunal hearings:⁷
 - 90% of respondents felt the Tribunal members explained what the hearing was about.
 - 82% considered that the Tribunal members listened to their opinions.
 - 81% felt the Tribunal members explained their decision in an understandable way.
 - 77% considered that the Tribunal members treated them fairly throughout the hearing.
 - 65% agreed with the outcome of the hearing.
- In the later part of 2019 the Tribunal initiated a collaborative project with VLA and MHLC about maximising the effectiveness of legal representation in Tribunal hearings. This project is a response to the fact that mental health law and mental health hearings involve distinct issues and complexities (which is arguably one of the reasons why most Australian jurisdictions have preserved specialist, multi-disciplinary, stand-alone mental health tribunals). Just as tribunals need to take a distinct approach to their functions, legal representation should also be tailored to the unique requirements of this field of law. Furthermore, whilst all the participants in hearings, including lawyers, have distinct roles and responsibilities, a shared appreciation or understanding of the role of other participants contributes to more effective hearings.

⁵ Mental Health Legal Centre Inc. 2019, *Submission to the Royal Commission into Victoria's Mental Health System*, 33: 'The MHT does not view the low levels of legal representation as a problem. In its 2017/18 Annual report it stated that it was vital to avoid "creating a misconception that having a lawyer is necessary to ensure a fair hearing or that it determines outcomes" (Mental Health Tribunal 2018).'

⁶ Section 192.

⁷ The full report on the survey is available at:

<https://www.mht.vic.gov.au/sites/default/files/documents/201905/MHT%20Hearing%20Experience%20Survey%20Report.pdf>.

3. DATA AND RELATED ANALYSIS OF THE IMPACT OF LEGAL REPRESENTATION IN MENTAL HEALTH TRIBUNAL HEARINGS

3.1 Limitations of the current data and analysis

For a number of reasons the Tribunal has concerns about some of the data and related analysis being presented not only to the Productivity Commission, but prior to this in various fora. Before elaborating it is important to repeat and further emphasise that the Tribunal supports legal representation and we would welcome increased levels of representation. People experiencing severe mental illness often experience cumulative disadvantage, and disempowerment attributable to a range of causes. Legal representation and advocacy more broadly (such as VLA's Independent Mental Health Advocacy service) can reduce disempowerment both objectively, as well as in relation to individual consumers' subjective experience of various processes and discussions related to their treatment. Having a legal representative is also likely to encourage some people to attend their hearing when they may otherwise have chosen not to. Legal representatives can be valuable contributors to hearings, and indisputably are one of many factors that bear upon hearing outcomes. However, there are many considerations that urge caution in relation to any assertion that the presence or absence of legal representatives is a primary determinant of hearing outcomes.

- a) The draft report cites the Law Council of Australia's (LCA) finding that when a person is legally represented in a hearing to determine an application for an electroconvulsive treatment order (ECT Order) an Order is only made in 50% of cases.⁸ The source of the reduced approval rate of 50% is unclear, neither of the references cited by the LCA refer to it and it is not borne out by the Tribunal's data (see Appendix – Table 3).⁹
- b) Regardless of what the particular numbers might be for a given period, there are a complex mix of factors and potential biases that need to be considered when interpreting data. The Tribunal is not aware of any research that has sought to undertake such sophisticated analysis. For instance:
 - The Tribunal's view is that the most important variable in hearing outcomes is the attendance and participation of the consumer. One of the potential beneficial impacts of legal representation is that it can encourage a person to attend when they may not have done so without a lawyer. At the same time, it cannot be discounted that a number of people will seek legal assistance because they have already decided to attend. Furthermore, it does not detract from the contribution of lawyers to note that some of the consumers they represent would have (and do) secure an equivalent outcome where they attend without legal representation.
 - The acuity and/or chronicity of a person's symptoms of illness can in some cases impact on their ability to speak to or instruct a lawyer.¹⁰ For example, a person in relation to whom there has been an application for an ECT Order who has stopped eating and drinking and is non-responsive; or a person experiencing chronic 'negative symptoms' of schizophrenia. A hearing outcome is never pre-ordained and symptom severity does not automatically mean the criteria for a compulsory Treatment Order or ECT Order are met. However, individuals whose symptoms are especially severe and disabling are potentially under-represented in the cohort of consumers who are legally represented.
 - The Tribunal also notes that VLA applies a merit test for legal representation in matters before the Tribunal.¹¹ The Tribunal cannot comment on how this interpreted or applied but it does raise the possibility of further bias in the cohort of consumers who are legally represented.

⁸ Law Council of Australia, 2018, *The Justice Project, Final Report – Part 1, People with Disability*, 60, cited in Productivity Commission, 2019, *Mental Health - Draft Report*, 641.

⁹ It is also instructive to note that the Queensland MHRT has confirmed that in the first year after legal representation became mandatory in ECT hearings the ECT refusal rate only increased by 0.6% to 5.9%.

¹⁰ The Queensland MHRT advise that pursuant to section 739(3)(b) *Mental Health Act 2016 (Qld)* in matters where legal representation is mandatory, but the person is unable to express their views, wishes or preferences the lawyer must act in the person's best interests.

¹¹ Details are available on VLA's website: <https://handbook.vla.vic.gov.au/handbook/7-state-civil-law-guidelines/guideline-2-mental-health-tribunal-cases> (downloaded on 21 January 2020).

- c) Since its commencement the Tribunal has been committed to publishing comprehensive quarterly data relating to the outcome of hearings and the performance of our functions. We do this because mental health law profoundly impacts upon the human rights of individuals and as such, within the confines of the strict privacy provisions that govern our hearings, we regard it as being incumbent on the Tribunal to make available as much information as possible to explain how the law is being interpreted and applied. We welcome scrutiny based on this data, especially global data, which we acknowledged in our submission to the Royal Commission raises serious doubts about the extent to which expectations associated with the reforms embedded in the Act have been realised. However, quite apart from the complexities referred to above, there is an overarching question that arises in any purely quantitative analysis of individual hearing outcomes which is – in the absence of case details what exactly can outcomes tell us? The potential answer is – often very little. Mental health is not a good/bad or win/lose jurisdiction. The Tribunal always strives to promote the principles of the Act which strongly emphasise voluntary, least restrictive treatment and individual autonomy;¹² and also focus on bringing about the best possible therapeutic outcomes, recovery and full participation in community life.¹³ Churchill Fellow and VLA lawyer Eleanore Fritze makes a pertinent observation about the focus on whether mental health tribunals do or don't make Orders:¹⁴

While rates of discharge from detention at mental health hearings do indicate something, without more they do not reveal much about the extent to which judicial decision-makers are respectful of rights. Not only do discharge rates reveal nothing about the processes and interactions between the decision-makers and hearing participants, there is no way to know whether a low discharge rate means the decision-makers are conservative and not open to persuasion or whether it instead means that mental health services are rights-respecting and rarely present someone at a hearing who does not meet the statutory criteria...

- d) Having cited so many concerns about drawing conclusions regarding the link between legal representation and the outcomes of mental health tribunal hearings it may appear contradictory for this submission to refer to such data from New South Wales and Queensland (Appendix – Table 4). The Tribunal has done so for two reasons. Both jurisdictions are logically cited as the comparator to Victoria because for a range of hearings before each states' Mental Health Review Tribunal there are much higher levels of legal representation, including mandatory legal representation in some hearings. As such the differences in the rates of representation are stark, but the profile of hearing outcomes is vastly different to what might be expected in that both Tribunals revoke or refuse far fewer orders than the Victorian Tribunal. We think this data is necessary firstly for the sake of completeness; and secondly, to demonstrate that it is diabolically complicated to reach any meaningful conclusion about the link between legal representation and hearing outcomes.

3.2 Data for legal representation and hearing outcomes in the Victorian Mental Health Tribunal and New South Wales and Queensland Mental Health Review Tribunals

The appendix to this submission contains data that the Tribunal has been able to extract from its case management system and other sources that may assist the Productivity Commission's inquiry. The data relating to Victorian hearing outcomes has been separated into outcomes for Treatment Order hearings and outcomes for ECT Order hearings and is further broken down to express outcomes by reference to consumer attendance or non-attendance, and outcomes where the consumer attends and is represented by a lawyer. As noted above, the Tribunal's view is that it is the participation of the consumer that is the most critical variable in terms of hearing outcomes.

We have also included data from New South Wales and Queensland regarding hearing outcomes, the relevant levels of legal representation in those hearings, and the Victorian equivalent for the past two years. The Tribunal has consulted with the New South Wales and Queensland Mental Health Review Tribunals to confirm that our interpretation of their published statistics is accurate and that our proposed Victorian equivalent is valid, taking into account the differences between the legislation and hearing procedures in each jurisdiction.

¹² See in particular sections 11(1)(a),(c),(d) and (e).

¹³ Section 11(1)(d).

¹⁴ Fritze, Eleanore, 2015, *Shining a Light Behind Closed Doors - Report of the Jack Brockhoff Foundation Churchill Fellowship to better protect the human rights and dignity of people with disabilities, detained in closed environments for compulsory treatment, through the use of innovative legal services*, 56.

APPENDIX 1

Table 1: Legal representation in Victorian Mental Health Tribunal hearings

N = hearings conducted in which a final determination was made.

n = hearings in which the consumer was legally represented.

	2014/15 (N = 6182 hearings)		2015/16 (N = 6871 hearings)		2016/17 (N = 7198 hearings)		2017/18 (N = 7520 hearings)		2018/19 (N = 7751 hearings)	
	n	%	n	%	n	%	n	%	n	%
Victoria Legal Aid	1101	17%	919	13%	1058	14%	1063	13%	1003	12%
Mental Health Legal Centre	40	<1%	73	1%	80	1%	95	1%	123	1%
Other legal representation	46	<1%	54	<1%	59	<1%	53	<1%	36	<1%

Table 2: Determinations in Victorian Mental Health Tribunal hearings – Treatment Orders

	2014/15 (N = 5329 hearings)		2015/16 (N = 5960 hearings)		2016/17 (N = 6296 hearings)		2017/18 (N = 6467 hearings)		2018/19 (N = 6794 hearings)	
	Make TO %	Revoke TO %	Make TO %	Revoke TO %	Make TO %	Revoke TO %	Make TO %	Revoke TO %	Make TO %	Revoke TO %
Global outcomes	92%	8%	94%	6%	94%	6%	95%	5%	93%	7%
Outcomes in hearings where the consumer did not attend (excluding revocations based on s5(c) of the Act). ¹⁵	95%	5%	97%	3%	98%	2%	98%	2%	98%	2%
Outcomes in hearings where the consumer attended but was not represented	94%	6%	95%	5%	95%	5%	95%	5%	93%	7%
Outcomes in hearings where the consumer attended and was legally represented	87% (n = 824)	13% (n = 145)	89% (n = 796)	11% (n = 100)	89% (n = 894)	11% (n = 105)	90% (n = 871)	10% (n = 97)	88% (n = 803)	12% (n = 107)

¹⁵ Revocations under section 5(c) will be in cases where the consumer has gone missing or is evading contact with their mental health treatment team, the revocation is based on the fact that treatment cannot be provided pursuant to an Order because the consumer cannot be found. Given it is a revocation based on an objective fact rather than the Tribunal accepting one view of the facts and the law over another these revocations are not relevant to the issues that are the subject of this submission.

Table 3: Determinations in Victorian Mental Health Tribunal hearings – ECT Orders

	2014/15 (N = 618 hearings)		2015/16 (N = 710 hearings)		2016/17 (N = 691 hearings)		2017/18 (N = 762 hearings)		2018/19 (N = 690 hearings)	
	Make ECTO %	Refuse ECTO %								
Global outcomes	88%	11%	88%	12%	85%	15%	90%	10%	86%	14%
Outcomes in hearings where the consumer did not attend.	96%	4%	93%	7%	94%	6%	95%	5%	93%	7%
Outcomes in hearings where the consumer attended but was not represented	89%	11%	89%	11%	85%	15%	89%	11%	87%	13%
Outcomes in hearings where the consumer attended and was legally represented	55% (n = 29)	45% (n = 24)	59% (n = 40)	41% (n = 28)	57% (n = 43)	43% (n = 33)	72% (n = 61)	28% (n = 24)	55% (n = 46)	45% (n = 38)

Table 4: Comparative levels of legal representation and determinations in hearings in NSW, Queensland and Victoria

	2017/18		2018/19	
	% of consumers legally represented	% of hearings where no Order made	% of consumers legally represented	% of hearings where no Order made
New South Wales¹⁶	Section 34 reviews ¹⁷ – 99% legal representation	Patient discharged in 0.3% of all matters	Section 34 reviews – 97% legal representation	Patient discharged in 0.5% of all matters
	Section 37(1)(a) reviews - 91% legal representation	Patient discharged in 1.6% of all matters	Section 37(1)(a) reviews - 93% legal representation	Patient discharged in 0.8% of all matters
	Section 37(1)(b) reviews - 90% legal representation	Patient discharged in 1.4% of all matters	Section 37(1)(b) reviews - 94% legal representation	Patient discharged in 0.9% of all matters
	Section 37(1)(c) reviews – 63% legal representation	Patient discharged in 0.4% of all matters	Section 37(1)(c) reviews – 59% legal representation	Patient discharged in 0.3% of matters
	ECT hearings – 78% legal representation	ECT was not approved in 1.5% of all matters	ECT hearings – 83% legal representation	ECT was not approved in 0.8% of all matters
Queensland¹⁸	Treatment authority hearings – legal representation data NA.	Treatment authority revoked in 1.02% of all matters	Treatment authority hearings – 0.4% legal representation	Treatment authority revoked in 1% of all matters
	ECT hearings – mandatory legal representation	ECT application refused in 4.7% of all matters	ECT hearings – mandatory legal representation	ECT application refused in 5.9% of all matters
Victoria	Temporary Treatment Order hearings – 21% legal representation	TTO revoked in 6% of all matters	Temporary Treatment Order hearings – 19% legal representation	TTO revoked in 8% of all matters
	Treatment Order hearings – 11% legal representation	TO revoked in 5% of matters	Treatment Order hearings – 11% legal representation	TO revoked in 7% of matters
	ECT Order applications – 13% legal representation	ECT application refused in 15% of all matters	ECT Order applications – 15% legal representation	ECT application refused in 14% of all matters

¹⁶ Mental Health Review Tribunal (NSW), 2018, *2017/18 Annual Report* and Mental Health Review Tribunal (NSW), 2019, *2018/19 Annual Report*.

¹⁷ Legal representation is compulsory – subject to a consumer’s right to refuse representation: *Mental Health Act 2007* (NSW), s. 154(2A): ‘An assessable person who is before the Tribunal for a mental health inquiry must, unless the person decides that he or she does not want to be represented, be represented by an Australian legal practitioner or, with the approval of the Tribunal, by another person of his or her choice.

¹⁸ Mental Health Review Tribunal (Qld), 2018, *2017-18 Annual Report*, State Government of Queensland, Brisbane; and Mental Health Review Tribunal (Qld), 2019, *2018-19 Annual Report*, State Government of Queensland, Brisbane.

