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President's Update

Welcome to the final communique and Q&A for 2021. I would like to take this opportunity to thank all members for their contribution to the Tribunal over the past 12 months in what continue to be challenging times. Wishing you all a safe and relaxing holiday period and I look forward to working with you next year.

End of year get together

All members are invited to join us at The Pav Bar, Stamford Plaza on Friday 10 December from 5pm for Christmas drinks. As in previous years, some platters of nibbles will be provided and members are invited to purchase drinks. Please ensure that you respond to the calendar invitation by **Monday 6 December** with accepted or declined so that we know numbers for the booking.

Covid-19 mandatory vaccination

All members should now be aware of the Tribunal's mandatory Covid-19 vaccination policy (see email from the Tribunal dated 12 November 2021). From 15 December 2021, it will be a requirement for all Tribunal members to be fully vaccinated against Covid-19 and to have provided evidence of vaccination via the Queensland Health vaccination hub. Should you have any questions regarding the policy or your obligations, please contact me as soon as possible.

Diversity data

Thank you to all the members who provided a response to the Tribunal's diversity data survey.

Any members who have not yet answered the survey and would like to can contribute here:

https://forms.office.com/Pages/ResponsePage.aspx?id=CLBIC9eVvEq6_D_8IMA5wGPF4A-xSR1Fsc9V6nTgNK5UMFAyN1pINkRVQ0JLTDNKWlpHWFRHQk41SS4u.

To date we have had 55 responses. Some results so far:

- 85% of respondents were born in Australia.
- 9% of respondents are of Aboriginal or Torres Strait Islander origin (or both).
- 11% of respondents have a disability.
- 13% of respondents speak a language other than English at home. 11% of respondents identify as LGBTIQ+.

You Can't Ask That – Cairns videos

For Mental Health Week this year, Mental Health and ATODS from Cairns and Hinterland Hospital and Health Service put together a series of short videos asking real life consumers and carers questions about their experiences. The videos can be accessed here:

- Eliza, a 22 year old Peer Worker who shares her take on how to best connect with and support consumers on their recovery journey <https://vimeo.com/619452465/2ba1dc61d3>
- Whitney, a proud young 19 year old Indigenous woman navigating caring for her partner <https://vimeo.com/user31906235/review/619446177/870437d915>
- Chelsea, a 23 year old aspiring mental health worker who has cared for her mum since she was 13 years old <https://vimeo.com/user31906235/review/619448549/0e96b6356d>
- Mena, a breast cancer survivor used to caring for other breast cancer survivors who then found herself thrust into another world of caring when her friends mental health came crashing down around her <https://vimeo.com/user31906235/review/619433743/c8292790ca>
- John, a 62 year old champion lawn bowler with 36 years lived experience in mental health Here is the link for John <https://vimeo.com/630560425/1e85c5e0fa>
- Jasmen, a 22 year old singer and songwriter who has had to manage with mental health issues since she was 15 years old Here is the link for Jasmen <https://vimeo.com/630554217/8325fbbb1d>

Making tracks together: Health equity framework

Queensland Health has developed a Health Equity Framework titled Making Tracks Together: Queensland's Aboriginal and Torres Strait Islander Health Equity Framework. The framework is designed to provide guidance to enable Hospitals and Health Services to develop a Health Equity Strategy that is co-designed, co-owned and co-implemented in accordance with requirements outlined in legislation. Additional information is available in videos published on QHEPS (available

[here](#) when on the QH network). Importantly for the work of the MHRT, the framework notes that poor mental health is the leading burden of disease experienced by First Nations peoples in Queensland.

Masterclasses and case study sessions

We have been planning learning and development opportunities for members for 2022. The first masterclass for the year will be on Wednesday 9 February at 5:30pm and we will be looking at recent Mental Health Court cases. An invitation for the session (via Teams) will be sent early in the new year.

Vicarious trauma masterclass

Thank you to those members who could make it to the masterclass session earlier this month on vicarious trauma. Members seemed to enjoy the session and we had great feedback about the speaker, Tere Vaka from Penny Gordon & Associates. Based on the notes we took during the session, we have published on the members' website an information sheet on vicarious trauma, including the causes and signs of vicarious trauma, building resilience and how to maintain wellbeing.

Executive Officer's Update

Staffing

As mentioned in the last Communique, there have been a number of staffing changes over the past few months.

In the Hearings Team, we have two new positions of Team Leaders. Jodie Stuart who you will all know was the successful candidate in one of these positions, while Hayley Dodd was successful in the other position. Hayley joins us from the Public Trustee office and you will no doubt have already received some emails from her.

Monday 29 November also sees the arrival of Michael Marengi who will be undertaking the role of Legal and Executive Support Officer. Michael will sit in the desk outside Annette and Virginia's office.

Hearings

Parking

As we return to more AMHS venues and more office workers return to the city, car parking (or the limited supply of) has become an issue. Members are reminded that details of the AMHS venues and where to park can be found in the Hearings Venue Reference Guides at [Member Resources | MHRT](#). Of course, Members can also contact the relevant Hearings Coordinator with any queries in relation to parking.

We also understand that parking has been in limited supply in the office with the 53 Albert St car park and the Royal on the Park car park recently both full on one occasion. We have been advised that there is a further car park available at 42 Albert Street. The entry to this car park is via Margaret Street. This car park is run by the same company that operates the 53 Albert St car park so similar payment arrangements are in place. We are currently investigating other parking options and will provide an update as soon as possible.

Members will also be aware of the change in payment system at the 53 Albert St park. You must now keep the ticket you received on entry. As usual you will then see Corporate Services, or Michael, who will provide you with another ticket. On exit, you firstly need to scan the ticket you received upon arrival. This will then indicate how much your parking is and you then scan the ticket you received from Corporate Services to exit.

Perhaps one of the key items to remember in relation to parking, is to arrive early. Members are expected to be at the venue and ready to sit at least 30 minutes before the start of the first matter.

All members in person

We recently had a situation where all three members were in person at a venue. Given the members were in person, the CMR was not dialled into. However, a doctor had dialled in to the CMR and was awaiting the start of the hearing. We have raised with the Admin Delegates that they need to be clear as to how members are sitting and the mode that treating teams will be attending by. However, could we also please ask Members to be mindful that even if you are all in person, there may be others to dial into the CMR?

Once we have the new Manager, Hearings Coordination in place, they will be in contact with members regarding treating teams attending in person at venues as we are aware there are some services where teams are not attending in person.

Member requests to sit from home

With the increasing number of requests from members to change their sitting mode to sit from home, please be advised that members will now need to consider the following information when making their request:

- What matters are listed for the day?
- Are there any security/risk issues should one member be left sitting in-person alone?
- Are there any matters that require the members to be in-person?
- Who are the other members sitting?
- How are the other members sitting?
- What facilities does the venue have? For example, Pine Rivers do not have videoconference capability.

These are the matters that will be discussed prior to any approval being given for any change. As is currently the case, it may be that requests are not approved having regards to these issues.

Hearings break

Well another year is very quickly coming to an end and we'd like to remind Members that our last full day of hearings will be 17 December with hearings to recommence from 6 January. The office will generally be closed from 27 December to 4 January, though there will be on-call panels and the office will have skeleton staff available on 30 December. Any urgent issues outside of these times, please just contact Jade on her mobile – 0408 985 074.

Corporate Services

Mileage and insurance

As members will be aware, in order for us to process mileage claims, we must have a copy of a certificate of currency/a current insurance policy on file. In accordance with the Tribunal's Travel Management policy ([Travel Management Policy - v3 Feb 2020.pdf \(mhrt.qld.gov.au\)](#)) and the Remuneration Procedures for Part-Time Chairs and Members of Queensland Government Boards ([remuneration-procedures.pdf \(www.qld.gov.au\)](#)), the insurance policy must be endorsed to indemnify the Queensland Government against certain liabilities at law. This is a standard endorsement available on request from all insurance companies. The wording of the endorsement need not contain "Queensland Government", the word "employer" will suffice. This wording may be on the policy itself or included in the Product Disclosure Statement. Should we not have a copy of your policy with this wording, one of our Administration Officers will be in contact with you in order to have the correct documents on file.

Vaccination evidence

Just a reminder for Members that when uploading your vaccination certificates to the Qld Health portal, you will be asked for user id and password. This is your novell login, or the details you

enter when you first turn on your computer.

Staff expense claims

Please ensure that all claims are lodged before Christmas in order to ensure prompt payment to you.

Medical member recruitment

As all members will be aware, the number of two member panels does not seem to be decreasing despite the recent recruitment process. In order to try to address this issue, we have recently approached a number of doctors who have previously indicated their interest in working the Tribunal. We are hopeful that this may result in more Medical Members, however as always with any Member recruitment and Governor-in-Council process, these steps take some time and unfortunately we do not have an immediate solution to the two member panel issue. If any current Medical Members are more available, please ensure you reply to the fortnightly email sent by the Team Leaders.

Lobby feature in CMR

We have definitely heard the feedback from Members and others regarding how a lobby feature in CMR (which only permits people to be allowed entry to the meeting/hearing upon acceptance by the meeting host) would be useful and we have been liaising with the Telehealth team from eHealth Qld in relation to this. Our latest advice is that this may be possible in the near future. The telehealth team are currently testing the feature and we have everything crossed that this becomes possible for us shortly.

Swollen battery issue

Members may be aware that there is a known fault with hp laptops that cause the battery to swell and the back of the computer to pop open. Whilst a fix was implemented to solve this problem, if any Member does experience this, could you please let Heath know?

Monthly Stats - October 2021

Please note this data is approximate only

October 2021	
MHC Orders	6 including 1 TSO and 1 NFFT (temp). No PPO matters.

Appeals to MHC lodged	2
MHRT Hearings where a decision was made	1035
MHRT Hearings where an adjournment occurred	173
SORs requested	39
Adjournment rate	14%

Q&A's

The Q&A's come directly from issues you identify, and raise with us. That sense of deliberate curiosity creates a culture of collegial discussion and professional development and improves everyone's knowledge and confidence. We want to thank you for your interest and dedication to our work and look forward to embarking together on whatever 2022 has in store for us.

Members' Learning and Development Committee

As Chair of the Members' Learning and Development Committee I would like to welcome new members Dr Curtis Gray, Matt Heelan and Leith Henry. I would also like to thank Dr Geoff Leong and Michael Bradburn for their contribution to the Committee for the last two years.

Attendance at MHRT hearing – an excluded visitor

A panel recently had to address a situation where a patient's nominated support person (NSP) had been excluded from visiting the patient by the Administrator of the relevant AMHS. Under s408 of the Mental Health Act 2016, the Administrator of an AMHS may refuse to allow a person to visit a patient of the AMHS if the Administrator is satisfied the proposed visit will adversely affect the patient's treatment and care. The excluded visitor may appeal the Administrator's decision to the MHRT. Note, the Administrator cannot refuse some persons to visit a patient: a person performing a function under an Act including for example, a community visitor performing a function under the Public Guardian Act 2014 or a legal representative or health practitioner requested by the patient to visit.

The Administrator's decision relates to the person visiting the patient, however, it is not clear whether this extends to the person attending at the AMHS for other purposes, including attending an MHRT hearing held at the AMHS. The Administrator's authority to exclude a person from visiting a patient, is not the only power a service has to exclude a person from the grounds of the site. For example, the Hospital and Health Boards Act 2011 gives security officers the power to direct a person to leave the health services land in a range of circumstances, including if the

person is being disorderly, causing a disturbance or their presence may pose a threat to the safety of anyone on the health service land. Therefore, even if the Administrator's authority does not extend to excluding the person from the whole AMHS, it is possible that the person would still be otherwise prevented from attending the hearing venue.

Where the patient wants the excluded person to attend their hearing as either a representative or support person, they could be invited to attend by telephone. Given the potential for hostility between the excluded person and the treating team, it may be beneficial for the panel to clarify how the hearing will proceed, the fact that the treating team are there to give evidence and not to be cross-examined and that questions can be asked via the treating team.

Reportable offenders register obligations

A treating team recently suggested to a panel that it was not necessary to include conditions on the forensic order because the person was already subject to a number of relevant conditions due to being subject to the 'reportable offenders register obligations. The Child Protection Offender Reporting scheme is established by the *Child Protection (Offender Reporting and Offender Prohibition Order) Act 2004*. The scheme requires persons convicted of child sexual offending to keep police informed of their whereabouts and other personal details for a period of time after they are released into the community. In the case in question, the person was required to report on a periodic basis via a website or telephone to the QPS. The reportable information included address, details of any child with whom they have had reportable contact, details of employment, details of membership of any club or organisation, details of any vehicle driven, details of telephone and internet services used, social networking sites used and information relating to travel.

While this reporting may well be relevant to the QPS monitoring the person's risk of reoffending, it may not be sufficient for the Tribunal's purposes. It is also important to note that this reporting is delayed in nature and may not prevent the person from engaging in activities that the Tribunal would ordinarily prohibit. Lastly, the Tribunal does not have any control over the register obligations which may be changed or removed over time. Panels should be aware that they are entitled to place conditions on a person's order as they see fit in accordance with applicable legislation (including *Mental Health Act 2016* and the *Human Rights Act 2019*).

Election to go to trial

A person may be referred to the Mental Health Court in response to criminal charges by a number of sources including the Chief Psychiatrist, the Director of Public Prosecutions (DPP) or their legal representative. If the Mental Health Court finds that the person was of unsound mind when the offence was allegedly committed, the proceedings for the offence are generally discontinued.

However, section 119(2) allows the subject person to elect to be tried for the offence; that is, for their matter to be referred back to the criminal courts. The person has 28 days to give the DPP written notice of their decision to elect to go to trial. If a forensic order or treatment support order was made by the Mental Health Court, that order will stay in force (and will be subject to review by the Tribunal) until a final decision is made in the criminal proceedings.

While not directly relevant for the Tribunal's operations, it is interesting to note how the evidence before the Mental Health Court for the purposes of the reference can be used in the criminal proceedings:

- expert reports are admissible in the criminal trial only for the purposes of (s157):
 - deciding whether the person is not capable of understanding the proceedings, whether the person is not of sound mind, whether the person was of unsound mind or diminished responsibility when the offence was allegedly committed or whether the person should be admitted to an AMHS under a forensic order (Criminal Code); or
 - sentencing.
- a statement made by the person at the reference is not admissible in evidence in any civil or criminal proceedings (s158).
- a person is not prevented from raising the issue of their mental condition in their criminal proceedings. If it is raised, the Mental Health Court's decision is admissible for sentencing but for no other reason (s159).

For criminal proceedings for a simple offence before the Magistrates Court, in certain circumstances the court may refer the matter to the Mental Health Court or may dismiss the proceedings (depending on the type of offence. For a proceeding in the District or Supreme Courts, in certain circumstances the court can refer the question of the person's mental state to the Mental Health Court. Alternatively, where a jury makes a finding of unsound mind or unfit for trial, the Court may make a forensic order (Criminal Code) which is subsequently reviewed by the Tribunal.

New published Mental Health Court cases

[GLH – Appeal MHC024 – Human rights considerations](#)

The reasons for this decision were published on the members' website under the name MHC024. They have now been named GLH and published by the Mental Health Court. In summary, this case confirms that the *Mental Health Act 2016* can work compatibly with the *Human Rights Act 2019*. Specially, it considered whether a condition prohibiting unsupervised contact with children was compatible with human rights in all the circumstances.

FCZ – Fitness for trial

FCZ was charged with multiple, serious offences and the only issue on the reference was whether FCZ was fit for trial. There was conflicting clinical evidence – all clinicians agreed that FCZ had an intellectual impairment but they disagreed on whether those cognitive deficits could be overcome with accommodations during the court procedures. The reasons provide a good summary of prior cases (and key takeaways from those cases) and assess the level of intellect and understanding required for the person to be considered fit to stand trial. A more detailed summary of this case is in the Mental Health Court case library available on the members' website.

Human rights case – solitary confinement and consideration of less restrictive alternatives

Earlier this month, we circulated an email to all members which looked at a case ([Owen D'Arcy v Queensland Corrective Services](#)) in which the Court found that the decision-maker had failed to show that the limit on the person's human right was necessary because they had failed to adduce evidence exploring why less restrictive alternatives were not available. A key takeaway for Tribunal members may be that when considering whether the limit was justified, the Court did not accept that there were no less restrictive alternatives. In particular, the Court found that it was not enough for the decision-maker to simply state her belief that no alternatives were available without providing any basis for that belief. This case may be useful for members to keep in mind when drafting statements of reasons.

Adjournments under s730 – when the patient has since been located

A panel recently faced a situation where the team had submitted an AWA report pursuant to section 728 but by the time of the hearing, they had received information that clearly identified where the patient was – he was in custody interstate. So the question was, is the panel still authorised to adjourn the hearing under section 730? On one hand, the AWA report was valid when it was created by the team and provided to the Tribunal so the Tribunal can rely on section 730 and adjourn the hearing until the person is returned to the service. Alternatively, the criteria for a valid AWA report (that the person is a patient required to return and the service can not locate the person) no longer apply so is it consistent with the intention of the legislation for the patient's statutory reviews to continue? The circumstances in which the Tribunal may consider adjournment under section 730 versus an adjournment for no longer than 28 days will depend on the evidence provided by the treating team. Further information can be found in the information sheet "Adjourning under s730" published on the members' website.



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