

## Position Details

<b>Title</b>	Legal Member	<b>Current Remuneration</b>	\$181,637 p/a pro rata (full-time or part-time appointments)
	Psychiatrist Member		\$181,637 p/a pro rata (full-time or part-time appointments only) or \$1,128 per full-day casual rate (sessional appointments only)
	Community Member		\$111,590 p/a pro rata (full-time or part-time appointments)
<b>Status</b>	Members are appointed pursuant to s 476 of the <i>Mental Health Act 2014</i> . Remuneration is as determined by the Minister on the recommendation of the Public Sector Commissioner (s 478(2)). Members hold office on the terms and conditions of appointment determined by the Minister (s477(4)) for the period (not exceeding 5 years) specified in the instrument of appointment and are eligible for reappointment (s 477(3)).		
<b>Reports to</b>	Members report to the President of the Mental Health Tribunal. Other than when exercising the jurisdiction of the Tribunal as conferred by Part 21 of the Act, Members are subject to the administrative oversight of the President.		

## The Mental Health Tribunal

The Mental Health Tribunal is an independent statutory tribunal established under the *Mental Health Act 2014* (WA). The Tribunal plays an oversight role over involuntary treatment imposed, and certain decisions made, under the Act.

The Tribunal's primary role is to safeguard the rights of involuntary patients in Western Australia. An involuntary patient is a person who receives psychiatric, medical, psychological or psychosocial treatment without informed consent.

The Tribunal conducts informal hearings for a range of matters, inviting the attendance of the patient, the patient's legal representative and or advocate, as well as carers, close family members and personal support persons. Representatives of the patient's treating team also attend the hearing.

### Our vision

Our vision is accessible justice for those whose rights are affected by decisions made under the *Mental Health Act 2014*.

### Our mission

Our mission is safeguarding rights and promoting compliance and accountability under the *Mental Health Act 2014* by:

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



## **Our values**

We value respect for the law, equality before the law, fairness, impartiality, independence, accessibility, efficiency, accountability, competence, and integrity.

## **Our members**

The Tribunal is comprised of a President and:

- Legal Members;
- Psychiatrist Members; and
- Members who are not lawyers, medical practitioners, or mental health practitioners currently serving as staff members of a mental health service or private psychiatric hospital (referred to as a 'Community Member')

All members are appointed by the Governor on the recommendation of the Minister for up to five years and are eligible for reappointment. The current President of the Tribunal is Ms Karen Whitney.

## **What we do**

The Tribunal conducts hearings for a range of proceedings arising under the Act. For most proceedings, the Tribunal must be constituted by a panel of three members: a legal member, a psychiatrist member, and a community member. The Tribunal lists approximately 3,500 hearings per year, and has two panels conducting hearings every business day of the year. The Tribunal's hearings are usually not open to the public.

Most of the Tribunal's work involves reviewing involuntary treatment orders. The Act provides that the Tribunal must conduct an initial review of every involuntary treatment order made in Western Australia within 35 days of the order being made, and then a periodic review every three months thereafter. The Act also provides that the Tribunal must determine a range of applications, including applications to approve the administration of electroconvulsive therapy and psychosurgery.

The legal member is always the presiding member at hearings. Questions of law (including questions of mixed law and fact) must be resolved according to the opinion of the presiding member. Questions other than questions of law must be resolved according to the majority of the members constituting the Tribunal for the proceeding. The legal member is responsible for delivering *ex tempore* reasons for decision at the conclusion of each hearing. Hearings are conducted with as little formality and technicality, and as speedily, as proper consideration of the matter permits. The Tribunal is bound by the rules of natural justice. Every party must have a reasonable opportunity to call evidence, examine or cross-examine witnesses, and make submissions. The Tribunal is not bound by the rules of evidence but may inform itself of relevant matters in any manner the Tribunal considers appropriate, within the bounds of procedural fairness. In conducting every proceeding, the Tribunal must have regard to the objects set out in the Act.

Most hearings are conducted on site at a hospital or health service, and it is not unusual for members to travel between two or three hearing venues per day. Each hearing is listed for between 30 and 60 minutes, and the hearing day is from about 8 am until about 5 pm. During the hearing day, members travel to and between hearing venues, prepare for and conduct on average 5 – 7 hearings, and perform other tasks as required. Depending upon the Tribunal's operational needs, members may need to engage in hearing preparation and other tasks outside business hours. The current remuneration of Tribunal members reflects the expectation that Members will work the hours necessary to meet the Tribunal's operational needs. Because of the Tribunal's operational needs, part-time members must be available to work full hearing days (8am to 5pm) on their assigned days.



## Position Overview

### Key Responsibilities

Tribunal members hear and determine matters in the Tribunal's jurisdiction in accordance with the Act. Full-time and part-time members also:

- assist the President to effectively manage the Tribunal's service delivery performance to achieve its performance benchmark targets;
- lead and deliver projects as assigned by the President;
- provide mentoring and support for sessional members;
- work cooperatively with other Members and staff of the Tribunal;
- impart knowledge to Members and Tribunal staff concerning major developments in applicable law; and
- engage with relevant industry and community stakeholders to provide up-to-date information concerning the operation of the Tribunal, new initiatives or emerging issues and to receive feedback.

### Work Related Requirements

#### Essential Values

Tribunal members are expected to demonstrate commitment to the Tribunal's values, and reflect those values in the performance of their functions. The Tribunal's values include respect for the law, equality before the law, fairness, impartiality, independence, accessibility, efficiency, accountability, competence, and integrity.

#### Essential Competencies

Tribunal members must demonstrate the following competencies.

##### *Knowledge and Technical Skills*

- Ability to quickly develop a sound and detailed knowledge of the legal framework and jurisdiction of the Tribunal as set out in the *Mental Health Act 2014 (WA)*.
- Ability to quickly develop detailed knowledge of the Tribunal's practices and procedures, and willingness to apply those procedures appropriately.
- For legal and psychiatrist members, in depth and up-to-date expert knowledge relevant to the member's classification.

##### *Fair Treatment*

- An established record of respecting diversity in all its forms including differences in beliefs, gender, race, religious customs, age, disability, mental capacity, sexual orientation, social or economic status and lifestyle.
- Sound understanding of, and firm commitment to, the Tribunal's obligation to ensure a fair and respectful hearing for every patient.
- An established record of treating all people with courtesy, respect and dignity, particularly those who are vulnerable and disempowered, and/or under your supervision (such as patients and junior staff members).

##### *Communication*

- Demonstrated ability to communicate courteously and effectively with a wide range of people, particularly those who are vulnerable and disempowered, and/or under your supervision (such as patients and junior staff members).



### Conduct of Hearings

- Ability and willingness to conduct hearings in a manner that establishes and maintains the independence and authority of the Tribunal and enables proper participation by all involved.
- Ability and willingness to manage the hearing process to facilitate the fair and timely performance of statutory obligations.
- Ability and willingness to ensure that the hearing addresses all relevant issues.

### Decision-making

- An established record of exercising sound judgment and appropriate discretion.
- Ability to quickly identify, read and assimilate large volumes of information, retain the information, and use it to form well-reasoned decisions in accordance with the Act.
- Ability and willingness to use a structured decision-making process to produce well-structured, concise and clear decisions and reasons.
- For legal members, ability and willingness to deliver clear, well-reasoned, and sound *ex tempore* reasons for decision at the conclusion of every hearing.

### Efficiency

- Ability and willingness to manage hearings to facilitate the fair and timely resolution of the matter.
- Ability and willingness to actively manage cases to promote the efficient and just determination of disputes.
- Ability and willingness to make effective use of all available Tribunal resources, including electronic resources.

### Professionalism and Integrity

- Ability and willingness to maintain and advance the independence, authority and reputation of the Tribunal.
- Ability and willingness to maintain and advance personal independence and integrity.
- Ability and willingness to promote the highest standards of behaviour.
- Willingness to fully prepare for every hearing in advance of the allotted hearing time, including (if necessary) preparation outside normal business hours without additional remuneration.

## Additional Requirements

- **Legal Members:** Must be an Australian Lawyer as defined in s3 of the *Legal Profession Act 2008 (WA)* (a person who is admitted to the legal profession under the *Legal Profession Act 2008 (WA)* or a corresponding law). Although there is no statutory minimum period of legal experience required by the *Mental Health Act 2014* for appointment, the demands of the position require Australian Lawyers who, because of their degree of experience, competence and ability, operate with very high levels of professional autonomy. Candidates will have demonstrated by their professional performance the capacity to undertake professional work with great efficiency, effectiveness and reliability. Candidates will have demonstrated very high degrees of initiative, judgment, and originality in the performance of professional work. Equivalent private sector positions would include Senior Lawyer, Special Counsel, and established Junior at the Bar. Equivalent public sector positions would include Assistant State Solicitor, Assistant State Counsel, State Prosecutor, or Assistant Parliamentary Counsel.
- **Psychiatrist Members:** Must be a Fellow of the Royal Australian and New Zealand College of Psychiatrists. To be designated a member who is a child and adolescent psychiatrist, must be a Fellow of the Royal Australian and New Zealand College of Psychiatrists with additional qualifications and clinical training in the treatment of mental illness in children.



- **Community Members:** A member who is not a lawyer, a medical practitioner, or a mental health practitioner who is currently a staff member of a mental health service or private psychiatric hostel. Parliament intended that the third member of the Tribunal effectively ensure that community standards and expectations are upheld by the Tribunal. The statutory limitations on who can be a community member are intended to avoid any bias and actual or perceived conflicts of interest. Community members reflect the diversity of our community and may have experiences which assist the Tribunal in meeting the objects set out in section 10 of the Act.
- **All Members** must:
  - have a high level of computer literacy and access to a private mobile phone, computer, internet and email for electronic delivery and preparation of hearing documentation;
  - have a class C driver's licence and use of a private vehicle to drive to, and between, hearing venues as directed by the President;
  - be willing and able to work the hours necessary to meet the Tribunal's operational needs, including additional and non-standard hours (the remuneration of Tribunal members set by the Minister reflects this expectation);
  - be willing to undertake intrastate travel as directed by the President;
  - be willing to participate in mandatory professional development training, performance management and continuous improvement processes as directed by the President;
  - be willing to work continuously toward achievement of the Tribunal's strategic objectives and action plan detailed in the *Mental Health Tribunal Strategic Plan 2018-2020* (**copy attached**).

## The Appointment process

The Tribunal seeks to recruit up to 6 full-time equivalent Members on a full-time or part-time basis. All part-time members will have fixed schedules negotiated with the President in accordance with the Tribunal's operational needs. The Tribunal will also consider appointing Psychiatrists as sessional members to fill areas of particular operational need, such as child and adolescent psychiatrists. Members are appointed for a term of up to five years.

The appointment process will proceed in multiple stages. At each stage, each candidate's suitability for appointment will be assessed in relation to:

- The candidate's ability to meet the Work Related Requirements set out above;
- The expectation that the membership of the Tribunal should be gender-balanced and reflect the social and cultural diversity of the Western Australian community;
- The current needs of the Tribunal, having regard to Member status and type (including availability and willingness to commit to appointment on a full-time or part-time basis).

The appointment process may involve shortlisted candidates being interviewed by a panel. The appointment process may also involve reference checks. The Tribunal uses 360° reference checks, which means we may speak with people you have had contact with at several levels. Candidates may be asked to provide three referees (one each of the following):

- **A junior staff member who is currently (or recently has been) in the same professional setting as yourself** (not necessarily under your supervision, control, or direction) who can attest to your ability to communicate courteously and effectively with all people, and to treat all people with courtesy, respect and dignity, particularly those who are vulnerable and disempowered, and/or under your supervision.
- **You current supervisor (if you are currently employed) or your most recent supervisor (if you are not currently employed)** who can attest to your abilities in respect of all of the competencies. If you are, or have been, a Member of a Tribunal, please use your current or most recent Head of Jurisdiction.



- **A professional colleague (current or recent former)** who can attest to your abilities in respect of all of the competencies and your reputation amongst your colleagues.

Persons who you have not specifically nominated as a referee may also be contacted if you are successful in progressing to this stage of the appointment process.

The appointment process may also involve probity checks.

- **Lawyers, Psychiatrists, and any other professionally qualified candidates:** You may be required to provide consent to the making of enquiries of all present and former professional bodies concerning admission, registration, complaints, and or disciplinary history.
- **A National Police Certificate:** You may be required to provide a National Police Certificate listing all disclosable court outcomes and pending charges from all Australian jurisdictions (including traffic and non-police prosecuted matters).
- **Other relevant probity checks or enquiries:** Other relevant probity checks or enquiries also may be required at this stage.

A final list of candidates considered most suitable for appointment will be referred to the Minister for Mental Health. The Minister will then make recommendations for appointment to the Governor in Council. The statutory appointment process can take a considerable time from the date of application (sometimes up to six months).

All candidates will be notified once the process is finalised. Because of the nature of these appointments, however, feedback to unsuccessful candidates is generally very limited.

## How to Apply

Your application must include:

- A completed Expression of Interest form, including evidence as to your professional qualifications;
- A *curriculum vitae* of no more than 4 single-sided A4 pages (additional pages will not be accepted);
- A covering letter of no more than 2 single-sided A4 pages (additional pages will not be accepted) indicating why you are interested in serving as a Member of the Tribunal, and how your skills and experience will make you a good fit to perform the required work in the context of the Work Related Requirements identified above.

If you would like further information, please contact Fiona Macleod, Price Consulting Group Pty Ltd on 0407 980 708 or by email at [fiona@priceconsulting.com.au](mailto:fiona@priceconsulting.com.au).

Send your completed Expression of Interest form (including evidence of your professional qualifications), your CV, and your covering letter in pdf to:

‘Expression of Interest’ – Attn. Fiona Macleod

[applications@priceconsulting.com.au](mailto:applications@priceconsulting.com.au)

**Applications must be submitted by email using the Expression of Interest Form. Hard copies of applications, incomplete applications, or late applications are unable to be accepted.**

**Closing Date: Friday 21 June 2019 at 4.30pm**



# Mental Health Tribunal WA Strategic Plan 2018 – 2020

## our vision

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

## our mission

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

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

## our values

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

## strategic objectives

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

We will support stakeholder participation in the hearing process.

We will improve how we work and maximise our use of technology.

We will build our capacity and make best use of our resources.

## action plan

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

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

We will support stakeholder participation in the hearing process.

- The Tribunal will provide patients, 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 publically 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 the basis of 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 caseflow management.
- The Tribunal Registry will articulate its administrative processes in a manual which will be publically 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.