



Mental Health Tribunals ARC Project

Mental Health Tribunals: Balancing fairness, freedom, protection and right to treatment?

Much studied overseas, Australia lacks information about the effectiveness of mental health tribunal processes. This project will provide the first comprehensive theoretical and empirical work on the civil jurisdiction of Australian mental health tribunals—looking at their functions in reviewing the care and treatment of people who are patients in general and psychiatric hospitals or subject to community treatment orders.

The project hopes to contribute substantially to improving access to justice and needed treatment for people with mental illnesses, to encourage wider debate about the review process and to enhance communication between participants and stakeholders. It is a collaborative and interdisciplinary venture. Members of the research team have experience in the fields of sociology, psychology and law.

The project is funded by the Australian Research Council under its ‘Linkage’ program, which supports collaborative projects with relevant industry or government partners. The research team is led by Professor Terry Carney of Sydney University’s Law Faculty from 2005-2008. The NSW Mental Health Review Tribunal, ACT Mental Health Tribunal, Mental Health Review Board of Victoria and NSW Law and Justice Foundation are research partners.

Aims and Research Areas

The principal aim of the study is to assess the ‘fairness’ and ‘therapeutic’ value of tribunal hearings and to identify best practice reforms.

The perspectives of a range of participants and stakeholders—consumers (the tribunals’ clients), their family members and carers, tribunals, health services and advocacy services—will be explored. The main study jurisdictions are NSW, Victoria and the ACT.

Research questions include:

- How does the *actual* operation of mental health tribunals compare to their functions set down in legislation and policy?
- How do consumers, and their family members and carers, experience the review process?

- How are hearings conducted and administered, and how does the interdisciplinary membership of tribunals impact on these processes?
- What are the relationships between mental health tribunals and other bodies with whom they liaise: health service providers; substitute decision-making bodies, such as guardianship tribunals; advocacy organisations; and the government bodies which fund the tribunals?
- What is the impact of legal and lay representation?
- How do tribunal processes and hearing outcomes relate to broader experiences of mental health treatment and care?

Methods

The study utilises five main data sources and methods, ranging from quantitative to qualitative approaches.

Hearing observations

To better understand the *features of hearings* which may be pertinent to optimal outcomes, the study is conducting observations of approximately 100 hearings across all three tribunals (including some pre-hearing discussions & deliberations, and Magistrates hearings in NSW). Researchers will collect information about hearing practices, social/symbolic environments, and levels and forms of communication.

Interviews with consumers and carers

In order to obtain deeper understandings of how the tribunals' clients, and their family members and carers, experience hearings and their place in the life course of treatment, we will conduct approximately 120 semi-structured face-to-face interviews with participants attending all three tribunals in the previous 3, 6 or 12 months. Interviews will take place at various stages both after, and in the lead-up to, hearings. This phase will tap attitudes towards the tribunals and hearings, as well as views about services and treatment; information and communication issues; and perceived impacts on subsequent health status.

Interviews with professional participants

In order to properly understand the variables and forces at play, and maximise the opportunity to contribute to better practice in the future, the study will schedule semi-structured face-to-face and telephone interviews with around 30 people involved in tribunal hearings in a professional capacity in the three jurisdictions. This will enable the study to collect data about structure, policies and practices of organisations, and views on (and examples of) problems and challenges for the tribunals, other professional participants and clients. A number of focus groups will also be conducted.

Statistical profiles based on computerised records

To obtain a picture of the pattern and *flow of cases*, the study will analyse approximately 10,000 computerised unit records from the three tribunals.

Ethics and Confidentiality

The project is being carried out according to the *National Statement on Ethical Conduct in Research Involving Humans* (June 1999) produced by the National Health and Medical Research Council of Australia. It has been approved by the University of Sydney's Human Research Ethics Committee.

The anonymity and the confidentiality of the personal information of participants will be protected by de-identification of the data collected. In all publications related to the project and in the final report, participants (or their organisations where relevant) will be referred to by a pseudonym, unless they specifically consent to being identified.

All members of the research team are subject to confidentiality obligations in collecting the data. Wherever possible, the primary data collected will be anonymised. Where it is necessary to collect information with identifying details, the primary data and the system allowing matching of de-identified data with the primary data, will be stored securely in separate places. The primary and de-identified data will be kept securely in the file area of the project for seven years.

Any person with concerns or complaints about the conduct of the project can contact the Manager, Ethics Administration, at the University of Sydney on (02) 9351 4811.

Feedback and Publications

Once the analysis arising from the research has been completed, the full report and recommendations will be distributed free to participants upon request. Summaries of these reports will be available separately where required. There will be two widely representative workshops in Sydney and Melbourne involving industry and community stakeholders, and a number of publications will be produced as the project progresses. The first conference papers produced by the project were presented at the *Third International Conference on Therapeutic Jurisprudence* held in Perth, Western Australia in June 2006.

The Research Team

Professor Terry Carney, Chief Investigator
University of Sydney, Law Faculty

Dr David Tait, Chief Investigator
Senior Lecturer, University of Canberra, School of Law, Division of Business, Law and Information Sciences

Professor Duncan Chappell, Partner Investigator
Immediate past President NSW Mental Health Review Tribunal
President of the Commonwealth Secretarial Arbitral Tribunal and member of the NSW Law Reform Commission
Adjunct Professor, School of Criminology, Simon Fraser University, Vancouver, Canada

Dr Christine Coumarelos, Partner Investigator
Principal Researcher, Law and Justice Foundation of NSW

Miriam Ingvarson, Researcher
Project Worker, Victorian Mental Health Legal Centre

Vivienne Topp, Researcher
Solicitor, Victorian Mental Health Legal Centre

Martin Thomas, Researcher
Project Worker, Victorian Mental Health Legal Centre

Fleur Beaupert, Doctoral Candidate
Research Assistant, University of Sydney, Faculty of Law

For further information, please contact:

Martin Thomas
Mental Health Legal Centre (Victoria)
Ph:
Email: Martin_Thomas@clc.net.au