

MENTAL HEALTH TRIBUNAL REPRESENTATION SCHEME

Written: Diane Sharman and Valerie Williams

Presented: Diane Sharman

The Mental Health Tribunal Representation Scheme (the Scheme) is a Tasmanian initiative developed and implemented to provide free, competent representation to all persons appearing before the Mental Health Tribunal (MHT). The Scheme fills the gap that existed in Tasmania between the right to receive representation and the ability to exercise that right. The two goals of the Scheme are to;

- (1) guarantee access to competent and free representation to all persons appearing before the Tribunal and;
- (2) improve professional service delivery to clients with a mental illness

The Scheme was a necessary initiative to ensure that the rights of people living with mental illness in Tasmania were met. It was created as a consequence of the failure to obtain legal practitioner representation, a band-aid solution as it were. However, in its nearly 6 years of operation, it has proved to all stakeholders that it can provide 100% legal representation of a comparative high standard. It has been demonstrated that the Scheme is an efficient, cost effective and a more therapeutic service for Tasmanians appearing before the MHT.

1. BACKGROUND

Despite the fact that representation is a right guaranteed in the United Nations *Principles for the protection of persons with mental illness and the improvement of mental health care* which was incorporated in s54 of the *Mental Health Act 1996 (Tas)*, Tasmania did not have a system of legal representation for individuals appearing before the MHT at a time when the person could be deprived of their liberty for periods to six months and/or be forcibly treated.

In November 2000, the President of the MHT wrote to the newly established mental health advocate enquiring as to whether the advocate's role included representation before the Tribunal. Effectively, all patients appeared unrepresented and the Tribunal considered that the lack of representation represented a legal failing and a human rights breach.

Time and resources did not allow the sole state mental health advocate to provide representation for the more than one hundred persons appearing at Tribunal hearings across the state each year. She did however make the commitment that achieving representation would be the mental health program's priority systemic issue.

After unsuccessfully lobbying Government and Legal Aid for two years, the advocate had an idea for a scheme using a law student volunteer force. Not wishing to recreate the wheel, research was commenced to find a suitable

model but it quickly became apparent that the idea was innovative. The concept needed to be developed from its very theoretical foundation to a financially viable and sustainable working model that met the needs of all stakeholders.

2. THE MODEL

The Scheme draws upon the therapeutic jurisprudential theory for its underpinning philosophies¹. Therapeutic jurisprudence is the study of law's healing potential and uses social science to study the extent to which a legal rule or practice promotes the psychological and physical well-being of the people it affects. The theory can be seen in practice in what are commonly called 'problem solving courts'.

Therapeutic Jurisprudence:

- encourages healing
- recognises the role that law has to play as a therapeutic agent
- is less confrontational
- is problem solving
- examines underlying social issues and the impact of law on society
- promotes a mixture of justice and psychology
- focuses on the mental well being of all participants
- focuses on the reduction of recidivism
- focuses on reaching desired outcomes for all participants
- resists a strict application of rules and laws
- promotes individualism
- focuses on what is right with a person rather than what is wrong
- searches for creative alternatives
- borrows tools used by other disciplines such as the 'personal contract' and the 'voiced commitment'.
- uses a cooperative approach rather than an adversarial approach
- promotes responsibility

The Mental Health Tribunal Representation Scheme Therapeutic Jurisprudential Model;

- is non-adversarial
- empowers clients by;
 - being aware that there is a legally trained person 'on their side'
 - being informed
 - feeling supported
 - having choice

¹ In the mid 1990s, two American professors, Bruce J. Winick and David Wexler co-founded the school of social inquiry known as therapeutic jurisprudence.

- does not harm existing relationships
- provides Representatives with mentoring
- works co-operatively with the Mental Health Tribunal

2 (a) Benefits of the Scheme

The Client

- feels empowered
- feels that they have someone on 'their side'
- feels more able speak for themselves
- feels that they have choices
- feels that the participants will listen to them
- feels that they have a competent and articulate professional helping them to present their issues and wishes
- feels a part of the decision-making process rather than just an observer
- feels more prepared before speaking to the Tribunal having explored options and strategies with the representative prior to hearing commencing
- feels more comfortable in the environment
- is able to provide more and better information to the Tribunal

The Representative

- gains knowledge and practical skills that will benefit them personally and professionally
- gains knowledge and practical skills specific to working with clients who have a mental illness that will benefit them professionally
- gains knowledge and practical skills that better helps them to find employment
- raises awareness of social justice and human rights
- reduces stigma
- raises confidence and esteem
- improves well being and self satisfaction

The Tribunal

- improved overall benefits when people actively participate in their hearing
- opportunity to make better more informed decisions
- ability to achieve outcomes that better suit the person's needs
- increased sense of wellbeing in knowing the person had independent competent representation
- representation that is legally and therapeutically compatible
- representation that is not adversarial
- being a partner in the ongoing development and goals of the Scheme

The Government

- opportunity to fulfil its human rights' obligations
- funding a Scheme that provides 100% access to representation state-wide at minimal cost
- opportunity to increase awareness and skills amongst Tasmanian professionals working with mentally disordered persons
- reduce stigma and discrimination

The Community

- raises awareness of mental health issues
- reduces stigma and discrimination
- raises awareness of human rights

The Therapeutic Jurisprudential model allows all participants, especially the client, to feel that they are contributing in the process and that all participants are focused on the client's needs. The representative ensures that their client is heard in a way that satisfies the client. This may mean that the representative speaks on the client's behalf; the client is supported to speak on their own behalf; or there is a combination of both. The consequence is that the Tribunal is able to make more informed decisions and ensure better outcomes based on the client's voice and their expressed wishes.

2 (b) Innovative

Developed to work in partnership with the Mental Health Tribunal and educational facilities, the Scheme provides a system of non-adversarial legal representation based on principles of Therapeutic Jurisprudence using primarily volunteer law students who have undertaken additional training in mental health. The role of the representative is to ensure that legal rights are protected while therapeutic relationships are not damaged in the process.

2 (c) Competent

The Scheme is a legal scheme providing defined legal representation before a mental health tribunal deciding matters pertaining to the lawfulness of a detention order or a community treatment.

The vast majority of volunteers are law students from the University of Tasmania and legal graduates from the Centre for Legal Practice. As these educational facilities are located in the south of Tasmania, it has proved difficult to recruit legally trained volunteers in the north/northwest so students from other disciplines such as nursing, teaching and TAFE welfare courses primarily represent clients in the other regions.

Representative's performances are evaluated by the Tribunal and are used in the representative's professional development. To date, evaluations have been of a consistently high standard. The 07/08 Annual Report of the MHT noted that persons appearing before the Tribunal are more likely to provide relevant material when represented by a Scheme representative.²

² 2004 – 2005 Annual Report Tasmania

2 (d) Free

The service is provided free to all persons across the state listed for hearing before the Tribunal.

2 (e) Partnership

The Scheme is a rights initiative created in an atmosphere of partnership with Advocacy Tasmania Inc, the Tasmanian government, the MHT, the legal fraternity, the education system and committed individuals prepared to ensure the rights of the mentally ill are met.

- Mental Health Services, Department of Health and Human Services, Tasmania

Mental Health Services has continually supported the Scheme providing in 2002/03 a small grant of seed funding to develop and implement a year long pilot project. In 2003/04 full funding was achieved by a grant from the Tasmania Community Fund and Mental Health Services. Since 2005 Scheme has been fully funded by Mental Health Services with an undertaking that this would continue into the future as the Scheme has changed the legal landscape in Tasmania and has successfully imbedded itself in the Tasmanian legal system.

- University of Tasmania Law School

The University Law School has supported the Scheme from its inception and continues to do so because beyond its value in meeting human rights obligations, the Scheme provides valuable practical skills training.

- Centre for Legal Practice

The Scheme Certificate was compulsorily incorporated into the Legal Practice Course in 2004. Trainees/representatives are allocated time from their course to provide representations. 265 newly admitted legal practitioners have completed the Certificate of Skills and Awareness in Mental Health.

- Mental Health Tribunal

The Scheme has a symbiotic relationship with the Tribunal. The Tribunal emails the names of persons listed for hearing to the Coordinator and provides necessary contact information. The Tribunal includes the Scheme's brochure with the Notification of Hearing mailed to the person. It is fundamental in the ongoing evaluation of the Scheme. Finally, the President of the Tribunal delivers an hour lecture to the volunteers during their training. The relationship is a partnership to achieve common goals however the Scheme is independent of the Tribunal.

- Clinicians

The prospect of legal representation caused initial concern to mental health clinicians and nursing staff who had no experience of patients being represented and did not see a role for law or lawyers in Tribunal hearings. Working with the support of the Clinical Directors of Mental Health Services, the Scheme provided information sessions to staff. Once the Scheme began representing patients, clinical staff quickly saw improved outcomes; saw it was not an adversarial experience; and felt better in knowing that patients were being heard in an environment that respected each person's legal rights. Having been in place for six years, representation is both expected and welcomed.

2 (f) Process

- The Tribunal sends person a Notice of Hearing which includes information about the Scheme and the person's right to access the offered service
- The Tribunal emails names of listed persons to Coordinator
- Coordinator allocates a representative to a listed person
- Representative telephones listed person and offers a service
- If person accepts service the representative takes initial instructions over the phone
- Representative makes appointment to meet with their client an hour prior to hearing
- In that hour the representative provides information, explains process, discusses doctor's report and takes instructions
- The representative represents the person or supports the person to self advocate during the hearing
- After the hearing the representative explains the decision and answers questions the client may have
- The representative informs the Coordinator regarding the outcomes of the hearing in written form
- The representative debriefs with Coordinator and receives counselling if necessary
- The Tribunal evaluates the representative's performance using the Scheme's evaluation form and forwards the form to the Coordinator
- Evaluation forms may be used in the Coordinator's professional development work with the representative

3. TRAINING

Training is in two parts;

- Certificate in Skills and Awareness in Mental Health
- Representative's Training

3.1 Certificate in Skills and Awareness in Mental Health

The Five Goals

1. To increase awareness of mental illness and the issues and barriers faced by people with a mental illness
2. To provide a good level of skills for future professionals to better work with mentally ill clients
3. To offer greater opportunity for gaining employment.
4. To provide potential employers with an additional gauge to assess applicants
5. To deliver the initial training necessary for persons wanting to proceed to further training as a representative of the Scheme

Objectives of the Skills and Awareness Certificate Training:

Lecture 1 – Social Perspective: Barriers for People Living with Mental Illness

Objective 1

Provide trainees with a greater awareness of the stigma and discrimination experienced by people with mental health issues in our society.

Key Points

- What is stigma and discrimination?
- The roles that the media and myth play in perpetuating stigma and discrimination in society
- Everyone is capable of discriminating against people living with mental illness regardless of social and professional standing, educational levels etc.

Objective 2

Ensure that trainees are aware that if they are to provide the best possible future service to their mentally ill clients they need to reflect on their own subjective biases and be flexible enough to overcome them.

Key Points

- An analysis of the 'normal' expectations that professionals have of clients, and client/professional relationships and why some mentally ill clients will never fit the standard expectations model.
- In the provision of a non-discriminatory best service, it is the professional that must adjust their practices to better meet the needs of their client.
- Additional skills are required to ensure that professionals will provide their mentally ill client with the best possible service.

Lecture 2 – Clinical Perspective: Mental Illness, Symptoms and Behaviours

Objective 1

Provide trainees with a greater awareness of the various mental illnesses and disorders, co-morbidity, and the associated symptoms and behaviours.

Key Points

- Increase the knowledge of the major mental illness, mental health disorders and substance abuses.
- Understanding how mental illness, mental health disorders and substance abuse affects thought processes and behaviours of the mentally ill and why it is that they do not fit the social norm.

Lecture 3 – Skills in Working with Clients with a Mental Illness

Objective 1

Ensure trainees have the practical skills to minimize risk to them selves and increase positive outcomes for their future clients.

Key Points

- The need to implement occupational health and safety strategies when working with mental health clients.
- Improving communication skills of professionals for working with people with mental illness.

Objective 2

Trainees will be able to connect the skills theory with practical implementation through the experiences of the guest lecturer.

Key Points

- The practicalities and difficulties of working with the mental health clients
- The connection between the theory and the implementation of the different learned skills and how the learned skills increase the chances of better outcomes for mentally ill clients

Lecture 4 - The Mental Health Tribunal – “Appearing before the Mental Health Tribunal”

This is a 1 hour lecture given by the President of the Tasmanian Mental Health Tribunal on the role and function of the Tribunal.

Objective 1

Trainees will learn the legislative requirements for the involuntary orders that the Tribunal review.

Objective 2

Trainees will be familiar with the *Mental Health Act 1996* and the required provisions for review of involuntary orders undertaken by the Mental Health Tribunal

Key Points

- An analysis of sections of the *Mental Health Act 1996* that are relevant to the review of involuntary orders
- An understanding of the Administrative Court process relating to the Mental Health Tribunal
- Knowledge of what is required to represent a client before the Mental Health Tribunal
- Skills to instruct clients of Tribunal procedure and collect the client's instructions
- Skills to collate the information provided by the client and to present the relevant information to the Mental Health Tribunal during the hearing.

Skills to provide a closing statement with direct reference to the legislative provision under review

3.2 Representative Training:

Objectives of the Representation Training

The objective of the 5 hours of additional training is to ensure that representatives have;

- a good understanding of the model
- a good understanding of the relevant law
- a good understanding of the legal functions, processes and practices
- a good understanding of professionalism
- a good understanding of the rights of persons with a mental illness
- skills in communicating with mentally ill clients
- skills to ensure competent representation
- occupational health and safety skills

The objectives are achieved through a combination of training methods using;

- lectures
- group work
- interactive exercises
- role plays/interviewing exercises

The 5 hour intensive tutorial is divided into 6 sections which are outlined below.

1. Initial Session

- Welcome
- Overview of the Scheme
- Background of the Scheme
- How Volunteers Work within the Scheme

2. The Model: Therapeutic Jurisprudence – The Representative

Theory of Therapeutic Jurisprudence and its Benefits

The Role of the Representative in a Therapeutic Jurisprudential Framework

- Lawyer or Advocate?
- Pro Bono
- Principles of Advocacy
- Who is the Client when Families are Involved?
- Confidentiality
- Professional Conduct
- Professional Boundaries and Conflict of Interest
- Ethical Dilemmas
- Debriefing

The MHT Court Precepts and Environment

- Participants
- Non Adversarial
- Informality
- Time Management
- Rules of Evidence
- Substitute Decision-making and the Issue of Blame

3. The Law

International Law and Human Rights

The *Mental Health Act* 1996 (TAS)

- The Right to Representation
- The Doctor's Report
- Initial Order

- Continuing Care Order and the Necessary Elements
- Community Treatment Order and the Necessary Elements
- Authority for Temporary Admission and the Necessary Elements

4. Mock Hearing

5. The Client

- Client Allocation and the Procedural Steps of a Representation
- Occupational Health and Safety Issues
- Communicating with the Client
- Using the Doctor's Report and Client Information to Develop the Case
- Empowering the Client
- The Importance of Reporting

6. Role Plays and Practice Interviewing

4. PROMOTION

While the Scheme is innovative to Tasmania, other states have indicated their interest in establishing their own Schemes. In September 2004, the Advocate was invited by the Mental Health Review Board (WA) to provide training to 100 law students from the University of Western Australia Law School.

The Scheme was included as part of the program of the National Administrative Law Conference in 2004, and was promoted by the conference organisers.

In July 2005, a presentation was given at the Annual Conference of Presidents and Registrars of Australian Mental Health Tribunals and Review Boards. The presentation was positively received with attendants stating their intention to consider implementing similar schemes in their states. Advocacy Tasmania Inc. subsequently provided these states with materials including the Training Manual.

The Scheme was featured in the 'Not for Service' Report³ under the 2.7.8.3 *Positive developments* as reflecting a positive initiative for Tasmania.

In 2004, Valerie Williams was nominated by the University of Tasmania School of Law for the National Human Rights and Equal Opportunity award.

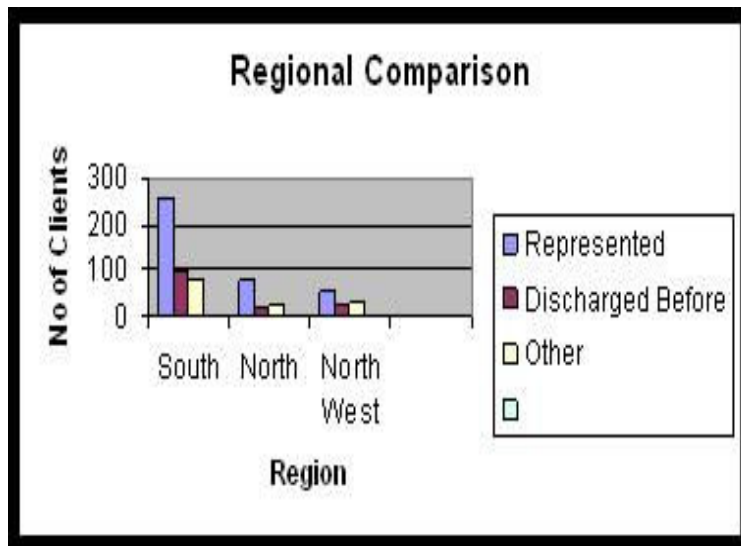
In 2005 the Scheme was awarded the Tasmanian Human Rights Award for "the generous commitment and dedication of the team members to the needs and welfare of the mentally ill through advocacy, support and caring legal representation."

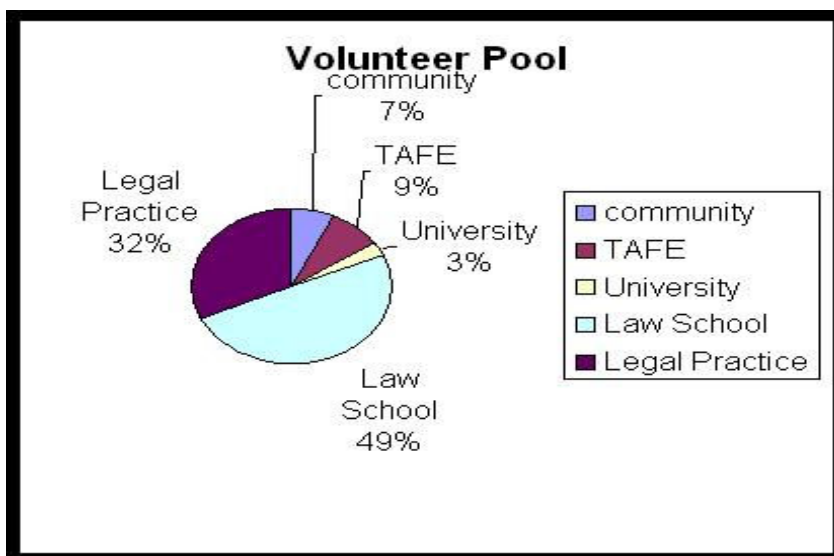
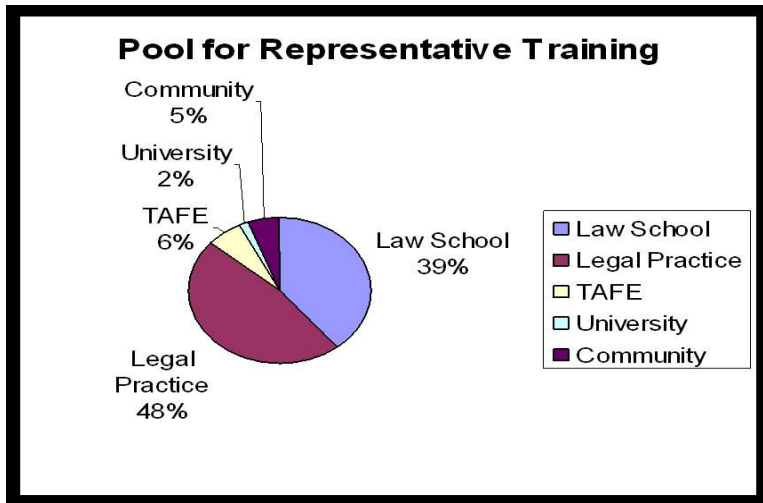
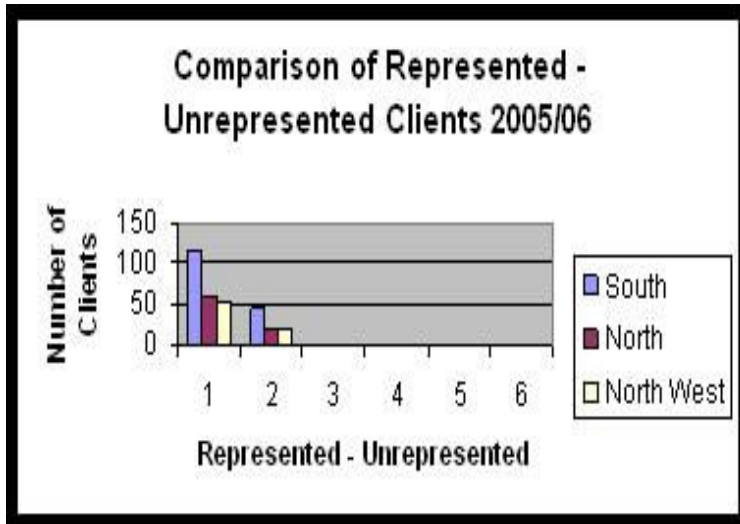
³ Not for Service *Experiences of Injustice and Despair in Mental Health Care in Australia* Mental Health Council of Australia 2005, p 84

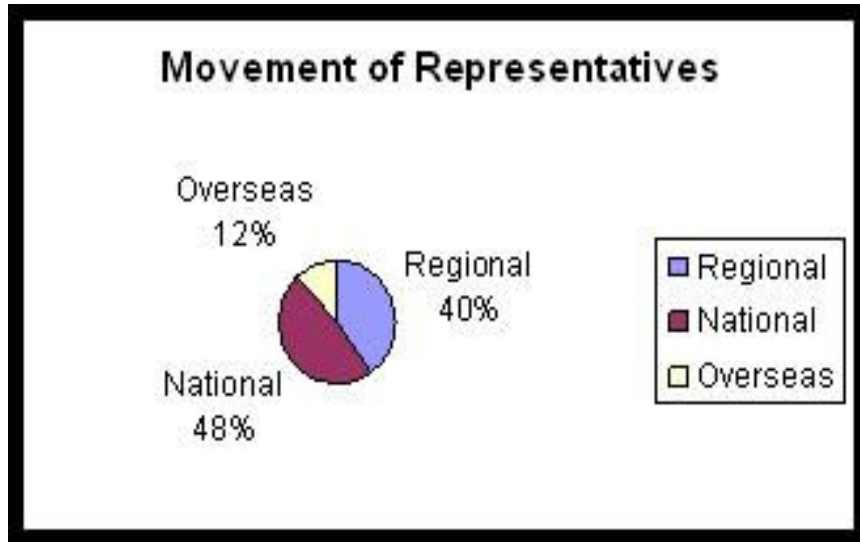
In 2006 the Scheme presented a paper at the Annual TheMHS Conference in Townsville.

From 2006 to present there has been local promotion of the Scheme. This has included various articles in local and state wide newspapers such as the mental health publication 'Insight'.

4. STATISTICS







5. Contact Details

Diane Sharman, Scheme Coordinator –
mhrep@advocacytasmania.com.au