

NORTHERN TERRITORY

**Mental Health Review
Tribunal**

ANNUAL REPORT

2018 - 2019



The Northern Territory of Australia

The Mental Health Review Tribunal

The Honorable Natasha Fyles MLA
Attorney-General
GPO Box 3146
Darwin NT 0801

Dear Attorney-General

Re: Mental Health Review Tribunal – Annual Report 2018 - 2019

In accordance with section 140 of the *Mental Health and Related Services Act 1998*, I have pleasure in providing you with the Annual Report on the operation of the Mental Health Review Tribunal for the period 1 July 2018 to 30 June 2019.

Yours faithfully

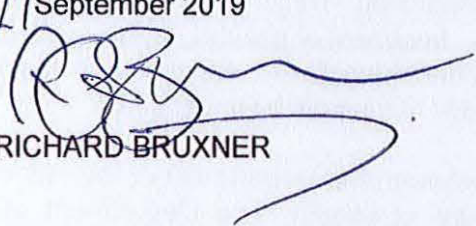

Judge Richard Bruxner
President

27 September 2019

**NORTHERN TERRITORY OF AUSTRALIA
MENTAL HEALTH REVIEW TRIBUNAL
ANNUAL REPORT**

In accordance with section 140 of the *Mental Health and Related Services Act 1998*, I Richard Bruxner, President of the Mental Health Review Tribunal, hereby submit my report on the exercise of the Tribunal's powers and the performance of its functions for the year ended 30 June 2019.

DATED: 27 September 2019


JUDGE RICHARD BRUXNER

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SECTION A: INTRODUCTION

The Mental Health Review Tribunal (MHRT) was established under Part 15 of the *Mental Health and Related Services Act* ('the Act').

The primary role of the MHRT is to act as an independent decision making body to protect the interests of persons who cannot do so themselves due to mental illness. The exercise of that primary function largely involves the review of decisions made by Mental Health Services (MHS) relating to the admission, detention and treatment of persons admitted involuntarily to an Approved Treatment Facility (ATF) and determinations in relation to the involuntary treatment of patients in the community. Appendix 1 contains a statement of the Tribunal functions. Appendix 2 contains a more detailed description of selected functions carried out by the Tribunal.

The administration of the Act is shared between the Department of the Attorney-General and Justice and the Department of Health. The Department of the Attorney-General and Justice has responsibility for the administration of Part 15 of the Act which deals with the MHRT. The MHRT does not administer its own budget. Details of expenditure in relation to the MHRT should be set out in the Annual Report of the Department of the Attorney-General and Justice.

Section F of this Report sets out statistics relating to the MHRT for the period covered by this Report.

SECTION B: OFFICEHOLDERS, STAFF & PREMISES

The Act requires the Administrator to appoint a President of the MHRT from amongst its legally qualified members.

The President is responsible for ensuring the proper exercise of the powers conferred on the Tribunal and the proper performance of the functions of the Tribunal.

I have held the appointment as President since 17 December 2014.

I accepted that appointment because I am also the President of the Northern Territory Civil and Administrative Tribunal ('NTCAT') and because I understood at the time that NTCAT would soon be taking over the mental health review jurisdiction. As noted later in this report, it now appears likely that this will occur during the 2019-20 reporting period.

For the entire reporting period, the MHRT has been administered and staffed by officers of NTCAT.

The Act stipulates that a member of the public service must be appointed as a Registrar of the MHRT. The functions of the Registrar are to exercise the powers and perform the functions conferred by the Tribunal. The Registrar of the MHRT is Ms Renata Blanch.

The Act also includes provision for the appointment of Deputy Registrars. During the reporting period Ms Victoria Tom, Ms Eleanor Poulter, Ms Poppi Iliou and Mr Triston Mullins held appointment as Deputy Registrars. The Deputy Registrars (and Ms Tom in particular) are responsible for the bulk of the administrative workload of the MHRT. In addition the MHRT received invaluable assistance in the conduct of its Alice Springs hearings from Sandra Cronin (of the Local Court) and, from April 2019, from Ms Therese Gibson of NTCAT in Alice Springs.

The administration and management of the MHRT is carried out from the head office of NTCAT, which is located at The Met Building, level 1, 13-17 Scaturchio Street, Casuarina.

MHRT's hearings are conducted on Mondays, Wednesday and Fridays – at the Tamarind Centre in Parap, at the Royal Darwin Hospital (Cowdy Ward), and at the Alice Springs Hospital respectively.

SECTION C: MEMBERSHIP OF THE TRIBUNAL

Appendix 3 contains a list of persons who held appointments as Tribunal members during the reporting period.

The Act provides that the members of the MHRT are to be appointed by the Administrator and that, in the performance of its hearing functions, the tribunal is to

comprise members from one each of three distinct categories.

Members eligible for appointment in the first of those categories, described as the legal members, are Local Court Judges, Judicial Registrars and lawyers who have more than five years' experience.

MHRT's members in the second category, referred to as the medical members, are interstate-based consultant psychiatrists. Appointment of medical members from interstate is unavoidable. It is not practicable to recruit Northern Territory based members owing to the practical inevitability that professional associations with practitioners and patients involved in tribunal hearings will give rise to conflicts of interest.

MHRT's third category of members, referred to as Community Members, is appointed on the basis of special interest or expertise in mental illness or mental disturbance.

During the reporting period the listing arrangements that were introduced in 2017-18 (by which the majority of Top End community management order matters are dealt with on Mondays at the Tamarind Centre) have continued. This has seen an ongoing improvement in the management of the MHRT's workload – particularly in terms of avoiding the bottlenecks that occasionally led to unsustainably large Wednesday (Cowdy Ward) lists.

Mr Mark O'Reilly (who is NTCAT's permanent Alice Springs member) sits as the MHRT's legal member for most of its Alice Springs hearings. Darwin matters that are unable to be heard on Monday or Wednesday (for example due to urgency) are also dealt with as part of the Alice Springs list.

All members, other than persons employed in the public service, are entitled to be paid sitting fees. The sitting fees are paid in accordance with a determination of the Administrator on the recommendation of the Remuneration Tribunal.

The MHRT once again acknowledges the work of its members and thanks them for their valued expertise and commitment in a role that can often be extremely challenging.

SECTION D: OBJECTIVES OF THE TRIBUNAL

The Tribunal's objectives are:

1. to conduct hearings within legislative time-frames;
2. to maximize access to the Tribunal across the Northern Territory;
3. to provide quality service to patients and stakeholders by:-
 - conducting hearings in an informal, respectful, atmosphere;
 - ensuring full effect is given to patients' rights under the Act to legal representation;

- ensuring that patient rights are met in regard to accessing records and reports that are before the Tribunal;
 - ensuring the attendance at hearings of patients the subject of the review wherever practicable;
 - facilitating the attendance of family and other support persons at Tribunal hearings (where this is the patient's wish);
 - ensuring full effect is given to patients' rights under the Act to the provision of interpreter services where necessary;
 - ensuring confidentiality of Tribunal proceedings;
 - ensuring fair and equitable hearings and compliance with the principles of natural justice;
4. to maintain a productive, cooperative working relationship with MHS, patients' legal representatives and other stakeholders, particularly in the context of pre-hearing procedures and arrangements on hearing days;
 5. to raise levels of awareness about the Tribunal and its operations.

These objectives have largely been met.

The following particular observations are necessary.

Conducting hearings within legislative time frames

It has been noted in successive annual reports that the tight and often inflexible timeframes within which the tribunal is required to undertake its review functions can have unfortunate and counter-productive ramifications in matters that are complicated or highly contentious.

It remains desirable that consideration is given to amendments to the Act in order to allow the tribunal, in exceptional cases, to temporarily extend the timeframes that apply in review proceedings.

Timely provision of reports

Compliance by treating doctors with timeframes for the provision of tribunal reports and paperwork - particularly in relation to involuntary admissions - remains erratic.

Legal representation

The arrangements for legal representation of patients at tribunal hearings have proven stable over the reporting period.

For Darwin matters, the Northern Territory Legal Aid Commission (NTLAC) has continued to make available two lawyers for eight tribunal matters per week (now divided between the Monday and Wednesday lists). Any requirements for additional lawyers for Darwin matters continued to be met from a panel of private practitioners.

For Alice Springs matters legal representation for patients was arranged through the North Australian Aboriginal Justice Agency and the NTLAC.

An issue has emerged during the reporting period regarding the representation of patients at the MHRT's Tamarind Centre hearings (conducted each Monday).

The majority of matters dealt with at the Tamarind Centre hearings concern patients who are under community management orders. Patients under such orders often do not attend their review hearings and sometimes are unwilling to engage at all with their appointed lawyers. In the case of patients for whom a private lawyer has been appointed, the patient's non-attendance and/or refusal to provide instructions will not normally prevent the lawyer from appearing at the MHRT hearing in at least an *amicus curiae* capacity. The NTLAC, however, considers its lawyers unable to appear in that capacity. An unfortunate consequence is that the MHRT is occasionally left without the benefit of any legal input at its Tamarind Centre hearings.

Discharge of involuntary patients onto a community management order

The annual report for 2017-18 included the following observation:

When the tribunal is reviewing involuntary inpatient admissions, it is not uncommon for treating doctors to propose that the patient be discharged onto a community management order.

Although there may be sound clinical reasons for such a practice (and it is clearly within the power of the MHRT to make a community management order in respect of an involuntary inpatient – see section 123(5)), it does not always fit comfortably with the requirements of the *Mental Health and Related Services Act* - in particular the requirement in section 40(3), by which a patient who no longer meets the requirements for involuntary admission must be discharged.

Legal practitioners representing involuntary inpatients for whom discharge onto a community management order is proposed have submitted that the course that should be followed in relation to such patients is for them to have *already* been discharged (onto an interim community management order made under section 45 of the *Mental Health and Related Services Act*).

There seems considerable force in that submission, and for a conclusion that amendments to the Act would be necessary in order to unequivocally support the treating doctors' approach.

In the meantime, it can also be noted that the tribunal's move to three hearing days per week means that there are additional opportunities to bring forward reviews of involuntary inpatient admissions in cases where the treating doctors consider that discharge onto a community management order may be possible.

It is encouraging to note that the above practice has largely ceased during the reporting period.

Community management reviews - patient attendance

It was noted in the 2017-18 Annual Report that there had been a significant number of community management order review hearings at which the patient had not attended.

This pattern has persisted during the reporting period and has seen a continued need for review hearings to be adjourned or conducted in the patient's absence.

As foreshadowed in the 2017-18 report, the tribunal has commenced collecting data relating to patient non-attendance at hearings. The data, which relate to *all* tribunal hearings in Darwin and Alice Springs from October 2018 to June 2019, indicate that in that period there were 113 instances when a patient was not present at a hearing. Of those instances, there were 38 where the patient could not be located and 56 where the patient did not wish to attend but provided instructions to their appointed lawyer.

NTCAT

The *Mental Health and Related Services Amendment Bill 2019* was introduced into the Legislative Assembly on 18 September 2019. If passed, it will have the effect of transferring the jurisdiction presently exercised by the MHRT to the Northern Territory Civil and Administrative Tribunal (NTCAT).

Although the changes will mean that the MHRT ceases to exist, there will be very little visible change to the way in which the mental health review jurisdiction under the *Mental Health and Related Services Act 1998* is administered.

In particular, there will be no alteration to the criteria according to which the decisions about involuntary treatment of patients are reviewed; nor will there be any change to the timeframes or paperwork affecting such reviews.

The existing requirements affecting the way in which hearing panels are configured will continue. Members of the MHRT will, by virtue of the jurisdictional transfer, become members of NTCAT. Hearings will continue to be held at the present venues. The same NTCAT staff who have carried out the administrative duties of the MHRT since 2015 will continue to do so.

SECTION E: HEARINGS

Venues

For the reporting period MHRT's hearings were conducted at the Royal Darwin Hospital (Cowdy Ward), at the Tamarind Centre at Parap and at the Alice Springs Hospital.

SECTION F: STATISTICS

Number of new Tribunal clients by financial year			
	2016/17	2017/18	2018/19
	402	541	588

Case Numbers by Location:

Number of cancelled hearings*			
Location	2016/17	2017/18	2018/19
Alice Springs	135	186	149
Darwin	579	685	740
TOTAL	714	871	889

Number of determinations made by the Tribunal			
Location	2016/17	2017/18	2018/19
Alice Springs	112	109	134
Darwin	420	555	592
TOTAL	532	664	726

Refer to following pages for breakdowns of cases by purpose and outcome.

(*Cancelled hearings relate to matters notified to the Tribunal that do not proceed to hearing.)

Applications Listed – By Location									
	2016/17			2017/18			2018/19		
Purpose	ASP	DRW	Combined	ASP	DRW	Combined	ASP	DWN	Combined
Review long term voluntary admission	0	0	0	0	0	0	0	0	0
Review involuntary admission to mental health facility on the grounds of mental illness	131	440	571	140	486	626	92	527	619
Review involuntary admission to mental health facility on the grounds of mental disturbance	29	177	206	57	199	256	20	245	265
Review Tribunal order for involuntary detention	18	131	149	19	104	123	13	108	121
Review Interim Community Management Order (CMO)	7	39	46	6	43	49	7	35	42
Review CMO	37	133	170	38	205	243	49	164	213
Review Report	10	21	31	6	36	42	10	50	60
Determine application for specific treatment	0	15	15	4	25	29	4	34	38
Determine application for warrant to apprehend	15		15	40		40	53		53
Review on patient's request (section 123(4))	1	27	28	14	28	42	12	24	36
Adjournment on the papers	<i>Statistics not kept</i>			<i>Statistics not kept</i>			2	26	28
Total matters scheduled for determination by the Tribunal	233	998	1231	284	1166	1450	209	1266	1475

Hearing Outcomes - by Location									
	2016/17			2017/18			2018/19		
Cancelled Hearings	ASP	DRW	Combined	ASP	DWN	Combined	ASP	DWN	Combined
Discharged from facility prior to hearing	62	384	446	103	369	472	77	443	520
Changed status to voluntary patient prior to hearing	73	195	268	72	276	348	61	236	297
Person's whereabouts unknown / AWOL	0	0	0	4	3	7	1	4	5
Person left NT	0	0	0	4	6	10	0	4	4
CMO revoked by Mental Health Services	0	0	0	2	30	32	10	51	61
Deceased during term of Order	0	0	0	1	0	1	0	2	2
CMO expired	0	0	0	0	1	1	0	0	0
Other	0	0	0	0	0	0	0	0	0
Total hearings cancelled	135	579	714	186	685	871	149	740	889

Determined by Tribunal									
	2016/17			2017/18			2018/19		
	ASP	DRW	Combined	ASP	DRW	Combined	ASP	DRW	Combined
Confirm admission as voluntary patient	0	0	0	0	0	0	0	0	0
Order for involuntary detention mental illness	46	180	226	59	186	245	55	206	261
Order for involuntary detention mental disturbance	1	2	3	6	4	10	7	13	20
Revoke admission & order person be discharged from facility	3	5	8	9	6	15	1	1	2
Discharge within seven days	-	-	-	0	1	1	0	3	3
Community Management Order	30	143	173	21	178	199	33	176	209
Community Management Order Declined	2	8	10	0	6	6	2	3	5
Review Report – further Action	0	1	1	2	0	2	0	2	2
Review Report – no further action	10	23	33	0	38	38	8	47	55
Authorise electro convulsive therapy	4	11	15	0	13	13	2	20	22
Authorise non-psychiatric treatment	0	1	1	1	4	5	0	5	5
Authorise major medical procedure	0	2	2	1	5	6	0	5	5
Warrant to apprehend a person for assessment	1	15	16	1	46	47	0	56	51
Adjourned	15	29	44	5	65	70	25	51	76
No Order made				4	3	7	1	4	5
Total determinations made	112	420	532	109	555	664	134	592	726

STATISTICS - OTHER

	2016/17	2017/18	2018/19
Percentage of matters where client attended and was female	23%	22%	25%
Percentage of matters where client attended and was male	76%	77%	75%
Percentage of matters scheduled where client attended and was of Aboriginal or Torres Strait Islander background	46%	34%	42%
Percentage of hearings Tribunal clients were legally represented	100%	94%	87.4%
Percentage of Tribunal clients under Adult Guardianship ¹	4%	3%	5%
Percentage of hearings conducted with an interpreter	36%	14%	13%
Percentage of hearings where patient has not attended	<i>No data kept</i>	<i>No data kept</i>	22%

¹ This records instances where the tribunal was provided with prior advice that the patient was under guardianship. The likelihood is that a higher percentage of patients than shown were subject to guardianship orders.

APPENDICES

APPENDIX 1: TRIBUNAL FUNCTIONS

The functions of the Tribunal are mostly contained in Part 15 of the Act, but with incidental provisions in other parts of the Act.

Those functions are:

1. To conduct periodic reviews of:
 - 1.1 the admission and treatment of voluntary patients;
 - 1.2 the admission and treatment of involuntary patients;
 - 1.3 patients subject to involuntary treatment in the community.
2. To determine applications to administer:-
 - 2.1 non-standard treatment (such as ECT);
 - 2.2 non-psychiatric treatment;
 - 2.3 major medical procedures;
3. To hear reviews on request in relation to admission and treatment.
4. To review decisions regarding the withholding of certain information from patients.
5. To determine whether a person has capacity to give informed consent.
6. To determine applications for warrants to apprehend persons for assessment purposes.
7. To review reports submitted to the Tribunal and to give any necessary directions to the Chief Executive Officer of DoH.
9. To make orders with regard to transfers of patients to and from the Northern Territory.

APPENDIX 2: OPERATIONS OF THE TRIBUNAL

- **Continuing admission and treatment of long term voluntary patients (including prisoners).**

The Tribunal may confirm the admission where it finds the person is able to give informed consent.

If the Tribunal finds that the person fulfils the criteria for involuntary admission, it may determine that the person be detained on those grounds for a period not exceeding 3 months and fixes a date for further review.

If the Tribunal finds that the person meets the criteria for involuntary treatment in the community, it may make a Community Management Order (CMO) in relation to the person for no longer than six months. Prisoners may be made subject to a CMO whilst serving their sentence in prison.

Where the Tribunal makes an order for involuntary treatment it must authorise the treatment that may be administered under the order.

If the Tribunal is not satisfied that the person will benefit from continuing to be admitted as a voluntary patient, or does not fulfil the criteria for involuntary admission or involuntary treatment in the community, then it must order that the person be discharged. Prisoners will be discharged back to the prison if their sentence has not yet expired.

- **Continuing admission and treatment of involuntary patients, and community management orders.**

The Tribunal must conduct a review within 14 days from the date that a person is admitted as an involuntary patient on the grounds of mental illness or is placed on an interim CMO. The Tribunal has a timeframe of seven days to conduct a review from the date a person is admitted as an involuntary patient on the grounds of mental disturbance.

Following a review, if the Tribunal is satisfied that the person fulfils the criteria for admission on the grounds of mental illness, it may order that the person be detained as an involuntary patient on that basis for up to three months. It must also authorise the treatment that may be administered to the person during the term of the order.

If the Tribunal is satisfied that the person fulfils the criteria for admission on the grounds of mental disturbance, it may order that the person be detained as an involuntary patient on that basis for up to 14 days. Again, it must authorise the treatment that may be administered to the person during the term of the order.

If the Tribunal is satisfied that the person fulfils the criteria for involuntary treatment in the community, it may make a CMO in relation to the person for up to six months.

Where the Tribunal makes any of the aforesaid orders under any of the above- named

criteria, it must fix a date for the order to be again reviewed and must then conduct a further review by that time.

If the Tribunal is not satisfied that a person fulfils either the criteria for admission as an involuntary patient or the criteria for involuntary treatment in the community, it must revoke the order admitting the person as an involuntary patient or revoke the interim CMO, as the case may be.

Where the Tribunal revokes an order it must then order that the person be immediately discharged, or discharged within seven days if arrangements need to be made for the patient's care.

- **Applications to administer non-standard or non-psychiatric treatment.**

The Act provides that, except in the case of emergency treatment, the approval of the Tribunal or another specified person or body is required in order to administer any of the following treatments to involuntary patients:

- Non-psychiatric treatment, such as a surgical procedure;
- Major medical procedure;
- Clinical trials and experimental procedures; or
- Electro-convulsive therapy.

Sterilisation is not allowed to be performed on a person as a treatment for mental illness or mental disturbance.

The Act provides that psychosurgery and coma-therapy are prohibited in the Northern Territory irrespective of whether or not that treatment is intended to treat a mental condition.

- **Requests for reviews**

A request may be made to the Tribunal to review the decisions made under the Act and listed in section 127.

Following such a review the Tribunal may:

- Affirm, vary or set aside the decision or order;
- Make any decision or order that the authorised psychiatric practitioner may have made;
- Refer the matter back to the authorised psychiatric practitioner for further consideration; or
- Make any other order it thinks fit.

A request may also be made to the Tribunal to review an admission or any order made under the Act, see section 123(4).

Limitation on further reviews.

After conducting any review, the Tribunal may order that an application for another review in relation to the same matter may not be made before a date determined by the Tribunal.

- **Determining capacity for informed consent.**

The Tribunal must determine whether a person is capable of giving informed consent on application by an authorised psychiatric practitioner.

- **Assessment warrants**

Following an application by a medical practitioner or an authorised psychiatric practitioner or a designated mental health practitioner or a member of the Police, the Tribunal may issue a warrant to apprehend a person where it is satisfied that:

- the person may be unable to care for himself or herself;
- the person may meet the criteria for involuntary admission on the grounds of mental illness or mental disturbance; and
- all other reasonable avenues to assess the person have been exhausted

A warrant authorises the police to apprehend the person named in the warrant and to take them to an ATF for assessment to determine whether they are in need of treatment under the Act.

For the purposes of issuing a warrant to apprehend a person, the Tribunal may be constituted by the President, or by a Legal Member delegated to exercise the powers and perform the functions of the President.

- **Review of certain decisions of authorised psychiatric practitioners.**

The Act provides that an authorised psychiatric practitioner must inform the Tribunal when it is decided that certain information about a patient's admission, treatment or discharge plan is to be withheld from the patient.

The Tribunal must review the decision and may either uphold the decision or substitute its own decision for that of the authorised psychiatric practitioner.

- **Review of reports**

The Tribunal must review a report forwarded to it under the Act as soon as is practicable.

Following the review, the Tribunal:

- may give a written direction to the Chief Executive Officer of DoH relating to a procedural matter, or an interpretation of the Act, in both cases arising out of the report; and
- where it considers that a person may be guilty of professional

misconduct, must notify the relevant professional body.

- **Interstate mental health orders and interstate transfer orders**

The Tribunal has jurisdiction under the Act to make orders in relation to the transfer of persons subject to involuntary orders in and out of the Territory

The Tribunal can only exercise its powers in these matters where intergovernmental agreements exist between the Northern Territory and other jurisdictions.

- **Appeals**

Appeals against decisions made by the Tribunal may be made to the Supreme Court in accordance with section 142 of the Act.

APPENDIX 3 - LIST OF TRIBUNAL MEMBERS (FOR 2018-19)

Legal Members	Location	Appointment
Judge Richard Bruxner (P)	(Darwin)	1 January 2018 – 31 December 2021
Mr Mark O'Reilly	(Alice Springs)	19 December 2016 – 18 December 2019
Mr Anthony Whitelum	(Alice Springs)	29 October 2015 – 28 October 2018 29 October 2018 – 28 October 2021
Mr Julian Johnson	(Darwin)	19 December 2016 – 18 December 2019
Mr David Alderman	(Darwin)	19 December 2016 – 18 December 2019
Mr David Baldry	(Darwin)	19 December 2016 – 18 December 2019
Mr Joshua Ingrames	(Darwin)	19 December 2016 – 18 December 2019
Ms Jodi Truman	(Darwin)	19 December 2016 – 18 December 2019
Ms Kathryn Ganley	(Darwin)	29 October 2015 – 28 October 2018
Ms Jodi Mather	(Darwin)	29 October 2015 – 28 October 2018
Medical Members		
Prof Jim Greenwood	(Sydney)	17 December 2017 – 16 December 2020
Dr June Donsworth	(Sydney)	19 December 2016 – 18 December 2019
Dr Rosemary Howard	(Sydney)	01 September 2017 – 31 August 2020
Dr Peter O'Brien	(Sydney)	01 September 2017 – 31 August 2020
Dr Arnold Waugh	(Brisbane)	19 December 2016 – 18 December 2019
Dr Teresa Garrone	(Brisbane)	23 November 2017 – 22 November 2020
Community Members		
Ms Jill Huck	(Darwin)	17 December 2017 – 16 December 2020
Ms Patricia Kurnoth	(Darwin)	17 December 2017 – 16 December 2020
Mr Paul Rysavy	(Darwin)	26 August 2016 – 25 August 2019
Ms Suzi Kapetas	(Darwin)	30 June 2017 – 29 June 2020
Mr Don Zoellner	(Alice Springs)	30 June 2017 – 29 June 2020
Ms Frances Kilgariff	(Alice Springs)	2 March 2018 – 1 March 2021