CITATION:	*Top End Mental Health Services v SA & NAAJA & NTA [2009] NTMC 007*
PARTIES:	Top End Mental Health Services Applicant v SA Patient And North Australian Aboriginal Justice Agency Claimant And Northern Territory of Australia Contradictor
TITLE OF COURT:	Mental Health Review Tribunal
JURISDICTION:	Mental Health & Related Services Act 1998
FILE NO(s):	1360/06
DELIVERED ON:	17 April 2009 by post
DELIVERED AT:	Darwin
HEARING DATE(s):	3 December 2008, 9 February 2009
JUDGMENT OF:	Mr V M Luppino, President Dr J Greenwood, Medical Member Ms P Kurnoth, Community Member

CATCHWORDS:

Costs in the Mental Health Review Tribunal – Entitlement to Costs – Appointment of a legal practitioner by the Tribunal as a prerequisite – Discretion to award costs – Factors relevant to the exercise of the discretion – Amount of costs.

Thaina Town (on Goulburn) Pty Ltd v City of Sydney Council [2007] NSWCA 300

Mental Health & Related Services Act (NT) 1998 ss 3, 39, 41, 129, 131, 174

REPRESENTATION:

Counsel:

Applicant:	Not represented
Patient:	Not represented
Claimant:	North Australian Aboriginal Justice Agency
Contradictor:	Solicitor for the Northern Territory

Solicitors:

Applicant:	Not represented
Patient:	Not represented
Claimant:	Mr Johnson
Contradictor:	Mr Macdonald

Judgment category classification:	B
Judgment ID number:	[2009] NTMC 007
Number of paragraphs:	41

IN THE MENTAL HEALTH REVIEW TRIBUNAL
AT DARWIN IN THE NORTHERN
TERRITORY OF AUSTRALIA

No. 1360/06

BETWEEN:

TOP END MENTAL HEALTH SERVICES
Applicant

AND:

SA
Patient

AND:

NORTH AUSTRALIAN ABORIGINAL JUSTICE AGENCY
Claimant

AND:

NORTHERN TERRITORY OF AUSTRALIA
Contradictor

REASONS FOR DECISION

(Delivered 17 April 2009)

1. The Mental Health Review Tribunal ("the Tribunal") is constituted by three members. Decisions of the Tribunal are made by all three members with the exception of questions of law which are decided solely by the President or the President's delegated legal member. The issues raised in this matter involve some questions of law. Therefore, in these reasons, any rulings on

questions of law are rulings of the President and all findings and other rulings are made by the Tribunal as a whole.

2. On 3 December 2008 the Tribunal conducted a review in relation to the involuntary admission of SA, ("the Patient"). At that review, the Patient was represented by a legal practitioner employed by North Australian Aboriginal Justice Agency ("NAAJA"). At the conclusion of the hearing an order for costs pursuant to section 131(2) of the *Mental Health & Related Services Act* ("the Act") was sought. The question of costs was reserved and directions were given regarding the filing of affidavits and submissions.

3. As the Northern Territory ("the NTA") is liable to pay any costs ordered, the NTA was invited to file affidavits and submissions. NAAJA filed the affidavit of Julian Johnson affirmed 10 December 2008 and submissions bearing the same date. The NTA filed the affidavit of Gregory John McDonald sworn 22 December 2008 and submissions bearing the same date.

4. In its submissions the NTA gave notice of an intention to apply to the Tribunal for an order that any legal practitioner appointed pursuant to section 131(2) of the Act should be from a list of lawyers to be provided to the Tribunal by the NTA. The NTA proposed that the list would comprise mostly lawyers employed by the Northern Territory Legal Aid Commission ("the NTLAC"). The NTA, in any event, opposes any costs order in favour of NAAJA. This position is very much at odds with a letter dated 24 October 2007 from by the then Attorney-General to NAAJA where NAAJA was invited to seek costs from the Tribunal (see paragraph 9**).** Nonetheless, in consequence of the NTA's application, the NTLAC was also invited to be represented in the proceedings and to make submissions but declined to make any submissions.

5. Thereafter, the matter was set for argument. During the course of argument, NAAJA was given leave to file a further affidavit and the affidavit of Julian Johnson affirmed 13 February 2009 was subsequently filed. NTA was given

leave to file further affidavit or submissions in response and filed further submissions dated 20 February 2009.

6. The Act, and specifically section 131, was amended by the *Mental Health & Related Services Amendment Act 2007* which commenced on 2 March 2009. Section 174 of the Act contains the transitional provisions which provide that the former Act continues to apply in relation to a review that commenced before that commencement date. Accordingly the Act as in force before the amendments applies to the current application. Having said that, the extent of the amendments made to the section would not have affected the rulings or findings in this matter and the same outcome would have occurred if the amended Act applied.

7. Section 131(2), at the time that the order for costs was sought, provided as follows:

> (2) The Tribunal –
>
> (a) must appoint a legal practitioner to represent a person at a review or appeal where the person is not represented unless it is satisfied that, in the circumstances of the case, it is not necessary; and
>
> (b) may order that the Territory pay all or part of the reasonable costs and disbursements of the legal practitioner in representing the person at the review or appeal.

8. The crux of NAAJA's claim is that it has been implicitly or indirectly appointed within the meaning of section 131(2) of the Act by reason of having been provided with certain notices and documents by the Applicant and by the Deputy Registrar of the Tribunal.

9. In summary form, the affidavit evidence filed on behalf of NAAJA is as follows:

- NAAJA sought funding from the NTA to cover the costs of representing patients before the Tribunal;

- By letter dated 24 October 2007, Mr S Stirling, the then Attorney-General declined that request and in lieu suggested that inter alia NAAJA seek an order for costs from the Tribunal pursuant to section 131(2) of the Act;

- NAAJA then unsuccessfully sought financial assistance specifically for representing patients before the Tribunal from the Commonwealth and NTLAC;

- NAAJA then decided to pursue the course suggested by the Territory Attorney-General, namely to apply to the Tribunal for costs;

- On 30 November 2008, the Applicant provided to NAAJA a notification pursuant to section 41(1)(b) of the Act in respect of the Patient following the Patient's detention as an involuntary patient;

- On 2 December 2008 the Deputy Registrar of the Tribunal provided NAAJA with the relevant medical report regarding the Patient for the purposes of the review to be heard on 3 December 2008, together with a hearing list for that date; NAAJA was named as the legal representative of the Patient on that hearing list;

10. The submissions made by NAAJA provide:

- NAAJA has been appointed pursuant to section 131(2) of the Act by reason of matters deposed to in the affidavit and on the basis that the Tribunal has implicitly approved of the notification pursuant to section 41(1)(b);

- As a result of that appointment, the Tribunal has a discretion to order the NTA to pay costs;

- The exercise of that discretion should have regard to the particular legislative regime of the Act;

- Relevant in assessing the particular legislative regime are the provisions in section 3 of the Act which set out the objects of the Act; specifically that every patient has a right to treatment suited to his or her cultural background and be given explanations of their legal rights and entitlements in a form they understand;

- The Tribunal can, and should, formulate a guideline as to costs specifically so that a separate order for costs is not necessary in each matter where NAAJA represents a patient;

- NAAJA provides culturally appropriate legal services, its staff are actively attuned to the needs of Aboriginal patients, it is the singularly appropriate legal aid service to represent Aboriginal people before the Tribunal and consequently there is ample imperative for NAAJA to be appointed pursuant to section 131(2) of the Act.

- The workload for NAAJA lawyers representing patients before the Tribunal has increased in recent times such that it has been necessary for NAAJA to allocate two lawyers to Tribunal matters on occasion;

- The provision of representation in four to five matters before the Tribunal uses up the equivalent of a whole day for one lawyer;

- A failure by the Tribunal to award costs to NAAJA could lead to a depletion of services in other areas by NAAJA;

- The nature of Mental Health Review Tribunal hearings and the complexity of the matters warrant an award of costs based on 80% of the Supreme Court Scale, namely $160.00 per hour.

11. Notwithstanding the matters referred to in paragraph 9, the NTA now opposes the NAAJA's application arguing that not only have NAAJA not been appointed within the meaning of section 131(2) of the Act, in any event a costs order should not be made in the exercise of the Tribunal's discretion.

12. In relation to the affidavit evidence filed on behalf of the NTA, a good part of that and the annexures attest to communications between the NTA and NAAJA where the NTA attempted to secure disclosure of certain documents and information. The documents sought related to NAAJA's funding from the Commonwealth of Australia as well as details of NAAJA's cost structure. NAAJA has declined to make those disclosures.

13. The submissions filed by or on behalf of the NTA provide, in summary form as follows:

- The NTA concedes that NAAJA has a particular expertise in dealing with indigenous clients, but other than that, says that there is no real difference in the services provided between NAAJA and NTLAC;

- The section 41(1)(b) notification issues from an authorised psychiatric practitioner employed by the Applicant and not the Tribunal; therefore it only indicates that the Applicant considers that NAAJA "*is prepared to act*" for a particular patient within the meaning of that phrase in section 41(1)(b) of the Act;

- However, that does not amount to an appointment within the meaning of section 131(2) of the Act as the giving of that notice by the Applicant under a statutory obligation to do so cannot be taken to be an action of the Tribunal;

- Section 131(2) of the Act only applies where a patient is not otherwise represented at a review and there is no warrant to make any appointment until such time as the Tribunal is satisfied that the patient is not represented; accordingly, the Tribunal cannot make the requisite determination until the commencement of any review;

- As a result, "and", which joins subparagraphs (a) and (b) of section 131(2) must be read conjunctively; accordingly, the NTA submits that the Tribunal only has jurisdiction to order costs where it appoints a legal practitioner due to a patient being "not represented".

14. The NTA's submissions rightly introduce the relevance of section 41 of the Act. That section, as it read before 2 March 2009 is set out below. Again, the 2007 amendments would not affect the outcome.

> 41. Notification of admission
>
> (1) An authorised psychiatric practitioner must, as soon as practicable after a person is detained under section 39(1)(a), notify –
>
> > (a) the person;
> >
> > (b) a legal practitioner who is prepared to act on behalf of the person; and

(c) where the person consents, the person's primary care provider or, if there is no primary care provider, a person who is closely involved in the treatment or care of the person,

of the grounds for admitting the person and the section under which the person was admitted.

(2) An authorised psychiatric practitioner must, as soon as practicable after a person is detained under section 39(1)(b) or (3)(a), notify –

(a) the persons referred to in subsection (1)(a), (b) and (c);

(b) the principal community visitor; and

(c) the Tribunal,

of the grounds for admitting the person and the section under which the person was admitted.

15. The Tribunal deals firstly with the application by the NTA that it be granted leave to nominate the legal practitioners whom the Tribunal may appoint for the purposes of section 131(2) of the Act. There is however a preliminary matter. After affidavits and submissions closed the President became privy to certain information concerning the terms of the funding of NTLAC by the NTA which was considered to be pertinent to this application. Therefore the parties were notified of the Tribunal's intention to rely that information, given section 129(2) of the Act, for the purposes of the proceedings and were given an opportunity to file further affidavit evidence and to make further submissions. The information referred to was that NTLAC claims that it is not specifically funded by the NTA to represent patients appearing before the Tribunal. NTLAC does presently provide a duty lawyer service but considers that it is not obliged to do so pursuant to the terms of its funding and that it can withdraw that service at any time. The relevance of this to the NTA's application is self evident given that the NTA suggests that the pool of legal practitioners from which the Tribunal should make

appointments for the purposes of section 131(2) of the Act should comprise mostly legal practitioners employed by NTLAC.

16. In response to the invitation for further affidavit evidence and / or submissions, the NTA provided a further affidavit (of Gregory John Macdonald sworn 18 March 2009) and further submissions dated 20 March 2009. NAAJA did not take up that invitation. The affidavit and submissions filed on behalf of the NTA did not challenge NTLAC's claim and sought to make the point that whatever legal obligation exists on NTLAC to represent persons before the Tribunal, that is not a relevant consideration in determining the question of an appointment pursuant to section 131(2) of the Act. The Tribunal accepts that. However, that was not the point of the invitation for further submissions and / or evidence. Effectively therefore the information ascertained by the President is uncontradicted.

17. That distraction being disposed of, although it is accepted that the NTA has an interest in this issue as the paying party (and subsequently has standing for the purposes of the current application), there is nothing in the Act which supports the interpretation suggested by the NTA or empowers the Tribunal to act in that way. The ordinary and natural construction of the section calls for an interpretation counter to that suggested by NTA. If Parliament had intended the Tribunal's power of appointment to be limited in any way it could very simply have provided for that specifically or by defining the term "legal practitioner" in a suitably restrictive way. The Act however does not limit the identity or classes of person who may be appointed under that section. Hence, once the Tribunal has determined to appoint a legal practitioner, there is no restriction on the Tribunal as to the actual legal practitioner who may be appointed.

18. That conclusion is reinforced by the objects of the Act and the emphasis in the objects on independent legal representation for patients. The objects of the Act as set out in section 3 include that the Act should afford protection

to patients consistent with the United Nations Principles for the Protection of Persons with Mental Illness. Independent legal advice is a core feature of those principles. Allowing the NTA to nominate the particular legal practitioners where the party seeking an order from the Tribunal is itself a Government agency, compromises the independence of the patient's legal advice. Construing the Act in the way suggested by the NTA compromises this object and therefore such an interpretation cannot be preferred.

19. Moreover the independence of the Tribunal would also be compromised if the section were to be interpreted as the NTA suggests as the Tribunal would then be subject to a direction of the Government of the day. That runs counter to another of the core principles of the Act namely, the requirement of conducting an independent review of admissions and of other actions by the Applicant. Interpreting section 131(2) in a way which supports the NTA's submission is therefore inappropriate for all these reasons.

20. Accordingly, it is the Tribunal's view that the Tribunal is not empowered to make the order sought by the NTA.

21. Dealing next with the question as to whether NAAJA was appointed to represent the Patient, before there can be an order for costs pursuant to section 131(2) of the Act, a number of prerequisites must be satisfied. Firstly, there must be an appointment, by the Tribunal, of a legal practitioner where the patient is not represented. Secondly, the Tribunal must determine to award costs. Thirdly, the Tribunal must determine the amount of costs.

22. Considering firstly the question of whether NAAJA has been appointed as required by section 131(2) of the Act, NAAJA relies on three separate events in support of its claim that it has been appointed pursuant to section 131(2) of the Act. These events are firstly, the provision to NAAJA of the notification pursuant to section 41(1)(b) of the Act by an authorised psychiatric practitioner employed by the Applicant. Secondly, the provision

to it by the Deputy Registrar of the Tribunal of the medical report prepared by the Applicant and thirdly the provision to it, again by the Deputy Registrar of the Tribunal, of the hearing list nominating NAAJA as the legal representative of the Patient.

23. In respect of the first document, NAAJA relies on an action taken by an employee of the Applicant acting under a statutory obligation as the genesis for an appointment by the Tribunal pursuant to section 131(2) of the Act.

24. In the Tribunal's view, the notification pursuant to section 41(1)(b) of the Act can have no bearing on the question of an appointment for a number of reasons. Firstly, the document is not provided by the Tribunal. Secondly, the Applicant provides it under a statutory obligation and for a specific purpose. An appointment for the purposes of section 131(2) of the Act can only be made by the Tribunal and then only when the prerequisites of that section have been satisfied. The section 41(1)(b) notice is given at best contemporaneously with the Tribunal being notified of the patient's admission under the Act. Whether the Applicant has given notice pursuant to section 41(1)(b) of the Act, even if the Tribunal is aware of that, is irrelevant to the determination of whether the Tribunal has made an appointment. Leaving aside the question of whether an appointment can be indirect or implicit (section 131(2) of the Act seems to contemplate an express appointment by Tribunal order), a notification given under a statutory obligation by a person unconnected to the Tribunal cannot be taken to be an order of the Tribunal, specifically an order of appointment of a legal practitioner pursuant to section 131(2) of the Act. Thirdly, section 41(1)(b) only identifies the recipient as a legal practitioner who the authorised psychiatric practitioner considers "is prepared to act…". That is quite distinct to a practitioner who has been appointed to act. It clearly contemplates that the notice is, at best, preliminary to an appointment rather than anything involved in the appointment process. That is reinforced by the prerequisites to appointment that are specified in section 131(2) of the Act

and the requirement in section 41(1)(a) and (c) to also provide the same notice to the patient and to the patient’s primary care provider.

25. The remaining two events relied on can conveniently be dealt with together as the documents involved are provided to NAAJA by the same person, namely the Deputy Registrar of the Tribunal.

26. It is relevant to note that the actions of the Deputy Registrar of the Tribunal relied upon are administrative in nature. In providing the relevant medical report to NAAJA and in listing NAAJA as the legal representative of the Patient in the hearing list, the Deputy Registrar does no more than to acknowledge and act upon information provided to the Deputy Registrar by the Applicant as to whether the patient is an indigenous person or not, i.e., the Deputy Registrar simply acts in accordance with a convention of long standing namely, that NAAJA (and before NAAJA, its predecessor) wishes to represent indigenous patients appearing before the Tribunal. The Deputy Registrar of the Tribunal does not provide the report and the hearing list by order of the Tribunal or even at the direction of the Tribunal. Rather, they are provided in the exercise of an administrative function. That therefore cannot be relied upon to evidence an order of the Tribunal, specifically an order of appointment of a legal practitioner pursuant to section 131(2) of the Act.

27. Given that this issue is a question of fact, many of the other submissions made by NAAJA are irrelevant. Those matters relate to firstly, the objects of the Act, secondly, the cultural appropriateness of the representation, thirdly, whether NAAJA is “the singularly appropriate legal aid service to represent Aboriginal people before the Tribunal”, fourthly, any possible impact on the provision of other legal services by NAAJA, fifthly, any detriment to the patient, sixthly, any increased workload for others or decreased efficiency in the conduct of Tribunal hearings and lastly, NAAJA funding priorities. All of these matters might be relevant, to varying

degrees, to the question of whether an appointment should be made but they cannot be evidence of whether an appointment has been made.

28. Turning now to NAAJA's submission that the Tribunal should formulate guidelines for the exercise of the discretion specifically to obviate the need for a separate costs order in each case. NAAJA relies on the decision in *Thaina Town (on Goulburn) Pty Ltd v City of Sydney Council* [2007] NSWCA 300 to support that submission. In that case the NSW Court of Appeal said that guidelines for the exercise of a discretion may be developed by courts to promote consistency. NAAJA suggests that this empowers the Tribunal to formulate a guideline relating to costs for indigenous people represented by NAAJA before the Tribunal, specifically so as to obviate the need for a separate application for a costs order in each case.

29. It is noted that the only discretion involved in the question of appointment is preliminary to the appointment and involves only the determination by the Tribunal as to the necessity of legal representation. The obligation to appoint a legal representative for a then otherwise unrepresented patient only arises if the Tribunal considers that it is not necessary to do so "*in the circumstances of the case*" and clearly this involves a consideration of the circumstances on a case by case basis.

30. If the Tribunal were to accede to NAAJA's suggestion that would ignore the specific requirement in section 131(2) to assess the question of the necessity of legal representation in "*the circumstances of the case*". The Tribunal is of the view that a guideline cannot be used in this way. To do so would amount to an automatic appointment of NAAJA in all cases involving indigenous patients. That is inconsistent with the Act as it would cut across the specific obligation on the Tribunal to consider the circumstances of each case in determining the need to make an appointment.

31. Accordingly, in the Tribunal's view, NAAJA has not been appointed to represent the Patient pursuant to section 131(2) of the Act. As that is a prerequisite to a costs order, that essentially concludes the matter. The Tribunal however now considers the question of the discretion both as to the award of costs and as to the quantum of costs in case it becomes relevant or in case it may be of utility as a guide in any future cases.

32. Firstly, in relation to the discretion as to whether to award costs, the analysis in the submissions of the NTA as to the intended operation of section 131(2) has merit. The NTA's submission is that Parliament contemplated and intended that legal aid would be the primary provider of legal representation to patients appearing before the Tribunal. This is consistent with the wording of the section, the scheme of the Act and how it operates in practice. Given that the Tribunal must first be satisfied that the patient is not represented, that status can only logically be ascertained at the commencement of the hearing in normal circumstances. In the usual case before the Tribunal, and as occurred at the hearing in the present matter, the legal practitioner attends the hearing with the patient, having already received and considered the evidence on which the Applicant relies, and having taken instructions from the patient. Query therefore how it can be said that the patient is unrepresented and in that case an appointment under section 131(2) cannot be made in that circumstance.

33. Furthermore, the ability of the Tribunal to operate expeditiously would be severely restricted if the Tribunal, faced with an unrepresented patient at the commencement of a hearing, then decided to appoint a legal practitioner. The consequent delay before the arrangements could be made, materials provided and instructions taken would necessarily require an adjournment of the hearing and for a week given that the Tribunal only sits on one day per week. With the existing service provided both by NAAJA and NTLAC, the patients are seen by legal practitioners before the hearing, sometimes on the day before the hearing, and the legal practitioners attend on the day ready to

act for the patient in all respects. The hearing then routinely proceeds without any delays.

34. If an adjournment was routinely required the resultant delay would run counter to another of the United Nations Principles for the Protection of Persons with Mental Illness. As stated before, the objects in section 3 of the Act require consistency with those Principles. Principle 17 provides that inter alia, the procedures of the Tribunal are to be "expeditious". The provision of legal representation by way of a duty lawyer service run by a legal aid body or bodies best satisfies that object in practice and in the context of the specific operational matters of the Tribunal. This then supports an interpretation based on the provision of a duty lawyer service with a back up provision as a safeguard. If that is the intended scheme then in the ordinary case, costs should not be ordered.

35. The Tribunal also considers the refusal by NAAJA to disclose relevant documents to also be relevant to the exercise of the discretion to award costs. As stated above NAAJA has declined to make disclosure of documents relevant to its cost structure and funding. The Tribunal agrees that those documents are relevant to the exercise of the discretion. Nonetheless, all that NAAJA has been prepared to provide is the letter from the Commonwealth Attorney-General's Department, being Annexure JJ-5 to the affidavit of Julian Johnson affirmed 10 December 2008. Specifically, NAAJA relies on the following extract from that letter namely, "I confirm that there is no requirement in the Legal Aid Service Contract for NAAJA to provide services in matters appearing before the MHRT". However immediately after the cited extract, appear the words "The Department's position is that NAAJA must balance the demands of such representation against its obligations to other clients in the context of setting priorities for assistance within the broader guidance of the Policy Directions". Although NAAJA give the impression that funding for representation before the Tribunal has not been allowed for, there is the suggestion that it has been

indirectly allowed for, i.e., that NAAJA is provided with funds to provide legal services to indigenous persons but is permitted to determine priorities and the nature and extent of services that it provides. This then puts NAAJA in the same position that NTLAC claims to be in (see paragraph 15 above). This is an important consideration while NAAJA's claim is based on the absence of funding.

36. Questions of NAAJA's cost structure are also relevant to the issue of the quantum of any costs order as the Tribunal is empowered to order the NTA *"…to pay all or part of the reasonable costs…"* of the legal practitioner. The absence of that information impacts on a proper determination of quantum. Where a discretion is sought to be exercised in favour of a party, that party should disclose all relevant material especially where that material is not readily available to the other party. NAAJA's refusal to clarify this ambiguity on the question of its funding is relevant to the exercise of the discretion given the basis of its claim. On that basis even if NAAJA were able to satisfy the Tribunal that it had been appointed within the meaning of that term in section 131(2) of the Act, the Tribunal would decline to order costs.

37. In relation to the question of quantum, NAAJA submits that the work before the Tribunal is of a specialised nature and is complex. Although technical and specialised medical material is involved, the facts are rarely complex and the issues for determination before the Tribunal in the majority of cases are relatively straightforward, namely whether the specific criteria in respect of each application as set out in the Act are satisfied.

38. As the NTA correctly points out, reviews before the Tribunal are informal and non-adversarial. The Applicant is only represented by medical personnel so there is no legally qualified opponent for the legal representatives of the patient. A hearing before the Tribunal is conducted in a manner decided by the Tribunal (see section 129(2) of the Act) and the Tribunal routinely

proceeds without being bound by the rules of evidence. The legal, procedural and evidentiary issues that occur before the Tribunal are entirely different to those of civil litigation in either the Local Court or the Supreme Court.

39. The foregoing is relevant to NAAJA's claim that the appropriate remuneration should be based on 80% of the Supreme Court Scale. That would equate the complexity of matters and the issues arising in matters before the Tribunal to be on par with a typical Local Court matter which overstates the complexity in the Tribunal's view.

40. Also relevant is that the Supreme Court Scale makes allowance for profit as well as to cover the overheads of private law firms. The profit component where a legal practitioner employed by legal aid agency is the claimant for costs requires significant adjustment in the Tribunal's view and perhaps total disallowance of that component is appropriate. Similarly, and absent NAAJA establishing that additional administrative and support services are in place to solely handle Tribunal matters, it would appear that NAAJA's overall funding covers its overhead costs. It does not appear that any significant additional overheads are incurred by NAAJA on account of providing representation for patients appearing before the Tribunal. A substantial adjustment is required on that account as well bearing in mind that a high percentage of a private practitioner's turnover is taken up in overheads.

41. Taking all these matters into consideration, as a guide the Tribunal is of the view that costs based on an hourly rate of the order of 25% of the Supreme Court Scale is appropriate where the costs are payable to a legal practitioner employed by a legal aid agency. Different considerations apply in the case of a private legal practitioner for the reasons stated earlier and in that case the Tribunal considers that costs based on an hourly rate representing 60% of the Supreme Court Scale would be appropriate. Alternatively, as a lump

sum award, the Tribunal is of the view that costs fixed at $100.00 per hearing in the case of a legal practitioner employed by a legal aid agency and $250.00 per hearing in the case of a private legal practitioner would be appropriate.

Dated this 17th day of April 2009.

Mental Health Review Tribunal

Per:_______________________

V M Luppino,
President