

**THIS IS AN OFFICIAL REPORT OF THE MENTAL HEALTH REVIEW
TRIBUNAL PROCEEDINGS IN RELATION TO MR NAYLOR AUTHORISED
BY THE PRESIDENT OF THE TRIBUNAL ON 27 FEBRUARY 2015**



This is an edited version of the Tribunal's decision. The forensic patient has been allocated a pseudonym for the purposes of this Official Report

FORENSIC REVIEW: Mr Naylor

s46(1) Review of forensic patients

Mental Health (Forensic Provisions) Act 1990

TRIBUNAL: Anina Johnson Deputy President
John Basson Psychiatrist
Stephen Woods Other Member

DATE OF HEARING: 24 July 2014

PLACE: Metropolitan Remand and Reception Centre

APPLICATION: Grant of leave of absence:
Leave - Escorted Day Leave
Leave - Supervised Day Leave
Leave - Supervised Overnight Leave

DECISION

Pursuant to s. 49 of the *Mental Health (Forensic Provisions) Act 1990*, the Tribunal orders that Mr Naylor be detained Metropolitan Remand and Reception Centre to receive care and treatment, but be allowed to be absent from Metropolitan Remand and Reception Centre on escorted day leave, supervised day leave and supervised overnight leave for the purposes of undertaking the program offered by Odyssey House and subject to the following conditions:

1. He is to live in accommodation provided by Odyssey House initially at 169 Campbelltown Road, Ingleburn.
2. He is to remain under the supervision of Odyssey House staff or high level residents, in accordance with the practices of the Odyssey House program.
3. He is to accept and carry out any reasonable direction given by the staff or high level residents of Odyssey House, in accordance with the practices of the Odyssey House program.
4. He is to accept and comply with all rules at Odyssey House.
5. He is to attend all rehabilitative programs as offered and recommended by the Odyssey House staff.
6. He is to remain abstinent from any legal or illegal drugs, except if they are prescribed for him by a registered medical practitioner.

7. He is not to consume alcohol.
8. He is to undergo random urine drug screening and submit to such tests for the detection of the use or consumption of drugs and substances including alcohol as shall be required from time to time by staff or residents of Odyssey House, in accordance with the usual practices of Odyssey House.

Signed

Anina Johnson
Deputy President
Dated this day 1 September 2014

REASONS

This is the 16th review of Mr Naylor who is currently detained in the Metropolitan Remand and Reception Centre (MRRC) Silverwater, on an order of the Mental Health Review Tribunal dated 18 January 2012. Mr Naylor, through his legal representative, has asked the Tribunal to consider granting Mr Naylor Escorted Day Leave, Supervised Day Leave and Supervised Overnight Leave to be exercised at Odyssey House.

BACKGROUND

In 2008, Mr Naylor was found, on the limited evidence available, to have committed the offence of murder. The NSW Supreme Court imposed a limiting term of 21 years and ordered that Mr Naylor be detained at the Metropolitan Remand and Reception Centre.

TRIBUNAL REQUIREMENTS

This is a review pursuant to section 46(1) of the *Mental Health (Forensic Provisions) Act 1990* ("the Act"). Under section 46 the Tribunal is required to review the case of each forensic patient every six months. On such a review the Tribunal may make orders as to the patient's continued detention, care or treatment or the patient's release.

The Minister for Health, the Attorney General, and any registered victims are entitled to make submissions to the Tribunal concerning any proposed leave. The Attorney General and the Minister for Mental Health were both advised prior to the hearing that the Tribunal would be considering an application for escorted day leave, supervised day leave and supervised overnight leave. Neither Minister has made submissions to the Tribunal.

Before granting leave, the Tribunal must be satisfied pursuant to section 49 of the Act:

that the safety of the patient or any member of the public will not be seriously endangered if the leave is granted.

Without limiting any other matters the Tribunal may consider, the Tribunal must consider the principles set out in section 40 of the Act and section 68 of the *Mental Health Act 2007* as well as the following matters under section 74 of the Act when determining what order to make:

- (a) whether the person is suffering from a mental illness or other mental condition,
- (b) whether there are reasonable grounds for believing that care, treatment or control of the person is necessary for the person's own protection from serious harm or the protection of others from serious harm,
- (c) the continuing condition of the person, including any likely deterioration in the person's condition, and the likely effects of any such deterioration,

DOCUMENTARY EVIDENCE

The Tribunal considered the documents listed in the Forensic Patient Exhibit List dated 24 July 2014 annexed to these reasons.

ATTENDEES

Mr Naylor attended the hearing accompanied by his lawyer, Mr Mark Ierace SC, Barrister who was instructed by Ms Agnes Dalumpines of the Mental Health Advocacy Service.

Also in attendance were:

- VMO Psychiatrist, MRRC;
- Acting CNC, MRRC;
- Manager, Specific Needs, Corrective Services NSW;
- Criminal Justice Program clinician;
- Chief Clinical Officer, Odyssey House;and,
- Wife.

PRESENT CIRCUMSTANCES

Mr Naylor has been in custody since 2003. The evidence from Corrective Services NSW, suggests that throughout that time he has been in a series of maximum security prisons.

The evidence before the Tribunal in previous hearings was that Mr Naylor has a range of risk factors for future violence, in particular, alcohol misuse. However, he also has some strong protective factors, the most important of which are his connection with his wife, her family and their young children. The Tribunal has previously noted the evidence of the CNC for the MRRC, who had worked closely with Mr Naylor for many years. She said:

“Mr Naylor has now been in custody for over nine years and aside from restrictions on freedom any further confinement in gaol carries with it a variety of collateral consequences which in Mr Naylor’s case may include the loss of employment opportunities, the disruption of family life, loss of social skills and a very high risk of institutionalisation. Serving his full limiting term may be in fact counterproductive and actually exacerbate the factors associated with re-offending especially if relationship with his family members may deteriorate over the coming years.”

As previous Tribunals have noted, there remains a window of opportunity for Mr Naylor to return to being an integral part of his family. This is a strong protective factor, which may be lost with the passing of time.

A plan for Mr Naylor's conditional release was developed by the Community Justice Program (CJP) in 2012. That plan suggested a return to living with family, with 21 hours of drop-in support from case workers, and encouragement to engage in therapeutic and educational programs. As part of that conditional release application, a report from a psychologist not involved in treating Mr Naylor, was obtained: s 74 (d) of the Act. That report was before the Tribunal at this hearing. She noted that the plan proposed by CJP contained a number of unmitigated risks, so that ultimately the conditional release application did not proceed. However, her report remains a useful document in considering the question before the Tribunal at this hearing, which is would a grant of supervised leave to Odyssey House seriously endanger the safety of Mr Naylor or any member of the public.

Report of the independent psychologist

The psychologist summarised her report findings as follows:

“38. Summary: On the basis of the current assessment, Mr Naylor has been determined to currently be at a moderate level of violence recidivism risk. He has moderate treatment and case management needs and there are also a range of environmental factors that are assessed as being of moderate risk. The most critical risk factors in the current case pertain to the fact that Mr Naylor will be unsupervised for periods in the community, and other than family to monitor and daily casework support, he will have potential opportunity to abuse alcohol and reintegrate with anti-social peers. Whilst I note that Mr Naylor expresses no desire to engage in either of these behaviours, his low IQ complicates his capacity to manage and problem solve in such risky situations. Countering these concerns is the fact that Mr Naylor's behaviour over his current gaol term reflects good supervision compliance and he has no sanctions or problematic behaviours that suggest he may deviate from his pattern upon his potential release. One needs to acknowledge that his opportunities to engage in substance use and with old associates are somewhat limited in the custodial environment and so the potential in these areas has not as yet been completely tested. Nonetheless, his recent behaviour in custody does not reflect any elevated concerns about these risk factors.

39. Overall, the current risk assessment highlights a range of moderate individual risk factors and environmental factors that would need to be addressed in any risk management plan. The assessed level of intervention need for Mr Naylor is also considered to be of medium intensity. The critical factor to determine for Mr Naylor will be whether his risk issues are sufficiently addressed in the risk management plan detailed below.

40. *Risk Management: It is my opinion that a comprehensive risk management plan of at least medium intensity is required to ensure that the risk of recidivism is moderated in the current case. The plan proposed for Mr Naylor of up to three hours of daily contact (totalling 21 hours per week) is assessed to be of adequate intensity. Other factors that need to be addressed relate to ensuring Mr Naylor's participation in any recommended programming. The most obvious means to ensure this is to mandate these as part of his release plan, with specific consequences identified should he fail to adhere. Furthermore, the influence of his pro-social support system should buffer any resistance to programming and opportunities to disengage. Mr Naylor's family appear to be realistic regarding the challenges he is likely to face upon release and hence are supportive in this regard. It is noted again that despite Mr Naylor's early history of violence and anti-social influence, that he has not displayed any characteristics over his current gaol term that suggest he will not make attempts to maintain a pro-social lifestyle upon his release. However, the influence of impulse control and low IQ may counter such pro-social tendencies and influences in the absence of strict controls such as those offered in the gaol environment. Unfortunately there are no prospects regarding constant supervision of Mr Naylor if he is to be released other than considering infeasible options such as electronic monitoring.*

41. *Countering such a release plan, however, are issues related to substance abuse programming that I do not believe are adequately addressed in the current proposal. Unfortunately, there is no substance abuse intervention or monitoring available through CJP, which means that treatment would have to be provided by a local service, such as Mr Naylor's area health service, and monitoring most likely through his GP. Both services would need to be in agreement regarding involvement before Mr Naylor's release should be considered. If Mr Naylor were to be released without either of these options in place, it is my opinion that the release plan would not be of adequate intensity to mitigate likely risk.*

42. *I have been asked to give an opinion on whether the current plan proposed would mean the safety of any person or member of the public would be seriously endangered by Mr Naylor's release. This is the critical issue and one that is difficult to fully determine. There will of course be some risk to the community present upon Mr Naylor's release. However, it is my opinion that this risk will be suitably mitigated as long as Mr Naylor engages in daily support, weekly therapeutic programming, substance abuse counselling and regular testing of any potential substance use upon his release. Should there be*

problems facilitating substance abuse treatment and monitoring, then it is my opinion that the risk to the community is too high to consider Mr Naylor's release at this time."

The Tribunal has also considered the reports of the Community Forensic Mental Health Service provided on 23 August 2011 and 1 November 2011. The CFMHS did not support Mr Naylor's return directly from custody to living with his family, as proposed by CJP. Instead, the CFMHS recommended that Mr Naylor "be released to a rehabilitative facility for a period of time to allow for a gradual reintegration back into the community and his family environment. This would ensure that his activities of daily living could be adequately addressed and developed and that screening of his drug and alcohol use while on leave could occur."

Taken together, the evidence before the Tribunal was that:

- Mr Naylor poses a risk to the safety of others if he has unsupervised access to the community, because it allows him an opportunity to return to alcohol abuse and reintegrate with anti-social peers. He says that he will not do so, but his resolve has not been sufficiently tested in his current high secure environment.
- These risks could be suitably mitigated by:
 - a period in a suitable a rehabilitative facility that would allow for a gradual reintegration back into the community and his family environment.
 - appropriate levels of supervision
 - engagement in substance abuse counselling
 - regular testing of any potential substance use.

Odyssey House

It is against this background that the Tribunal considered Mr Naylor's request to have supervised leave to live at Odyssey House and undertake its residential program.

The Tribunal had in front of it an information guide produced by Odyssey House and dated 2 April 2014. It also had the benefit of extensive evidence from the Chief Clinical Officer, Odyssey House.

Odyssey House calls itself a therapeutic community for the treatment of alcohol and drug misuse. It has been in operation since 1977. The primary goal of Odyssey House is to prepare the resident to cope with and return to society. It views drug abuse and other types of anti-social behaviour as being symptomatic of an underlying psychopathology and treats individual residents accordingly.

The Chief Clinical Officer said there were four basic rules at Odyssey House:

- no sex or intimate relationships,
- no violence or threats of violence,
- no stealing,
- no drugs or alcohol

Odyssey House's response to transgressions of these rules would depend upon the nature of the transgression. Odyssey House accepted some of that those attending the program may have problems with emotional regulation. Traditionally they would have dealt with their difficulties through the use of drugs and/or alcohol. The program allowed people to adopt new ways of responding to difficult situations, with appropriate flexibility to recognise the difficulties of changing behaviour.

If a person needed to be discharged from the program for a breach of one of these rules, the responsible authority would be contacted and advised. In Mr Naylor's case, this would be the Tribunal.

Assessment phase

Before entering the program, there is a 6-8 week assessment phase. During this phase the proposed resident learns about the program and learns to build trust with staff and other residents. During the assessment phase, people are with staff all the time and under almost constant scrutiny and supervision. A treatment plan is developed, having regard to the factors that underpin a person's drug and alcohol abuse. A person must therefore feel comfortable in sharing their life story in order to be successful in the program. In addition many people attend Odyssey House under a mandatory order. During the assessment phase, the team at Odyssey House work hard at developing people's motivation to attend the Odyssey House program. About 50% of people chose not to pursue the program after the Assessment phase. It is possible, but rare, for Odyssey House to decide that they do not consider a particular person suitable to attend the program.

Odyssey House program

The evidence before the Tribunal was that the Odyssey House programs follows a detailed stepped path. At each stage, the residents practice taking increased levels of responsibility for their own actions and the welfare of others. The program is structured so as to model as closely as possible a working environment. Residents are largely responsible for the physical work done to keep the service running, and play a significant role in offering support and mentoring to their

peers. As residents progress through the program, they take on increasing responsibility for supervising the work of others, as well as ensuring that their own work is done.

At each stage, residents have outcomes that they need to meet. These outcomes focus on developing and maintaining identified life skills. A therapeutic treatment plan is also developed for each resident individually, depending upon their own life story and having regard to their own level of intellectual function. The objectives for each stage, for both life skills and individual treatment plans must be met at each stage before the person can move to the next level. Privileges (such as family visits, free time, the right to have personal property) must be earned and negotiated with the resident's peer group.

Family can be a positive or negative influence on residents. Work is done to try rebuild a responsible relationship with family. Initially, family visits are monitored by a level 3 or 4 sitting in with the resident. This is part of supporting the resident and their family to engage in positive and respectful conversations with one another.

The program aims to return people to living in the community with a vocational and/educational pathway. Education classes on offer include literacy, maths and computer classes. These are catered to the individual. Some residents at Odyssey House aim to reach a basic level of literacy, whilst others are seeking to achieve university entrance.

The program is staffed by nurses, psychologists, psychiatrists, teachers and counsellors. Staff include a number of Odyssey House graduates.

Odyssey House program is about teaching people to live within appropriate boundaries. Residents need to learn to participate willingly, without making negative comments. Odyssey House expects that at first, people will find this difficult, but there are programs in place to encourage people to engage collaboratively and to motivate them to participate. If someone finds this particularly difficult, there is a "turn it around" program which offers more intensive support and assistance to encourage the person to re-engage with the program.

The program usually takes 12 - 18 months to complete, although some people have stayed 2 years. The program regularly accommodates people with an intellectual disability and they may take longer to complete the program.

The evidence before the Tribunal was that Mr Naylor has been assessed as having a mild intellectual disability. However the Tribunal noted that this testing may have underestimated his

cognitive capacity, by not tailoring the testing to Mr Naylor's cultural background and limited schooling.

The Chief Clinical Officer was confident that a person with learning difficulties would be able to complete the Odyssey House program. A resident simply needed to have the capacity to understand and follow instructions. Given that Mr Naylor has been working successfully within the correctional environment for many years and is in fact the head sweeper of his pod, there is evidence that he is able to both follow instructions and to give instructions to others.

Risk factors and their mitigation

The Tribunal considers that before granting supervised leave for Mr Naylor, it would need to be satisfied that the relevant risk factors have been satisfactorily addressed. Many of these risk factors were highlighted in the Independent Psychologist's report.

The VMO Psychiatrist gave evidence at the Tribunal hearing that in his view, Mr Naylor's primary risk of harming others is related to a possible return to alcohol use, which could lead to the use of violence. VMO Psychiatrist did say that Mr Naylor may struggle with the strict conditions of the program, confinement to the facilities, isolation from family and the obligation to engage in some very challenging therapeutic work.

These risks would appear to be mitigated by the following:

- a. Engagement in a substance use program
- b. Supervision of daily activities to limit the chance of a return to an anti-social peer group
- c. Monitoring of use of drugs or alcohol
- d. Mitigation of the risk of using violence
- e. Mitigation of the risk of absconding

The Chief Clinical Officer said that from admission, all residents are given a daily risk rating, as part of the care planning process. Risk ratings take into account changes to medication, behaviour, mental health status and emotional status.

In addition, the Chief Clinical Officer said that Odyssey House ordinarily prepares monthly reports, which it can provide to the Tribunal, so that the Tribunal can also continue to monitor Mr Naylor's progress.

Engagement in a substance use program

The Odyssey House program is an intensive residential drug and alcohol rehabilitation program. The evidence before the Tribunal is that program offers several stages, based on achieving general living skills objectives, as well as a tailored treatment plan to address an individual's needs. Support and counselling is offered through professional staff and peers, in both a group and individual setting.

Supervision of daily activities to limit the chance of a return to an anti-social peer group

The Chief Clinical Officer described a comprehensive, busy and challenging program, with very little free time, at least in the early stages of the program. The crux of the program is to establish new patterns of behaviour that do not involve relying on drugs or alcohol.

Community access is limited. External visits into the community for those on Assessment are usually only for urgent medical matters. They are all undertaken under supervision of a resident who has reached Level 3 or 4, or a staff member, depending on the person's risk rating.

Residents on Level 1 to 4 have external recreation days, as a part of community reintegration. These might include a picnic at the Botanical Gardens, a visit to the theatre etc. These will all be undertaken under the supervision of Levels 3 and 4 residents as well as staff. Level 3 residents will begin to participate in independent excursions, which must be pre-approved and must travel with peers. Level 4 may have unsupervised access to the community.

Family contact is initially limited to phone calls to a nominated next of kin. Supervised family visits can be earned within a few weeks of commencing the program. Family visits are carefully monitored to ensure that they are pro-social. Contact by friends, rather than family, appears to be very limited.

Monitoring of use of drugs or alcohol

The Tribunal was provided with confidential evidence about the way in which Odyssey House monitors residents' drug use and limit drugs being brought onto the premises. In order to preserve the effectiveness of that system, the details will not be repeated here. In broad terms, the arrangements involve very regular random urine drug screens and breath tests. Those entering Odyssey House facilities, including visiting family, are monitored to limit the likelihood of drugs being brought into Odyssey House.

The Chief Clinical Officer said that she could not guarantee a complete absence of drugs from the Odyssey House premises. However, she said that in her experience any drug use at Odyssey House is quickly identified. Any person found bringing drugs onto the facility would be immediately discharged, the responsible authority alerted and the person removed from the property.

Mitigation of the risk of using violence

As noted above, “no violence or threats” is one of the cardinal rules of Odyssey House. The Chief Clinical Officer said that Odyssey House provides a lot of programs focussing on emotional regulation, dealing with emotions and dealing with anger. Every resident has to participate in these programs.

The Chief Clinical Officer said if a person is involved in threatening behaviour or violence, there would be an immediate “consequence”. This may range from “an awareness”, where the residents discuss in groups about how they will deal differently with their feelings. However, if there was a genuine threat of violence, the person may be discharged. Similarly if the individual responsible for the threatening behaviour did not demonstrate a willingness and ability to change, again, there would be a discharge.

Mitigation of the risk of absconding

The Odyssey House facilities are not secure. It is possible for someone to simply walk off the site and abscond. However, the Chief Clinical Officer said that this was very rare. A head count of all Odyssey House residents is conducted every hour between 7 am and 10 pm. That count is undertaken by Odyssey House residents who have reached a Level 2 responsibility. Level 2 residents have a formal training manual to follow when conducting the head checks and a limited amount of time within which to complete this task. A Level 3 resident is responsible for supervision of the Level 2’s performance of that procedure. Level 3 residents give the roll to a staff member.

Between 10 pm and 7 am, the facilities are locked down and movement is monitored by cameras, which are monitored by staff. Anyone moving around the facility would be immediately noticed. If a person is observed leaving the facility, staff will attempt to locate them and dissuade them. If the person continues to leave, the responsible authority will be notified.

At most, a resident would be absent from the facility for no more than an hour before that is identified and reported. However, the Chief Clinical Officer said that as residents work in groups

with peers and staff, it is unlikely that someone could be absent for an hour without others noticing and alerting staff.

Custodial record

Mr Naylor's custodial record has only two incidents recorded in the 10+ years that he has been in custody. One was a "Fail Prescribed Urine Test" in October 2013. For this, he was denied contact visits for 42 days. No further information is available. The second involved an allegation by another inmate that Mr Naylor punched him in the arm in February 2014. Mr Naylor was given a formal caution, but no other penalty. In sum, these incidents do not appear to be overly serious. Indeed, they represent a remarkably good custodial record. The Chief Clinical Officer said that neither would prompt her to consider Mr Naylor unsuitable for Odyssey House.

Supervised leave

In considering a grant of leave, the Tribunal uses the same nomenclature as the Ministry of Health *Guidelines for forensic & correctional patient ground access, leave, handover, transfer, & release* PD2012-50 (Forensic Policy Directive). The Forensic Policy Directive defines supervised leave in 4.3.1 as follows:

Supervised day leave means leave to a place outside a mental health facility, correctional centre, or other place, under the close supervision of at least one responsible adult (who is not a member of staff of the facility).

Paragraph 4.3.2 requires that supervisors should be formally approved by the Medical Superintendent of the mental health facility at which a person is detained.

The Forensic Policy Directive is not binding on the Tribunal, although it represents a considered approach to the safe management of forensic patients. However, Mr Naylor's circumstances and the arrangements at Odyssey House are unusual and quite different from the arrangements that would apply in a mental health facility.

It is clear that the structure of the Odyssey House program is organised on the premise that other residents, who have advanced further through the program, can be assessed as being suitable to act as supervisors of other residents. In those circumstances, the Tribunal considers that both staff of Odyssey House and residents who have been assessed by Odyssey House as being suitable to supervise other residents could be supervisors for the purposes of a grant of supervised leave by the Tribunal.

The Chief Clinical Officer was asked whether Mr Naylor would be able to participate in the program up to at least Level 3 using supervised leave. She agreed that this would be feasible. To reach this stage of the program is likely to take in excess of a year, so that the Tribunal would be able to conduct further reviews and consider a grant of unsupervised leave if necessary.

At present, the Tribunal has not been asked to consider making an order that Mr Naylor's family act as supervisors for him whilst on leave. From the Chief Clinical Officer's evidence it is unlikely that Mr Naylor would be authorised to have time away from Odyssey House with only his family for some time. If or when that becomes appropriate to consider, a further review should be requested and the Tribunal can consider the issue.

Corrective Services leave

The Commissioner of Corrective Services has the power grant leave to those detained in a correctional centre under s. 26 of the *Crimes (Administration of Sentences) Act 1999* ("the CAS Act"). The Commissioner has not made a grant of leave for Mr Naylor.

The rationale for this decision by the Commissioner would appear to be that Corrective Services policy is that, as an inmate with an A2 classification, Mr Naylor is not eligible for leave. However, as is clear from the letter provided by the Serious Offenders Review Council (SORC) to the Tribunal dated 9 July 2014, the reason for Mr Naylor's A2 classification relates to the length of Mr Naylor's limiting term, rather than any identified risk issues in relation to leave.

Is it necessary for the Commissioner of Corrective Services to grant leave to Mr Naylor for him to be able to exercise that leave? The Tribunal considers that Mr Naylor is entitled to exercise leave on the strength of its grant of leave alone, for the following reasons.

The Act plainly confers the ultimate responsibility for making decisions about forensic patients on the Tribunal. One decision that is open to the Tribunal is to order the detention of a forensic patient in a correctional facility: sections 47(1)(a) and 48. However, it is the Commissioner who retains responsibility for the safe running of correctional centres. Thus, where a forensic patient has been ordered to be detained in a correctional centre, section 76C of the Act authorises the Commissioner "to continue to exercise his functions under the CAS Act if that is necessary for the security, good order or safety, in any way, of the correctional centre ... or its inmates."

However, the Commissioner's powers under section 76C of the Act do not detract from the other powers conferred on the Tribunal under the Act. The phrasing of section 76C indicates that the Tribunal's orders are paramount, unless overridden by the Commissioner's obligations to ensure

the safety, security and good order of a correctional centre or particular inmates. Indeed, section 49 specifically authorises the Tribunal to grant leave for those detained in a correctional centre.

This construction is consistent with an ordinary reading of the legislative provisions of the Act. It is also consistent with a purposive construction of the Act, which confers responsibility on the Tribunal to balance issues of risk to public safety with the imperative of detaining forensic patients in the least restrictive environment consistent with safe and effective care: section 40 of the Act and section 68 of the *Mental Health Act 2007*.

Accordingly, the Tribunal considers that an order from the Tribunal under s. 49 is sufficient authority to allow the forensic patient to be absent from a correctional centre on leave. There is no requirement for an order to also be issued by the Commissioner of Corrective Services under s. 26 of the CAS Act.

DETERMINATION

The program offered at Odyssey House addresses the risks identified by the independent psychologist and the VMO psychiatrist in their reports. It offers a lengthy, structured program addressing substance abuse, and other anti-social behaviours such as violence. The risks of drug misuse and absconding are addressed by comprehensive monitoring arrangements. The Tribunal will be regularly updated about Mr Naylor's progress, and any breach of his conditions of release, which include an obligation to comply with the rules of Odyssey House.

The program also offers an opportunity for community reintegration, a stepping stone between the high secure facilities where Mr Naylor has spent the last 11 years and community living. There is a focus on vocational pathways and employment opportunities. It offers a supported environment in which to work on family relationships. It offers an opportunity for Mr Naylor to demonstrate that he could live safely in the community under a conditional release arrangement.

The Odyssey House program is not an easy option. The Tribunal reiterated to Mr Naylor that he will need to work hard and engage with all aspects of the program if he wishes to remain on the program and succeed. If he does not, then the Tribunal will have no alternative but to order his return to the MRRC.

The Tribunal is satisfied on the evidence available to it that the grant of escorted leave and supervised day and overnight leave would not seriously endanger Mr Naylor or any other member of the public.

Signed

Anina Johnson
Deputy President

Dated this day 1 September 2014