

**THIS IS AN OFFICIAL REPORT OF THE MENTAL HEALTH
REVIEW TRIBUNAL PROCEEDINGS IN RELATION TO MR
ISLAND AUTHORISED BY THE PRESIDENT OF THE TRIBUNAL
ON 15 JUNE 2018**



This is an edited version of the Tribunal's decision. The forensic Mr Island has not been identified in this Official Report

FORENSIC REVIEW: ISLAND, GEORGE

**s46(1) Review of forensic Mr Islands
*Mental Health (Forensic Provisions) Act 1990***

TRIBUNAL: Maria Bisogni Deputy President
Janelle Miller Psychiatrist
Peter Bazzana Other Member

DATE OF HEARING: 20 April 2017

PLACE: Forensic Hospital

APPLICATION: Own Motion Tribunal review

DECISION: Order of 7 April 2017 confirmed.

REASONS

This is the XX review under section 46(1) of the *Mental Health (Forensic Provisions) Act 1990* ("the Act") of George Island.

Mr Island is currently detained at the Forensic Hospital on an order of the Mental Health Review Tribunal, dated XXX.

DOCUMENTARY EVIDENCE

The Tribunal considered the documents listed in the Forensic Patient Exhibit List.

ATTENDEES

Mr Island attended the hearing accompanied by his lawyer. Also in attendance were:

- Treating Psychiatrist
- Clinical Director of the Hospital
- Psychiatry Registrar.
- Clinical Psychologist
- Associate Nurse
- Registered Nurse
- Director of Forensic Mental Health

- Forensic Hospital Statewide Clinical Director
- Forensic Hospital lawyer
- 2 representatives of the NSW Nurses & Midwives Association.

BACKGROUND

This was a Tribunal initiated review of Mr Island who is currently detained in the Forensic Hospital. The review was conducted in April 2017. Two weeks earlier, the Tribunal had reviewed Mr Island and ordered as follows:

“Mr Island is to be removed from seclusion and is to be given care and treatment as determined by Mr Island’s treating psychiatrist or her/his delegate.”

Between the two reviews, Mr Island’s lawyer, advised the Tribunal that Mr Island had not been released in accordance with the Tribunal’s order made after the earlier review.

Some years before, Mr Island had been found not guilty by reason of mental illness on charges of assault occasioning actual bodily harm and sexual intercourse without consent.

EVIDENCE AND SUBMISSIONS

In evidence was an email from the Forensic Hospital Medical Superintendent to staff. It was sent between the two reviews and noted that SafeWork NSW and the NSW Nurses & Midwives’ Association had visited the Forensic Hospital on that day raising work health and safety issues concerning the order that Mr Island be removed from seclusion. The Medical Superintendent advised that a work health and safety risk assessment would be completed regarding Mr Island’s staged exit from seclusion. Questioned by Mr Island’s lawyer about Mr Island’s non-removal from seclusion, the Forensic Hospital referred to a risk management plan and a provision of resources and assistance to enable Mr Island’s movement from seclusion in a gradual and safe manner “in accordance with the risk management plan and directions from SafeWork NSW and to adjust that plan if necessary” to accommodate Mr Island’s ongoing progression.

The Medical Superintendent asked that the Tribunal order be amended to “when seclusion is ceased” that it be made subject to “a risk assessment and management” of the unit. The Medical Superintendent gave evidence of attempted compliance with the orders in good faith but it had been challenging. The Medical Superintendent had received legal advice and had been working with the treating team to transition Mr Island out of seclusion.

Representatives of the union gave evidence that it was concerned about the safety of its members and trying to ensure that no further serious injuries were experienced by them. Its members had “a right to a safe workplace.” The witness acknowledged that it was a complex case involving balancing of the rights of Mr Islands and obligations to staff.

Mr Island’s Treating Psychiatrist was concerned about non-compliance with the Tribunal’s order and raised the issue that “management plans were being formulated by non-clinicians without the support of the treating team”. Mr Island’s Treating Psychiatrist noted that Mr Island’s was becoming frustrated by the change of plans and developing a sense of hopelessness. Mr Island’s Treating Psychiatrist expressed the opinion that Mr Island was being “harmed on a daily basis” by the protracted seclusion. A SafeWork NSW report stated that Mr Island should not be released from seclusion until consultation with workers and a

finalised risk assessment plan including an assessment of risk of assault or aggression towards nursing staff. There was an improvement notice specifying safe systems of work and other actions. Treating Psychiatrist expressed the opinion that Mr Island should come out of seclusion and that Mr Island's "risk of imminent violence is low" and that the Treating Psychiatrist plan would identify triggers.

Mr Island's lawyer emphasised that the Tribunal's former order should be complied with and given immediate effect and that the risk assessment management forms were inconsistent with the Tribunal's order. The current detention was unlawful.

The Forensic Hospital's lawyer emphasised the legal obligations that the facility had to meet regarding work health and safety issues and the improvement notices. All efforts were being made to comply with the work health and safety notices. He proposed that the Tribunal amend its order and make it subject to "the risk plan being undertaken". He emphasised his client's "competing duties including work health and safety issues and common law duties to make sure everyone is safe" presenting challenges complicating the transition of Mr Island from seclusion.

CONSIDERATION

Mr Island's case has been challenging for management and Justice Health who understandably wished to protect staff and comply with their obligations under work, health and safety legislation as well as abide by the Tribunal's order. However, the Tribunal has specific obligations under the legislation to consider the nature of care, treatment and detention of Mr Island, having regard to his continuing condition, his response to treatment, including any likely deterioration and the effects of any such deterioration and whether treatment and control was necessary for his protection or the protection of others from serious harm.

At the previous review, Mr Island's case had required an examination of the Tribunal's role at s46 reviews and the AMO's role under s190(2) of the *Mental Health Act*. The Tribunal in its previous decision considered that its review of Mr Island was triggered by s46 and s47 of the Act, having regard to the specific matters in s74 and the purpose, objects and aims of the governing legislation. The Tribunal then determined, after having considered the extensive evidence from Justice Health management and Mr Island's treating team, led by Treating Psychiatrist, that Mr Island no longer posed a threat of serious harm to others (staff and Mr Islands) due to his more settled condition; and that his care, treatment and detention should not occur in seclusion. The Tribunal's order required that he be removed from seclusion in accordance with a treatment plan by Treating Psychiatrist or her delegate.

Events since that last hearing reveal that Mr Island's management out of seclusion is being significantly affected by WHS officers, Safework NSW and the N & MWA. Attempts to effect Mr Island's removal from seclusion have been delayed by various industrial demands (referred to in the Notices) including by risk assessments undertaken by WHS officers who have refused to transition Mr Island in accordance with the Treating Psychiatrist's transition plan. This is most unfortunate as Mr Island's risk of self-harm and sense of hopelessness have increased to the point that his treating team have found it difficult to engage him and he is on observation to guard against self-harm.

At this review, the Tribunal considered that the Medical Superintendent had not put forward any persuasive reason as to why the Tribunal should alter its previous order in the manner suggested by him. The Tribunal had comprehensively considered Mr Island's circumstances and found that his detention in seclusion was not necessary for the protection of others.

Moreover, the Tribunal concluded that Mr Island's treating team were best placed to transition him out of seclusion according to their transition plan. At this hearing, the Tribunal accepted the evidence of the Treating Psychiatrist that the core group of staff identified at the previous review continued to want to work with Mr Island and that his risk of serious harm to staff and other Mr Islands in the HDU was low. There was a sensible and comprehensive plan to manage him effectively and safely.

The Tribunal was concerned that its order had not been given effect as was intended and as a result Mr Island remained in seclusion with evident ongoing harm. Mr Island's sense of frustration and hopelessness had increased because of the failure to transition him out of seclusion according to the plan that had been discussed with him by Treating Psychiatrist. The Tribunal accepted that Mr Island's prolonged seclusion was increasing his risk of self-harm.

The rewording of the order as requested by the Medical Superintendent had the potential of further prolonging Mr Island's seclusion, based on considerations that were not relevant to his personal circumstances. It was not suggested the Medical Superintendent or Clinical Director that Mr Island would pose a risk of serious harm if the deficits were not attended to.

The Tribunal's order made after the earlier review is clear. It requires Mr Island's removal from seclusion in a timeframe and in accordance with the directions of the Treating Psychiatrist, or her delegate, and staff working with her. Since the Tribunal has determined that there should be no variation to Mr Island's care, treatment, and detention, the Tribunal notes that a formal order is not required to be issued on this occasion and confirms that the order made after the earlier review remains in force.

The Tribunal makes an order under s151(4) of the *Mental Health Act* prohibiting the publication or broadcasting of Mr Island's name to protect his private health information.

The Tribunal determined that the next review will be held within 6 months.

Signed

Maria Bisogni
Deputy President

Dated this day 2017