THIS IS AN OFFICIAL REPORT OF THE MENTAL HEALTH REVIEW TRIBUNAL PROCEEDINGS IN RELATION TO MS CROKER AUTHORISED BY THE PRESIDENT OF THE TRIBUNAL ON 6 NOVEMBER 2013

Mental Health Review Tribunal

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: **Ms Croker**

s46(1) Review of forensic patients
Mental Health (Forensic Provisions) Act 1990

TRIBUNAL:	**Maria Bisogni**	**Deputy President**
	John Spencer	**Psychiatrist**
	John Haigh	**Other Member**

DATE OF HEARING: **1 August 2013**

PLACE: **Forensic Hospital**

APPLICATION: **Leave - Escorted Day Leave**

DECISION

1. Having determined pursuant to section 49 of the *Mental Health (Forensic Provisions) Act 1990* that neither the safety of Ms Croker nor any member of the public would be seriously endangered thereby and having considered the matters to which section 74 refers, the Tribunal orders that Ms Croker be allowed the following leave subject to any conditions and restrictions which the medical superintendent may impose:

   1.1 Escorted day leave

2. Otherwise, that the current arrangements for Ms Croker's care, treatment and detention as a forensic patient at the Forensic Hospital continue to apply including any previously approved leave.

Signed

Maria Bisogni
Deputy President

Dated this day 20 September 2013

REASONS

This is the 33rd review under section 46(1) of the *Mental Health (Forensic Provisions) Act 1990* ("the Act)" of Ms Croker.

Ms Croker is currently detained at the Forensic Hospital on an order of the Mental Health Review Tribunal, dated 7 February 2012.

Prior to the hearing the Tribunal received a Notice of Intent from Mr Davis, Ms Croker's legal representative, on 9 July 2013 requesting escorted day leave for Ms Croker from the Forensic Hospital. Subsequently, the Tribunal received written submissions from Mr Davis, in support of that leave, dated 26 July, 2013.

BACKGROUND

In 2000, Ms Croker was found not guilty by reason of mental illness of inflict grievous bodily harm. The index event which occurred when Ms Croker was serving a prison sentence.

Ms Croker is an Aboriginal woman who has suffered with a lifelong psychiatric illness with over 100 admissions to psychiatric units. Ms Croker has suffered with schizophrenia since 1976, complicated by illicit substance use which she commenced in her teenage years. Ms Croker also has a number of medical issues that are referred to below.

Ms Croker has a long history of institutional care which commenced when she was taken from her parents as an infant and placed into an orphanage. Ms Croker also has a criminal history commencing in 1976. Ms Croker has 3 sons. Her financial affairs are managed by the NSW Trustee and Guardian.

Ms Croker is currently detained in the Austinmer Ward at the Forensic Hospital. Since the commission of the index event, Ms Croker has been variously detained at Silverwater Women's Correctional Centre, Dillwynia, the Bunya Unit at Cumberland Hospital and the Forensic Hospital.

[The Tribunal then outlined Ms Crocker's history as a forensic patient.]

DOCUMENTARY EVIDENCE

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

ATTENDEES

Ms Croker attended the hearing accompanied by her lawyer, Mr Todd Davis of the Mental Health Advocacy Service. Also in attendance were:

- Staff Specialist, Austinmer Women's Unit
- Psychiatry Registrar
- Psychologist
- Welfare Officer
- Registered Nurse
- Occupational Therapist
- Ms Helen Sears, Legal Aid, and
- Mr Croker, son (by telephone).

PRESENT CIRCUMSTANCES

The Tribunal had the benefit of a comprehensive multidisciplinary report. In addition, the Tribunal, prior to the hearing, received two letters from Justice Health; one from Dr Karin Lines, Executive Director Clinical Operations (Forensic Health) dated 6 June 2013, regarding Aboriginal support programmes in the Forensic Hospital, and the other from Ms Julie Babineau, Chief Executive, Justice Health, dated 15 July, 2013. Both letters were responses to letters sent by Deputy President Ms Anina Johnson, who had inquired of Dr Lines of the support programmes for Aboriginal patients and of Ms Babineau, the Forensic Hospital's attitude to community leave for rehabilitative purposes.

The Tribunal also had before it an email of 18 June 2013 from Ms Siobhan Mullany, the Tribunal's Forensic Team Leader to the Tribunal indicating that the Bed Flow Committee Meeting on 17 June 2013 advised that Ms Croker would not be "next on the list" for a bed at the Bunya Unit as she had been accepted into the HASI Plus Program.

During the course of the hearing, the Tribunal was provided with a Justice Health policy document "Leave, Ground Access & SCALE- The Forensic Hospital", (Policy Number 1.249, issued on 1 August 2011). The Policy summarises the procedure for outside leave for adult,

and adolescent civil, correctional and forensic patients detained at the Forensic Hospital and the use of Security Category and Leave Entitlement (SCALE) for forensic patients. The document was referred to extensively in Mr Davis' submissions (see below).

In summary, the written reports of the multidisciplinary team were supportive of Ms Croker being discharged to the HASI PLUS program. The written report by the psychiatry registrar and staff specialist at the Austinmer Women's Unit recommended that the Tribunal order a further period of detention with an early Tribunal date to facilitate discharge to a HASI-Plus 24 hour staffed accommodation. In her oral evidence to the Tribunal the staff specialist said that she was therefore unable to put in a Notice of Intent for the leave, as the " procedures' for the leave have not yet been put into place. Nevertheless she "clinically", supported it stating that there have been undue delays in having Ms Croker transferred to a medium secure unit and that it had to now be facilitated by the Forensic Hospital.

At the hearing, the treating team was unanimously supportive of Ms Croker being allowed escorted day leave for the purpose of transitioning her to the program and her eventual discharge to HASI PLUS.

In their report the doctors confirmed Ms Croker's diagnosis of paranoid schizophrenia, co-morbid dementia and poly-substance dependence, which are contained in the controlled environment of the Forensic Hospital.

[Ms Croker's complex medical history was outlined by the Tribunal]
Since the last Tribunal review she has had a number of admissions to Prince of Wales Hospital.

The doctors related that Ms Croker's mental state has been stable and that she has progressed significantly over the last several months, except for the mental state deteriorations described below. Otherwise, Ms Croker was functioning very well. She has actively engaged in ward and off ward groups and has utilised her "point to point access". The treating team stated that Ms Croker has used unsupervised access to the hospital grounds "appropriately and responsibly".

[The Tribunal outlined certain mental state deteriorations].

In relation to risk, the doctors reported that Ms Croker's risk related to "noncompliance and the return of her mental illness and the risk of harm to others if she were to be discharged to the community without any support". Ms Croker's compliance with medication and other management plans is good. There have been no instances of physical aggression in the last 6 months. The doctors opined that Ms Croker needs a gradual exposure to community rehabilitation.

Ms Croker has made a full recovery from her physical ill health She is prescribed a number of medications for her mental illness. She is prescribed a number of other medications for her physical health conditions.

The nursing report related that there were four instances of verbal aggression towards staff members due mainly to personal needs not being immediately met by staff members. Ms Croker's interaction with peers is superficial but there were no documented conflicts or arguments. Ms Croker undertakes regular daily unescorted perimeter walks without incident. She also attends art group, and morning meeting, often chairing the meeting for her peers. She also plays board games with staff.

The report also noted Ms Croker's fluctuating mental state over the period of her recent hospital admissions and that her interactions with staff and her peers is generally superficial and tinged with some paranoia.

In terms of family involvement her son, Mr Croker is her primary carer and she has sporadic contact with him. Since the last review hearing Mr Croker has booked in to see his mother 4 times and he has attended once. When he has not appeared Ms Croker becomes "dismissive and withdrawn". Ms Croker regularly phones her sons but they do not always answer her calls. She worries if she does not have contact with them for long periods of time.

The report of the occupational therapist, also supported "graded community leave" once appropriate leave is granted from the Forensic Hospital. The graded leave program was being developed by the Therapy Team. She re recommended that Ms Croker be allowed continued opportunities to develop her functional skills, through cooking, including education about safety concerns and management of potential dangers, psycho-education to increase her level of insight, continued access to culturally sensitive activities, and greater community leave.

A risk assessment of Ms Croker was undertaken by the psychologist, utilising the HCR-20 instrument in June 2013. Ms Croker's overall risk of reoffending was assessed to be moderate.

The Social Welfare officer in his (undated) report supported Ms Croker's placement in the HASI Plus program, stating that it was integral to the program that she be allowed external supervised leave from the Forensic Hospital. HASI has given an indicative time frame for accommodation and the provision of support staff by mid September 2013 with Mission Australia and New Horizons providing accommodation. Mr Plunkett reported that the Team Leader at Mission Australia is to complete an initial assessment on 12 August 2013 to tailor a supported accommodation plan to meet Ms Croker's current level of needs.

The Social Welfare officer has also been advised by the Aged Care and Assessment Team (ACAT) Southern Sydney Health Service that it will act as a backup service should Ms Croker become too frail.

He stated:

> "In considering the total duration of time spent in custody, and in mental health facilities, it could be said that Ms Croker's general demeanour reflects that of institutionalisation in its clearest forms. As such, a structured support plan is paramount in relation to successful and continued community reintegration, one such option is HASI Plus, which has 24 hour support staffed residential and this option is suitable for her."

The treating psychiatrist said that ideally, she would like Ms Croker to be transitioned to a medium secure setting so she can have an increased greater period of exposure to leave. Ms Croker was referred to the Bunya team in June 2012, but 4 assessments were cancelled, either on the day or the day before the scheduled assessment. The last cancellation was on 9 July 2013.

The treating psychiatrist said that Ms Croker is ready to transition to conditions of lesser security. The doctor had made a successful application to the Forensic Hospital Leave Committee on 27 May 2013 for Ms Croker to have escorted outside day leave for therapeutic and rehabilitative purposes. It has been approved by the Medical Superintendent. Ms Croker was approved for E3 and all E4 leave, with the former requiring two escorts and a driver and

the latter requiring a member of staff. The latter is likely to be easier to implement because of the capacity of a staff member or a member of New Horizon to use other vehicles. The leave would allow Ms Croker to get to know her case worker in the community. The doctor said that the Leave Committee had regard to a full risk assessment in reaching its decision.

The doctor said that Ms Croker's access of the leave was critical to her successful transition to the community. It was imperative "before making the enormous jump to the community". The leave would enable Ms Croker to visit her proposed home and make connections with community mental health facilities. Potentially, there is a choice of facilities for Ms Croker to choose from, and it was crucial that she is able to choose. Ms Croker would also be engaged by a local community mental health team. It was hoped the Aboriginal worker would have a role in involving Ms Croker in local groups. All these interactions could occur with two or one escorts.

The clinical view was that Ms Croker's access to leave would not pose a risk of harm to herself or others. The leave involves a high degree of supervision. It was noted that before coming to the Forensic Hospital, Ms Croker was having regular unescorted leave. The only reason she came to the Forensic Hospital was because of deterioration in her mental state due to Clozapine medication being ceased by her medical team.

The Tribunal asked questions as to the procedure that needs to be put in place by Justice Health to effect external leave. The treating psychiatrist referred to Ms Babineau's letter to Ms Johnson. The treating psychiatrist's understanding from the letter was that a number of stakeholders had to be consulted, including the local public and victims. Also, there are issues around preventing the bringing in of contraband. The treating psychiatrist thought that these concerns related to unescorted leave. She could not see that these were issues with escorted leave. The medical superintendent has convened a working party to progress the procedural requirements, which will be put into place in the next few months.

The treating psychiatrist said that until the formal procedure was in place, she would not be able honour any leave granted by the Tribunal. She was therefore unable to put in a Notice of Intent for the leave. However, the treating psychiatrist supported it "clinically", stating that there have been undue delays in having Ms Croker transferred to a medium secure unit and that it had to now be facilitated by the Forensic Hospital.

The social welfare officer said that he absolutely supported the leave. He was happy to assist with the leave and was part of the transitional process.

All members of the treating team present at the hearing said they supported the grant of escorted day leave. Ms Croker was also supportive, as was her son.

Mr Davis submitted that Ms Croker falls within the terms of the Justice Health Leave Policy, as the leave is to be used for rehabilitative purposes. He said that it is likely that Ms Croker will leave the Forensic Hospital directly to the community. Without leave, Ms Croker would not have the opportunity to visit the place where she is going to live. Escorted day leave would allow her to visit the property and discuss with the care providers and others if is appropriate from a health perspective, given her cultural issues and her co-morbidities.

It is necessary to refer to the Justice Health Leave Policy which was discussed throughout the hearing. It is a comprehensive document that the Tribunal had only seen for the first time at the hearing. It details the policy for leave for all patients detained at the Forensic Hospital, including forensic patients and correctional patients. It sets out the categories of leave, such as leave for medical or compassionate reasons and the process for applying for leave on the grounds of the facility and external to it.

Justice Health Leave Policy

The salient points of the Policy in relation to outside leave for Forensic Patients are as follows:

- At para 4.5: Outside leave for rehabilitative purposes must have the application approved by the Leave Committee before an application can be forwarded to the Tribunal.
- Whilst outside leave may be potentially supervised, unsupervised, escorted or unescorted the policy restricts the leave to escorted day or supervised day leave and in exceptional circumstances escorted overnight leave and extended leave only.
- Whilst the Tribunal may approve leave "the policy restricts the type of leave that the Leave Committee can support" as the Forensic Hospital is a high secure environment and the security status of the patients would generally preclude them from having the leave. Those who are clinically suitable would be transferred to a medium or low secure facility to access leave.

- At 4.7: the specifics of the use of leave are to be detailed in the plan and are to include a risk management plan which identifies the risks of the leave.

Mr Davis' written submission

In summary, Mr Davis submitted that escorted day leave should be allowed as there was evidence that:

- Ms Croker remains in conditions of security greater than her risk (noting the psychiatrist's report for the Tribunal review);
- an *Application for Ground Access* by the treating psychiatrist was approved and was based on Ms Croker's acceptance for HASI;
- a referral had been made to the CFMHS for support for Ms Croker's conditional release;
- Ms Croker would be able to access the community with two staff initially to facilitate familiarity with the area and placement;
- Ms Croker is physically frail and motivated to abstain from illicit substances;
- She is a low risk of absconding due to engagement with the team, a low risk of illicit substance use, due to escort and is also a low risk of violence due to her well controlled psychosis;
- her accommodation is likely to be available on about September 2013; and
- there was no evidence that it would endanger Ms Croker or any member of the public. There was a "plethora of evidence" that she would not endanger herself or others having regard to her history of attendance at external hospital visits without incident, her physical incapacity to abscond; her well controlled psychosis; and her use of unsupervised leave at the hospital without incident.

Ms Davis submitted that the leave would create the best possible opportunity for Ms Croker to successfully transition to community based care. Its importance could not be underestimated in light of Ms Croker's "long history of detention and state based control regarding her liberty that commenced during her infancy". Further, that the leave would give effect to the Principles for Care and Treatment in s 68 of the Mental Health Act, including:

- Assisting Ms Croker to live and participate in the community;
- Providing care in the least restrictive environment;
- Ensuring those restrictions placed on Ms Croker's liberty are kept to the minimum necessary in the circumstances;

- Recognising Ms Croker's cultural needs as an Aboriginal woman and member of the Stolen Generation.

Mr Davis also submitted that the application was not inconsistent with the Forensic Hospital's leave policy, which provides:

> "Outside leave is an important part of the rehabilitation program and vital when preparing patients for transfer to a less secure unit or discharge to the community. It is a policy of Justice Health that patients in the Forensic Hospital should be able to access the grounds and outside leave as required for their health and wellbeing to the greatest extent possible taking into account their clinical, legal and security status".

Mr Davis submitted that leave to the grounds and outside leave are an important part of rehabilitation and vital for preparing patients for transfer to a less secure unit or discharge to the community. He noted that that approval must be granted by the Leave Committee before an application can be made to the Tribunal.

Mr Davis also submitted:

> "The Tribunal must make its decision on the basis of legislative requirements. Policy considerations and requirements cannot detract from that requirement'.

THE LEGISLATIVE FRAMEWORK FOR LEAVE

Under section 46 of the Act 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 preconditions for the grant of leave or release are set out in the Act. In view of this, the Tribunal requires notice of applications for leave or release to ensure that the necessary evidence is available. This process also enables the Tribunal to provide notice of such applications to the Minister for Health, the Attorney General, and any registered victims who are entitled to make submissions concerning any proposed leave or release. A notice was provided to the Tribunal prior to this review for an application by the Mental Health Advocacy Service, for escorted day leave.

The Tribunal was notified that an application would be made for escorted day 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 of care and treatment under 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,
>
> (d) .....
>
> (e) …….

DETERMINATION

The purpose of escorted day leave is to transition Ms Croker to a community placement under a 24 hour high support, HASI Plus package. The issue for the Tribunal is whether Ms Croker meets the legislative criteria for leave.

The Tribunal was satisfied pursuant to section 49 of the Act that Ms Croker's access to the leave would not seriously endanger her safety or that of any member of the public. The reasons for that finding are as follows.

The uncontested evidence was that Ms Croker's use of escorted day leave for the purpose of transitioning her to a HASI Plus placement would not endanger her or others, for the following reasons: the highly supervised nature of the leave; the assessment of Ms Croker's low risk; her mental stability and motivation; her compliance with medication and treatment; and her excellent record of using ground leave and escorted leave without incident for medical emergencies and non urgent appointments.

Level of supervision. Ms Croker will be highly supervised whenever she partakes of this leave. The Tribunal has no reason to doubt that Ms Croker will receive consistent and appropriate monitoring and supervision.

Low risk assessment. The evidence of the treating team was that Ms Croker's risk assessment in respect of escorted day leave was low.

Mental stability and motivation. The evidence summarised above clearly establishes that Ms Croker's mental state is currently stable. It also establishes that Clozapine medication has benefitted her and has contributed to a greater control of her symptoms.

The significant improvements to Ms Croker's circumstances in the last six months have included a marked reduction of psychotic symptoms and physically aggressive acts. This contrasts with a past lengthy period of detention, characterised by very many impulsive aggressive acts and outbursts.

Despite a protracted period of treatment with Clozapine medication, Ms Croker continues to experience underlying psychosis, manifested in some paranoid behaviours and a degree of guardedness and suspicion. Nevertheless, the Tribunal accepts the evidence of the treating psychiatrist that these behaviours do not unduly impact on her day to day functioning. The clear reduction of menacing and aggressive behaviours is a barometer of Ms Croker's wellness. It was evident that Ms Croker's improvement is significant, notwithstanding her progressive co- morbid dementia.

Ms Croker also impressed the Tribunal as keen to progress to the community and to "stick to the rules".

Compliance with treatment. It was evident to the Tribunal that Ms Croker's transfer to the Forensic Hospital in 2012 was due to the re-emergence of gross psychotic symptoms related to the cessation of Clozapine medication by her then treating team. Whilst it was withdrawn for good reason it is important to note that Ms Croker's decline was not related to her failing to take her medication and that she continues to comply with her treatment, including medication.

Appropriate use of current leave. There was ample evidence of Ms Croker's appropriate use of supervised leave external to the hospital, regrettably, for reasons of ill health and medical appointments.

The Tribunal also took into consideration the following other relevant matters. The principles of care and treatment under s 68 of the Mental Health Act also apply, as do the objects of the Act under s 40. They advocate the least restrictive treatment, high quality treatment, the involvement of the affected person in their care, treatment and discharge planning, and an approach that focuses on a person's opportunity to participate fully in living and working in the community. They emphasise the right of patients to dignity, self–respect and autonomy. All these matters may be taken into account, and in addition the list of matters for consideration under s 74 of the Act are not exhaustive. However, such factors cannot displace the requirement under s49 (3) that the Tribunal must not make an order for leave unless satisfied that the subject person and members of the public are protected from "serious endangerment". As discussed above, the Tribunal is so satisfied in this particular case of Ms Croker.

Ms Croker's transfer to the community is timely, if not overdue, and she has been detained for a considerable time, in more restrictive conditions than she requires. This is the case presently and it was also the treating psychiatrist's view at the Tribunal review 6 months earlier, on 7 February 2013. Ms Croker is entitled to be cared for in the least restrictive option consistent with safe and effective care.

Ms Croker will now not be assessed by the Bunya Unit, at Cumberland Hospital, a medium, secure unit because of the HASI PLUS offer, although she is clearly ready for detention in conditions of lesser security.

The HASI offer is likely to provide Ms Croker with intensive support and appropriate external controls that caters to her not insignificant cognitive impairment, mental illness and other health needs. It is likely to be the only feasible option which will allow for her safe and rehabilitative transfer to the community. Ms Croker's impairments are such that her capacity for meaningful participation in the rehabilitation programs at the Bunya Unit must be limited.

Ms Croker is a vulnerable person who will require a high degree of structure, supervision and support to moderate her risk of relapse and re-offending. It is incumbent on her treating team

to effect a transition to the community at an appropriate cautious pace and in a manner that takes into account Ms Croker's views about her needs and preferences and her long history of institutional care. This gives effect to the principles set out in s 68 of the *Mental Health Act* that a person subject to the Act is to be involved in the "development of treatment plans and plans for ongoing care" and that it should occur in "the least restrictive environment".

It is likely that Ms Croker's future well-being will depend on the following: appropriate placement in the community with access to a skilled key worker; a high degree of support and supervision; access to a community mental health team; positive engagement with a dedicated case manager and psychiatrist to regularly monitor her mental state; access to ongoing medical care to attend to her manifold medical conditions; and involvement in her cultural group, including her family. The granting of leave will allow Ms Croker opportunities for engagement with key persons who will be involved in her future care. It is in Ms Croker's interests and the community interest that any exercise of leave be utilised to maximise her chances of succeeding in the community on conditional release.

Impact of the Justice Health Leave policy and lack of formal procedures

An issue raised by the evidence and submissions, was the effect of the Justice Health leave policy and the current absence of procedural guidelines that could be directly applicable to the determination of this matter. It was clear that the treating team was not permitted to apply for escorted day leave, despite obtaining the approval of the Leave Committee, because of the lack of formal procedures.

Although no representative was present from Justice Health to address this issue at the hearing, the Tribunal had before it Ms Babineau's letter (referred to above) which was supportive of restricted leave from the Forensic Hospital, for patients who are eligible for medium secure units but who cannot be transferred because of a lack of beds. The letter advised that procedural guidelines had to be developed before the leave could be enacted. These are to be developed by a working group convened by the Medical Superintendant.

Ms Babineau's letter was consistent with the policy which stated that "the type of leave that the Leave Committee can support" was generally restricted because of the security status of patients and the high secure nature of the Forensic Hospital. The usual pathway for patients would be transfer to a medium or low secure facility to access leave.

Mr Davis submitted that the application for leave was not inconsistent with the Forensic Hospital's leave policy, which recognised its role in a patient's rehabilitation program and transfer to lesser security and discharge to the community. The policy states that it should be allowed "to the greatest extent possible" taking into account the patient's clinical, legal and security status.

Mr Davis also submitted:

> "The Tribunal must make its decision on the basis of legislative requirements. Policy considerations and requirements cannot detract from that requirement'.

In the Tribunal's view, Mr Davis in his submission, has correctly identified that policy considerations, which are not referred to in the relevant legislative provisions, cannot of themselves preclude a patient's access to leave should the requirements of the Act be met to grant such leave after proper consideration of all the evidence available to the Tribunal.

The Tribunal is of the view that it should have regard to policy and procedural requirements as they are relevant to the legislative criteria. The manner in which leave from the hospital is organised and exercised under Justice Health policy and procedure may be very relevant to the issue of a person's risk of dangerousness to self and others. It is an important factor to be considered by the Tribunal amongst a number of other relevant and important factors, some of which are identified above.

Whilst the Justice Health policy foreshadows that the usual pathway for forensic patients will be via the medium secure unit, this does not constrain the Tribunal from making orders allowing leave or release directly to the community in appropriate cases where the legislative criteria have been satisfied having taken, inter alia, proper consideration of those policies. As the policy itself comments this is only the 'usual pathway'. There must be flexibility to meet the particular circumstances of each forensic patient, as is required under the Act.

The Tribunal was satisfied that the leave would not endanger Ms Croker or any member of the public although no applicable procedure had been set by Justice Health, because of her own personal circumstances and the particular circumstances of her leave. In particular, Ms Croker has an un-contradicted low risk assessment in relation to the access of the leave and it is clear

that during leave she will be supervised by mental health staff at all times. The social welfare officer had offered to assist in supervising the leave, and to assist in whatever way possible to allow Ms Croker to view the HASI options and to make links with care providers who will implement the program. The exercise of the leave also will be subject to the conditions, requirements and discretion of the medical superintendent. He or she can prescribe the conditions that accompany the leave and the superintendent must also have regard to ongoing risk assessments of Ms Croker, before leave can be exercised.

At present, Ms Croker falls within the Justice Health Leave Policy. It will be for another Tribunal panel to consider whether escorted leave should be expanded to leave that is not permitted by the policy. It is not necessary to decide that issue at this hearing. However, there is no reason in law or principle, as to why Ms Croker's engagement with service providers under HASI, all other things being equal, should not begin from the Forensic Hospital. In this case there was ample evidence of Ms Crocker's good use of leave on the grounds and external to the hospital without incident and the high degree of supervision attendant with the leave allows for the Tribunal to approve it. The final decision will rest with the medical superintendent who may prescribe additional conditions to the leave and implement it accordingly.

The Tribunal was persuaded that the leave is for an important rehabilitative purpose and that this objective is consistent with the above principles for care and treatment. Ms Croker's recovery is to be promoted, after taking into consideration the proper management of any risk issues.

Ms Croker is unlikely to be competitive for a bed at the Bunya Unit because of the pressure of beds and the HASI Plus offer. HASI is likely to offer Ms Croker a tangible, realistic and safe exit pathway from the Forensic Hospital. Further, Ms Croker is being detained in circumstances that are excessively restrictive for her particular circumstances.

Finally, the Tribunal would also generally acknowledge that established policies such as by Justice Health are vital to the good governance of hospitals and for the proper use of leave. The decision by the Tribunal in this matter should not be regarded as a criticism of the role and importance of policy and procedures nor of the efforts of Justice Health in implementing effective policies and procedures. It is well understood that all mental health facilities must have prescriptive, operable policies and procedures in place that address the security of patients and

the community and the health needs of patients. The Tribunal supports the development of policy and procedure by Justice Health and recognises the complexity and burden of that task. The policies and procedures need to be able to deal with all patients at the Forensic Hospital who may have a vast range of relevant personal circumstances and forensic histories.

CONCLUSION

Ms Croker has met the legislative requirement for leave to the community, having regard to the matters set out in ss 40, 49 and 74 of the Act and s 68 of the *Mental Health Act* 2007. She has a mental illness, schizo affective disorder and polysubstance abuse (in remission). The Tribunal is satisfied that there are reasonable grounds for believing that care, treatment and control of Ms Crocker are necessary for her own protection from serious harm and the protection of others from serious harm. Having regard to her continuing condition and her lengthy history of psychiatric intervention and illicit substance use and criminal history, her capacity for safe reintegration into the community will depend on her successful transition to the HASI program.

The exercise of the leave will be subject to the conditions, requirements and discretion of the medical superintendent.

A copy of these reasons together with the proposed order will be forwarded to Ms Croker's legal representative.

Signed

Maria Bisogni
Deputy President

Dated this day 20 September 2013