

**THIS IS AN OFFICIAL REPORT OF THE MENTAL HEALTH REVIEW
TRIBUNAL PROCEEDINGS IN RELATION TO MR MURRAY 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 Murray

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

TRIBUNAL: Harold Sperling QC Deputy President
John Basson Psychiatrist
Meredith Martin Other Member

DATE OF HEARING: 15 May 2014

PLACE: Long Bay Hospital

APPLICATION: Conditional Release

DECISION

Having determined, as required by section 43 of the *Mental Health (Forensic Provisions) Act 1990* (hereafter "the Act"), that the safety of Mr Murray or any member of the public would not be seriously endangered by Mr Murray's release and that other care of a less restrictive kind, consistent with safe and effective care, is appropriate and reasonably available to Mr Murray and, as required by section 74 of the Act, having had regard to a report by a forensic psychologist, who is not currently involved in treating Mr Murray, as to the condition of Mr Murray and as to whether the safety of Mr Murray or any member of the public would be seriously endangered by Mr Murray's release, and having had regard to the other matters referred to in section 74 of the Act, the Tribunal orders, pursuant to section 47(1) of the Act, that Mr Murray be conditionally released subject to the following conditions:

1. Mr Murray is to be discharged from Long Bay Hospital as soon as practicable following the issuing of this order, on a date to be determined by the Medical Superintendent having regard to Mr Murray's care and treatment needs including the availability of a place at [a secure nursing home], NSW (hereafter "the Centre"), subject to the availability of a place for him at the Centre.
2. While Mr Murray remains in Long Bay Hospital he will obey all directions of the Medical Superintendent as to medication, attendance at appointments, tests for the taking of medication or other substances, and leave of absence from that facility.
3. Mr Murray accepts as his case manager, the nurse manager residential care, at the Centre or such other person, or delegate, as shall be nominated from time to time by her or her delegate.

4. Mr Murray accepts as his treating medical practitioner, the staff specialist geriatrician, from the Local Health District, or her delegate, or such other person as shall be nominated from time to time by her or her delegate.
5. Mr Murray lives at the Centre.
6. Mr Murray accepts and carries out any reasonable directions given by his case manager as to leave of absence from that accommodation.
7. Mr Murray attend upon his treating geriatrician with such regularity as shall be determined from time to time by his treating geriatrician, and according to such arrangements as shall be determined by his treating geriatrician, as to time and place of such attendance.
8. Mr Murray accept such medication as shall be prescribed from time to time by his treating geriatrician, and shall follow the directions of his treating geriatrician as to the identity of the person to administer the medication, and the place, mode, and regularity of the administration of such medication.
9. Mr Murray engage in such rehabilitation, recreational, therapeutic, or other programmes as shall be directed from time to time, in consultation with Mr Murray by his case manager.
10. Mr Murray to provide his case manager with a recent colour (head and shoulders) photograph of a quality acceptable to the case manager or co-operates while the case manager or delegate takes a photograph of him. Case manager to provide a copy of the photograph to the Tribunal.
11. Mr Murray is to remain abstinent from illegal drugs and substances.
12. Mr Murray is to take mind-affecting and mood-altering prescription drugs and substances only in accordance with the terms of such prescription and with the consent of his regular registered medical practitioner.
13. Mr Murray is not to take non-prescription drugs or medication without the knowledge and approval of his case manager or regular registered medical practitioner.
14. Mr Murray is only to consume alcohol in accordance with such directions and approval as may be given from time to time by his case manager.
15. Mr Murray attend the Mental Health Review Tribunal reviews of his case pursuant to the *Mental Health Act 2007* and/or the *Mental Health (Forensic Provisions) Act 1990* according to arrangements as notified in advance to Mr Murray, his case manager, and his solicitor, in writing by the Tribunal.
16. Mr Murray may travel interstate and overseas if suitable travel arrangements are approved in advance by his case manager. Care should be taken to ensure that appropriate reciprocal arrangements have been made with the local mental health services at the patient's destination. The Tribunal is to be notified of the travel arrangements and it may choose to hold a review hearing to examine the suitability of the arrangements.
17. Mr Murray is to notify his case manager and the Registrar of the Tribunal in writing in the event of any plans to apply to change his name. This notification is to include the proposed name change. The Tribunal may choose to hold a review hearing to examine the suitability of the proposed application.

From time to time a forensic patient on conditional release may need to be admitted to a mental health facility for assessment or treatment (please note, an admission to a mental health facility does not affect the forensic patient's conditional release status unless the Tribunal otherwise orders).

If this is required, then the following conditions apply:

- 18 a) If for any reason either Mr Murray's case manager or his treating geriatrician shall determine that it would be in his best interests to reside for a period in a mental health facility or other institution, and shall give Mr Murray a direction to this effect, then Mr Murray shall immediately comply with any such direction.
- b) If such a direction is issued, Mr Murray's case manager is to advise the Tribunal as soon as practicable of the date and place of admission and the Tribunal may choose to hold a review hearing to consider the circumstances leading to his admission.
- c) While Mr Murray remains in a mental health facility or other institution under the direction of his case manager or treating geriatrician he will obey all directions of the Medical Superintendent as to medication, attendance at appointments, tests for the taking of medication or other substances, and leave of absence from that facility.
- d) The date of discharge from the mental health facility is to be agreed between the Medical Superintendent of the facility and Mr Murray 's case manager and/or treating geriatrician having regard to his care and treatment needs including, but not limited to:
- his mental state;
 - the availability of accommodation; and
 - the availability of services in the community upon release.
- e) When the date of discharge from the mental health facility is agreed, Mr Murray's case manager is to advise the Tribunal as soon as practicable of the date of discharge and confirm the patient's place of residence in the community. The Tribunal may choose to hold a review hearing to consider the suitability of the arrangements.

Signed

Harold Sperling QC
Deputy President

Dated this day: 3 July 2014

REASONS

This is the 8th review of Mr Murray who is currently detained in Long Bay Hospital on an order of the Mental Health Review Tribunal. At the previous Tribunal review, the treating team had sought unsupervised overnight leave. This was not approved. The Tribunal requested additional evidence be provided regarding updated progress reports particularly in relation to any risk assessment undertaken and appropriate accommodation. Mr Murray's treating team now seeks an order for conditional release at this review.

BACKGROUND

In 2012, Mr Murray was found not guilty by reason of mental illness in relation to the offence of reckless wounding, and was ordered to be detained.

The Tribunal had regard to further background information concerning Mr Murray's history, care and treatment as a forensic patient.

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 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.

The Act includes requirements which must be satisfied before the Tribunal can grant leave or release. The Tribunal must be satisfied pursuant to section 43 of the Act that -

- (a) the safety of the patient or any member of the public will not be seriously endangered by the patient's release, and
- (b) other care of a less restrictive kind, that is consistent with safe and effective care, is appropriate and reasonably available to the patient or that the patient does not require care.

Pursuant to section 68 of the *Mental Health Act 2007*, made applicable by section 76B(1) of the *Mental Health (Forensic Provisions) Act 1990*, the Tribunal must, as far as practicable, give

effect to the principles of care and treatment specified in section 68. So far as is presently material, these include the following principles.

- (a) people with a mental illness or mental disorder should receive the best possible care and treatment in the least restrictive environment enabling the care and treatment to be effectively given,

.....

- (c) the provision of care and treatment should be designed to assist people with a mental illness or mental disorder, wherever possible, to live, work and participate in the community

.....

- (f) any restriction on the liberty of patients and other people with a mental illness or mental disorder and any interference with their rights, dignity and self-respect is to be kept to the minimum necessary in the circumstances

Further, without limiting any other matters the Tribunal may consider, the Tribunal must also have regard to the matters specified in section 74 of the Act when determining what order to make. So far as presently material, these are -

- (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) in the case of a proposed release, a report by a forensic psychiatrist or other person of a class prescribed by the regulations, who is not currently involved in treating the person, as to the condition of the person and whether the safety of the person or any member of the public will be seriously endangered by the person's release,
- (e)

DOCUMENTARY EVIDENCE

The Tribunal considered the documents listed in the Forensic Patient Exhibit List dated 15 May 2014 annexed to these reasons.

ATTENDEES

Mr Murray attended the hearing accompanied by his lawyer, Ms Jo Kwan of the Mental Health Advocacy Service. Also in attendance were:

- Psychiatrist

- Geriatrician
- Dr G, Geriatrician
- Neuropsychologist
- Acting Nurse Unit Manager
- Nurse Manger Residential Care (by phone)
- A representative from the Office of the Public Guardian

PRESENT CIRCUMSTANCES

Written evidence

The following are extracts from the report dated 8 May 2014 by the consultant psychiatrist, Long Bay Hospital:

“Mr Murray is a 71 year old Australian man of Italian background. He is placed in the Aged Care and Rehabilitation Unit (ACRU) in Long Bay hospital. He has variously been given a diagnosis of moderate to severe dementia, either of Korsakoffs type or secondary to Alzheimer’s disease and alcohol abuse.

.....

Since his previous tribunal, Mr Murray has been placed under the Public Guardian. The order was placed on the 21st November 2013 and relates to decisions regarding his accommodation and health care.

.....

Early during the period of detention, Mr Murray demonstrated aggressivity. This was manifest by his reluctance to return to his cell at lock-in. He was started on citalopram with good effect for this.

Mr Murray was reviewed by the Prince of Wales ACAT service on the 5th December 2013. They have noted his moderate to severe dementia and have said that the ideal environment for him is an aged care facility. The ACAT team have applied for, and been awarded, government funding for a ‘high level care’ in a care facility.

.....

Over the last 12 months appropriate accommodation has tried to be sought for Mr Murray. A [secure nursing home] in Sydney has been found. This nursing home offers a closed, all-male ward with nurses who specialise in dementia care. On the 28th of April 2014 an independent psychiatric review for risk assessment by a neuropsychologist was provided. The report supports his placement to the Centre.

.....

Cognitive testing showed deficits in orientation and memory. He could not give any correct answers regarding his immediate orientation to place, only able to say that he was in New

South Wales. He scored 18/30 on the MMSE 2 days prior. He acknowledged that he had felt that he was losing some memory function. His visuo-spatial skills and language skills were intact.

Mr Murray showed no insight into his mental condition or the need for treatment. He was not aware of his diagnosis of dementia, what treatment he was receiving or why he need continued treatment in a correctional hospital setting.

.....

Mr Murray has dementia, with specific deficits in short-term memory, orientation and executive function. He has no insight into his condition.

The most likely diagnosis is that of a combination of Alzheimer's Dementia and vascular dementia. His symptoms have been present for at least 2 years and the GP was known to have concerns before he came into custody. He is not psychotic or depressed.

.....

Mr Murray's cognitive function is so low it is highly unlikely that he will be able to premeditate and execute episodes of violence or deception for personal gain. There remains a risk of interpersonal violence if he is provoked and frustrated to a significant degree that he lashes out.

There is a risk that Mr Murray will abscond from whichever facility and try to make his way to his former home in Sydney where he remembers his home to be. This will probably lead to Mr Murray becoming lost and harm coming to him through misadventure. This risk is evident by his repeated talk of wanting to go home.

Mr Murray is a Forensic Patient who may be eligible for conditional release once an appropriate place is identified and available to him. By all accounts, the Centre appears to be such a place and I would recommend him moving there on a conditional release.

He will be able to receive ongoing medical care at Centre through the visiting Geriatrician."

The following are extracts from the report dated 9 May 2014 by the clinical nurse consultant:

"Mr Murray is unable to self care without verbal prompting and requires staff assistance to ensure he wears clean clothes after a shower. He suffers from urinary incontinence in the form of dribbling and does not wear continent garments at this time. It would benefit to ensure that he toilets often. His clothing is laundered regularly and the cleaning of his room

is maintained by ward staff. Mr Murray ambulates well and appears active for his age of 72 years of age.

.....

Mr Murray suffers from dementia that is progressive in nature secondary to Alzheimer's disease and long term alcohol abuse. His cognitive impairment is seen in the moderate to severe range. Although he has not deteriorated further cognitively, he would be better managed in an environment that encourages independence and fosters activities that will gauge his interest and leave little room for boredom. These environments are best provided by the community in aged care facilities.

The treating team believe that the community with many care services are best able to provide future care, treatment and accommodation for this man. Mr Murray was assessed by Prince of Wales Aged Care Assessment Team (POW ACAT) on 5 December 2013 and has been approved for Government funding for a 'high level care' in a care facility.

A care facility has been located that addresses Mr Murray's individualized care needs, encourages independence; secure and is best able to manage his risk of flight. Mr Murray says, 'he wants to go home'. Therefore the settling in period on transfer will be vital to ensure his happy with his environment. The facility has diversional activities aimed to discourage boredom, encourage participation and engagement and is directed toward the majority of interests of the residents. Mr Murray is a young 72 year old man, so interacting with a mixed age group would allow him to story tell which he likes to do on his present ward. The Centre are able to manage his cognitive decline, dementia and behaviours associated.

The Centre is a secure dementia facility that provides a safe and secure environment for absconding behaviours particularly due to dementia. The Centre's speciality is challenging behaviours associated with dementia. It has a keypad electronic lock system for security.

The Local Area Health Service would need to be involved in this transfer, care and treatment for Mr Murray. If successful to secure accommodation for Mr Murray, the local mental health district would need to be involved in case management, joint responsibility for care and treatment, reporting and writing the MHRT reports.

Presently there is no vacant bed in the Centre and Mr Murray has been placed on a waiting list. The Centre is the preferred facility by the treating team. This accommodation has been

supported by the risk assessment conducted by an independent Forensic Neuropsychologist.

The treating team is seeking conditional release. If a bed does become available at the Centre, Mr Murray is able to be transferred to that accommodation and it will be a long term residence.

The Centre administration is aware that if Mr Murray requires hospitalisation or any type of treatment outside the facility they would need the approval from the MHRT for special leave. Any type of leave will need MHRT approval. The Centre is able to provide a safe and secure environment for absconding behaviour particularly due to dementia. The Centre's specialities is in the management of challenging behaviours associated with dementia.

The Centre's Deputy Director of Nursing and Clinic Nurse Consultant for Dementia have met Mr Murray and assessed his suitability and appropriateness for the facility. In their professional opinion they believe their care facility can appropriately address and manage all Mr Murray's care and risk behaviours."

The following are extracts from a letter dated 9 May 2014, sent to the Tribunal by the nurse manager, for the Centre:

" I have visited Mr Murray at Long Bay, spoken with medical and nursing staff, read his medical and nursing notes and communicated with him and am of the belief he is suitable for placement at the Centre. I am aware that he would require 6 monthly reviews."

A clinical neuropsychologist had been retained to provide a report for the purposes of section 74(d), cited above. She administered tests and recorded the outcome in her report dated 28 April 2014. The following are extracts from the concluding part of her report, in which she provided her clinical opinion:

"Mr Murray was interviewed and assessed at the Long Bay Hospital over two consecutive visits. The results of cognitive assessment support the diagnosis of a moderate to severe dementia, most likely being a combination of Alzheimer's and vascular dementia and alcohol abuse.

He has significant deficits in his auditory and visual memory and executive abilities. He is disoriented to time and place and has no insight into his condition. His language skills and visuospatial abilities remain relatively intact. His condition is progressive.

Mr Murray lacks higher order reasoning ability including abstract thinking and planning. I concur with the opinion of the psychiatrist in his report dated 4 March 2014 that although he lacks the ability for premeditation of a violent act there remains a risk that Mr Murray could display interpersonal violence if provoked.

Given his medical history and diagnosis of dementia his cognitive abilities will continue to decline. He is assessed as being low risk of harm to self and others. There remains a risk that he may abscond if possible. It is my professional opinion that he could be safely accommodated in a closed secure dementia ward with 24 hour supervision with staff experienced in dealing with potentially challenging behaviour. Accordingly I would support the placement of Mr Murray at a facility such as the Centre should a bed remain or become available.

Oral evidence

The Tribunal sought the opinion of the professionals concerned with Mr Murray's case on the question of conditional release with a view to accommodating him at the Centre subject to a place becoming available.

The Nurse Manager at the Centre, said that, in her opinion, Mr Murray could be safely accommodated at the Centre having regard to the neuropsychologist's report.

The Long Bay Hospital psychiatric registrar agreed that Mr Murray should be transferred to the Centre.

A representative from the Public Guardian's office, had no objection to this course subject to access to community and health care services. The Tribunal returned to this topic.

The Long Bay Hospital consultant psychiatrist said that he supported the transfer in principle but sought a one week adjournment to arrange psychiatric supervision in view of a Justice Health policy directive which required that a forensic or correctional patient must have a named consultant psychiatrist, employed by a Public Health Organisation who is responsible for the provision of psychiatric services for the person. (Under conditional release, Mr Murray would, of course, continue to be a forensic patient.) However, as the psychiatrist pointed out, the directive included a statement in the introduction that some forensic patients may not be mentally ill but instead have an intellectual or developmental disability, and that some forensic patients may have no need for ongoing contact with mental health services.

The Tribunal declined to grant the adjournment. The policy directive was not binding on the Tribunal. Furthermore, it was apparent, as a matter of common sense, that the requirement for a consultant psychiatrist was not intended to apply in the case of a forensic patient such as Mr Murray, who did not require ongoing psychiatric treatment.

The Long Bay Hospital clinical nurse consultant supported the transfer. She was of the opinion that, on the evidence, the Centre was in a position to provide suitable and secure care for dementia cases, such as Mr Murray.

It remained to settle appropriate conditions for inclusion in any order for conditional release.

A copy of the Tribunal's standard conditions had been circulated to the professionals involved.

The Nurse Manager for the Centre agreed to accept the role of case manager. The Tribunal was satisfied that she was a suitable person for this role.

She informed the Tribunal that a geriatrician, who is employed by the Local Health District as a staff geriatrician, visits the Centre on two days each week. The Tribunal was of the opinion that this would be appropriate medical supervision.

The Nurse Manager for the Centre further informed the Tribunal that the Centre dealt with a psycho-geriatrician, to whom patients were referred as necessary and who visited the Centre as necessary. The consultant psychiatrist said he had spoken to the staff geriatrician who informed him, conformably, that she could refer patients at the Centre to psycho-geriatric services for appropriate treatment if they developed a psychiatric condition.

Dr Basson, the psychiatrist on the Tribunal panel, indicated that the Tribunal should be provided with a psycho-geriatric report at the next review, which would include a mental state examination, and thereafter as might be sought by the panel constituting the Tribunal. The Nurse Manager for the Centre said that there would be no difficulty organising a report for this purpose.

There was discussion as to the common conditions imposed by the Tribunal concerning monitoring for alcohol and drugs. The Nurse Manager for the Centre said that no alcohol was allowed on the premises. The Tribunal suggested that whilst a prohibition against the use of alcohol or prohibited drugs could be included in the conditions for release, there appeared to be no need for a testing regime in that regard.

The Nurse Manager for the Centre was asked about absence from the premises. She said that this would only occur for the purposes of medical or hospital treatment or for bus trips which are routinely provided for patients at the Centre. She said that members of the staff travel on the bus to ensure that patients do not wander off or get into difficulty.

There remained the concerns expressed by the representative of the Public Guardian, concerning access to community and health care services. She was invited to state her position in the light of the information now before the Tribunal in that regard. She said she had no objection to conditional release being granted as proposed in these circumstances subject to the proposed medical supervision being suitable and sufficient. The consultant psychiatrist was asked about that and said that what was proposed was, in his opinion, suitable and sufficient.

All present, were then asked whether there was any objection to the proposed order for release on the conditions which had been outlined, and there was no objection.

DETERMINATION

The Tribunal was satisfied, as required by section 43 of the *Mental Health (Forensic Provisions) Act 1990*, that the safety of Mr Murray or of any member of the public would not be seriously endangered by his release subject to the proposed conditions and that, relative to being detained in a hospital, as was currently the case, conditional release to an aged care facility as proposed constituted care of a less restrictive kind that was consistent with safe and effective care, appropriate and reasonably available to the patient.

The Tribunal had regard to the principles promulgated in section 68 of the *Mental Health Act 2007*. The principles were, in the opinion of the Tribunal, satisfied by the proposed conditional release.

The Tribunal had regard to the matters specified by section 74 of the *Mental Health (Forensic Provisions) Act 1990*, in particular that there were reasonable grounds for believing that care and control were necessary for Mr Murray's own protection from serious harm or the protection of others from serious harm, and that the Tribunal had before it a report by a forensic psychologist, not currently involved in treating Mr Murray, as to his condition and as to whether the safety of Mr Murray or any member of the public would be seriously endangered by his release as proposed.

In these circumstances, the Tribunal was minded to make an order for conditional release as proposed.

Pursuant to section 76(A) of the *Mental Health (Forensic Provisions) Act 1990*, the Minister for Health and/or the Attorney General may attend before the Tribunal or make a submission in relation to a possible grant of leave to a forensic patient. Accordingly, in accordance with the Tribunal's practice, notice of this review was sent to the Minister and to the Attorney General and a copy of these reasons and of the order will be forwarded to them and to Mr Murray's legal representative. If, within 28 days, the Tribunal receives from the Minister or the Attorney General notice of a wish to appear or to make a written submission, the Tribunal will consider the substance of any such submission and/or may hold a further hearing. Parties will be notified of any further hearing as soon as practicable.

The Tribunal considered that up-to-date geriatric and a psychogeriatric reports should be provided to the Tribunal prior to the next review.

The Tribunal considered whether an early review was required in this case. It was satisfied that the usual further review within six months would be sufficient.

Signed

Harold Sperling QC
Deputy President

Dated this day: 3 July 2014