



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: KELSO [2017] NSWMHRT 9

s 46(1) Review of forensic
patients
*Mental Health (Forensic
Provisions) Act 1990*

TRIBUNAL: Ms Angela Karpin Deputy President
Dr Geoffrey Rickarby Psychiatrist
Ms Susan Johnston Other Member

DATE OF HEARING: 2017

PLACE: Mental health facility

DECISION

1. Having determined pursuant to section 49 of the *Mental Health (Forensic Provisions) Act 1990* that neither the safety of Mr Kelso 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 Mr Kelso be allowed the following leave subject to any conditions and restrictions which the medical superintendent may impose:

unsupervised day leave to the local area to engage in rehabilitation activities

2. Otherwise, that the current arrangements for Mr Kelso's care, treatment and detention as a forensic patient at [mental health facility] continue to apply including any previously approved leave.

Signed

Angela Karpin
Deputy President

Dated this day

REASONS

1. This is the [x] review of Mr Kelso who is currently detained in [mental health facility] on an order of the Tribunal with access to escorted day leave and unsupervised day leave restricted to the grounds of [mental health facility]. Mr Kelso's treating team is seeking that the already approved unsupervised day leave be extended to the local area to engage in rehabilitation activities at this review.

BACKGROUND

2. The District Court found Mr Kelso not guilty by reason of mental illness of [details of charges]. Mr Kelso was ordered to be detained.

TRIBUNAL REQUIREMENTS

3. 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.
4. The Act has special evidentiary requirements in relation to leave or release which must be satisfied before the Tribunal can grant leave or release. 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 for that the already approved unsupervised day leave be extended to the local area to engage in rehabilitation activities.
5. 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.
6. 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,*
- d) ...
- e) ...

DOCUMENTARY EVIDENCE

7. The Tribunal considered the documents listed in the Forensic Patient Exhibit List dated [date].

ATTENDEES

8. Mr Kelso attended the hearing and was represented by his lawyer, Ms Kim Wellard of the Mental Health Advocacy Service. Also in attendance were:
- Consultant Forensic Psychiatrist
 - Medical Officer
 - Psychologist
 - Social Worker
 - Enrolled Nurse
 - Four observers

PRESENT CIRCUMSTANCES

9. Mr Kelso has a diagnosis of treatment resistant schizophrenia. His condition is complicated by a history of extensive illicit drug use, non-compliance with medication a social anxiety disorder, and obsessive-compulsive traits. He has been a forensic patient since [date].
10. His current leave entitlements are escorted day leave and unsupervised day leave restricted to the grounds of [a mental health facility]. The treating team now seek an extension of his leave to permit unsupervised day leave in the local area, restricted to specified suburbs, in order to engage in rehabilitation activities. That application is opposed by the Minister for Mental Health.
11. Mr Kelso's polysubstance abuse and his criminal history both commenced when he was [age]. He began to steal, and consume [alcohol] and committed his first offence resulting in him being sent to juvenile detention. Thereafter he accumulated a lengthy criminal history largely involving stealing offences in order to feed his drug habit.
12. Mr Kelso was first diagnosed with a psychotic illness aged [age] while serving a prison sentence at [prison]. The diagnosing psychiatrist viewed his presentation as characteristic of schizophrenia, however, it was thought possible that his addiction accounted for some of his

presentation. An admission to [hospital] in [year] again led to a suspicion that he was suffering from schizophrenia. In [year] he was diagnosed positively with schizophrenia.

13. The comprehensive report prepared for the Tribunal hearing by his consultant forensic psychiatrist, provides a very thorough review of Mr Kelso's history both in relation to his offending and the progress of his mental illness. His illness has been characterised by delusions, including [details of mental illness].
14. In [year], when he committed the [offences] he had consumed cocaine, heroin and methamphetamine and the voices and messages from television told him that he had permission to commit these offences in order to obtain funds to buy drugs. After consuming the drugs purchased with the proceeds of those crimes, he had no money to obtain further drugs. The voices started telling him to kill himself. He attempted suicide by [method]. He is reported to have attempted suicide on a number of other occasions.
15. Since his admission to the [mental health facility], Mr Kelso has been co-operative at all times with staff and co-patients. He has however interacted minimally with peers and the treating team noted that he experienced fluctuations in his mental state especially regarding anxiety and psychotic phenomena.
16. When reviewed by his consultant forensic psychiatrist in early [year] Mr Kelso told [them] that on three half day [trips], he had experienced significant anxiety due to intrusive thoughts which he expressed as, inter alia, [delusions]. He was also experiencing intrusive thoughts about harming himself and others but reported he would not act on those thoughts because he recognised that they were part of this illness. His dose of Quetiapine was increased to 100mg twice a day. During the latter part of [year] and early [year] Mr Kelso's mental state fluctuations were frequent. He reported an increase in psychotic symptoms as well as anxiety attacks and obsessions. As a consequence of this instability his regular leave was curtailed on a number of occasions.
17. Mr Kelso underwent a mental state examination in [date]. The treating team report that over the six months that have elapsed since the last Tribunal hearing, Mr Kelso's mental state has been stable and he has remained on the same medication plan. He has continued to engage with regular psychology sessions with [a psychologist] in an attempt to assist his psychotic and anxiety symptoms. This therapy utilises a cognitive behavioural approach and he has engaged well with the treatment. He reports that his intrusive thoughts have gradually decreased and whilst he still experiences them, they have diminished in intensity and are no longer distressing him. He has not experienced any perceptual disturbances for some months and there has

been no evidence of paranoid ideation. His concerns about the devil have also dissipated. These improvements in his mental state have caused him to feel more relaxed and content. He engages more comfortably with staff and co-patients. He has continued to develop insight into his illness. Mr Kelso is consistently pleasant and punctual in his psychology engagement. He is reported to have self-initiated an exposure approach to his social anxiety symptoms.

18. For a number of years Mr Kelso has expressed guilt about some past conduct with [the victim], which he has sought to recompense by sending [the victim] money. The improvement in his mental state has caused him to feel less guilt about this past behaviour. He ceased sending [the victim] money. He believes he has adequately “repaid his debt”.
19. As a consequence of his good progress, Mr Kelso’s leave was gradually reinstated and increased in duration. At the time of this Tribunal hearing he was approved for unsupervised day leave within the hospital grounds with no restrictions on time. He was also attending [a group] which occurs within the grounds of the hospital. He was happier attending bus trips and shopping outings with staff. He acknowledges feeling some anxiety about being in crowded areas but manages well when he arrives at the destinations. There have been no behavioural issues during any leave periods. He has now had unsupervised day leave within the grounds of [the mental health facility] for more than a year without incident.
20. A source of happiness for Mr Kelso is the return of [a family member] to Australia after many years of living overseas. At the time of this Tribunal hearing, communication had only been established telephonically. In the circumstances it is not realistic to hypothesise is about what part his [family member] might play in his continuing rehabilitation.
21. Mr Kelso is reported to be extremely clean and tidy and obsessive about laundry routine. He requires no prompting to attend to aspects of personal care. He has been attempting to become more involved in programs. He has engaged in [a club] and completed the mental health awareness program. He successfully engages in full and half day outings with staff. He is a dedicated member of the hospital’s [program]. He has stated that he would like to receive some drug and alcohol assistance and acknowledges the role his substance misuse played in his offending behaviour and mental instability. Since his admission to the hospital, all his drug screen tests have been negative.
22. Mr Kelso’s risk of violence towards others was assessed using the HCR-20 which takes into account static and dynamic risk factors as well as clinical judgement in assessing risk. The report prepared by his consultant psychiatrist sets out in detail each step of that assessment.

In summary, however, the report notes that “in the next 3-6 months, the potential risk of Mr Kelso engaging in violent behaviour is low.”

23. The report further summarised:

“Mr Kelso presents with a high loading of historical risk factors and low to moderate loading of dynamic risk factors. His risk of harm to others is well managed in a supervised and restricted environment. Mr Kelso has a history of harm to self and this risk would become significant with intoxication or deterioration in his mental state. He is also vulnerable to exploitation from others (due to his anxiety and need to appease those he fears).”

24. The most relevant risk factors for Mr Kelso relate to substance misuse, relapse of his mental illness and social isolation. His social isolation appears to be self-imposed and occurs as a direct result of his fear and anxiety of being negatively evaluated by others. It is important to note, however, in recent months he has experienced a decrease in his anxiety symptoms and gained a greater willingness to engage with co-patients and staff.

25. Mr Kelso will therefore require ongoing engagement in substance use programs and have opportunities to access greater periods of leave (as well as treatment) to address anxiety symptoms.

26. The report notes that despite Mr Kelso’s history of suicidal ideation and suicide attempts his continuing compliance with antipsychotic medication and abstinence from drugs and alcohol together with close monitoring and supervision provide an assessment of his current risk of self-harm and suicide as being low.

27. The treating team feel that it would be beneficial for Mr Kelso’s recovery to have further access to his local community which would involve unescorted day leave to local suburbs as the next phase. He has said that he would like to use this leave to visit the library and attend to his individual shopping needs.

28. His consultant forensic psychiatrist told the Tribunal that Mr Kelso has always been reliable with limitations placed on his unsupervised day leave in the grounds of [the mental health facility]. He has exercised that leave without incident for more than a year.

29. At the request of the Tribunal, Mr Kelso’s consultant forensic psychiatrist has provided a detailed leave/rehabilitation plan together with details of risk management the latter of which had already been addressed in the initial report provided to the Tribunal. That plan (Addendum

Medical Report for the Mental Health Review Tribunal) will be an Annexure to this determination.

PHYSICAL HEALTH

30. [Complex health issues.]

THE MINISTER FOR MENTAL HEALTH

31. The solicitor-advocate of the Crown Solicitor's Office provided the Tribunal with written submissions and appeared at the Tribunal hearing on behalf of the Minister for Mental Health. The Minister opposed the application for leave on the grounds that it is premature. It is submitted that the current level of leave should be maintained for a further three months.

32. The Notice of Intent seeks unsupervised day leave in the following terms: "unsupervised leave to local area to engage in rehabilitation activities."

33. The Minister's concern appears to be that the Notice of Intent, on the face of it, seeks that Mr Kelso "jump straight from utilising escorted leave to utilising unsupervised leave". That is an understandable interpretation. However, as is familiar to Tribunal members, the introduction of unsupervised day leave for a person in Mr Kelso's situation is introduced very slowly, cautiously, and with numerous safeguards. The consultant forensic psychiatrist's Addendum Report clearly sets out the conditions upon which that leave will be implemented. The Tribunal is satisfied that those conditions and safeguards meet the concerns raised by the Minister, and, indeed, satisfy concerns raised by the Tribunal.

34. The Tribunal noted the Minister also was of the view that the possibility of Mr Kelso's [family member] becoming an approved supervisor should be explored. This was discussed in the course of the Tribunal hearing, however, the treating team were of the opinion that it could be some time before that possibility could be satisfactorily explored, and advised that his brother intends to return overseas within the next two years. The Tribunal, accordingly, determined to put that issue to one side.

DETERMINATION

35. The Tribunal is satisfied on all the evidence that Mr Kelso is medication compliant and complies with all directions relating to his care and treatment. He has successfully, without incident, utilised unsupervised day leave within the grounds of [the mental health facility]. He has maintained a stable mental state over the last six months and has continued to engage well with regular psychology sessions. He has engaged increasingly in social outings with others.

He has made considerable progress over this period. There has been some improvement in his insight into his mental illness.

36. The Tribunal is satisfied that Mr Kelso's current risk of violent behaviour resulting in serious harm to others or to himself is low. However, the Tribunal is satisfied that there are reasonable grounds to accept that his care treatment and control in his present environment is necessary for his own protection from serious harm and the protection of others from serious harm. The Tribunal is satisfied that in seeking an extension of his current unsupervised day leave, the treating team has addressed the potential risks. The Tribunal is satisfied that the proposed introduction of unsupervised day leave in the community, introduced in the manner set out in the consultant forensic psychiatrist's Addendum Report (Annexure B) satisfactorily addresses the risks arising in the grant of the leave sought. Accordingly, the Tribunal determined to make an order granting that leave.
37. Being satisfied on the evidence currently before the Tribunal that the grant of unsupervised day leave to local area would not seriously endanger Mr Kelso or any other member of the public and having regard to the other matters to which sections 49 and 74 of the *Mental Health (Forensic Provisions) Act 1990* refer, the Tribunal determined to make an order granting Mr Kelso unsupervised day leave to the local area to engage in rehabilitation activities.
38. The Tribunal noted that the proposed neuropsychological assessment has not yet taken place and recommends that be followed up.
39. The Tribunal further determined that the next review under s 46 will be held within six months.

Signed

Angela Karpin
Deputy President

Dated this day