

**THIS IS AN OFFICIAL REPORT OF THE MENTAL HEALTH REVIEW  
TRIBUNAL PROCEEDINGS IN RELATION TO MR TURNER AUTHORISED  
BY THE PRESIDENT OF THE TRIBUNAL ON 31 MAY 2019**



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

**CIVIL REVIEW:** Mr Turner  
**TRIBUNAL:** Richard Cogswell President  
**DATE OF HEARING:** 15 October 2018  
**PLACE:** X Hospital  
**APPLICATION:** Section 162 Application to Publish or Broadcast Name

**Background**

1. The applicant is a journalist with an Australian television station. He applied on behalf of the television station for the Tribunal's consent to publish or broadcast the name of Turner in connection with proceedings before the Tribunal which will be tomorrow at X Hospital. The application is made under s 162 of the *Mental Health Act 2007*. The application is opposed by Mr Turner through his lawyer Mr Callum Hair. I fixed the television station's application to be heard by me this afternoon, as a preliminary issue to determine before I preside at Mr Turner's review tomorrow at X Hospital.

**The Legislation**

2. Section 162 of the *Mental Health Act 2007* reads as follows:

**"162 Publication of names**

(1) A person must not, except with the consent of the Tribunal, publish or broadcast the name of any person:

- (a) to whom a matter before the Tribunal relates, or
- (b) who appears as a witness before the Tribunal in any proceedings, or
- (c) who is mentioned or otherwise involved in any proceedings under this Act or the *Mental Health (Forensic Provisions) Act 1990*,

whether before or after the hearing is completed.

Maximum penalty:

- (a) in the case of an individual—50 penalty units or imprisonment for 12 months, or both, or
- (b) in the case of a corporation—100 penalty units.

- (2) This section does not prohibit the publication or broadcasting of an official report of the proceedings of the Tribunal that includes the name of any person the publication or broadcasting of which would otherwise be prohibited by this section.
- (3) For the purposes of this section, a reference to the name of a person includes a reference to any information, picture or material that identifies the person or is likely to lead to the identification of the person.”

Section 162 is contained in chapter 6 of the Act which deals with the Mental Health Review Tribunal and is contained in Part 2 (Procedures of the Tribunal) which also contains s 151 of the Act. Section 151 provides as follows:

**“151 Procedure at meetings of Tribunal to be informal**

(cf 1990 Act, s 267)

- (1) Meetings of the Tribunal are to be conducted with as little formality and technicality, and with as much expedition, as the requirements of this Act, the *Mental Health (Forensic Provisions) Act 1990*, the regulations and as the proper consideration of the matters before the Tribunal permit.
- (2) In determining any matter relating to a forensic patient, correctional patient or other patient or a person detained in a mental health facility, or any matter relating to a community treatment order, the Tribunal is not bound by the rules of evidence but may inform itself of any matter in such manner as it thinks appropriate and as the proper consideration of the matter before the Tribunal permits.
- (3) The proceedings of the Tribunal are to be open to the public.
- (4) However, if the Tribunal is satisfied that it is desirable to do so for the welfare of a person who has a matter before the Tribunal or for any other reason, it may (of its own motion or on the application of the person or another person appearing at the proceedings) make any one or more of the following orders:
  - (a) an order that the hearing be conducted wholly or partly in private,
  - (b) an order prohibiting or restricting the publication or broadcasting of any report of proceedings before the Tribunal,
  - (c) an order prohibiting or restricting the publication of evidence given before the Tribunal, whether in public or in private, or of matters contained in documents lodged with the Tribunal or received in evidence before the Tribunal,
  - (d) an order prohibiting or restricting the disclosure to some or all of the parties to the proceedings of evidence given before the Tribunal, or of the contents of a document lodged with the Tribunal or received in evidence by the Tribunal, in relation to the proceedings.

**Note.** Section 162 prohibits the publication or broadcasting of the name of a person involved in Tribunal proceedings or other material that may identify any such person, except with the consent of the Tribunal.

- (5) The President or a Deputy President or the chairperson of a meeting of the Tribunal may administer an oath to any person giving evidence before the Tribunal.
- (6) The President or a Deputy President of the Tribunal has, in the exercise of his or her functions as a member, the same protections and immunity as a Judge of the Supreme Court has in the performance of his or her duties as a Judge.”

### **Evidence**

3. Mr Hair tendered before me this afternoon extracts from social media comments following the publicity which the television station gave earlier this year to Mr Turner’s trial. He had been charged with murder following the death of the victim. The Supreme Court found Mr Turner not guilty by reason of mental illness on that charge.
4. Mr Hair also called evidence from Dr A, Mr Turner’s treating psychiatrist. Dr A said that after the publicity earlier this year, Mr Turner was very distressed, anxious and worried and extremely concerned about the safety of his relatives. He also felt unsafe in the community. Dr A also gave evidence that other patients at X Hospital were concerned and members of the staff became quite anxious. In fact, some staff refused to escort patients or attend escorted patients and particularly Mr Turner. Mr Turner, Dr A said, is “still pretty upset” and has changed his leave plans. After the publicity earlier this year he did not go anywhere for weeks.
5. Dr A later gave evidence that a significant concern in this case was Mr Turner’s absence of consent. The point in this context was that some patients may consent to their history of proceedings in the Mental Health Review Tribunal being the subject to publicity whereas Mr Turner does not want his story to be published. He wants to stay out of the media. Dr A also compared the publication of details concerning Mr Turner’s psychiatric condition (which may be contained in reports) with somebody’s personal medical information, for example prostate surgery, being published in the media.

### **Written Submissions**

6. The journalist supported his application by written submissions which also contained additional evidentiary material. His application was for the Tribunal’s consent to publish or broadcast Mr Turner’s name as part of a news report through various media platforms.
7. He pointed out that the victim’s death “is a notorious event widely reported on”. An anniversary is approaching and provided a “timely opportunity to examine the current regime for dealing with

persons affected by mental health issues who intersect with the criminal justice system.” The purpose of the broadcast was “to provide a fair and accurate report of Mr Turner’s upcoming review hearing” to highlight “how the various interests of mental health patients, criminal responsibility and community safety are balanced and managed in the current system.” The community would be interested in a better understanding of such issues. It will also touch upon the community interest in mental health issues.

8. He sought “permission to film the hearing” (that is, the review at X Hospital tomorrow). An alternative was to identify Mr Turner in reporting on the hearing.
9. In his submissions, the journalist reviews the considerations referred to in the Practice Direction about the purposes of s 162. He noted that hearings are open to the public in any event and he would not be obtrusive. Details have been widely publicised and the application would not likely affect free disclosure of the details. The Tribunal could be closed for the purposes of taking evidence about Mr Turner’s personal health information which is unlikely to be needed by him in any event. He referred to the wide dissemination of information and reporting on the killing of the victim by Mr Turner. He also referred to a public submission to a public hearing by Mr Turner’s parents. That is in the public domain. It made reference to Mr Turner and his involvement in the death of the victim. There is “already a high degree of notoriety surrounding [patient], including allusions to his involvement with mental health institutions and the mental health system.” Hence there is unlikely to be any further detriment as a result of granting the application. He points out that the legislation “makes it difficult to communicate to the community the reasons behind any potential release of [patient] and the consideration at play.”
10. He refers to the principle of open justice. The broadcast “is intended to be a fair and accurate news report of the hearing, intended to contain only those details of the hearing that are necessary to achieve [its] purposes.”
11. The journalist provided the submission by Mr and Mrs Turner to the public hearing as well as an extract from reporting earlier this year (unrelated to the MHRT).
12. **Mr Hair** supported his opposition in written submissions. He argued that the onus is on the television station Network “to persuade the Tribunal as to why they should be permitted to report” on the review.
13. He made reference to the objects of the *Mental Health Act* and the principles for care and treatment contained in s 68 of that Act. He made reference to the decision of Adams J in *A v Mental Health Review Tribunal* [2012] NSWSC 29 and reported decisions of the Tribunal on its website.

14. He pointed out that his client was opposed to the granting of the application which, he argued, is a significant consideration. His client is likely to be less open during the review if he knows that there will be a public report on the review. This could extend into the future. He referred to the protection of the safety of the public as an object (s 40) of the *Mental Health (Forensic Provisions) Act* and argued that there is a direct relationship between his client's mental state "and his level of risk to members of the public" so that "permitting the publishing would be contrary to the objects" of the *Mental Health (Forensic Provisions) Act*. Other participants in the hearing would be identified by the filming.
15. The reporting by the applicant earlier this year of the events surrounding the death of the victim brought about a "substantial amount of vitriol expressed online by members of the public, particularly in the ... area." There were threats of harm and the location of the unit was identified. More could be expected by a further report and it "increases the risk of vigilantism" which would place his client, "other forensic patients and members of staff from [X Hospital] at risk."
16. Promoting the public interest of keeping the community informed about Tribunal procedures could be achieved by attending a hearing and reporting without identifying the parties as well as meeting Tribunal staff.
17. He referred to two published reports regarding s 162 applications and noted the significance of the fact that, in both, the patients had consented.

### **Oral Submissions**

18. **Mr Hair** in his submissions this afternoon referred to the adverse impact on his client's health of this publicity and relied upon the evidence of Dr A. He argued that it was not in his client's interests, so far as his rehabilitation was concerned. Indeed it was not in the broader community's interest that his client's rehabilitation be jeopardised. He also referred to the fact that other patients are concerned and affected by the publicity. He expressed concern about the fact that personal details of his client's medical and psychiatric condition would be published which is different to the publicity he has already attracted through his trial for murder where he was found not guilty by reason of mental illness. He reminded me of the objects of the legislation, both the *Mental Health (Forensic Provisions) Act* and the *Mental Health Act* being aimed towards the rehabilitation of forensic patients. He acknowledged the public interest in a case such as this and the public interest in being better informed about procedures but contrasted this with information provided about particular patients. He later suggested three avenues which are available for media reporting on the general issue of procedures in the Mental Health Review Tribunal. They are the published decisions (which are anonymised) made by the Mental Health Review Tribunal. Second is the avenue of communications between the media and officials of the Mental Health Review Tribunal. Third is the fact that tomorrow's proceedings are open and can be attended provided, of course, participants were not identified.

19. The journalist, on the other hand, emphasised the frustration members of the public feel by the fact that they have little or no knowledge of how a particular person who was exposed to publicity some years ago as a result of a very serious event but was then referred to the Mental Health Review Tribunal. So the public has no ongoing knowledge of that person's progress. He referred to the confidence of the public in their need to feel safe. He emphasised his and his employer's interest in wanting to be part of the process and to better understand how a forensic patient such as Mr Turner is being monitored and dealt with after referral to the Mental Health Review Tribunal. He argued that it would be a service to the Tribunal and the public if proceedings could be openly reported by reassuring the public that there are procedures and monitoring in place which can reassure them about the reliability of the process. As is currently the case, he argues that he cannot report anything meaningful, for example about how a patient such as Mr Turner has improved over the years. The public's interest, he said, is how a person who has, as Mr Turner did, admitted to a notorious homicide without infliction of punishment or conviction proceeds after the verdict. The question is what has been happening to a person such as Mr Turner since then. He referred to lifting the "veil of secrecy" to provide accurate information to the community. The journalist also emphasised that his position was not so much one of neutrality but was in Mr Turner's favour. This is because it would enable him to report progress made by Mr Turner and, in addition, the reasons for any leave which Mr Turner is permitted including information about risk assessments or other ways of judging how a patient such as Mr Turner may be enabled to re-join the community for periods of time. This would be in Mr Turner's favour rather than against him. Again he emphasised the legitimate public interest in the notorious event which involved the death of the victim.

### **Consideration**

20. In determining this application, the Tribunal starts with the status quo in s 162 which is that a "person must not, except with the consent of the Tribunal, publish or broadcast the name of any person" to whom proceedings relate or who is connected with the proceedings. In this case Mr Turner has not agreed to the television station's application, thereby saying that he wants the protection afforded to him by the legislation to be maintained and that there should be no exception. The Tribunal must therefore decide whether or not there should be an exception.

21. Mr Hair has led evidence to the effect that there will be an impact on Mr Turner. It will be an unfavourable impact upon him as a patient. There will also be an unfavourable impact on other patients at the hospital where Mr Turner is a patient. In addition, it will unfavourably impact on members of the staff of that hospital. Against this is the public interest in the media informing the public of Mr Turner's progress, the nature and conditions of his leave and the evidence of any risk assessments. This reflects a legitimate role of the media in a case such as this. Mr Hair argues

that this interest is accommodated, although in a confined way: people can sit in on the hearing. This statutory access plus the evidence of impact on Mr Turner are significant factors in this case.

22. There is force in Mr Hair's arguments that his client is less likely to be forthcoming during the review if he knows that it is being publicly reported. The processes of the Tribunal require openness and frankness. Assessments have been made and need to be reported on. Confidentiality encourages the necessary frankness during a Tribunal review which is, in itself, an important public health process. Knowing that what you say will not be confidential and could be published or broadcast is hardly likely to contribute to a fruitful engagement. A patient is likely to be guarded and less ready to admit to failures or setbacks.
23. The process of bringing someone from a psychotic killer to a well and contributing member of the community is not an easy one in any event. It is a refined and delicate therapeutic process, as is any psychiatric intervention in the life of an individual. It is quite different from the process of sentencing which requires the public assessment by a judicial officer in open court of legislative and common law factors. Then there is an appropriate punishment imposed for the breach of the public's peace. It must be remembered that in former days forensic patients were simply locked up indefinitely and removed from the community. Instead, nowadays the focus of the legislation is on a forensic patient's wellness, treatment and rehabilitation back into the community. The public's safety is protected not by indefinite removal of a forensic patient, but by a process (which can be long) of treatment and rehabilitation until they are ready to re-join the community.
24. This perspective of the process gives weight to Mr Hair's submission that it is not in the broader community's interest that his client's rehabilitation be jeopardised. Also, this process of treatment and rehabilitation takes place within the environment of a mental health facility, so that events such as publicity may detrimentally affect that environment (as the evidence suggests in this case) and therefore impact on the progress of the particular patient and other patients. There is also force in Mr Hair's point that reporting or broadcasting his review may unfavourably interfere with his client's mental state.
25. Cases such as this provide a classic example of the tension inherent in conflicting public interests. This is not at all unusual. In this case, the conflicting public interests are, on the one hand, the public interest enshrined in the *Mental Health Act* and the *Mental Health (Forensic Provisions) Act* of public mental health patients, specifically forensic patients, regaining their health and re-joining the community as rehabilitated and well citizens. On the other hand, there is a legitimate public interest in a notorious and tragic breach of the public peace. (To describe what happened in this case in such terms sounds neutral. This is because the charge of murder resulted in a verdict of not guilty by reason of mental illness.) The public has an interest in any breach of its peace. Some breaches will be relatively minor. This was extreme and took the form of a shocking homicide. The public and media interest in the events in this case is hardly surprising.

26. The tension between those two public interests has been resolved by two provisions of the legislation. Section 162 of the *Mental Health Act* provides that individuals are not to be identified in the proceedings. Section 151(3) (in the same part of that Act) provides that proceedings are to be open to the public. This means that the legislature has determined that the public interest of patients becoming rehabilitated members of the community is preserved by prohibiting publication of their health details and progress. But the public interest in a tragic event such as the one in this case is preserved because members of the public, including the media, are able to attend the regular reviews of the patient who was responsible.
27. It is hardly surprising that striking the balance would cause a degree of frustration amongst various people. A patient may be frustrated and annoyed that their progress through the Tribunal can be open to anyone, including the media, who cares to come along and watch. The reassurance they receive is that no details about them or about information disclosed within the Tribunal can be published outside the hearing. On the other hand, members of the public, as the journalist points out, will be frustrated by hearing of a notorious and tragic public event such as the one in this case, but then finding that they cannot follow the progress of the person responsible after they are referred to the Tribunal, unless they themselves attend the Tribunal's reviews of that person. It will also be frustrating for members of the media that they may attend these hearings but not report to the public what they see and hear. But this is the balance that Parliament has struck between these two competing interests.
28. I will make some further observations about these frustrations. They may or may not be helpful to the media. It seems to follow from the legislation that, once a case reaches the Tribunal, the topic or narrative or 'story' for public or media attention must be limited to the processes which are used generally in an anonymous range of cases to assess the ongoing progress of patients. The focus cannot be on the progress of a particular patient. In other words, so far as the media are concerned, they can attend as many hearings as they like and report in general terms on the thoroughness and reliability (or otherwise) of the processes used by the Tribunal. What the media cannot do is follow and then publish the story of a particular patient, unless the patient consents and the Tribunal too consents. It probably provides little comfort to the media to point out that there are available on the Tribunal website information and reports about the Tribunal processes, opportunities to meet members of the Tribunal and personal attendance at reviews. Nevertheless, these are the options which are available.
29. One option that was mentioned by Dr A may be worth considering by the media. Perhaps one particular patient would be prepared to consent to the media following their story and progress through the Tribunal. Of course the fact of consent by the patient may be controversial. There may be questions of capacity. There may be questions about the impact on the mental health of the patient which would need to be determined by the Tribunal. (See Adams J's remarks in *A v Mental*



*Health Review Tribunal* [2012] NSWSC 29.) The Tribunal would need to determine the application under s 162 unaffected by these observations by me. But it could be explored as a possible avenue to give more publicity to the processes of the Tribunal, along with the personal story of a particular patient.

### **Determination**

30. I accept the evidence that identifying him and publicising his progress through the Tribunal reviews will have an unfavourable impact on Mr Turner, on his participation in the review and on his therapeutic environment. I am not satisfied that I ought to consent in this case to the television station's application through the journalist to broadcast and publish tomorrow's proceedings concerning Mr Turner. It is for the reasons I have outlined that I refuse the application.

Signed:

His Honour Judge Richard Cogswell SC  
**President**

Dated: 4 December 2019