THIS IS AN OFFICIAL REPORT OF THE MENTAL HEALTH REVIEW TRIBUNAL PROCEEDINGS IN RELATION TO YOUNG AUTHORISED BY THE PRESIDENT OF THE TRIBUNAL ON 14 JUNE 2022	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:	ANDERSON s 90 of the *Mental Health and Cognitive Impairment Forensic Provisions Act 2020*	**[2022] NSWMHRT 1**
TRIBUNAL:	Ms Maria Bisogni	Deputy President
	Dr Raphael Chan	Psychiatrist
	Mr Michael Gerondis	Other Member
DATE OF HEARING:	2022	
PLACE:	Mental Health Review Tribunal	

DECISION

1. The Tribunal reviewed Mr Anderson under s 90 of the *Mental Health and Cognitive Impairment Forensic Provisions Act 2020* and determined that Mr Anderson is a mentally ill person who should continue to be detained at X Hospital.

2. The Tribunal was satisfied that no financial management order was required for Mr Anderson.

SUMMARY

1. Mr Anderson is a correctional patient, currently detained at the X Hospital. Mr Anderson was transferred to the X Hospital from a correctional centre, by order of the Secretary dated [date].

2. The question for the Tribunal is whether Mr Anderson should continue to be detained at the X Hospital, whether he should be transferred to another mental health facility or other place, or whether he should be discharged to a correctional centre.

3. The Tribunal determined that Mr Anderson is a mentally ill person and that he should continue to be detained at X Hospital for ongoing care and treatment.

STATUTORY CRITERIA

4. As Mr Anderson has been transferred to a mental health facility from a correctional centre by order of the Secretary, the Tribunal is required to conduct a review: s 90(1) of the *Mental Health and Cognitive Impairment Forensic Provisions Act 2020* (MHCIFPA).

5. At this review, the Tribunal is required to determine whether the patient is a mentally ill person who should continue to be detained in a mental health facility or has a condition for which treatment is available in a mental health facility: s 92(1).

6. The MHCIFPA adopts the definitions used in the MHA: s 3(2). A person is a mentally ill person as defined by s 14 of the *Mental Health Act 2007* (MHA) if:

   > *"the person is suffering from a mental illness and, owing to that illness, 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 for the protection of others from serious harm."*

   In considering whether a person is a mentally ill person, the continuing condition of the person, including any likely deterioration in the person's condition and the likely effects of any such deterioration, are to be considered: s 14(2) MHA. A condition for which treatment is available in a mental health facility is undefined.

7. If the Tribunal orders the patient's detention in a mental health facility, the Tribunal must consider whether the person is capable of managing their financial affairs, and if not, order the estate of the person be subject to management under the *NSW Trustee and Guardian Act 2009*: see s 45 of that Act.

8. The Tribunal has had regard to the principles set out in s 68 of the MHA and the objects of the MHCIFPA set out in s 69 of that Act.

9. Section 92(2) of the MHCIFPA provides that the Tribunal may make an order for the transfer of a correctional patient to a mental health facility, correctional centre, detention centre or other place.

10. The MHCIFPA sets out a number of other matters that the Tribunal must also consider when conducting a review:
    a) Does Mr Anderson have a mental health impairment or cognitive impairment? Are there 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; and the continuing condition of the person, including any likelihood of deterioration and the effects of that deterioration: s 75 of the MHCIFPA.

EVIDENCE BEFORE THE TRIBUNAL

11. The Tribunal has considered the documents which are exhibited to these reasons. The written reports for the hearing disclosed the following evidence.

12. Mr Anderson is [x] years old. He entered custody on [date] and is on remand in relation to charges of [offences]. Prior to custody, he resided in a granny flat on his parent's property and was on the Disability Support Pension.

13. This is Mr Anderson's first time in custody. Following Mr Anderson's arrest on [date], he was escorted by police to Y Hospital for a mental health assessment in the context of headbanging in the police cells and hearing voices that he would not get bail. On assessment he reported increased persecutory ideation since the start of the COVID-19 pandemic with a belief in conspiracy theories related to the COVID vaccine, the end of the world, the rebirth of Christ, a communist new world order and a potential invasion. He felt the need to arm and defend himself. He reported hearing voices telling him to hurt himself. His presentation was consistent with a schizoaffective disorder.

14. On [date], Mr Anderson was discharged from Y Hospital to custody with a recommendation that the Justice Health and Forensic Mental Health Network review him urgently due to ongoing suicidal ideation.

15. On [date], Mr Anderson was subject to a s 86(5) order for transfer to X Hospital by the Secretary. Mr Anderson consented to the transfer. On [date], the Secretary issued a notice under s 87(2) that Mr Anderson was to remain in a mental health facility.

16. At review on [date] by Dr A, Mr Anderson presented with psychotic symptoms including perceptual disturbance and religious and persecutory beliefs. He was compliant with treatment and he was referred to the Medical Screening Unit for ongoing management and consideration of Clozapine medication. He was diagnosed with schizoaffective disorder, comorbid anxiety and PTSD. Mr Anderson was previously treated in the public and private sector by psychiatrists and psychologists. He has a history of self-harm including [incidents]. Mr Anderson's PTSD diagnosis is said to have arisen from a traumatic incident at the age of [age] when he was injured in an unprovoked assault by an acquaintance, resulting in facial fractures requiring surgery. He has a supportive relationship with his parents.

17. Dr A's review of Mr Anderson on [date], noted that Mr Anderson described persecutory ideation, derogatory auditory hallucinations, beliefs regarding doomsday prepping and COVID-19 which "appeared more in line with fringe and alternative conspiracy theories available online, and did not appear to have a delusional quality". Mr Anderson showed insight and was able to question his concerns. Olanzapine medication was increased with good effect.

18. Dr A's mental state examination of [date] did not detect formal thought disorder or delusions. Mr Anderson demonstrated good insight into his diagnosis, symptoms and need for treatment. Dr A considered Mr Anderson continued to have "residual symptoms of psychosis likely exacerbated by his comorbid generalised anxiety disorder and PTSD" despite his compliance with treatment. He also noted a history of self-harm and suicidal ideation. Dr A noted Mr Anderson's concern regarding his vulnerability to assault and harm from others. Mr Anderson consented to remaining in the Hospital and has been appropriately engaging with the treating team.

19. Dr A opined that Mr Anderson has a mental health impairment with ongoing mood disturbance which impairs his emotional well-being, judgement and behaviour; and that there is treatment available for his condition at X Hospital. Furthermore, there is no other care appropriate and reasonably available to him in a correctional centre. The team's request was that Mr Anderson remain in the Hospital.

20. Dr A also noted that Mr Anderson was admitted to the care of the Cardiology Team at Z Hospital on [date] for investigation and management after reporting central squeezing chest pain, palpitations and tachycardia. An angiogram revealed mild artery disease which did not require intervention. He was also found to have low platelets on his admission. This was discussed with the Haematology Team at [Z Hospital] who have recommended a non-urgent referral to their clinic for review, and this remains pending.

AT THE HEARING

21. Mr Hair advised the Tribunal that Mr Anderson was content to remain in the Hospital and feels that it was the best place for him. Mr Anderson has had a conversation with the treating team about potentially starting Clozapine medication. The only pressing issue is Mr Anderson's wish to remain in [a ward]. Mr Anderson is rather nervous about moving and this has caused him some distress in the last few days.

22. Mr Anderson told the Tribunal that he was very happy with staying in [a ward]. He finds the ward very therapeutic as he feels relaxed with other staff and patients. He does not wish to move. He is so nervous about moving that he experiences thoughts of self-harm and the day before the hearing he had self-harmed. Mr Anderson hopes to get to the W Hospital. He is agreeable with the treating team's recommendation that he have a trial of Clozapine.

23. Dr A reassured Mr Anderson that there was no intention to move him from the ward. Mr Anderson has partly responded to treatment and continues to struggle with a lot of mental health issues. Mr Anderson has agreed to a Clozapine work up which means that he will remain in the ward for at least 3-6 months longer.

24. Dr A has discussed the events that led Mr Anderson to coming into hospital and Dr A is of the view that there is a direct link between his symptoms and the index offence. Dr A was of the opinion that there was a case for Mr Anderson to be found not criminally responsible due to mental health impairment. This is an avenue that Mr Anderson wishes to pursue.

25. In answer to questions from the Tribunal as to the reasons for Mr Anderson's improvement since being in his care, Dr A considered that the hospital environment was key. Mr Anderson is in a 'slow stream', settled place with a smaller number of other people for him to be in contact with, which he finds beneficial. In addition, there has been some increases in medications but these have only been only partially effective in treating his illness. This is the reason why Clozapine has been discussed with him. Dr A stated that Mr Anderson has a treatment resistant illness. He has tried a large array of medications over many years and whilst Clozapine had been discussed with Mr Anderson in the past, it has not been prescribed. However, Mr Anderson is now able to reflect on his mental health state that led him into custody and he understands that he needs to do things to address it.

26. Dr A stated that Mr Anderson is extremely motivated in becoming well. Mr Anderson also shared some drawings of his and said that he wanted to show the horrific things that he sees every day and the things that are going on in his head. As he is a Christian, he feels distraught at seeing these images.

SUBMISSION BY MR HAIR

27. Mr Hair noted that Mr Anderson's transfer to X Hospital was based on Mr Anderson's consent. He queried whether it was necessary for the Tribunal to make an order for detention as Mr Anderson consented to remaining in the Hospital. Mr Hair pointed to the use of the word 'may' in s 92 (2) in support of his submission. He also noted that Mr Anderson's transfer by consent was a new approach taken by Justice Health and Forensic Mental Health Network.

DISCUSSION AND DECISION

28. The Tribunal is satisfied on all the evidence that Mr Anderson's placement at X Hospital is necessary in order for him to receive care and treatment for his illness. Mr Anderson has experienced some improvement in his mental state, which is largely attributed to his feeling safer in the Hospital. Unfortunately, Mr Anderson remains symptomatic and is considered to have a treatment resistant illness. The treating team has discussed a trial of Clozapine medication and Mr Anderson is agreeable. Mr Anderson impressed the Tribunal with his motivation to address his symptoms which he acknowledges have led to his incarceration. Mr Anderson understandably finds them distressing and disturbing.

29. Based on all of the material before it, the Tribunal was satisfied that Mr Anderson is a mentally ill person. He experiences symptoms of delusions and hallucinations, including derogatory delusions. He has a history of self-harm. He has recently self-harmed whilst in the Hospital, in the context of his being symptomatic and experiencing an overwhelming dread of returning to the prison. In the Tribunal's view, Mr Anderson is at risk of serious harm and his mental state is such that involuntary care and treatment in a hospital setting is the least restrictive option consistent with safe and effective care.

30. The Tribunal considered that it was necessary to make on order for Mr Anderson's care and treatment in X Hospital on the basis that he meets the criteria of a mentally ill person in the MHA. Notwithstanding that Mr Anderson was certified as having a 'condition' for which treatment is available in a hospital, he experiences acute and distressing symptoms, and he requires treatment for his own protection and more broadly for the protection of the community from serious harm. Mr Anderson's co-operation and trust in his treating team is laudable and a positive sign. However, the Tribunal determined that the appropriate finding is that he is mentally ill and that he must be treated, in a mental health facility, if necessary, without his consent, for the following reasons:
    - his long history of treatment resistant illness
    - the circumstances that led to his incarceration
    - his history of self-harm, including recent self-harm

- the real prospect that he may be found not criminally responsible due to mental health impairment,
- and his ongoing significant symptoms.

31. This order would allow the Authorised Medical Officer under s 84 of the MHA to authorise Mr Anderson's treatment without his consent in the Hospital, should he refuse his consent to treatment. In addition, Mr Anderson is required to remain in the Hospital until such time that he is discharged by the Hospital or the Tribunal.

32. For these reasons the Tribunal makes an order for his ongoing care, treatment, and detention at X Hospital.

Maria Bisogni
Deputy President

Date 6 April 2022