

**THIS IS AN OFFICIAL REPORT OF THE MENTAL HEALTH  
REVIEW TRIBUNAL PROCEEDINGS IN RELATION TO MR  
DUNLOP AUTHORISED BY THE PRESIDENT OF THE TRIBUNAL  
ON 21 NOVEMBER 2013**



*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 Dunlop

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

**TRIBUNAL:** Daniel Howard SC President  
John Basson Psychiatrist  
Diana Bell Other Member

**DATE OF HEARING:** 20 June 2013

**PLACE:** Long Bay Hospital

**APPLICATION:** Conditional release

## **DECISION**

The Tribunal Determines that Mr Dunlop should be subject to an early review under s 46 of the Act within three months of this determination. The Tribunal notes that it may also require additional reviews at such times as it considers appropriate.

The Tribunal further determines pursuant to s 47(4) of the said Act that Mr Dunlop has not become fit to be tried for an offence.

Having determined pursuant to section 43 of the *Mental Health (Forensic Provisions) Act 1990* that neither the safety of Mr Dunlop nor that of any member of the public would be seriously endangered thereby, and that an independent forensic psychologist's report is also of that opinion, and having considered the other matters to which sections 43 and 74 refer, the Tribunal pursuant to section 47(1) makes the following orders as to Mr Dunlop's conditional release:

Mr Dunlop is to be met and collected at his current place of detention by his case manager or delegate on Monday 26<sup>th</sup> August, 2013 and is thereupon to be conditionally released subject to the following conditions:

- 1A That Mr Dunlop accepts and commences, no later than Friday 9th August, 2013, such testosterone lowering medication as may be prescribed by his treating psychiatrist. If he does not so accept and

commence such medication by that date, or if no such medication is prescribed by that date, then Mr Dunlop will be deemed to be in breach of this condition.

- 1B That Mr Dunlop accept as his case manager, Senior Clinical Consultant, CJP, within the Aging, Disability and Home Care (ADHC) branch of the Department of Family & Community Services, or such other person, as shall be nominated from time to time by the Executive Director of Clinical Innovation and Governance, ADHC or their delegate. The case manager shall be responsible to ensure that any suspected breach by Mr Dunlop of any of these conditions of release, is promptly reported to the Tribunal by the case manager or the case manager's delegate.
- 2 That Mr Dunlop accept as his treating psychiatrist Dr. [named] of [address], or his delegate.
- 3 That Mr Dunlop attend upon his treating psychiatrist with such regularity as shall be determined from time to time by Mr Dunlop's treating psychiatrist, and according to such arrangements as shall be determined by Mr Dunlop's treating psychiatrist, as to time and place of such attendance.
- 4 That Mr Dunlop accept from his treating psychiatrist, or his delegate, such medication as shall be prescribed from time to time by, including (but not limited to) testosterone lowering medication and anti-alcohol craving medication, and follow the directions of his treating psychiatrist as to the identity of the person to administer the medication and the place, mode and regularity of administration of such medication.
- 5 That Mr Dunlop accept and engage in such psychotherapeutic interventions as are recommended by his treating psychiatrist or his delegate.
- 6 That Mr Dunlop accept such community based mental health services and case management from such Community Mental Health Service as shall be nominated by his case manager for additional psychiatric care and case management.
- 7 That Mr Dunlop live in such accommodation as shall be approved from time to time by his case manager, initially to be at [address].
- 8 That Mr Dunlop accept and carry out any reasonable directions given by Mr Dunlop's case manager as to leave or absence from that accommodation.
- 9 That Mr Dunlop attend upon, or accept home visits from, his case manager or delegate and/or such other support persons or authorised officers nominated by the CJP for the purpose of carrying out the CJP's SNRG Case Implementation Plan for Mr Dunlop, with such regularity and in accordance with such arrangements as to time and place of such attendance or visits as shall be determined from time to time by Mr Dunlop's Case Manager or delegate. Mr Dunlop will accept such case management and support of not less than 70 hours per week until the Tribunal orders otherwise.
- 10 That Mr Dunlop attend upon and accept psychology sessions with psychologist of [Name of Practice] of or such other psychologist as shall be directed by Mr Dunlop's case manager, for the purpose of undertaking psychological therapy and/or counselling to address Mr Dunlop's sexual offending.
- 11 That Mr Dunlop engage in such education training, rehabilitation, recreational, therapeutic, or other programmes, including drug and alcohol programmes, as shall be directed from time to time, in consultation with Mr Dunlop by Mr Dunlop's case manager.

12 That Mr Dunlop provide to his case manager a recent (head and shoulders) photograph of a quality acceptable to the case manager or co-operate while the case manager or delegate takes a photograph of Mr Dunlop. The case manager will provide a copy of the photograph to the Tribunal.

13 That Mr Dunlop is to remain totally abstinent from alcohol, illegal drugs and substances.

13A. That Mr Dunlop must not attend any premises at which alcohol is sold other than in the company of his case manager or authorised delegate.

13B (1) If Mr Dunlop's Case Manager (or his or her authorised delegate) reasonably believes that a search (of the type referred to in sub-paragraphs c to d below) is necessary:

- a. to monitor Mr Dunlop's compliance with the conditional release order; or
- b. because the Case Manager (or his or her authorised delegate) reasonably suspects Mr Dunlop of having used alcohol or illicit drugs or having such alcohol or illicit drugs on his person or in his residence;

then the Case Manager (or his or her authorised delegate) may direct, and Mr Dunlop must submit to:

- c. a search and inspection of any part of, or anything in, Mr Dunlop's approved accommodation;
- d. a search and examination of his person in his approved accommodation.

(2) For the purposes of sub-paragraph (1) above:

e. a search of Mr Dunlop means either or both a garment search or a pat down search.

f. to the extent practicable a pat-down search will be conducted by a person of the same sex as Mr Dunlop, or by a person of the same sex as Mr Dunlop under the direction of the Case Manager (or his or her authorised delegate).

NOTE:

**"Garment search"** means a search of any article of clothing worn by Mr Dunlop or in Mr Dunlop's possession, where the article of clothing is touched or removed from Mr Dunlop's body.

**"Pat-down search"** means a search of Mr Dunlop where Mr Dunlop's clothed body is touched.

(3) During a search carried out pursuant to sub-paragraph (1) above, Mr Dunlop must allow the Case Manager (or his or her authorised delegate) to seize any alcohol or illicit drugs, or any vessels or other accoutrements relating to alcohol or illicit drugs.

14 That Mr Dunlop is not to engage in any form of gambling.

15 That Mr Dunlop 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 Mr Dunlop's regular registered medical practitioner.

16 That Mr Dunlop is not to take non-prescription drugs or medication without the knowledge and approval of his case manager or regular registered medical practitioner.

17 That Mr Dunlop is to submit to such tests for the detection of the use or consumption of drugs and substances including alcohol as shall be required from time to time by Mr Dunlop's case manager and/or by his treating psychiatrist, such tests to be administered randomly, and/or at the discretion of the case manager and/or treating psychiatrist, according to such arrangements, as to the nature of the tests to be administered, the place of administration, and the time and frequency of administration of such tests, as shall be determined from time to time by his case manager and/or treating psychiatrist. This is to include, but is not limited to:

- a. Random breath-testing not less than once per week, to be performed by the Methadone Management Clinic.
- b. Carbohydrate Transferrin Deficiency (CDT) testing not less than once per month

18 That Mr Dunlop attend 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 Dunlop, Mr Dunlop's case manager, and Mr Dunlop's solicitor, in writing by the Tribunal.

19 That Mr Dunlop keep his case manager and the Registrar of the Tribunal notified in writing of the details of his current residential address and telephone number, and that Mr Dunlop notify his case manager and the Registrar of the Tribunal immediately in writing in the event of any plans to change address, and of any change of address and telephone number.

20 That Mr Dunlop accept and carry out any directions in relation to any reviews from, or submit to any reviews requested by the Community Forensic Mental Health Service.

21 That Mr Dunlop may travel interstate and overseas only if suitable travel arrangements are approved in writing in advance by the President or a Deputy President of the Tribunal. In support of any such application the Tribunal is to be provided with such information as may be available regarding whether appropriate reciprocal arrangements have been, or can be, made with the local mental health services or other agencies at the patient's destination. The Tribunal is also to be notified of the travel arrangements and it may choose to hold a review hearing to examine the suitability of the proposed arrangements.

22 That Mr Dunlop 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.

23 Mr Dunlop is to be of good behaviour.

24 That Mr Dunlop shall not approach, or initiate any communication, or attempt to initiate any communication, in any way, or through any medium, with [the victim] or any member of her family.

25 That Mr Dunlop is not to enter the [named] Local Government Area at any time.

*Admission to a Mental Health Facility*

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:

- 26 a) If for any reason either Mr Dunlop's case manager or his treating psychiatrist shall determine that it would be in Mr Dunlop's best interests to reside for a period in a mental health facility or other institution, and shall give Mr Dunlop a direction to this effect, then Mr Dunlop shall immediately comply with any such direction.
- b) If such a direction is issued, Mr Dunlop'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 Mr Dunlop's admission.
- c) While Mr Dunlop remains in a mental health facility or other institution under the direction of his case manager or treating psychiatrist 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 Dunlop's case manager and/or treating psychiatrist having regard to Mr Dunlop's 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 Dunlop'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 arrangement

Signed

Professor Daniel Howard SC  
President

Dated this day 31 July 2013

## REASONS

This is the 11th review of Mr Dunlop, a forensic patient aged 40. This review is held 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 review the Tribunal may make orders as to the patient's continued detention, care or treatment or the patient's release. The Tribunal is also to consider Mr Dunlop's present condition and fitness to be tried under section 47 of the Act.

Mr Dunlop is presently detained at the Additional Support Unit in the Metropolitan Special Programs Centre at the Long Bay Correctional Complex. Mr Dunlop applied for conditional release at the review heard on 11 December 2012, and resumed on 5<sup>th</sup> March, 2013.

In its reasons dated 10 May 2013 in relation to that review, the Tribunal made the following determination:-

1. *"Pursuant to s 47(4) of the Act, Mr Dunlop remains unfit to be tried for an offence.*
2. *The Tribunal will hold a further Review of Mr. Dunlop on 25<sup>th</sup> June, 2013.*

*The Tribunal further determines that being satisfied on the evidence currently before the Tribunal that the grant of conditional release would not seriously endanger Mr Dunlop or any other member of the public and having regard to the other matters to which sections 43 and 74 of the Mental Health (Forensic Provisions) Act 1990 refer and provided that the Tribunal is satisfied at the review on 25 June 2013 that:*

- a. *all of the pre-release components of the proposed Criminal Justice Program (CJP) SNRG Case Implementation Plan have been attended to and/or put in place to the satisfaction of the Tribunal; and*
- b. *all of the necessary arrangements are in place to enable effect to be given to the conditions stipulated below and any additional conditions that the Tribunal, at such review, may see fit to impose;*
- c. *it remains appropriate to order Mr Dunlop's conditional release;*

*The Tribunal was minded to make an order granting Mr Dunlop conditional release subject to the conditions set out below."*

The Tribunal then set out some draft conditions that it was considering imposing as appropriate conditions as part of any release of Mr Dunlop.

The current review was brought forward from 25 June 2013 to 20 June 2013. The parties were invited to make submissions in relation to the proposed conditions that had been included in draft form in the Tribunal's reasons of 10 May 2013. The primary purpose of the present review was to ascertain whether everything was in place for those draft conditions to be put into effect and to consider whether such conditions remained appropriate or whether further conditions may be required.

The Tribunal notes that in its reasons of 10 May 2013, the Tribunal indicated that it was satisfied that Mr Dunlop had spent sufficient time in custody for the purposes of section 74(e) of the Act.

## **TRIBUNAL REQUIREMENTS**

S 43 of the Act provides as follows:

### **43 Criteria for release and matters to be considered by Tribunal**

*The Tribunal must not make an order for the release of a forensic patient unless it is satisfied, on the evidence available to it, 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.*

**Note.** See section 74 for matters that the Tribunal must consider in deciding what orders to make under this Part. Section 75 sets out conditions that may be imposed on release.

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* (insofar as they may apply) as well as the matters under section 74 of the Act when determining what order to make. S 74 is in the following terms:

### **74 Matters for consideration**

*Without limiting any other matters the Tribunal may consider, the Tribunal must have regard to the following matters when determining what order to make about a person under this Part:*

- (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) in the case of the proposed release of a forensic patient subject to a limiting term, whether or not the patient has spent sufficient time in custody.*

## **DOCUMENTARY EVIDENCE**

The Tribunal considered the documents listed in the Forensic Patient Exhibit List. The parties also had access to all the documents previously exhibited on Mr Dunlop's forensic patient file with the Tribunal and where applicable reference will be made to such documents. The Tribunal also has had regard to the evidence and findings at the Tribunal's previous review as noted in its reasons of 10<sup>th</sup> May, 2013.

## **ATTENDEES**

Mr Dunlop attended the hearing in person represented by Ms. Brae Sinclair of the Mental Health Advocacy Service. Mr David Kell of counsel appeared for the Attorney General, instructed by Ms Giurastante.

Also in attendance were:

- Psychiatrist,
- CJP.
- New Horizons Support Staff; and,
- Disability Rights Service Support Staff.

## **PRESENT CIRCUMSTANCES**

### **Further written submissions on behalf of the Attorney General**

Mr David Kell, counsel for the Attorney General of NSW in this matter, provided the Tribunal with helpful written submissions dated 18 June 2013. Mr Kell in these submissions notes that he contended on behalf of the Attorney General, on the previous review, that the Tribunal would not be satisfied as to the matters required under section 43 of the Act and should refuse Mr Dunlop's application for conditional release. In his current submissions, Mr Kell notes that, while the Attorney maintains that position, his current submissions will proceed on the basis that the Tribunal has determined to conditionally release Mr Dunlop and that submissions were now being sought principally as to the form of order that should be made.

Mr Kell submits that, to the extent that it is able to do so, the Tribunal would be justified in incorporating in the Tribunal's order, the various reporting obligations that the Criminal Justice Program (CJP) and New Horizon staff have in relation to reporting suspected breaches of Mr Dunlop's conditions of release.

Mr Kell further expressed concern that the version of the SNRG Case Implementation Plan, prepared by CJP and dated 17 June 2013, at page 10, does not accurately reflect an understanding that a condition of Mr Dunlop's release would be that he should remain abstinent from alcohol. Mr Kell submits that the Tribunal would be justified in taking such steps as it may consider appropriate to ensure that CJP is aware of the requirement for abstinence on the part of Mr Dunlop and that, having regard to risk considerations, no use of alcohol by Mr Dunlop would be acceptable. He further submits that any suspected use of alcohol ought to be immediately reported to the Tribunal by CJP and New Horizons.

Mr Kell raises a further concern, in that it still remains unclear how the proposed random breath testing of Mr Dunlop will be arranged and by whom it will be performed. In this regard, the Tribunal notes that at the hearing on 5 March 2013, a case work specialist with CJP, gave evidence confirming that CJP would be prepared to commit to implement monitoring Mr Dunlop by breathalyser. Since that hearing, the Tribunal has been informed that CJP are, in fact, not prepared to make such a commitment. At the time that Mr Kell made his submissions, it was being proposed by CJP that an arrangement would be put in place to have Mr Dunlop randomly breath tested at [named] Police Station from time to time. Mr Kell raised concerns about the lack of any firm arrangement being in place. In particular, he submitted that the Tribunal should obtain confirmation that the Police will undertake such breathalysing or that New Horizon staff will be able to utilise such breathalysing equipment or results at any time of the day or week (including in the evening and without the need for prior appointment with Police) so as to ensure that testing of Mr Dunlop is both frequent and random, as contemplated by the experts.

Mr Kell made a number of additional submissions in relation to the draft conditions of release that had been proposed by the Tribunal in its reasons of 10 May 2013.

Mr Kell submitted that it would be appropriate to include in draft condition 4, mention of anti- alcohol craving medication as well as testosterone lowering medication as being medications that could be prescribed by Mr Dunlop's treating psychiatrist.

Mr Kell also proposed a revision of the wording of draft condition 21 relating to Mr Dunlop's obligations to make appropriate arrangements to be approved by the Tribunal prior to any travel interstate or overseas.

Mr Kell also suggested an addition to draft condition 13 to provide for precluding Mr Dunlop from attending premises at which alcohol is sold other than in the company of his case manager or authorised delegate.

Mr Kell also proposed that it would be appropriate for any conditions of release to include a condition permitting the case manager, or their authorised delegate, to search Mr Dunlop's person or residence for alcohol or illicit drugs, and to seize same if found. Mr Kell referred to a number of authorities and noted that conditions to similar effect have been included in the conditions imposed as part of an extended supervision order made by the Supreme Court under the *Crimes (High Risk Offenders) Act, 2006*.

Mr Kell very helpfully provided a draft of all of the proposed changes and additions to the conditions that he submitted should be included in any conditions of release.

Ms Sinclair, appearing for Mr Dunlop, did not take any exception to the conditions proposed by Mr Kell.

### **Evidence at this Review**

The treating psychiatrist confirmed that he would be prepared to act as Mr Dunlop's treating psychiatrist pursuant to a conditional release. The treating psychiatrist confirmed that he would report any breaches of conditions by Mr. Dunlop in respect of treatment and management prescribed by him, such as medication and treatment non-compliance, to the Tribunal. The treating psychiatrist also confirmed that, whilst Antabuse would not be an appropriate medication for Mr Dunlop, other anti craving medications such as Acamprostate, may be suitable. In relation to testosterone lowering medication, the treating psychiatrist told the Tribunal that once commenced, Androcur would take approximately two weeks to start having an effect and it would then need to be further monitored thereafter.

The Tribunal also heard from a Senior Clinical Consultant with the CJP who will now be Mr Dunlop's case manager in relation to any conditional release.

The Senior Clinical Consultant was taken through the various proposed conditions of release and confirmed that he understood his obligations to report any breaches by Mr Dunlop, to the Tribunal. However, at the hearing he was unable to confirm with any certainty what arrangements were in place for breath testing Mr Dunlop. It was most unfortunate that this matter was still unresolved, as the Tribunal had specifically listed the matter and allowed a significant number of weeks for such issues to be resolved prior to the hearing.

Prior to this review, the Tribunal received (and provided the parties with copies of) a copy of the CJP's SNRG Case Implementation Plan updated as at 17<sup>th</sup> June, 2013, which confirms that the various

components of the plan are now sufficiently developed and in place such that CJP is now in a position to commence case management of Mr Dunlop in the event that he were to be conditionally released by the Tribunal.

A residence for Mr Dunlop has been identified. CJP has identified a suitable general practitioner for Mr Dunlop. Staff training has been provided to New Horizons staff about Mr Dunlop for the purposes of the SNRG Case Implementation Plan.

Also prior to this review, the Tribunal received correspondence from a psychologist with [Name of Practice], that she is willing to accept Mr Dunlop as a treatment client in order to focus on his sexual offending.

The Tribunal notes that an opportunity was provided for Mr Dunlop to speak to the treating psychiatrist by telephone so that the nature and effect of testosterone lowering medication could be explained to him. After this opportunity had been provided, Ms Sinclair confirmed to the Tribunal that Mr Dunlop would be prepared to take such medication if required to do so as a condition of release.

#### **Further material on the question of breath testing**

As this issue could not be resolved at the hearing on 20 June 2013, the Tribunal reserved its decision and indicated that it would await further confirmation as to what breath testing was available, from CJP.

Subsequently, CJP forwarded to the Tribunal a letter from New Horizons dated 21 June 2013 confirming that the Methadone Management Clinic has agreed to provide facilities and staff to run random breathalyser tests on Mr Dunlop. The letter confirms that the Methadone Clinic recognises that these tests can be requested at any time of day, at the discretion of New Horizons staff or the CJP. The Methadone Clinic will also provide alcohol and drug counselling to Mr Dunlop. The letter further confirms that New Horizons will facilitate the random testing of Mr Dunlop by utilising the facilities provided by the Methadone Clinic, both during his scheduled alcohol and drug counselling appointments and during such time that it is deemed necessary by New Horizons staff or the CJP. The letter also confirms that appropriate paperwork from the Tribunal is to be provided to the Methadone Clinic to confirm the Tribunal's requirements.

A copy of this letter was circulated to the parties by the Tribunal. A letter dated 5 July 2013 from Ms Rita Giurastante, a Senior Solicitor with the Crown Solicitor's Office, notes that the hours of the Methadone Clinic, as indicated on the Clinic's website, do not allow for random breath testing on a 24 hours 7 days per week basis. Ms Giurastante notes in her letter that this raises a concern that if, for example, Mr Dunlop is suspected of having consumed alcohol in the early evening, or at midday onward during the weekend, he

would not be able to be breathalysed until sometime the following day. She states that such a scenario raises significant concerns from a risk management perspective.

Ms Giurastante also expressed concern at the fact that the letter from New Horizons dated 21 June 2013, states nothing concrete as to the frequency of the proposed testing. She states in her letter that the Tribunal would be justified in ensuring that at least a minimum number of tests would be performed in any given period. Ms Giurastante states in her letter that, if these two matters can be addressed by the CJP to the satisfaction of the Tribunal, it may go some way toward helping ensure that the testing of Mr Dunlop is both frequent and random, as contemplated by the experts who gave evidence to the Tribunal at the hearing on 11 December 2012.

Ms Sinclair also wrote a letter to the Registrar of the Tribunal dated 10 July 2013 addressing the outstanding issue of breath testing. In this letter Ms Sinclair states that she anticipates that Mr Dunlop would be prepared to agree to the breathalysing arrangements proposed in the New Horizons letter of 21 July 2013. However, she submits that there is no need for the Tribunal to specify the frequency and timing of the testing and submits that the supervising team are in the best position to determine from their first hand knowledge of Mr Dunlop what his risk issues and warning signs are and can take into account what is clinically appropriate and reasonably available in each circumstance. She notes that the supervising team at New Horizons will be providing 70 hours of supervision of Mr Dunlop per week, which is a substantial amount of time for the supervising team to familiarise themselves with Mr Dunlop and to determine with what frequency and where and how random the breath analysis tests should be carried out to ensure the safety of Mr Dunlop, and of the community.

Ms Sinclair further notes that, whether or not Mr Dunlop has been breathalysed, where there is a reasonable suspicion that he has used alcohol or illegal substances, he may be breached pursuant to s 68 of the Act.

Ms Sinclair further submits in her letter that, imposing too onerous and rigid breathalysing requirements on Mr Dunlop during what would be a short period of conditional release, may discourage or undermine his cooperation with such procedures.

### **Submission from the Minister for Mental Health**

The Tribunal also received a letter dated 11 June 2013 from the Hon Kevin Humphries MP, Minister for Mental Health. In the case of any proposed release, the Minister is notified of any proposed order, so that any submissions that the Minister proposes to make can be made prior to any orders actually being made. The Tribunal so notified the Minister.

In his letter, the Minister states as follows:-

*"I have reviewed the Tribunal's reasons for decisions together with the proposed conditions of the release. Additionally, I have sought the advice of the NSW Chief Psychiatrist, Associate Professor John Allan.*

*I am advised by Professor Allan that this is a complex matter. It is his opinion, by which I am guided, that keeping Mr Dunlop in custody offers very little chance of reducing his risk to the community at the end of his limiting term (31 December 2013), but that conditional release after 25 June 2013 offers a slim chance of meaningful change in his risk provided he secures ongoing support services that continue after the end of his limiting term.*

*I am therefore reluctant to support Mr Dunlop's conditional release until such time as the Tribunal can be assured that his care and treatment in the medium to long term is adequate and that such care can be provided effectively. To do otherwise poses an unreasonable risk to Mr Dunlop and the broader community.*

*However, should the Tribunal make such an order prior to these matters being resolved there is a need to ensure that Mr Dunlop complies with the orders of his conditional release and that such conditions are amended if appropriate. As such, in those circumstances I would request in accordance with s 46 of the Mental Health (Forensic Provisions) Act, that the Tribunal conduct a review of Mr Dunlop.*

- *Three months after any order for conditional release is made; and*
- *At any time should the Tribunal believe Mr Dunlop's (sic) is likely to breach his conditions of release.*

*I would appreciate any efforts you deem reasonable and appropriate prior to December 2013, to facilitate the engagement of relevant agencies in providing necessary services to him after the end of his term"*

### **Further correspondence from CJP**

Section 76A(1) of the Act states :-

*"For the purposes of a review, the Tribunal may communicate with any persons, take any action and make any recommendations it thinks fit."*

Pursuant this section, the Tribunal has sought to clarify the breath testing situation with CJP. In an email dated 27 June 2013 to one of the Tribunal's Senior Forensic Officers, CJP has confirmed that staff at the Methadone Management Clinic will be providing the services to do random tests and that New Horizons will be facilitating the transport of Mr Dunlop to the Clinic. He confirms that the Methadone Management Clinic has operating hours from 9am to 4pm on weekdays and 7am to 1pm on weekends. The Senior Clinical Consultant goes on to say in his email:-

*"Unfortunately, this will mean that the testing will not be available 24/7. However, I believe these hours are sufficient, as there would be limited instances where New Horizons would be taking Mr Dunlop to be tested during late night or very early morning. Given New Horizons will provide Mr Dunlop with approximately 10 hours a day of direct support (equating to 70 hours per week), the times New Horizons would be available to test Mr Dunlop would be within those ten hours. As such, even if testing were available during late night or early morning, it would not be readily utilised. Subsequently, tailoring support to cover a majority of the afternoon until the early night (ie support from 10am to 8pm) will mean that Mr Dunlop will have no access to alcohol for the majority of the day. Additionally, the control of his finances by New Horizons and the NSW Trustee and Guardian would greatly limit his ability to access alcohol during non-support hours."*

On 23<sup>rd</sup> July, the Tribunal obtained from the Office of the NSW Trustee and Guardian, a copy of a financial management order made 12<sup>th</sup> February, 2013, committing the management of Mr Dunlop's estate to the NSW Trustee and Guardian. The fact that Mr. Dunlop's financial affairs will be subject to such an order is, to an extent, a further protection against his potential for alcohol abuse and/or gambling.

## **CONSIDERATION**

The Tribunal has already found at the previous review that Mr. Dunlop has spent sufficient time in custody under s 74(e) of the Act, and confirms that finding.

The remaining question is whether or not the criteria for release under s 43 of the Act are satisfied by the evidence as it now stands, taking into account the additional material and submissions presented at this review.

The Tribunal notes that the random breath-testing arrangements proposed by CJP and which are available through the Methadone Management Clinic, fall short of allowing random breath-testing on a twenty four hours per day, seven days per week basis. This means that there will be no capacity for breath-testing to be done at night time. Further, the Tribunal notes the Senior Clinical Consultant's email of 27<sup>th</sup> June, 2013,

indicates that the hours of support can be tailored to cover a range of hours from 10.00 am until 8.00 pm each day.

The concern is that, were Mr Dunlop to drink clandestinely late at night or during the early morning, the effectiveness of random breath-testing during the hours that the Methadone Management Clinic is open, would be significantly limited.

Nevertheless, with 10 hours each day direct support of Mr Dunlop by CJP through the New Horizons staff, there will be considerable opportunity to observe Mr Dunlop closely during those hours.

In addition, the condition (13B) proposed by Mr Kell, permitting Mr Dunlop's accommodation and/or person to be searched by his case manager or their delegate, would enable Mr Dunlop's case manager or their delegate to conduct a search for indicia of alcohol consumption in the event that they reasonably believed that such a search was necessary.

It would also further strengthen the regime of testing for alcohol use if the Tribunal were to impose a further requirement that Mr Dunlop have regular Carbohydrate Transferring Deficiency (CDT) testing. According to the independent expert's report of 4<sup>th</sup> November, 2012, CDT testing is able to assess whether a person, on most days in the fortnight proceeding the test, has consumed 6 or more standard drinks. It is a useful test for monitoring chronic alcohol abuse.

In the Tribunal's view, the monitoring of Mr Dunlop's abstinence in relation to alcohol consumption will be sufficiently achieved by a combination of:

- regular weekly random breath-testing at the Methadone Management Clinic;
- monthly CDT testing;
- daily observing of Mr Dunlop for ten hours each day by CJP through its New Horizons staff;
- Mr Dunlop accepting such anti-alcohol craving medication, if any, as shall be prescribed from time to time by his treating psychiatrist or his delegate;
- Searches of Mr Dunlop's accommodation and/or person as deemed necessary by his case manager or their delegate to ascertain whether there are any indicia of alcohol consumption by Mr Dunlop;
- A condition in his release conditions that he is to remain abstinent from alcohol, illegal drugs and substances.

The Tribunal notes that Ms Sinclair, appearing for Mr Dunlop, has indicated to the Tribunal that Mr Dunlop would be prepared to accept testosterone lowering medication in the event that this is prescribed by his

treating psychiatrist, and also confirmed that there was no objection to the proposed inclusion of a condition requiring that he also accept such anti-alcohol craving medication as may be prescribed.

The Tribunal notes that the CJP is now in a position to implement the SNRG Case Implementation plan, and that it has been made very clear to the case manager that Mr Dunlop will be required to remain totally abstinent of alcohol and illegal drugs and substances.

Mr. Dunlop will receive ongoing psychiatric treatment from his treating psychiatrist, who has expertise in treatment of sexual offenders with intellectual disability, and case management from the Senior Clinical Consultant on behalf of CJP and that support pursuant to the plan will be available to Mr Dunlop 70 hours per week by support staff from New Horizons who are engaged by CJP and who have been trained in Mr Dunlop's background and management needs. They will provide support as indicated in the SNRG Case Implementation Plan. Mr Dunlop will also receive psychological treatment from a psychologist that will focus on his sexual offending.

CJP will be responsible to ensure that the Tribunal is notified promptly of any breaches by Mr Dunlop of any of his conditions of release. The President of the Tribunal may, when so notified, and in appropriate circumstances, take action pursuant to s 68 of the Act in respect of any breach of conditions, whereby Mr Dunlop could be apprehended and brought back into detention.

In combination, these provisions will provide a very comprehensive support and management network for Mr Dunlop and satisfy the Tribunal that the criteria for release and matters to be considered by the Tribunal under s 43 of the Act have been met.

The Tribunal is satisfied that there are reasonable grounds for believing that care, treatment and control of Mr Dunlop is necessary for his own protection from serious harm and the protection of others from serious harm. The Tribunal has given due consideration to Mr Dunlop's intellectual disability and overall mental condition, and has considered his continuing condition and any likely deterioration in his condition, and the likely effects of any such deterioration.

Having had regard to and given due consideration to the evidence before the Tribunal, including the expert report and evidence of the independent expert (whose report and oral evidence satisfies the requirement under s 74(d) of the Act), and having regard to the additional factors referred to in s 74 of the Act, and to the provisions of s 43 of the Act, and having regard (to such extent as they may apply) to the Principles for Care and Treatment set out in s 68 of the *Mental Health Act, 2007*, the Tribunal finds that, if Mr Dunlop were

to be released in accordance with the conditions set out below, the safety of Mr Dunlop or any member of the public will not be seriously endangered by Mr Dunlop's release. The Tribunal is also satisfied and finds that Mr Dunlop's release subject to those conditions would provide him with care of a less restrictive kind that is appropriate and reasonably available to Mr Dunlop. It will also provide him with the commencement of support and engagement with CJP, New Horizons and other professional, treatment and community supports such that these will be well progressed at the expiry of Mr Dunlop's limiting term on 31<sup>st</sup> December, 2013. This will significantly improve the likelihood that Mr Dunlop's care and treatment in the medium to long term is adequate and that such care can be provided effectively.

## **DETERMINATION**

The Tribunal makes the following orders under s 47 of the *Mental Health (Forensic Provisions) Act, 1990* as to Mr Dunlop's conditional release. [The order and conditions referred to above were then set out]

The Tribunal Further Determines that Mr Dunlop should be subject to an early review under s 46 of the Act within three months of this determination. The Tribunal notes that it may also require additional reviews at such times as it considers appropriate.

The Tribunal is satisfied that Mr Dunlop remains not fit to be tried.

This is the unanimous decision of the Tribunal panel.

A copy of these reasons together with the Tribunal's order will be forwarded to Mr Dunlop's legal representative and to the Minister for Health and Attorney General.

Signed

Professor Daniel Howard SC  
President

**Dated this day 31 July 2013**