

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

DETERMINATION OF TRIBUNAL

In relation to **Mr Griffith**

held on 12 September 2013 at Long Bay Hospital

Tribunal Members: Anina Johnson, John Basson, Stephen Woods

The case of **Mr Griffith** was reviewed under the provisions of section 46(1) of the *Mental Health (Forensic Provisions) Act 1990* on **12 September 2013**.

The Tribunal considered the documents listed in the Forensic Patient Exhibit List dated 12 September 2013.

Having regard to sections 47 and 74(a) – (c) of the *Mental Health (Forensic Provisions) Act 1990* and section 68 of the *Mental Health Act 2007*, the evidence before the Tribunal at this review and, in particular, the circumstances and considerations appearing below:

- the Tribunal is satisfied that there are reasonable grounds for believing that the present arrangements for care, treatment and control of Mr Griffith are necessary and sufficient for the protection of Mr Griffith from serious harm and/or for the protection of others from serious harm.

AND:

- the Tribunal makes the following variation to the orders in relation to the care, treatment and control of Mr Griffith presently in effect and notes that the present order or orders otherwise continue.

CIRCUMSTANCES AND CONSIDERATIONS

1. [The Tribunal noted Mr Griffith's mental state and any physical health issues]

...

3. Current risk assessment for harm or endangerment to self or others:

Low risk in his current environment.

4. The physical/mental condition of Mr Griffith is unlikely to deteriorate in the present circumstances of care, treatment and control.

5. Any significant developments since the last review are summarised as follows:

At the last review an order was made that Mr Griffith be housed in a correctional centre in the metropolitan area or detained at Long Bay Hospital. Parklea Correctional Centre was recommended subject to issues of classification.

This review was scheduled because the Assistant Commissioner of Corrective Services, Dr Anne-Marie Martin, indicated that it would not be appropriate to house Mr Griffith at Parklea, as there are no protection facilities. The Assistant Commissioner said that Mr Griffith would only be eligible for reclassification in two years time. If reclassified to C1 he would be eligible to be housed in the MSPC. In the meantime he should be transferred to Junee.

Corrective Services NSW provided the Tribunal with an extract from the Commissioner's guidelines indicating that progression to a C1 classification will only be considered three years prior to the earliest possible release date. Mr Griffith's limiting term is due to expire in August 2019. It is on this basis that Corrective Services NSW advise that he will not be able to be reclassified to a C1 before August 2016.

However, this approach to classification has a number of flaws. First, Mr Griffith may be conditionally released prior to the end of his limiting term. As such it should not be presumed that his earliest possible release date is August 2019. Secondly, these guidelines are meant to guide the exercise of the Commissioner's discretion. They are not legally binding and it would be unlawful if they were construed in that way. Indeed, the guidelines themselves allow for the possibility of progression outside the timeframe in special or exceptional circumstances.

An Officer of Corrective Services NSW advised the Tribunal that an application to vary classification could be made by a patient's legal representative, and should be directed to the Executive Director, Inmate Classification Placement.

Mr Griffith's lawyer said he would take instructions from his client and would apply for a reclassification if he got those instructions.

For these reasons, the Tribunal did not consider that the issue of classification presented an absolute bar to Mr Griffith being housed in the metropolitan area.

There are a number of reasons why Junee Correctional Centre did not appear to be appropriate to the Tribunal. First, the Tribunal understands that the Junee Correctional Centre is quite widely spaced. Mr Griffith has a range of physical difficulties which would make it difficult for him to move between one part of the Junee Correctional Centre and another.

In addition, it seems that he currently has a number of medical issues that require investigation. These investigations would presumably need to be arranged from the Long Bay Hospital.

Finally, Mr Griffith's wife is his only support and visits him weekly at Long Bay, despite her own physical ill health. At Junee she was only managing monthly visits.

In light of this, the Tribunal has decided not to order a transfer to the Junee Correctional Centre. Mr Griffith may be transferred to any metropolitan correctional centre but must otherwise remain at Long Bay Hospital.

On a more positive note, Mr Griffith says that he is now learning to read for the first time in his life and this gives him some satisfaction.

6. Any plans for a change in relation to care, treatment or control of the person:

As noted above, Mr Griffith may be moved to another suitable metropolitan correctional centre. The Tribunal notes the Commissioner's view that Mr Griffith should be housed in a protection facility.

7. Any other matters that the Tribunal considers should be noted arising from this review:

A copy of these reasons will be provided to Dr Anne-Marie Martin, together with a covering letter in response to her letter to the Tribunal.

FITNESS TO STAND TRIAL – s 47(4)(a) and (b) *Mental Health (Forensic Provisions) Act 1990*

The Tribunal makes the following recommendation as to the fitness of Mr Griffith to be tried for the relevant offence(s):

The Tribunal notes that more than 12 months have elapsed since the finding of unfitness by the Court, and is of the opinion that Mr Griffith has not become fit to be tried for an offence having regard to the following matters:

Mr Griffith's cognitive impairments have not changed and he remains unfit to stand trial.

The Tribunal further determined that the next review under s46 will be held within six months.

SIGNED BY

ON: 18 September 2013

Anina Johnson (Deputy President)