

**THIS IS AN OFFICIAL REPORT OF THE MENTAL HEALTH
REVIEW TRIBUNAL PROCEEDINGS IN RELATION TO MR
ALISTAIR YELLAND AUTHORISED BY THE PRESIDENT OF
THE TRIBUNAL ON 9 SEPTEMBER 2016**



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: Alistair Yelland

Mental Health (Forensic Provisions) Act 1990

DISTRICT COURT NUMBER XXXX

TRIBUNAL: Richard Gulley Deputy President
Enrico Parmegiani Psychiatrist
Stephen Woods Other Member

DATE OF HEARING: April 2015

PLACE: Hearing Room 2, Mental Health Review Tribunal

DETERMINATION

Pursuant to section 16 of the *Mental Health (Forensic Provisions) Act 1990* the Tribunal determines that **Alistair Yelland** is presently unfit and will not become fit to be tried for the offences with which he has been charged within 12 months of the Court's finding of unfitness.

Signed

Richard Gulley
Deputy President

Dated this day 12th May 2015.

REASONS

This is the first review of Alistair Yelland pursuant to section 16 of the *Mental Health (Forensic Provisions) Act 1990* ('the Act'). In 2015 the District Court found Mr Yelland unfit to be tried, he was granted bail and referred to the Tribunal under section 14 of the Act. The Tribunal is now to make a determination under section 16 of the Act.

BACKGROUND

In 2015 the District Court found Mr Yelland unfit to be tried in relation to a variety of sexual assault charges. Further background information concerning Mr Yelland's history is described in Annexure A to these reasons. In reaching its decision in this matter, the Tribunal has had regard to, and accepts as accurate, this background information which is maintained by the Tribunal's registry.

TRIBUNAL REQUIREMENTS

Under section 16 of the Act the Tribunal must, as soon as practicable after the person is so referred, determine whether, on the balance of probabilities, the person will, during the period of 12 months after the finding of unfitness, become fit to be tried for the offence.

If the Tribunal determines that the person will become fit, the Tribunal must also determine whether or not the person suffers from: (a) a mental illness; or (b) a mental condition for which treatment is available in a mental health facility, and, if the latter, whether the person objects to being detained in a mental health facility. Under section 16 (3A) the Tribunal may also make recommendations to the Court as to the care of the person.

DOCUMENTARY EVIDENCE

The Tribunal considered the documents listed in the Forensic Patient Exhibit List annexed to these reasons.

ATTENDEES

Mr Yelland attended the hearing and was represented by his lawyer, Ms A of the Mental Health Advocacy Service. Also in attendance was Ms J, Support Person, Intellectual Disability Rights Service.

PRESENT CIRCUMSTANCES

The Tribunal, to assist in its determination, had before it copies of the following material:

- Court Order of March 2015
- Indictment
- Statement of Facts
- Medical reports of Professor D, Forensic Psychiatrist,
- Medical report of Dr N, Clinical Neuropsychologist.

The oral submissions of Ms A, Solicitor appearing for Mr Yelland, included her opinion that she was not sure Mr Yelland could follow the Court process due to his physical and medical issues. Should the Court proceedings take several weeks to complete she was not sure that Mr Yelland would be able to sit for that length of time. Ms A reminded the Tribunal Dr N found Mr Yelland unfit for trial.

Professor D in his medical report described a history, amongst other things, of Mr Yelland suffering from a speech impediment and that he was suffering in the mild to borderline range of intellectual impairment. Mr Yelland had a poor education and lack of experience concerning the functioning of a Court but he could retain information about legal matters if they were explained to him.

Professor D noted that the offences were alleged to have occurred between January 1979 and December 1987. In his view it would not be uncommon for there to be normal memory loss in relation to Mr Yelland's version of the facts and additionally given the possible length of the trial, Mr Yelland may have a difficulty in appreciating the evidence given in the Court proceedings.

In addition to the material mentioned in the report Professor D went through the criteria in R v Presser [1958] VR 45 at 48, and R v Kesavarajah (1994) 123 ALR 463. Following that exercise Professor D provided a summary:

"I am therefore of the opinion that Mr Yelland on balance is currently unfit to plead and stand trial. However, I am of the opinion that over the next twelve months he would likely become fit to stand trial provided he:

1. Receive appropriate education about the Presser criteria and his understanding of such a criteria.
2. He is given additional support by the available Intellectual Disability Support Services.
3. His legal defence makes allowances for his impairments and deficits."

Professor D next saw Mr Yelland for an additional updating psychiatric assessment nine months later in March 2015. He provided a further report referred to earlier and in that report Professor D assessed Mr Yelland once again having regard to the criteria in Presser and Kesavarajah. After considering that further assessment Professor D opined:

"Mr Yelland's understanding of the Presser criteria remains rudimentary. On balance, I am of the view that Mr Yelland meets all the Presser criteria, but his appreciation of the substantial effect of evidence in Court remains borderline at this time. Borderline understanding relates to his borderline intelligence."

Dr N, in her report, formed the opinion after extensive testing of Mr Yelland that he does not meet all the standards as set out in Presser. In addition, Dr N opined:

"In view of his observed level of fatigue and discomfort after 90 minutes of interview he may also struggle to endure a lengthy trial."

In addition to the material before it the Tribunal had regard to section 15 of the Act. The Court had presumably the material which was also before the Tribunal and found Mr Yelland unfit on 23 March 2015. There was nothing before the Tribunal which suggested to the Tribunal that the presumption referred to in section 15 of the Act did not apply.

CONCLUSION

Having regard to:

- the expert written evidence presented by Dr N and Professor D; and
- the fitness criteria referred to in the decisions of Smith J in *R v Presser* [1958] VR 45 at 48, and Mason CJ, Toohey and Gaudron JJ in *Kesavarajah v The Queen* (1994) 181 CLR 230 at 245, 246:

Section 16

For the purposes of section 16 of the *Mental Health (Forensic Provisions) Act 1990*, the Tribunal determined that:

- because of Alistair Yelland's mild to borderline intellectual disability , he does not meet the criteria for fitness to be tried for an offence; and that
- on the balance of probabilities, this situation will continue, and Mr Yelland will not become fit during the period of twelve months after the finding of unfitness.

As is required by the *Mental Health (Forensic Provisions) Act 1990*, the Tribunal has taken steps to notify both the Court and the Director of Public Prosecutions of this opinion and determination.