

**THIS IS AN OFFICIAL REPORT OF THE MENTAL HEALTH
REVIEW TRIBUNAL PROCEEDINGS IN RELATION TO MR ERIC
GRAHAM AUTHORISED BY THE PRESIDENT OF THE TRIBUNAL
ON 20 JULY 2017**



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

FORENSIC REVIEW: Eric Graham
F0676 - 12th Review

s46(1) Review of forensic patients

Mental Health (Forensic Provisions) Act 1990

TRIBUNAL: Judith Walker President
John Basson Psychiatrist
Peter Champion Other Member

DATE OF HEARING: 16 March 2017 Adjourned
13 April 2017

PLACE: MSPC Long Bay Correctional Centre

APPLICATION: Conditional Release

DECISION

Amended Conditional Release Order

Having reviewed Mr Eric Graham, pursuant to ss.46 and 47 of the Mental Health (Forensic Provisions) Act 1990, the Tribunal orders that Mr Graham is released subject to the conditions set out below.

1. Mr Graham is to be discharged from Long Bay Correctional Centre as soon as practicable following the issuing of this order, on a date to be determined by the Governor/General Manager or delegate having regard to Mr Graham's care and treatment needs including, but not limited to:
 - a. his mental state;
 - b. the availability of accommodation; and
 - c. the availability of services in the community upon release.
2. If Mr Graham is not discharged within three (3) months of the issuing of the order, the Tribunal will hold a further review to consider the reasons for the delay.
3. While Mr Graham remains in Long Bay Correctional Centre, he will obey all directions of the Governor/General Manager or delegate as to medication, attendance at appointments, tests for the taking of medication or other substances, and leave of absence from that facility.

Case Manager

4. Mr Graham is to accept Ms A and Mr B, of the local Community Mental Health Service as his case managers. He shall be managed by the case managers in accordance with the NSW Ministry of Health *Guidelines for Forensic and Correctional Patient Ground Access, Leave, Handover, Transfer, and Release* (PD2012_50).
5. Mr Graham shall meet with one of his case managers, either at his home or at the local Community Mental Health Service. The case managers will decide how often these meetings will take place, and where they are to take place.
6. Mr Graham is to participate in any education, training, rehabilitation, recreational, therapeutic, or other programmes which his case managers asks him to attend.
7. Mr Graham must attend a mental health facility if directed to do so by his case manager or psychiatrist.

NB A forensic patient may also be scheduled and taken to a mental health facility under the Mental Health Act 2007.

8. The case manager may nominate a delegate to act as case manager in his or her place from time to time.

Psychiatrist

9. Mr Graham is to accept Dr R of the Goulburn Community Mental Health Service as his treating psychiatrist. He shall be managed by the treating psychiatrist in accordance with the NSW Ministry of Health *Guidelines for Forensic and Correctional Patient Ground Access, Leave, Handover, Transfer, and Release* (PD2012_50).
10. Mr Graham shall meet the treating psychiatrist at the local Community Mental Health Service. The treating psychiatrist can nominate an alternative venue for the meetings to occur. The treating psychiatrist will decide how often the meetings will take place.
11. Mr Graham is to accept the medication and other treatment prescribed by his treating psychiatrist. He shall take the medication in the way prescribed by the treating psychiatrist.
12. If the psychiatrist is concerned about Mr Graham's mental state, the psychiatrist may direct him to attend a mental health facility and seek admission to that facility as a voluntary patient. Mr Graham must immediately comply with that direction.

NB A forensic patient may also be scheduled and taken to a mental health facility under the Mental Health Act 2007.

13. The treating psychiatrist may nominate a delegate to act as treating psychiatrist from time to time.

Community Justice Program

14. Mr Graham shall engage with and accept the supervision, support, and programs provided to him as part of his involvement with the Community Justice Program (CJP) through his CJP clinical consultant, Mr L or delegate and other CJP staff involved in his support and will comply with all reasonable directions from those persons.

Drugs and Alcohol

15. The only mind or mood altering drugs that Mr Graham is to consume are those prescribed by the treating psychiatrist or regular registered medical practitioner.
16. Mr Graham must not take any illegal drugs or substances (or legal synthetic versions of illegal drugs).
17. Mr Graham must not consume any alcohol.
18. Mr Graham must promptly submit to any test for the detection of the use of drugs and substances, including alcohol, as shall be requested from time to time by Mr Graham's case manager. These tests may be administered randomly at the discretion of the case manager.

Accommodation

19. Mr Graham is to live at XX, an Intensive Residential Support (IRS) accommodation site operated by Lifestyle Solutions ('XX IRS'). If he wishes to live at another address, he must first obtain approval from the Tribunal at a review hearing.
20. Mr Graham must comply with the protocols and house rules of the XX IRS which apply to clients' accommodation, safety and support at the site.
21. Mr Graham must comply with the management and behaviour support plans developed for him by Lifestyle Solutions and CJP staff. In particular, he must not leave the XX IRS except for the purpose of appointments, activities or other visits organised in the community by the IRS staff and must be transported to such appointments, activities or visits by IRS staff. He must accept line-of-sight supervision by IRS staff at all times on these excursions away from the XX IRS.
22. Mr Graham to comply with all reasonable direction from XX IRS staff, including attending scheduled appointments or emergency treatment with health, mental health and other service providers and medication administration as prescribed to him by his GP, other health or mental health provider.
23. Mr Graham may not travel interstate, except for the Australian Capital Territory (ACT) on scheduled outings with IRS staff, or overseas without first obtaining the written approval of the President or a Deputy President of the Tribunal.

Conduct

24. Mr Graham must not engage in unlawful conduct or conduct that could give rise to a reasonable apprehension that the safety of himself or of any member of the public is, or could be, seriously endangered.
25. Mr Graham must not approach or otherwise seek to initiate any interactions with any children under the age of 16. This includes not frequenting any areas (e.g. schools, parks, etc.) during periods where there is reason to suspect there would be presence of children under the age of 16 (e.g. schools during school hours, parks on school holidays or after school, etc.).
26. Mr Graham is restrained from using the internet or any type of telephone except in the presence of a staff member of the XX IRS, his case manager or treating psychiatrist, and only for the purpose of communicating with family and friends and educational or business purposes (e.g. online learning, obtaining a driver's licence, completing business transactions, etc.).

Other conditions

27. Mr Graham is to provide his case manager with a recent (head and shoulders) photograph of a quality acceptable to the case manager. Alternatively he must co-operate while the case manager or delegate takes a photograph of him. The case manager is to provide a copy of the photograph to the Tribunal.

28. Mr Graham must attend any Mental Health Review Tribunal reviews according to arrangements as notified in advance to him, his case manager, and his solicitor, in writing by the Tribunal.
29. Mr Graham shall attend any reviews which are requested by the Community Forensic Mental Health Service.
30. Mr Graham shall allow the sharing of information about his treatment, progress and management between the Community Justice Program (CJP), Lifestyle Solutions, his community mental health team, his treating psychiatrist and any other person or persons providing health care, management and support services to him.
31. The breach or repeated breach of any of these conditions can lead to consequences for Mr Graham, including revocation by the Mental Health Review Tribunal of his conditional release and confinement back in gaol or a mental health facility.

Signed

Judith Walker
Deputy President
Dated this day: 19 May 2017

REASONS

This is the 12th Tribunal review of Eric Graham who is currently detained in the MSPC, Long Bay Correctional Centre. Mr Graham's legal representative is seeking conditional release at this review. The Tribunal had adjourned the previous review.

BACKGROUND

In 2011 the local District Court found that on the limited evidence available that Mr Graham committed the five of the offences named on the indictment and he was found not guilty with respect to three of the offences named on the indictment. Bail was continued and the matter was adjourned.

At a judge alone trial, the Court found that based on the limited evidence available, Mr Graham committed the offences. The Court imposed a series of concurrent limiting terms totalling 5 years to expire 26 April 2017.

At sentencing, Her Honour recommended in the strongest possible terms that, pending referral to the MHRT, he be held at the Long Bay Correctional Centre Forensic Hospital Wing, or other alternate mental health facility.

TRIBUNAL REQUIREMENTS

This is a review 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 a review the Tribunal may make orders as to the patient's continued detention, care or treatment or the patient's release.

The Act has special evidentiary requirements in relation to leave or release which must be satisfied before the Tribunal can grant leave or release. In view of this, the Tribunal requires notice of applications for leave or release to ensure that the necessary evidence is available. This process also enables the Tribunal to provide notice of such applications to the Minister for Health, the Attorney General, and any registered victims who are entitled to make submissions concerning any proposed leave or release. A notice was provided to the Tribunal prior to this review for an application for conditional release.

The Tribunal must be satisfied pursuant to section 43 of the Act *that the safety of the patient or any member of the public will not be seriously endangered if conditional release is granted.*

Without limiting any other matters the Tribunal may consider, the Tribunal must consider the principles set out in section 40 of the Act and section 68 of the *Mental Health Act 2007* as well as the following matters under section 74 of the Act when determining what order to make:

- (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 presented to the hearing.

ATTENDEES

Mr Graham attended the hearing and was represented by his lawyer, Ms Brae Sinclair of the Mental Health Advocacy Service. Also in attendance were:

- Solicitor, Crown Solicitor's Office
- Counsel for Attorney General
- Psychiatrist
- Geriatrician
- Psychologist
- Clinical Nurse Consultant
- Registered Nurse
- Site Manager, Lifestyle Solutions
- Psychologist Lifestyle Solutions
- Mr L, Community Justice Program
- OPG (by telephone)
- Local Community Health (by telephone)

- Lifestyle Solutions (by telephone)
- 3 x observers

PRESENT CIRCUMSTANCES

Mr Graham who is aged 59 suffered a severe head injury when he was eight years of age with subsequent intellectual impairment and behavioural disturbance.

Psychiatrist B in his report expressed the opinion that Mr Graham's primary diagnosis was his significant cognitive disability which has also been impacted by the multiple ischaemic strokes which he has suffered and which have caused vascular dementia and have left him with some physical disabilities. Intelligence testing has placed Mr Graham near the lower end of mildly intellectually impaired. He is illiterate and has had a long history of alcohol and other drug abuse. Mr Graham also has a history of emphysema and experiences chronic pain in both his legs and feet.

Mr Graham was admitted to Prince of Wales Hospital in June 2016 due to unsteadiness. He underwent a number of investigations but was determined not to have a movement disorder. Geriatrician B in her report observed that Mr Graham's chronic leg pain was thought to be neuropathic and was partially relieved by his medication. Psychiatrist B who also diagnosed Mr Graham as suffering from dysthymia which was currently in remission, described him as a frail man who looked older than his stated age.

In her report, the Clinical Nurse Consultant, with the Specialised Mental Health Service for Older People, observed that Mr Graham had not displayed any problems with behaviour since the previous MHRT and that he complied with what was asked of him by both Justice Health and CS NSW. She said that there had been no altercations with his peers and no signs of disinhibited, overfamiliar behaviour. She noted that Mr Graham's financial affairs were managed by the public trustee and that a continuation of his guardianship order was made for period of 12 months.

The proposal of the treating team was that Mr Graham be conditionally released to accommodation proposed by the Community Justice Program at XX an intensive residential service (IRS). The IRS is managed by the organisation, Lifestyle Solutions. During the three weeks prior to the hearing Mr Graham had had three visits from the Lifestyle Solutions team. He had met with the manager, nurse and psychologist.

The Community Justice Program report by Mr L, clinical consultant, described the proposed site as a 25 acre rural location set amongst a farming environment. The closest school, park or community centre is approximately 15 km away. Local hospital and medical centre are approximately 20 km away. There are a

number of security features at the property which has a capacity for four clients who are accommodated in an open plan house with staff present 24 hours each day. At least two staff are available during day shifts and one during an active and awake night shift. The Site Manager told the Tribunal that, including herself, there could be up to four staff present during the day. The staff member on night shift makes regular checks during the night to observe each of the clients and check breathing. Staff are equipped with a satellite phone which can be used to contact emergency services. The front door is locked all the time. Other doors are locked at 11pm. The doors are alarmed as are the screens on the windows. There are external sensory lights around the house and storage sheds. During the day clients are regularly monitored and are generally within sight due to the layout of the property. The property has two sets of fencing which were described as "farm house style fencing". The first fence is an approximately 1.2m high metal fence with locking gate enclosing house and front and back yard areas. The second 1.5 metre high fence encloses the boundary of the property. During outings from the centre, line of sight supervision is maintained.

In his report, Mr L noted that the site had an established core group of primary staff who regularly work with clients and have experience supporting clients who have a history of sexual offending behaviour. The primary staff members have all worked at the site for at least four years and the newest casual staff member started work at the site over eight months ago.

The interim Incident Prevention and Response Plan prepared by a Lifestyle Solutions clinician, set out an interim management and support plan for Mr Graham which would be reviewed when his needs were further assessed if he was conditionally released to the accommodation. The plan indicated that staff at the site would work with Mr Graham to update a behavioural support plan, assist with his medication and organise regular health reviews, help him access recreational and other activities and work with him to help develop his understanding of his offence cycle and develop strategies to prevent him engaging in offending behaviour. They would monitor the release conditions.

Mr Graham told the Tribunal that his particular interests were in animals and gardening. Activities available at the XX IRS catered to these interests.

Risk issues

The significant risk posed by Mr Graham is a risk of re-offending. He had a previous limiting term imposed on when he was found to have committed two offences of sexual intercourse without consent with a person under the age of 16. It was just over one year after this limiting term expired when he committed the offences which are the subject of the present limiting term.

Mr Graham has denied any involvement in sexual offending or has said that he has no memory of sexual offending. This, and his cognitive impairments, have limited his participation in rehabilitation programs for sexual offenders while in custody. In his report Mr L observed that Mr Graham appeared to be unaware of potentially risky situations for sexual offending due to his lack of awareness of his offence cycle. Mr L noted that his difficulties in being rehabilitated and poor insight meant that he continued to pose a risk of sexual reoffending. Mr L set out a summary of findings from two risk assessment measures which, he said, had been shown to have reliability and predictive validity for offenders with an intellectual disability. Using the first, the Static-99R, Mr Graham was placed in the moderate to high category for risk of recidivism. The second, the ARMIDILO-S focused on the manageability of offenders in the community and thus on dynamic risk and protective factors. Taking into account the environment, protective factors and support which would be available for Mr Graham at the XX IRS property the ARMIDILO-S risk measures indicated that there would be a low risk of re-offending should he reside there. In particular as well as the support, there would be close monitoring, limited access to potential victims and to drugs and alcohol. In his report Mr L expressed the opinion that the overall risk rating for Mr Graham at XX IRS was in the low range.

In relation to Mr Graham's own risk arising from his health issues, Mr L noted that he would not have rapid access to intensive medical support at the proposed location but that the staff would be trained in the warning signs of a CVA and emergence management of such a situation, including immediately contacting emergency services.

It was the opinion of the Psychologist in her report that the plan proposed by Lifestyle Solutions was comprehensive and designed to meet Mr Graham's individual needs and environmental needs and addressed both personal risk factors and environmental risk factors. She observed that the staff had received training in sexual offending behaviour and would provide support for Mr Graham. It was her opinion that the safety of the public would not be seriously endangered by his release to the proposed site. Mr Graham's guardian told the Tribunal that she had considered the support and risk behaviour management available at XX IRS and considered that the site provided the most appropriate accommodation for Mr Graham.

Further evidence at hearing also addressed relevant risk issues. It was apparent that the isolation of the property was itself a significant protective factor given Mr Graham's mobility problems.

Mr Graham arrived at the hearing in a wheelchair and it was explained that he had difficulty walking long distances. His nurse told the Tribunal that he preferred to use a toilet located in the courtyard of his unit but

that he was required to negotiate a step for access. She said that she observed that he had a lot of trouble managing the step.

A Geriatrician told the Tribunal that because of the physical disability caused by the strokes, he thought that Mr Graham would not be able to climb the fences around the property.

The greater risk posed by Mr Graham was likely to be in the community. He was likely to travel away from the site for medical consultations, meetings with his case manager, attendance at programs and for other purposes including participation in activities organised for the clients at the property.

Site Manager told the Tribunal that transport would be provided by the IRS for attendance at these activities including for medical appointments. She said that line of sight supervision would be provided whenever Mr Graham was participating in activities outside the site and that there would be one staff member for each client or two staff members for three clients depending on the nature of the relevant activity.

Mr L referred to the ongoing review and risk management at the site which would be part of the conditional release and the particular conditions to which CJP considered Mr Graham be subject to minimise risk. He referred to the close monitoring at the site, the line of sight supervision in the community and a restraint upon Mr Graham from consuming drugs or alcohol with random testing to assure compliance with this condition.

It was clarified at hearing that if Mr Graham was conditionally released, his case management would be organised through the local Community Mental Health Service. Ms A from the CMHS participated in the hearing and told the Tribunal that she anticipated that she and Mr B, CNC at the CMHS, would co-case manage Mr Graham. Mr B, she said, had experience with sex offenders. Ms A also advised the Tribunal that Dr R, psychiatrist, who also worked with older people, participated in a fortnightly clinic at the CMHS. Ms A said that she envisaged that initially Mr Graham would be able to be seen weekly and then on a fortnightly basis at the CMHS by his case manager/s. She also anticipated that initially he would be able to consult with Dr R on a six weekly basis, and later on a six monthly basis unless more frequent appointments were required.

The Site Manager advised the Tribunal that her work presently involves the Drug and Alcohol Service in the local area and that she also has regular contact with the CMHS and would be able to organise Mr Graham's transport to these services as well as to random drug and alcohol testing.

After evidence had been given at the hearing, Counsel appearing for the Attorney General told the Tribunal that further consideration would be given to the submissions made prior to the hearing. After a short adjournment to allow further instructions to be taken, Counsel advised the Tribunal that the Attorney General no longer opposed conditional release for Mr Graham on the basis that stringent conditions applied to his supervision and applied to other matters referred to in the evidence and discussed at hearing.

DETERMINATION

The Tribunal considered all of the evidence before it, particularly that related to Mr Graham's needs, the risks of re-offending he posed, the features of the XX IRS and the management plan for his needs and risks. Having considered all of these matters the Tribunal was satisfied pursuant to s43 that the safety of Mr Graham or any member of the public will not be seriously endangered by Mr Graham's conditional release with the conditions set out in the proposed order. Having regard also to the other matters to which sections 43/49 and 74 of the *Mental Health (Forensic Provisions) Act 1990* refer, the Tribunal determined to make an order granting Eric Graham, conditional release.

Given his limiting term expires on 26 April 2017, there was not an issue concerning whether he had spent sufficient time in custody.

FITNESS TO STAND TRIAL – s47(4)(a)(b) *Mental Health (Forensic Provisions) Act 1990*

It was the evidence of Psychiatrist B that because of his limited understanding of court proceedings, Mr Graham remained unfit to be tried.

Geriatrician B in her report had similarly expressed the opinion that Mr Graham's cognitive impairments precluded his ability to understand evidence, make decisions on any evidence presented and to instruct his legal representatives. Given this evidence the Tribunal determines that Mr Graham is unfit to be tried.

There should be a further review in six months if Mr Graham continues to be a forensic patient at that time.

Signed

Judith Walker

Deputy President

Dated this day: 16 May 2017