

**THIS IS AN OFFICIAL REPORT OF THE MENTAL HEALTH
REVIEW TRIBUNAL PROCEEDINGS IN RELATION TO MR
NICHOLS AUTHORISED BY THE PRESIDENT OF THE
TRIBUNAL ON 29 AUGUST 2013**



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: Mr Nichols
8th Review

s 46(1) Review of forensic patients
Mental Health (Forensic Provisions) Act 1990

TRIBUNAL: Patricia Staunton AM Deputy President
John Basson Psychiatrist
Elisabeth Barry Other Member

DATE OF HEARING: 14 June 2018

PLACE: X Hospital by videolink to
Y Correctional Centre

APPLICATION: Transfer to mental health facility

DECISION

Having reviewed the case of Mr Nichols on 14 June 2018 under sections 46, 47 and 48 of the *Mental Health (Forensic Provisions) Act 1990*, the Tribunal orders that Mr Nichols be transferred to and detained in Y Hospital to receive care and treatment, as soon as a bed becomes available, but in any event within twelve months from 14 June 2018. In the meantime, Mr Nichols is to be detained in a correctional centre for care and treatment.

Signed

Patricia Staunton AM
Deputy President

Dated this day: 21 June 2018

REASONS

Mr Nichols is currently detained in Y Correctional Centre on an order of the Mental Health Review Tribunal dated 2 June 2015. Mr Nichols' treating team is seeking no change at this review. The Tribunal on its motion made a time limited order at this review.

BACKGROUND

[Mr Nichols is both a forensic patient and serving a sentence of imprisonment.]

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 no change.

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,*

DOCUMENTARY EVIDENCE

The Tribunal considered the documents listed in the Forensic Patient Exhibit List.

ATTENDEES

Mr Nichols attended the hearing by videolink and was represented by his lawyer, Ms Agnes Dalumpines of the Mental Health Advocacy Service. Also in attendance was a Registered Nurse from Y Correctional Centre.

PRESENT CIRCUMSTANCES

1. Mr Nichols has been diagnosed with schizophrenia, paranoid type. He is currently prescribed Quetiapine. His present mental state is noted in his clinical progress notes of [date] last by Dr A, Psychiatrist as being in remission.
2. Dr A was not available to give evidence before the Tribunal and, apart from his entries in Mr Nichols' medical records, did not provide a written report to the Tribunal. Reference to Mr Nichols' clinical progress notes confirmed he had seen Mr Nichols twice since the last Tribunal review in December 2017.
3. The Registered Nurse gave oral evidence to the Tribunal that Mr Nichols was managing well in his present environment. She stated she had formally seen Mr Nichols once in the past six months but she occasionally encountered him when he came for his medication.
4. Before the Tribunal Mr Nichols spoke in a rather animated fashion, described by Dr A as 'driven' in delivery. He talked about the work he does at Y Correctional Centre and that it keeps him busy and any 'bad thoughts' at bay.
5. A report from the Serious Offenders Review Council (SORC) last noted, inter alia, that Mr Nichols was 'travelling well at [Y] CC' with no adverse reports. He is eligible to be considered for progression to medium security on [date].
6. The request from Mr Nichols's 'treating team' was that he should remain at Y CC. Ms Dalumpines confirmed her instructions from Mr Nichols were also to that effect and Mr Nichols himself stated his wish to remain where he was as he had an established job and routine that suited him.
7. It is a matter of record that Mr Nichols is both a forensic patient and a sentenced inmate. It is also a matter of record that Mr Nichols has been assessed as requiring a transfer to the X Hospital to enable him to receive the therapeutic treatment and access to programs that are only available at the X Hospital. Mr Nichols's work at Y does keep him occupied, however the reality is that Mr Nichols's underlying mental illness requires he be treated, not just managed.
8. It has also been a matter of some debate as to whether Mr Nichols may be transferred to the X Hospital because of his concurrent status as a sentenced inmate. The Tribunal does not propose to canvass earlier submissions received on this issue at this time except to say it is satisfied Mr Nichols is eligible to be admitted to the X Hospital because he is a forensic patient. That he is also a sentenced inmate does not preclude his admission. While not exactly on this point, the Tribunal notes an earlier decision of the Tribunal (in *Re Jones* [2017] NSWMHRT 8) confirmed the Tribunal's power pursuant to s 58(3) of the *Mental Health (Forensic Provisions) Act 1990* (the Act) to transfer a patient detained in a correctional centre to a specified mental health facility within a particular time frame.

9. Also s 60 of the Act provides that any period of time Mr Nichols serves in a mental health facility would count as full-time detention for the purposes of sentence and parole considerations. Further, as has been pointed out earlier by the Tribunal, there 'does not appear to be anything in the Act or the *Crimes (Administration of Sentences) Act 1999* to suggest that the imposition of a sentence or imprisonment deprives the Tribunal of its power under ss 46 and 47 to decide a forensic patient's place of detention'.
10. In June 2016 SORC reportedly advised it would be appropriate for discussions to occur between Corrective Services, Justice Health and Forensic Mental Health to determine protocols for these cases. There was no evidence before the Tribunal to confirm whether such discussions had occurred and what progress, if any, had been made.
11. The Tribunal expressed concern that no progress appears to have been made to facilitate Mr Nichols's transfer to the X Hospital. On any view, the circumstances of his index offence as well as his diagnosed mental illness require a thorough assessment and treatment that only the X Hospital can provide. As it was explained to Mr Nichols, while he may feel safe and comfortable at Y CC, he will not make the necessary progress he needs to make as a forensic patient until such time as he receives the appropriate care and treatment that his mental illness requires. On any reasonable view, that will take a considerable period of time.

DETERMINATION

12. The Tribunal determined it was appropriate at this time to make the appropriate order to facilitate Mr Nichols's transfer to the X Hospital for care and treatment. In doing so the Tribunal acknowledged that certain protocols may be required as flagged by SORC in 2016. Accordingly, the Tribunal determined Mr Nichols was to be transferred to the X Hospital within 12 months from today's date and in the meantime he is to remain in a correctional centre to receive care and treatment.

Mr Nichols will be further reviewed in six months.