

**THIS IS AN OFFICIAL REPORT OF THE MENTAL HEALTH REVIEW  
TRIBUNAL PROCEEDINGS IN RELATION TO MS WILLIAMS AUTHORISED  
BY THE PRESIDENT OF THE TRIBUNAL ON 1 JUNE 2020**



*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:** Ms Williams

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

**TRIBUNAL:** Paul Lakatos SC President  
Rob McMurdo Psychiatrist  
Michael Gerondis Other Member

**DATE OF HEARING:** [date]

**PLACE:** Hearing Room 4, Mental Health Review Tribunal

**APPLICATION:** Grant of leave of absence;  
- Unsupervised Overnight Leave

**DECISION**

Having determined pursuant to section 49 of the *Mental Health (Forensic Provisions) Act 1990* that neither the safety of Ms Williams nor any member of the public would be seriously endangered thereby and having considered the matters to which section 74 refers, the Tribunal orders the following:

- i. Unsupervised Overnight Leave for use up to seven (7) nights to expire in 6 months of the date of the order;
- ii. Ms Williams is to attend personally at [A Unit] twice a week (for the first 3 months) with recommendation that the team conduct drug screens and breathalyser when appropriate;
- iii. Ms Williams subscribe to an amended Unsupervised Overnight Leave Management Plan (the original version of which was signed by Ms Williams on [date]) which allows [A Unit] staff to conduct home visits "at reasonable times" in place of "as reasonably requested".

Otherwise, that the current arrangements for Ms Williams' care, treatment and detention as a forensic patient at [A Hospital] continue to apply including any previously approved leave.

Signed

Judge P I Lakatos SC  
**President**  
Dated 11 May 2020

## REASONS

This is the X review of Ms Williams who is currently detained in [A Hospital] on an order of the Tribunal dated [date] with access to escorted day leave; supervised day leave with family, to attend [work] and with NDIS workers; unsupervised day leave for use in accordance with Dr A's Leave Plan dated [date] and unsupervised overnight leave for up to two (2) nights per week to accommodation that has been approved by the treating team, as per Dr A's Leave Plan dated [date]. Ms Williams is not permitted to exercise any leave in the [A] Local Government Area.

Ms Williams' treating team is seeking an extension of the already approved unsupervised overnight leave for use up to seven (7) nights per week at this review.

### BACKGROUND

[Details in relation to patient's index offence.]

### 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 extension of the already approved unsupervised overnight leave for use up to seven (7) nights per week.

The Tribunal must be satisfied pursuant to section 49 of the Act

*that the safety of the patient or any member of the public will not be seriously endangered if the leave 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) ...

(e) ...

## **DOCUMENTARY EVIDENCE**

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

The Tribunal also had regard to a submission from a registered victim.

## **ATTENDEES**

Ms Williams attended the hearing and was represented by her lawyer, Mr Todd Davis of MHAS. Also in attendance were:

- Dr A, Psychiatrist;
- Dr B, Psychiatry Registrar;
- Ms C, Clinical Psychologist;
- Ms D, Social Worker;
- Ms E, Occupational Therapist;
- Ms F, Registered Nurse, and
- One SVSS observer.

## **CIRCUMSTANCES AND CONSIDERATIONS**

[Details in relation to index offence, and particulars of Ms Williams clinical presentation and personal history have been redacted from these reasons]

Ms Williams has a diagnosis of schizoaffective disorder and alcohol use disorder. This is the X review of Ms Williams, she most recently having been before the Tribunal on [date] when she was granted unsupervised day leave and unsupervised overnight leave for up to two nights per week in accordance with the leave plan provided by the treating team.

By separate Notices of Intent, the treating team and Ms Williams seek an order for unsupervised overnight leave to be increased up to 7 nights, which request is occasioned by the current coronavirus epidemic.

The Minister for Mental Health by her counsel Ms J Caldwell, provided written submissions arguing that section 49 of the *Mental Health (Forensic Provisions) Act 1990* does not permit the Tribunal to make an order granting a forensic patient leave of absence on a continuing and indefinite basis. In the alternative, the Minister does not oppose the application for leave of absence but made submissions as to a number of issues she considered relevant to the exercise of that discretion.

Ms Seares, the solicitor representing Ms Williams, objected to the Tribunal considering the Minister's submissions on the basis that the Minister had failed to comply with the Practice Direction of the Tribunal which required such submissions to be filed one week before the hearing. In the present case, they were filed on the day before the hearing. The solicitor stated that this caused unfair prejudice to her client in allowing proper submissions in response to be furnished. Ms Seares was unavailable at the time the hearing and Mr Davis represented Ms Williams.

The Tribunal notes that clause 9 of the Practice Direction requires the Minister to be notified of any review hearings where leave or release is to be considered 5 weeks before the hearing date. The notification requirements for urgent hearings are "at least 2 business days" before the hearing (clause 10). It should also be noted that the Tribunal may decide that a departure from the Practice Directions may be appropriate in the individual circumstances of a particular case. The Minister was notified of the fact of the hearing on [date] and of the precise date, on [six days later].

The Tribunal concluded that it should make a decision concerning Ms Williams on the most informed basis that is possible, but recognised the prejudice to Ms Williams' lawyers of the constrained timeframe. Accordingly, it was determined that the submissions of the Minister should be received and that Ms Seares be accorded the opportunity to reply to those submissions in writing, prior to any decision being made. Mr Davis did not press for the opportunity to make further written submissions.

The treating team advised that the Director General granted Ms Williams leave of absence between [date] and [date], pursuant to section 50 (1) of the Act which empowers leave of absence "in circumstances constituting an emergency or in other special circumstances as the Director General thinks fit".

It is noted that in support of that application, the treating team indicated that Ms Williams had responded well to treatment and demonstrated no psychotic symptoms. When she is untreated, her illness is characterised by a delusional ideations, auditory hallucinations and ideas of reference along with concurrent periods of major mood episodes. The "good prognostic factors" were the late onset of the illness, the presence of mood symptoms, ongoing good communication with her husband, good response to treatment and good insight. The letter summarised the risk management steps as follows: working X days per week at [work]; travelling in her own motor vehicle; residing at her own flat in [place] and ringing [A Unit] daily and visiting weekly. The application was based on the risks associated with the coronavirus epidemic and in particular, on Ms Williams potentially mixing with other patients as she exercises her current leave. The team does not feel that the plan places the patient or the general public at risk.

The Tribunal considered the psychiatric report of Dr B and Dr A; the nursing report of Ms G and Mr H; the social work report of Ms D; the psychotherapy report of Dr I and the report from Ms J from [work]. The treating team provided a management plan for the exercise of unsupervised overnight leave, which has been signed by Ms Williams. In addition, the Tribunal considered a letter from Ms Williams.

**Mental State, including the likelihood of any deterioration in mental state:**

At her mental state examination, Ms Williams presented as polite, engaging and responsive. She was found to be free of overt and covert psychotic symptoms and was well orientated, attentive and alert. Her insight and judgment were present and she was found to be accepting of engagement in ongoing treatment.

The nursing report confirmed that Ms Williams' insight and judgment were good and she showed no evidence of overheard psychotic symptoms or perceptual disturbances.

**Current risk assessment for harm or endangerment to self or others:**

The risk assessment undertaken in relation to Ms Williams indicated that she falls into a group of people at low risk of future violence. She has a very limited history of violence or offending behaviour.

The risk assessment undertaken by the nursing team also confirmed Ms Williams' status as presenting a low risk of future violence.

**Future plans in relation to care, treatment or control of the person:**

Ms Williams acknowledges that she understands her obligation to comply with the nine conditions which are listed, including to engage in work at [work]; to call [A Unit] each day of the week and to "return to [A Unit] for weekly review as requested by the Treating Team" and to abide by conditions relating to abstinence from alcohol and drugs, non-prescription medication, submission to urine drug and alcohol tests as well as a number of other conditions.

In a letter to the Tribunal, Dr A sought an early review for Ms Williams citing the specific effects of the COVID-19 pandemic.

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

As indicated earlier, the Minister primarily relied upon extensive written submissions made by her counsel and Ms Seares, solicitor for Ms Williams, also furnished written submissions.

The Minister submitted that section 49 (1) of the Act permits the grant of leave for a specified period. Relying upon the ordinary meaning of the word "period", it was submitted that the notion involved a specific, apportioned or fixed length of time. Accordingly, it was impermissible in the proper exercise of that power that a patient be permitted to be on leave in the community indefinitely.

Furthermore, it was argued that the italicised words of the section relating to leave "for such period and subject to such terms and conditions, *if any*, as the Tribunal thinks fit" may qualify the period as well as the "terms and conditions", but the better view is that they only qualify the former not the latter. (To the extent that it matters, the Tribunal notes that the words "if any" could not sensibly apply to "the period", because the section proceeds on the basis that there will be a grant of leave and then qualifies that leave

by reference to terms and conditions. This can be illustrated by applying the words directly, which would make the section read in effect: the Tribunal may make an order granting leave of absence “for such period... if any”.)

Ms Williams’ solicitor argued that the Minister’s contention ignores the use of the word “may”, which it is submitted, gives the Tribunal “discretion as to whether or not to make the order for leave, whether the leave granted is to be for a period of time, how long the order for leave will stand (another interpretation of *such period*) and whether to impose conditions”. It is submitted that the section does not oblige the Tribunal to impose a time limit on any grant of leave.

In the view of the Tribunal, the reference to “such period” in the section does require a specification of the length of time in which the leave of absence will operate. That appears to be the natural and ordinary meaning of the words and accordingly, the Minister’s submission in this regard, is correct. The submission that the use of the word “may” (connoting a discretion) permits the grant of leave in effect for a period of time or not, in our opinion, does not conform to the language of the statute. Statutory construction dictates that if language is used by the legislative drafters, it was intended that the language has some work to do. If the submission on behalf of Ms Williams is correct, it would have been a simple matter to have drafted the provision, specifying that the grant of leave could be made for a fixed time or an unlimited time.

Based on this conclusion, the only legislative requirement imposed on the Tribunal is to specify the period of time in which leave of absence is granted i.e. to place a sunset clause on the execution of the order for leave. That could be done by specifying a point of time or by reference to a particular event occurring e.g. the lessening of restrictions consequent upon the coronavirus epidemic.

It should be noted that counsel for the Minister did not accept that specification of a particular event as the endpoint, was permissible. That appeared to be on the basis that such event may never come to pass. However, and without needing to decide this point, an event may be a fixed point i.e. the death of a person, but nevertheless be a point which is not capable of being specified. There is a reasonable argument to permit the conclusion that such an endpoint does conform with a fixed or specified portion of time, albeit the precise endpoint being unknown.

The Minister then submitted that it would not be permissible for the Tribunal to grant such an extensive period of leave that it would in effect, amount to the release of a forensic patient under section 47 (1) (b) of the Act and points to the clear distinction between the notions of leave of absence and the release of a forensic patient. It was submitted that an unspecified length of order or alternatively a lengthy specified order, was tantamount to an order for conditional release rather than leave of absence. The submission is underpinned by reference to the additional safeguards attending the release of a forensic patient contained in the Act and as the Tribunal reads the submission of Ms Seares, no apparent issue is taken with this particular analysis.

However, Ms Seares argued that there is a substantial difference between the notions of leave and release, most importantly that the latter term involves the treating team at hospital relinquishing “all authority over patient”. It is further argued that the proposed leave application does not equate with conditional release given the strictures of the management plan.

In the opinion of the Tribunal, the submission on behalf of Ms Williams to the effect that the unsupervised overnight leave sought is qualitatively different to a conditional release order, must be accepted. The conditions of the leave and the fact that Ms Williams must regularly report to [A Unit], emphasise the distinction. It is unarguable that the constraints upon her if the leave was granted, would be lessened; but it would not amount to conditional release.

Finally, the Minister submitted in the alternative that the following matters warranted careful consideration in considering the proposed increase to Ms Williams’ unsupervised overnight leave:

[clinical information]

The Minister submitted that these matters indicate the possibility that Ms Williams may overestimate her ability to cope with unsupervised overnight leave, her vulnerability to alcohol use remains a constant risk factor, Ms Williams has the capacity to make decisions which are against the advice of her treating team and not in her best interests and finally, that she may not be open with her treating team about her personal circumstances.

In response, Ms Williams’ solicitor contended that the application should be granted. She has had no psychotic symptoms and is fully compliant with medication and treatment. She has worked diligently on her recovery and has a good therapeutic alliance with the treating team. She has and will have continuing contact with her treating team at [A Unit] and has been tested on leave which has been gradually increased as she progresses. Her risk assessment places her at low risk for future violence. Ms Williams has agreed to be subject to an agreed leave plan.

## **CONSIDERATION**

The Tribunal accepts the validity of the argument on behalf of the Minister that any order made under section 49 must be for a specified period. However, if such an order is warranted pursuant to section 49 (3), it is open for a grant of leave of absence to be made which expires at a certain fixed time or in relation to a fixed event. Therefore it becomes necessary to determine the merits of the application.

It should be noted at the outset that even if the Tribunal granted ongoing unsupervised overnight leave for seven nights, that does not equate to the grant of conditional release. It is accepted that it would accord Ms Williams substantial freedom and removal from her current close scrutiny at [A Unit] (and therefore should be approached with the appropriate caution). However, the fact that she would be required to present herself on a weekly basis to the treating team at [A Unit] and if she breaches that or any other

condition, she may be returned to the medium secure unit which will continue to hold a place for her, mark out the leave of absence as qualitatively different to an order for conditional release.

On behalf of the treating team, Dr A told the Tribunal at the hearing that the normal process of extending leave in the case of a patient such as Ms Williams, was to do so in a graduated fashion, increasing the length of time in which unsupervised overnight leave was to be exercised. That process was interrupted in the present case by the coronavirus epidemic. He stated that there was a real risk for Ms Williams' recovery if she could exercise no unsupervised overnight leave at all (which was the likely outcome by dint of enforcing the COVID 19 requirements at [A Unit]).

Ms Williams otherwise presented no risk factors in recent times and was settled. The treating team expressed no concerns relating to Ms Williams' cooperating with rules and regulations. She has been engaging with the drug and alcohol program on the unit.

The Tribunal sought the submissions of the parties about whether it could properly take into account the prejudicial effect upon Ms Williams and her recovery, if leave was not granted. Counsel for the Minister submitted that it was a relevant consideration along with the other matters which have been raised. Ms Caldwell reemphasised that the Minister was not objecting to leave but limited her role to raising relevant considerations.

Solicitor for Ms Williams, Mr Davis submitted that Ms Williams had progressed very well and presented no appreciable risks to her own safety or that of any other member of the community. He emphasised that the views of the treating team were overwhelmingly positive i.e. in short the benefit for Ms Williams' recovery, was not impacted in any significant way by the remote risks which may be present.

The Tribunal acknowledges the significant assistance provided by Ms Caldwell on behalf of the Minister and Ms Seares (as well as Mr Davis at the hearing) on behalf of Ms Williams. The case presented unprecedented problems and matters of some complexity. However, the Tribunal concluded that given the overwhelmingly positive progress and predicted behaviour of Ms Williams, and particularly the low level of risk to herself and to others which the extended leave might occasion, the order for seven nights unsupervised overnight leave should be granted.

However, it was considered appropriate to add a number of further measures, to ensure that Ms Williams retains a degree of the necessary structure for her continued recovery. Those measures were particularly directed to ensuring that Ms Williams is closely monitored in relation to any drug and alcohol intake, which as has been pointed out, is a known and serious risk factor for the decompensation of her mental state and behaviour.

Accordingly, the Tribunal made the following additional orders:



- i. an order for 7 nights unsupervised overnight leave to expire in 6 months of the date of the order;
- ii. Ms Williams is to attend personally at [A Unit] twice a week (for the first 3 months) with recommendation that the team conduct drug screens and breathalyser when appropriate;
- iii. that Ms Williams subscribe to an amended Unsupervised Overnight Leave Management Plan (the original version of which was signed by Ms Williams on [date]) which allows [A Unit] staff to conduct home visits “at reasonable times” in place of “as reasonably requested”.

Dr A on behalf of the treating team, undertook to have the amended Management Plan signed by Ms Williams. The Tribunal determined to review the case of Ms Williams in six months.

Signed

Judge P I Lakatos SC  
**President**

Dated 11 May 2020