



## Mental Health Review Tribunal New South Wales

Case Name: Mr Edwin

Medium Neutral Citation: [2024] NSWMHRT 1

Hearing Date(s): 14 September 2023

Date of Decision: 26 October 2023

Jurisdiction: Mental Health Review Tribunal

Before: Magistrate Carolyn Huntsman, President MHRT  
Dr John Basson, Psychiatrist  
John Hageman, Social Worker

Decision: Mr Edwin has not spent sufficient time in custody.

Catchwords: Sufficient time in custody – Court’s reasons on sentence

Legislation Cited: *Mental Health Act 2007 No 8 (NSW)*  
*Mental Health and Cognitive Impairment (Forensic Provisions) Act 2020 (NSW)*  
*Crimes (Sentencing Procedure) Act 1999 (NSW)*

Cases Cited: *Attorney General for the State of New South Wales v XY* [2014] NSWCA 466,  
*Adams* [2013] NSWMHRT 1  
*Talbingo* [2015] NSWMHRT 6

Category: Principal judgment

Representation: Mental Health Advocacy Services

File Number(s): [2024] NSWMHRT 1

Publication Restriction: This is a de-identified version of the decision.

## **DECISION**

- 1 These are the Tribunal's written reasons for its decision at the hearing held on 14 September 2023.
- 2 Pursuant to ss78 and 81 of the *Mental Health and Cognitive Impairment Forensic Provisions Act 2020*, the Tribunal made no change to the current orders for Mr Edwin.

## **SUMMARY**

- 3 Mr Edwin is a forensic patient. Mr Edwin's current Tribunal order dated 28 February 2023 is for detention in a correctional centre. The treating team requested no change to the current order at this review.
- 4 The Tribunal was asked by Mr Edwin's lawyer to consider making an order for release, with conditions. This review hearing is limited to the question of whether there has been sufficient time spent in custody.
- 5 The Tribunal was not satisfied that Mr Edwin has spent sufficient time in custody for reasons detailed below. The Tribunal further found on the evidence provided, that Mr Edwin's care and treatment needs are being met and there is no evidence of an alternative/appropriate place of detention, and accordingly the current order should continue.

## **STATUTORY CRITERIA**

- 6 At a review of a forensic patient, the Tribunal may make orders about the patient's detention, care or treatment in a mental health facility, correctional centre, detention centre or other place; or conditional or unconditional release: s81 of the MHCIFPA.
- 7 In reaching its decision, the Tribunal notes that a forensic patient who is ordered to be detained in a mental health facility should, so far as practicable, be detained in a mental health facility or other facility that is appropriate to the patient's needs and appropriate having regard to the safety of the patient and other persons: s70(2) of the MHCIFPA.

- 8 The Tribunal has had regard to the principles set out in s68 of the *Mental Health Act 2007* and the objects of the MHCIFPA set out in s69 of that Act.
- 9 Section 84(2) of the MHCIFPA provides that the Tribunal may not make an order for release unless it is satisfied that that the safety of the patient or any member of the public will not be seriously endangered by the patient's release.
- 10 Considering whether a proposed release will seriously endanger the community involves consideration of both the probability and the gravity of a risk to the community coming to pass: *Attorney General for the State of New South Wales v XY* [2014] NSWCA 466, Beazley P at [51], Basten JA at [168], McColl JA agreeing.
- 11 Section 84(1)(a) of the MHCIFPA provides that the Tribunal must also consider whether or not other care of a less restrictive kind, that is consistent with safe and effective care, is appropriate and reasonably available to the patient or that the patient does not require care.
- 12 Section 84(1)(b) of the MHCIFPA requires the Tribunal to consider a report from a forensic psychiatrist or other prescribed class of person who is not treating the forensic patient. The Tribunal has considered the report of Dr John Albert Roberts, which meets these criteria.
- 13 Section s84(1)(c) of the MHCIFPA requires the Tribunal to consider whether a forensic patient subject to a limiting term has spent sufficient time in custody.
- 14 The MHCIFPA sets out a number of other matters that the Tribunal must also consider when conducting a review:
- (1) Does Mr Edwin have a mental health impairment or cognitive impairment?
  - (2) Are there 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 and the continuing

condition of the person, including any likelihood of deterioration and the effects of that deterioration: s75 of the MHCIFPA.

(3) Whether Mr Edwin is fit to stand trial: s80 of the MHCIFPA.

15 On a review of a person who has been found unfit to be tried for an offence, the Tribunal must determine whether the person has become fit to be tried for an offence. The test for fitness is set out in ss36 and 44(5) of the MHCIFPA. The Tribunal's determination is to be made on the balance of probabilities: s80(3) of the MHCIFPA.

16 A person who has been found to be unfit to be tried for an offence continues to be unfit to be tried for the offence until the contrary is, on the balance of probabilities, determined to be the case: s45 of the MHCIFPA.

#### **SUFFICIENT TIME IN CUSTODY**

17 As Mr Edwin is subject to a limiting term, the Tribunal must consider whether he has spent sufficient time in custody: s84(1)(c) of the MHCIFPA.

18 In *Adams* [2013] NSWMHRT 1 and *Talbingo* [2015] NSWMHRT 6, the Tribunal determined that the sufficient time in custody is to be determined having regard to the following matters:

(1) The length of the limiting term set by the court.

(2) The sentencing remarks made by the court when setting the limiting term.

(3) The patient's history as a forensic patient whilst serving the limiting term to date, including any progress or lack thereof made in matters such as insight into their offending behaviour at the time of the index offence, the degree of the patient's remorse and contrition, their current physical and mental condition and such other relevant matters that may arise from a consideration of that history, so that an assessment can be made whether or not it remains appropriate to continue to detain the patient for

the purposes of sentencing referred to in Section 3A of the *Crimes (Sentencing Procedure) Act 1999*.

19 This Tribunal will decide the issue in a like manner.

## **EVIDENCE BEFORE THE TRIBUNAL**

20 The Tribunal has considered the reports and other documents submitted to the Tribunal either before or at the hearing of this matter and which are exhibits in evidence.

21 It was apparent at this review hearing that the sentencing reasons of the District Court Judge, of 29 June 2022, were not part of the material provided for the review and were also not before the prior Tribunal at the review in February 2023. The current review hearing considered all the available evidence, including medical reports and evidence about the current care and treatment of Mr Edwin, however determined it appropriate to reserve the decision to allow a consideration of the sentencing reasons for the imposition of the limiting term. These were obtained and provided to the Tribunal panel, and also the legal representative for Mr Edwin – further supplementary submissions were provided by Mr Edwin’s legal Counsel, Mr de Brennan, and these were carefully considered by the Tribunal prior to making a decision.

22 Much of the evidence provided at the last review in February 2023, and further material provided for this review, was relied upon as evidence in the current matter by various parties to the proceedings, as were the findings and reasons for decision of the Tribunal for the February 2023 review. Those reasons attract a lesser weight given that the Tribunal, at the February review, did not have access to the reasons of the sentencing Judge for the limiting term, which was imposed, and did not take those sentencing findings into account in their Reasons for Decision. An assessment of whether a forensic patient has spent sufficient time in custody necessarily involves having regard to the reasons for the imposition of the limiting terms and the purposes of sentencing detailed therein. The sentencing reasons will also reveal why an order for detention was made by the sentencing Judge, rather than some other order, a matter relevant to consideration of a request for conditional release. Given that the decision of

the Tribunal in February 2023 was made without reference to the reasons of the sentencing Judge they attract less weight.

- 23 Evidence at this review hearing included the order and reasons for decision of the Tribunal for the hearing of 9 February 2023; the affidavit of Mr Edwin's foster son, Mr CC, of 4 September 2023 which annexed his former affidavit of 31 January 2023 and other documentation; the affidavit of Christopher Daniele sworn on 1 February 2023 with various annexure's including exhibit C D1; and an audio recording made by Mr CC of a phone call; the report of Mr Hans Receveur Clinical Neuropsychologist of 28 July 2023; outline of submissions dated 8 February 2023; further outline of submissions dated 6 September 2023; supplementary submissions of Mr Edwin made by his legal counsel and dated 10 October 2023; Inspector of Custodial Services report of March 2021; court outcome result of 29 June 2022; District Court transcript and judgement dated 11 November 2022; transcript of the District Court proceedings of 29 June 2022; transcript of the District Court sentencing reasons of 29 June 2022. It is noted that numerous medical reports and other documents were annexed to the affidavit of Christopher Daniele including the most recent medical reports of January 2023 referred to by Mr Edwin's legal counsel in his supplementary submissions of 10 October 2023.

#### **Medical evidence at this review**

- 24 The medical evidence at this review was detailed and consisted of a number of reports which were before the Tribunal in February 2023. Those included the reports referred to above. All of the evidence was carefully considered, but not all will be summarised in these written Reasons for Decision. The evidence included the observations detailed by Mr Edwin's foster son in his affidavits.
- 25 Mr Edwin's legal representative referred to the recent report of Dr Roberts, Forensic Psychiatrist. It is noted that this report predates the last Tribunal review but post-dates the sentencing proceedings of June and November 2022. Dr Robert's report of 27 January 2023 reviews a number of the previous reports, many of which were before the sentencing court. He also assessed Mr Edwin by audio visual link, in January 2023, as well as reviewing past reports. Dr Roberts' conclusions on risk assessment and care needs were:

COMMENT: I would consider that due to the impact of age and infirmity, the risk of reoffending is substantially reduced by virtue of Mr Edwin's debility.

SPECIFIC QUESTIONS:

i. Is Mr Edwin suffering from a mental illness or other mental conditions?

COMMENT: I consider that Mr Edwin is suffering from a severe progressive neuro-cognitive disorder (i.e. progressive dementia) and in virtue of having been found guilty of the charges for which he has been sentenced, would be variably considered as having a paraphilia and possibly a tendency towards paedophilia.

ii. You ask for an opinion on the current condition suffered by Mr Edwin and his continuing condition, including any likely deterioration in his condition and the likely effects of such deterioration?

COMMENT: The prognosis on reasonable psychiatric grounds is for progressive deterioration in Mr Edwin's cognitive dysfunction. The effects of such a deterioration are to some extent already evident, insofar as Mr Edwin has no idea as to why he is in prison, and I would consider that it appears that he has no idea of the reason for him being incarcerated.

iii. You ask for an opinion as to whether any mental disorder (if any) of Mr Edwin is such that it is no longer necessary to continue to detain him in a mental health facility in order to protect the public from serious harm?

COMMENT: Due to age and infirmity, the absence of a sexual drive, the level of physical debility and the fact that it is my understanding that should he be released, he would return to an isolated life, in his longstanding place of residence and of him being incapable by virtue of no longer having a driver's licence and his age and infirmity, including physical debility and dementia, to take himself outside of that residence.

iv. You ask as to whether Mr Edwin's conditional release into the Community (under the care of Mr CC), his son, and his general practitioner, (pursuant to a treatment plan), would endanger himself or any member of the public?

COMMENT: I find it difficult to envisage how Mr Edwin having regard to his dementia, and level of incapacity could be a risk either to himself or a member of the public.

v. You ask whether care, treatment or control of Mr Edwin is necessary for his own protection from serious harm or the protection of others from serious harm.

COMMENT: I would envisage that should Mr Edwin be allowed to return to his previous place of residence, for reasons stated, namely a lack of sexual drive, dementia and physical debility that Mr Edwin would be substantially restricted to his place of residence and would not be in a position to leave his place of residence, to be a risk to anyone else, or to himself and that in the event of him needing to leave his place of residence, he could

not do so unless in the company of his son.

I would consider on reasonable psychiatric grounds that care of a less restrictive kind, that is consistent with safe and effective care, is appropriate and reasonably available to Mr Edwin.

- 26 In a further report dated 31 January 2023 Dr Roberts reviews a report by Dr MN, General Practitioner of 23 January 2023. Dr Roberts conceded that this report was not based on a recent examination of Mr Edwin and that Dr MN has no direct knowledge of his health or progress since November 2022. However, Dr Roberts goes on to confirm his view that:

Dr MN's comprehensive report confirms my impression of physical and mental debility.

In the context of my previous report of 27 January 2023, it reinforces my view that Mr Edwin is by virtue of his multiple physical complaints, and his severe cognitive impairment, and his overall lifestyle, that if released from custody namely residing in a property which is isolated, from which he cannot remove himself in the absence of being in the company of his son, would be a circumstance in which Mr Edwin is by virtue of his age and infirmity and debility, has a minimal risk of re-offending.

- 27 Dr MN in the report of 23 January 2023 summarises the various medical conditions suffered by Mr Edwin as of November 2022, and also sets out a proposed care plan for his foster son to manage his care at home.
- 28 Mr CC, foster son, in affidavit evidence indicates his support for Mr Edwin and his ability to provide home based care from his own home. He details various observations he has made of his father's presentation during visits, particularly in March, April and May of 2023, when he observed swollen legs and the wound on his head. He details that in June he saw scratches near the head wound and in July and August his head wound, and legs did not appear to be improving and his memory appeared worse. He refers to concerns provided in his earlier affidavit which was before the Tribunal at the previous review (and refers to threats made by an unknown person before the last review for which he has now provided an audio recording). He is concerned for his father's vulnerability in custody; that his father's health conditions are serious and that it is not humane to keep him in a prison environment. He wishes for his father to come home, so he can care for him with quality of care and compassion.



- 29 Dr Duke provided a report on 23 December 2023 to confirm that his opinion detailed in his report of 8 November 2022, provided to the District Court for sentencing proceedings on 11 November 2023, was maintained. He stated:

This letter is to confirm that I maintain my opinion as outlined in my report of 08 November 2022. This is in summary that Mr Edwin has a progressing dementia most likely vascular in origin and prior psychiatric diagnoses of post-traumatic stress disorder, depression and generalised anxiety disorder. In addition, he has medical issues of cardiac disease including aortic valve replacement, periodic double incontinence, cerebrovascular accident, osteoarthritis, malignant melanoma, gastric reflux, glaucoma, cholelithiasis, hypertension and anaemia.

I further maintain my previously stated opinion that Mr Edwin should remain at his current address under the care of his foster son Mr CC and regular physicians until such time as his care needs lead to requirement of institutional care at an aged care dementia unit.

My opinion is that his risk to the community at this time is negligible and attempts to incarcerate him in jail are likely to cause a deterioration in his physical and mental health and place him at risk.

- 30 The Medical report and opinion of Hans Receveur, Senior Clinical Neuropsychologist, and Tanya Mellare, Chief Psychologist dated 28 July 2023 was in evidence; and Mr Receveur attended the hearing and gave oral evidence and was available to answer questions of Mr Edwin's legal Counsel and the Tribunal. The written report stated:

**Matters Arising from the Previous Tribunal Hearing**

Statewide Disability Services had advised the MHRT that Mr Edwin had been reviewed by the Aged Care Unit at Long Bay and was found unsuitable for placement at either the Kevin Waller Unit or the Aged Care Rehabilitation Unit. This raised concerns for the tribunal, noting in its most reasons for decision from 09/02/2023:

*On the available evidence, the prospect of stroke and further cognitive deterioration is a real one. The Sentencing Judge was deliberate in ensuring that Mr Edwin received adequate and appropriate care in the custodial environment, endorsing the warrant with a recommendation that Mr Edwin be assessed for placement in the Aged Care Rehabilitation Unit at Long Bay Hospital. It is here that the affidavit evidence of his foster-son of many years becomes so important. Since the applicant's incarceration on 11 November 2022 his foster son has visited him on 12 occasions, with telephone contact as well. In this time, he has witnessed a general deterioration in the applicant's health, ranging from further memory decline to him*

*looking increasingly unkept and dishevelled. The evidence reveals that the applicant's foster son has also had occasion to write to Corrective Services to express concerns about the applicant's cell sharing arrangements and overall safety.*

### **Relevant Updates**

Further to the concerns expressed by the MHRT relating to the decision of the Aged-Care Bed Demand Committee to decline a request for placement at Long Bay Hospital, meeting minutes indicated the following basis of their opinion:

*Inmate cannot be cleared from medical cell until GP completes assessment. The forward plan is for him to remain at Clarence CC for completion upcoming reviews and consider possible relocation to the disability unit at Clarence. If Mr Edwin's care needs can't be managed at Clarence may need to consider transfer patient to a Centre within Hunter region to remain near family.*

A file review of notable entries in the Offender Integrated Management System (OIMS) database indicates the following events that may be of specific interest to the MHRT:

On 23/11/2022 (the period of the first MHRT review), his cellmate reported that he had very nearly had a fall. Records indicate that Mr Edwin declined the offer to speak to the doctor following the incident.

On 22/02/23 there was a non-association put in place against another inmate (not his cell mate) due to threatening behaviour being observed towards Mr Edwin.

On 23/05/23 Mr Edwin was noted to ask the same question four times in the space of five minutes in the same tone of voice, implying an instance of rapid forgetting in short term memory.

On 13/06/2023 a decision was made to restrict his buy-ups to \$30 per week due to potential stand over tactics being perpetrated by others upon him.

Family and contact visits, both in-person and via AVL, have been ongoing on an approximate monthly basis with no issues noted by custodial staff regarding his behaviour before, during, or following these occurrences.

### **Recent Aged Care Bed Demand Committee Review**

Mr Edwin's case was reviewed again at the Aged Care Bed Demand Committee meeting on 13/07/2023 which SDS staff attended including the report author. The acting nurse unit manager of Clarence medical unit, provided the following update on his situation:

Mr Edwin is medically stable albeit with some occasional vomiting attacks and gets dehydrated but being managed as well as possible with hydrolyte. He is picking at the sore on his head from skin cancer excision leading to some delayed healing. He remains unable to walk long distances and uses a walking stick within the unit and a wheelchair outside of the unit. Physiotherapy is available every six

weeks at the facility. The treating team had considered trialling the use of a four-wheeled walker instead of wheelchair for intermediate distances but decided against this as there was concern around the interplay of unsteadiness in gait, fatigue, and cognitive impairment raising the potential for falls. No falls were reported nor indicated on the "Synopsis" corrective services critical incident alert system. He requires prompting to attend to medication, requires some assistance with ADLs for dressing and grooming for which his cellmate has been helpful. Nonetheless, his son has been concerned about the quality of care insofar as teeth brushing, grooming, and the lingering sores on head.

There were no concerns around agitation or aggression towards others but some of the nursing staff were concerned that Mr Edwin may have been subjected to stand over tactics by other unspecified inmates. When asked by SDS about the observed indicators of this, the acting nurse manager reported that the anecdotal evidence was that he was spending \$100 per week on his buy ups and that this was considered greater in volume than he could reasonably be expected to consume in his current state of health. To mitigate the risk, corrections staff at Clarence subsequently restricted his maximum buy ups to \$30 per week.

In response to this update, the committee noted that if Mr Edwin were to transfer to Long Bay Hospital for his custodial care needs, discharge planning could only be facilitated within the local Sydney Metropolitan Area due to service constraint. This would then result in him being discharged into a secure residential ACF far away from his son. The recommendation proposed by the committee was for an ACAT assessment to be completed locally with Justice Health offering to help facilitate an expedited process if staff at Clarence (a privately run facility) were having difficulties in gaining one in the near future. The acting nurse unit manager also agreed to contact Mr Edwin's adopted son and work with him to try and identify a local residential aged care facility with a secure dementia unit. The committee and SOS staff emphasised that a secure ACF would likely be required to satisfy MHRT requirements for conditional release even though a secure dementia unit may have not otherwise been required to cater to Mr Edwin's level cognitive or behavioural deterioration.

#### Reported Experience in Custody

Mr Edwin and I had originally planned to meet for 30 minutes (a facility-imposed time limit) via AVL on 27/07/2023. Unfortunately, due to technical issues video link was unable to be established so a phone-based interview was undertaken instead. Due to the time and technical constraints, a formal MSE and cognitive testing could not be undertaken, and the substance of our interview instead related to his experience in custody and the concerns identified in the previous MHRT report.

Once introductions were made, Mr Edwin indicated a vague awareness that there was an upcoming tribunal hearing but was not sure about the reason and sounded surprised and incredulous to learn that he had been found unfit to be tried. He did not contest the determination and offered no further opinion on the matter. He spoke with conviction and no issues with expressive or receptive language were noted. He appeared to demonstrate preserved intellect but also reported that his memory was poor and there was a fair chance that he would struggle to remember much of our conversation at the upcoming hearing.

Mr Edwin was specifically questioned about his relationship with his cellmate which he described as "Very good, no concerns. We get on well and have been sharing the cell together for the last two months". When asked about attending to his hygiene needs such as teeth brushing and nail trimming, noting the concerns raised by his adopted son, Mr Edwin responded somewhat flatly "I do that all myself and don't need any help, thank you very much". When asked about his buy ups and limitations placed upon it, he expressed some surprise and no awareness that any limitation had been imposed and said that he was under the impression he had a limit of \$100 per week but conceded that he was unsure. As our conversation moved to the topic of stand over behaviour, Mr Edwin was able to explain in clear terms what constituted stand over behaviour and remarked "I am in a prison, you know". When asked if he had ever experienced any stand over behaviour, he denied this emphatically. Mr Edwin was asked if he had any concerns about the level of medical, physical or mental health care that he was receiving in custody and he said that he had no complaints and felt "quite comfortable here".

Towards the end of the interview, Mr Edwin was asked the following question. "If you had the option to come to Sydney and stay at Long Bay Hospital where the aged-care unit might be able to provide better healthcare support, or to instead stay at Clarence where you may not receive as high a level of support but could remain closer to your adopted son, which would you prefer?" Mr Edwin was clear and unambiguous in his response that he would prefer to stay where he is at Clarence closer to his adopted son as per his responses at the last MHRT hearing.

#### Summary and Recommendations

Based on the evidence available, I am satisfied that there has not been any significant decline in cognition over since the last MHRT. Periods of transient disorientation are noted, and short-term memory issues are common in vascular dementia. Unless they are persistent and/or accompanied by corresponding psychomotor declines, there are generally not considered to represent a sudden and significant decline. As noted in previously submissions by SDS neuropsychologist Mr Joshua Barber, Mr Edwin's pre-morbid cognitive reserve is likely buttressing against a more immediate decline in cognition, and this appears to remain the case at this time. However, it also is important to note that the progression of vascular dementia can be stepwise (i.e., large declines in short periods secondary to acute

ischaemic/haemorrhagic neurovascular events), insidious (i.e., slow decline from ischaemic change in the small vessels), or a combination of both. Moreover, the trajectory will be impacted by medical complications.

File review indicates that there is some evidence that supports the concerns raised by his family and legal representatives regarding aspects of personal hygiene such as teeth-brushing and nail cutting but this is noted to relate to the period of the previous MHRT hearing. Beyond this period, there is limited evidence that he is lacking otherwise in proper care. He is eating, toileting and showering independently. He is mobilising with aids effectively and remaining compliant with medications, albeit with prompting. Based on the evidence provided by the acting nurse unit manager at Clarence and Mr Edwin, I am satisfied that he is receiving adequate care for his health and disability-related needs at this time and there is no immediate reason for him to be relocated at this time.

#### Future Planning

Mr Edwin has consistently expressed a preference remain at Clarence rather than relocate to Long Bay Hospital if the choice were his to make. Moving Mr Edwin against his wishes would be of significant stress to him and his family, and he is already quite compromised in terms of medical risk factors. As noted by his cardiologist, the interplay of biopsychosocial stress could potentially evoke a cascade causing further cognitive and functional deterioration. The plan is to have an ACAT put in place locally whilst he is in Clarence and to identify suitable options for conditional release and appropriate intermediate priorities until such time as a significant decline in functioning necessitates relocation.

- 31 In oral evidence at the hearing Mr Hans Receveur confirmed the contents of his written report and advised the Tribunal that the Age Care Bed Committee had advised that the care provided to Mr Edwin was satisfactory, and also that there had not been a significant deterioration in his health. There had been some mobility deterioration and there was ongoing review planned to assess whether additional mobility aids were to be supplied. There was some memory impairment and some impairment of intellect, but Mr Edwin presents as someone who advocates for himself within those limitations.
- 32 A file review undertaken by Mr Hans Receveur was completed before the in-person review - Mr Hans Receveur undertook full file review including the Online Offender Management System and observed that there were no falls or other concerns recorded. There had been some concerns about stand over

tactics, but the records indicated these had been mitigated and there was continuing monitoring.

- 33 Mr Hans Receveur observed that the Aged Care Bed Committee assessment of July 2023, at which Mr Hans Receveur and SDS were present, noted that it might be possible to relocate Mr Edwin to a correctional facility near Port Macquarie, and that discharge planning could occur at such a facility. The Aged Care Bed Committee had recommended an ACAT assessment be undertaken at Clarence but this had not been actioned at the time of the review but was being followed up.
- 34 The Tribunal was advised by Mr Receveur that Dr Watt, the senior clinician who chairs the Aged Care Bed Committee, considered placement into an aged and frail unit was not required for Mr Edwin. In response to a question from a psychiatrist member of the Tribunal panel, Mr Hans Receveur stated that Mr Edwin's general care needs were being met and he was not at risk in his current accommodation on all the records, assessments and available evidence.
- 35 Cordelia from the State Wide Disability Service stated that if there was to be an ACAT assessment it would be organised in cooperation with Mr CC who is the Power of Attorney and Guardian for Mr Edwin and would then be undertaken by a local ACAT team in the Clarence area. If the ACAT assessment proceeded it would examine aged care facilities that might be available in the Clarence area nearby to Mr Edwin's son. State Wide Disability Service are available to work with relevant parties to look at such placement.

### **Submissions of Mr Edwin's lawyer of 8 February 2023**

- 36 Detailed submissions were made for the prior Tribunal review, dated 8 February 2023, which are also before the Tribunal in the current review. Those submissions summarised in some detail the various medical reports, many of which were also before the sentencing judge in proceedings in June 2022 and November 2022. A number of the reports are referred to in the remarks on sentence set out below in these Reasons for Decision. At paragraphs 108 to 123 of the submissions, detailed arguments are made that the Tribunal would find that Mr Edwin had spent sufficient time in custody. At paragraphs 123

onward, the submissions detail a conditional release order which could be made. Those submissions have been carefully considered in the current proceedings.

### **Additional submissions of Mr Edwin's legal Counsel of 10 October 2023**

37 Mr Edwin's legal representative made the following supplementary submissions which stated:

#### **Sufficient time in custody**

5. In respect of the specific question of whether sufficient time in custody has been served, the Tribunal's attention is respectfully drawn to pages 23-27 of the 9 February 2023 submissions.

6. Mr Edwin also requests that the Tribunal consider the totality of the submissions dated 6 September 2023, which (inter alia) observed that, although the Tribunal was disinclined to make an order that sufficient time in custody had been served at the First Review Hearing on 9 February 2023, "This was a difficult decision which could reasonably have been made the other way".<sup>1</sup> The Tribunal is also referred to the transcript of the 9 February Hearing where, at the conclusion of proceedings, Deputy President Dillon said to Mr Edwin that he should 'not give up hope' as to his conditional release.

7. In short, although it is accepted that the applicant is only a short way into his limiting term, it is submitted that he has spent "sufficient time in custody" as required by s 84(1)(c) of the Act. This is particularly the case where the Tribunal is empowered to put in place comprehensive conditions for Mr Edwin's release. Mr Edwin's time in custody needs to be seen through the prism of his ongoing physical and mental deterioration, his acute risk of stroke, as well as his cognitive and rehabilitative deficits. Perhaps most importantly, it is contended that Mr Edwin has spent sufficient time in custody in circumstances where the contemplated custodial environment sought by his Honour Judge Gartemann SC cannot be realised. In those circumstances, there have been relevant developments since the limiting term was imposed.

8. Importantly, there are a number of relevant documents that post-date Mr Edwin's sentencing proceedings before his Honour Judge Gartemann SC. These can be found in the annexures of the Affidavit of Christopher Daniele dated 1 February 2023 (the Affidavit) and directly bear upon the question of whether sufficient time in custody has been served, as well as the arrangements that would be put in place should conditional release be ordered. These include:

(a) 19. Letter from Dr Spencer Duke 23.12.2022 at p. 117-118 of the Affidavit.

- (b) 20. Letter from Dr MN 23.01.23 at p. 119-121 of the Affidavit.
- (c) 21. Risk Assessment Report of Dr John Albert Roberts 27.01.2023 at p. 122-141 of the Affidavit.
- (d) 22. Supplementary Report of Dr John Albert Roberts 31.01.2023 at p. 142-144 of the Affidavit.

9. In light of the evidence of Mr Edwin's son as to his father's welfare and safety, the Tribunal is also asked to have regard to the already provided Inspector of Custodial Services 'Health services in NSW correctional facilities' Report (2021)' (the Report).

## **Sentencing reasons**

38 His Honour's reasons on sentence were delivered on 29 June 2022, however the final sentencing was adjourned until November 2022 as set out below. It is instructive to set out excerpts of the transcript of the sentence proceedings. His Honour noted that he was setting a limiting term as Mr Edwin was found, on the limited evidence available in a special hearing, to have committed 8 offences - 6 offences of indecent assault on male person (Counts 1, 2, 4, 6, 7, and 10), each with a maximum penalty of imprisonment for five years, and 2 offences of procure indecent act with male person (Counts 3 and 5), each with a maximum penalty of imprisonment for two years. On 29 June 2022 his Honour imposed limiting terms for each separate offence and the overall term was one of five years. On 11 November 2023 after receipt of further evidence on the place of detention, as detailed below, his Honour set the commencement dates for each separate offence, with the overall limiting term of five years commencing 11 November 2022 and expiring 10 November 2027

39 His Honour's reasons detail the offences in some detail, which will not be recorded in these Tribunal reasons for decision, as the focus of the Tribunal is on his Honour's reasoning in imposing the limiting term. However, it is noted that the offences involved four different victims and that Mr Edwin was in a position of authority over the victims, he being a teacher, and they being school students. His Honour also noted, in respect of a number of the offences, that the victims were isolated at the times of the offences occurring. His Honour's sentencing reasons of 29 June 2023 state:

SN and AVDB provided victim impact statements. Each recounted the many ways the offence or offences had affected him. Each described experiencing shame and guilt though



neither had done anything wrong. Each provided a history of problems with mood and self-identity. Each suffered with self-doubt and low self-esteem. Each experienced many ramifications from the offending. Most striking is that each is now a middle-aged man yet recounts impact of the offending throughout his life.

I turn to the seriousness of the individual offences. A feature of them all is that the offender was a teacher at the victim's school. The offender was thus in a position of authority over the victim. He abused this to commit the offences against them. It is self-evident this applies where the offence was committed at the school but it applies also when the offences were committed elsewhere. The accused's position was the foundation for his relationship with the victim.

None of the offences involved use of force or coercion but this is unsurprising because the offender was in a position of authority over them.

Another feature of all the offences is that the victims were in aged in their early teens. This is significant as the offences are not limited to any particular age range. The victims' youth made them more vulnerable to the offender. He was aged about 30 years at the time. He abused a significant disparity between their ages in order to commit the offences against them.

I turn now to the offender's subjective circumstances, noting he may have been unable to establish mitigating factors because he was unfit to participate in the proceedings. He is now aged 83 years. His advanced age is a significant consideration in sentencing him. He committed the offences decades ago. There is however no evidence delay in the proceedings caused hardship.

The offender has not reoffended since these offences but there is otherwise no evidence of rehabilitation. Delay of itself does not warrant mitigation.

The offender has no record of prior convictions, whether before or since these offences, but he would not have had his teaching position but for his prior good character. It was therefore of assistance to him in committing the offences. It cannot warrant mitigation in the circumstances.

The offender now suffers numerous physical health problems. He has glaucoma. He has suffered malignant melanomas. He has chronic lumber back pain and osteoarthritis. He has episodic incontinence of the bowel and bladder. He suffers atrial fibrillation and hypertension. He has had an aortic valve replacement. His treating cardiologist considers this to be functioning well and notes he is currently being treated optimally in the community, minimising the risk of heart attack and stroke. His general practitioner notes however he suffered a stroke in April this year requiring inpatient treatment for a month and follow-up with a stroke specialist as well as an occupation therapist and

physiotherapist.

Dr Roberts, a psychiatrist, noted that a 2020 CT scan indicated heavy vertebral artery calcification which was associated with increased risk of ischaemic episodes with a concomitant risk of stroke and development of vascular dementia. Dr Roberts considered a neurosurgeon's opinion should be obtained as to the risk of a cerebrovascular event in stressful conditions such as gaol. Dr D'Urso, a neurosurgeon, assessed the offender in 2022. Dr D'Urso notes "patients with an aortic valve replacement and atrial fibrillation have a 3% risk of stroke per year". Dr D'Urso further notes the accused is on anticoagulants and CT scans disclose he suffers cerebral atrophy. Dr D'Urso considers these comorbidities put the accused at a substantially greater risk of embolic or haemorrhaging stroke than others. Subdural haematoma in particular could occur with relatively minor trauma or even spontaneously. Dr D'Urso considered the offender would almost certainly be exposed to a higher risk of trauma in prison and that access to the appropriate health care was often limited and delayed in prison. Dr D'Urso concluded that if the offender were to suffer an embolic or haemorrhaging stroke would likely be fatal or result in severe dysfunction or deterioration.

Dr Ette, a senior staff specialist with Justice Health and Forensic Mental Health Network, reports that treatment is available in prison for the offender's conditions. Dr Ette did not specifically address the risk of stroke or its management in the correctional centre environment. However, Dr Ette expressed confidence the Network could provide treatment the accused's conditions require and noted the Network's position that services available in custody were commensurate with those available in the community. Dr Ette notes the offender would be housed in a safe area according to his classification and if required in an aged care and rehabilitation unit at Long Bay Hospital or a unit for elderly inmates at the Long Bay complex. Dr Ette noted, however, that where inmates were housed depended upon bed availability and the inmate's condition. The evidence therefore does not confirm where the offender would be housed in custody. A statement from a police officer indicates approximate travel time from the offender's present residence to hospital is about half an hour. However, there is no evidence as to the period that might be expected to elapse between a stroke event and commencement of any journey to hospital whether in prison or at home such as to make any comparison between them meaningful.

Dr D'Urso's uncontradicted opinion is that the offender would be at a significantly increased risk of stroke in custody and in that event the probability of it being fatal or resulting in severe disfunction or deterioration. This evidence establishes there is a risk incarceration may jeopardise the offender's health of life. This is a significant albeit not determinative consideration. The nature and circumstances of an offence may warrant a sentence of imprisonment following an ordinary trial regardless of the offender's health. The executive is ultimately responsible for the proper care of inmates.

The offender suffers mental conditions in addition to those already noted. His treating general practitioner reports he has been diagnosed with chronic depression and anxiety. Dr Nesbit, a psychologist, assessed the offender in 2018 and found that he suffered severe symptoms of depression, anxiety and stress. The offender has been prescribed anti-depression and anti-anxiety medications for these conditions. Dr Roberts, psychiatrist, concluded following his assessment of the offender in 2021 that he suffered moderate dementia however the offender's treating general practitioner reports that his dementia continues to worsen [bold font added].

There is no evidence the offender suffered a mental condition that contributed to the offences such as to make him less morally culpable for them, but his mental conditions make his case less suitable for general deterrence and specific deterrence of lesser utility. The offender's mental conditions would in combination make his experience of prison more onerous than otherwise.

There is no evidence the offender has accepted responsibility for or acknowledged consequences of his offending such as might warrant a finding of remorse. Nor is there any evidence indicating prospects of rehabilitation. The likelihood of the offender re-offending is now negligible regardless because of his age and poor health.

The question whether a sentence of imprisonment would have been imposed for each offence following an ordinary trial is informed by the purposes of sentencing. General deterrence usually warrants weight in sentencing for child sexual offences but warrants less weight in this case as it is less suitable to use as a means to deter others because of the offender's physical and mental health conditions. The offender's conduct would still need to be denounced and he would need to be held accountable and adequately punished for it but again these considerations would warrant less weight because of the offender's physical and mental health conditions. Specific deterrence and community protection would not warrant particular weight as the offender has not previously been convicted of any offence before. Promotion of rehabilitation does not appear to warrant emphasis. The harm caused to victims must still be recognised.

The maximum penalties applicable at the time of the offences continue to apply in sentencing for them now. The Court is otherwise to disregard past sentencing practices and patterns in determining sentences for such offences. They must instead reflect contemporary understanding of the trauma such offences cause victims.

The only reasonable conclusion open in all the circumstances is that a sentence of imprisonment would have been imposed following an ordinary trial for each of the offences in order to fulfill the purposes of sentencing.

The Court must then determine the limiting term appropriate for each offence. The inability of the offender to demonstrate mitigating factors because of his unfitnes to participate in

the proceedings has been taken into account. It is conceivable the offender might have pleaded guilty to an offence but for his unfitness however the conduct of the proceedings before his fitness was raised as an issue demonstrated that he denied the offences. In these circumstances, the limiting term for each offence ought not reflect a nominal discount for a hypothetical plea.

The offender will be referred to the Mental Health Review Tribunal once limiting terms are nominated. There is presently no evidence regarding places in which the offender would be detained pending the Mental Health Review Tribunal's review of the offender. In these circumstances, the limiting term for each offence will be indicated rather than nominated and directions as to its commencement and expiry dates will be deferred.

The totality principal applied in determining whether sentences of imprisonment for individual offences were to be served consecutively following an ordinary trial. This would have warranted recognition that the offences were committed within one period of the offender's life and in similar circumstances but involved discrete instances of abuse causing harm to multiple victims. Partial accumulation of the sentences would have been required in order to reflect the totality of the criminality involved following an ordinary trial. The limiting terms to be nominated in these proceedings should be similarly partially accumulated in order to reflect the totality of the criminality involved. However, it must be born in mind that the determination of partial accumulation of sentences imposed following an ordinary trial would be made with reference to the non-parole period rather than the term of the sentence. The total effective term arising from partial accumulation of the limiting terms appropriate to reflect the totality of the criminality will be indicated but for reasons previously expressed, directions as to commencement and expiry dates will be deferred. The total effective term arising from partial accumulation of all the limiting terms will be five years.

- 40 The transcript records that his Honour also considered, at another point in the proceedings of 29 June 2022, what the place of detention may be. He clearly indicated that Mr Edwin must be detained and decided to obtain a report as to places of detention, given the medical evidence and especially the risk of a stroke (transcript 29 June). his Honour stated:

I order a Forensic Mental Health Network Disposition Report regarding recommended places of detention of the offender pending Mental Health Review Tribunal review. I adjourn the proceedings pending such a report to a date to be fixed.

- 41 At the resumed sentencing hearing of 11 November 2022 further medical reports were tendered: the defence tendered the reports of Dr Sidorov dated 8

August 2022 and the report of Dr Duke dated 8 November 2022; the Crown tendered a report from Berindah Aicken, being the Acting Director of Statewide Offender Services and Programs dated 24 October 2022. On 11 November 2022 his Honour delivered a further Judgment, the Transcript states:

HIS HONOUR: I stated the limiting term for each offence and the effective total term for all the offences I had found proved on 29 June 2022. I deferred setting commencement and expiry dates for those terms in order to obtain information regarding appropriate places of detention for the offender pending his review in the Mental Health Review Tribunal.

The Acting Director of Offender Services and Programs from Justice New South Wales provided the following information. The offender would be taken from Coffs Harbour Court complex to Clarence Correctional Centre. Statewide Disability Services has liaised with Court Escort Security Unit to provide appropriate transport for the offender. Justice Health would then screen the offender on reception into the correctional centre. Medical and disability needs of aged and frail inmates are assessed on reception and an Aged Care Bed Demand Committee sits weekly to decide appropriate placement for them.

Those with low needs are accommodated in the main prison population with other older inmates. Those with low to medium needs are accommodated in the Kevin Waller Unit and those with medium to high needs are accommodated in the Aged Care Rehabilitation Unit at Long Bay Hospital.

Dr Sidorov, consultant forensic psychiatrist, noted placement of the offender at Coffs Harbour Mental Health Unit would be inappropriate as he is not suffering with a major mental illness. Dr Sidorov considered the offender would be vulnerable in the main prison population because of his cognitive impairment and multiple medical comorbidities. Dr Sidorov considered the offender would most appropriately be accommodated in the Aged Care Rehabilitation Unit at Long Bay Hospital.

Dr Duke, psychiatrist, considered the offender's functioning and cognitive state would likely deteriorate were he to be moved from his son's home where he currently resides but provides no advice where he might otherwise be detained.

There was no other evidence in these proceedings regarding any other appropriate place of detention.

In these circumstances, the Court ought to proceed to set the commencement and expiry dates for the limiting terms previously stated. The Court ought also make a recommendation to Justice Health to accompany the warrant that the offender be assessed as soon as is practicable for placement in the Aged Care Rehabilitation Unit at Long Bay Hospital. The Court should also direct that copies of the reports of Dr Sidorov and Dr Duke accompany the warrant.

Accordingly, I propose now to set the commencement and expiry dates of the limiting terms previously stated. [his Honour went on to set out the terms for each separate offence and the commencement date of each separate term. The overall term was one of five years commencing 11 November 2022 and expiring 10 November 2027. his Honour stated]:

I direct the warrant be endorsed with a recommendation the offender be assessed as soon as is practicable for placement in the Aged Care Rehabilitation Unit at Long Bay Hospital and that it be accompanied with the reports of Dr Sidorov dated 8 August 2022 and Dr Duke dated 8 November 2022.

## **DISCUSSION AND FINDINGS**

42 In relation to the medical evidence at this review, it is noted that the most recent evidence is the detailed report by Mr Hans Receveur, Clinical Neuropsychologist. Given he is clinical neuropsychologist, his opinion as to cognitive presentation and cognitive diagnostic issues attracts some weight. I do note that for reasons detailed in his report, his recent assessment proceeded by telephone so the full cognitive assessment could not be undertaken. The assessment also included the detailed review of file records, management records, and medical notes, and as such a review of the recent medical records and observation notes, formed part of the opinion and report of Mr Receveur. In his evidence at the hearing Mr Hans Receveur concluded that Mr Edwin's care needs were being met and that there had not been significant deterioration. He did however note that deterioration, in relation to Mr Edwin's vascular dementia, will continue, and that there can be significant deterioration in a step-by-step phase as well as slowly over time. The evidence of Mr Hans Receveur, both in oral evidence and in his written report, is consistent with other evidence, also before the sentencing Judge, that Mr Edwin is likely to deteriorate. However, the view of Mr Hans Receveur is that there has not been significant deterioration to date.

43 Dr Roberts states in his second January 2023 report, after considering Dr MN's report, that Mr Edwin's dementia should now be considered severe. This was not clearly indicated by the evidence of Mr Hans Receveur. There is no doubt that Mr Edwin has dementia related cognitive impairment that impacts his functioning. If the Tribunal were to accept the evidence of Mr Dr Roberts, over the evidence of the clinical neuropsychologist, Mr Hans Receveur, that there

has been significant deterioration so that Mr Edwin now has severe dementia, this in itself would not determine that Mr Edwin has spent sufficient time in custody, for the reasons below detailed.

- 44 The sentencing charge clearly took into account, at the time of imposing the limiting terms, that Mr Edwin would in all probability deteriorate, and indeed might suffer a catastrophic medical event /or other complication in custody. Yet the sentencing judge, to achieve the purposes of sentencing, imposed the limiting terms totalling five years and ordered that Mr Edwin be detained. The purposes of sentencing referred to by the sentencing judge is a reference to section 3A of the *Crimes (Sentencing Procedure) Act 1999*. In his Honour's reasons for sentence of 29 June 2023 (set out above) he makes reference to those various sentencing purposes such as specific and general deterrence, community protection, punishment, denunciation, rehabilitation, and recognition of harm to the victims.
- 45 The Statewide Disability Service gave evidence of a willingness to work with all parties to facilitate a discharge plan to a secure aged care facility where detention could occur. The evidence at the hearing was that this was not sought by Mr Edwin's legal representatives, nor by his foster son, Mr CC. An order for release is sought so that Mr Edwin can be cared for at his son's home. This would necessitate the Tribunal being satisfied that sufficient time in custody has been served: the legislation makes it clear that in cases where a limiting term is being served the Tribunal must consider whether there has been sufficient time in custody as part of a consideration of conditional release.
- 46 In making a determination of whether Mr Edwin has spent sufficient time in custody, consideration of any deterioration in his health is only one factor. Regard must be had to the purposes of sentencing as reflected in the sentencing reasons of the Judge who imposed the limiting term. In Mr Edwin's case it is also quite clear that his deterioration in custody, and the fact that this was likely to occur, was specifically contemplated by the sentencing judge as part of his determination of whether to impose a limiting term and whether there was any in alternative to a custodial term. The sentencing judge assessed the complexity of Mr Edwin's physical health conditions, including that he was likely

to deteriorate and including that he was at risk of a catastrophic medical event. His Honour stated:

Dr D'Urso's uncontradicted opinion is that the offender would be at a significantly increased risk of stroke in custody and in that event the probability of it being fatal or resulting in severe disfunction or deterioration. *This evidence establishes there is a risk incarceration may jeopardize the offender's health or life. This is a significant albeit not determinative consideration. The nature and circumstances of an offence may warrant a sentence of imprisonment following an ordinary trial regardless of the offender's health. The executive is ultimately responsible for the proper care of inmates. [italics added]*

- 47 The sentencing judge, in deciding to impose the limiting term, also considered the mental health of Mr Edwin and that his mental health would make custody more difficult, stating:

The offender's mental conditions would in combination make his experience of prison more onerous than otherwise.

- 48 His Honour also took into account the evidence that Mr Edwin was likely to deteriorate if moved from his residence (with his son) to a custodial facility or other place of detention. All of these matters were considered by the sentencing judge who formed the view that there was no alternative but to impose limiting terms totaling five years. The sentencing judge, in imposing the limiting terms, had regard to the purposes of sentencing, and considered those purposes in the light of Mr Edwin's age and medical conditions. The purposes of the sentencing sought to be achieved by the imposition of the total five year limiting terms are set out clearly in his Honour's sentencing reasons and include the recognition of harm to the victims. His Honour stated:

The question whether a sentence of imprisonment would have been imposed for each offence following an ordinary trial is informed by the purposes of sentencing. General deterrence usually warrants weight in sentencing for child sexual offences but warrants less weight in this case as it is less suitable to use as a means to deter others because of the offender's physical and mental health conditions. The offender's conduct would still need to be denounced and he would need to be held accountable and adequately punished for it but again these considerations would



warrant less weight because of the offender's physical and mental health conditions. Specific deterrence and community protection would not warrant particular weight as the offender has not previously been convicted of any offence before. Promotion of rehabilitation does not appear to warrant emphasis. The harm caused to victims must still be recognised. The maximum penalties applicable at the time of the offences continue to apply in sentencing for them now. The Court is otherwise to disregard past sentencing practices and patterns in determining sentences for such offences. They must instead reflect contemporary understanding of the trauma such offences cause victims. The only reasonable conclusion open in all the circumstances is that a sentence of imprisonment would have been imposed following an ordinary trial for each of the offences in order to fulfill the purposes of sentencing.

- 49 Having regard to his Honour's reasons, the Tribunal cannot be satisfied that Mr Edwin has spent sufficient time in custody when he has spent less than one fifth of the total five year limiting term in custody – being limiting terms which were imposed to achieve the purposes of sentencing including recognition of harm caused to the victims.
- 50 Reliance is placed, in submissions by Mr Edwin's lawyer, on the fact that his Honour contemplated that the sentence would be served in the Aged Care Rehabilitation Unit at Long Bay Hospital. It is relevant to note that in the proceedings of 11 November 2022 his Honour was clear at all times that Mr Edwin should be detained upon imposition of the limiting terms - the question for his Honour was place of detention. He obtained further evidence as to place of detention as detailed above. His Honour was satisfied that there was no evidence indicating an alternative place of detention to a custodial facility.
- 51 Whilst the sentencing Judge made a recommendation for assessment for the Aged Care Rehabilitation Unit at Long Bay Hospital, his Honour noted that care within the custodial facility was a matter ultimately for the executive and made his orders and imposed the limiting term in a custodial environment/correctional facility acknowledging that aspect. Whilst his Honour made a recommendation for assessment for placement in the Aged Care Rehabilitation Unit at Long Bay Hospital, his Honour's reasons for sentence indicate his awareness that that placement would ultimately be a matter for the Executive. Assessments by the

Aged Care Bed Demand Committee have been undertaken on the evidence at this review, and placement decisions have been made in accordance with such assessments. On the evidence in this matter the fact that Mr Edwin has not been placed in the Aged Care Rehabilitation Unit at Long Bay Hospital is not determinative of the issue as to whether he has spent sufficient time in custody, for all the reasons detailed.

- 52 A plain reading of his Honour's sentencing reasons indicate that he was aware that Mr Edwin's health would likely deteriorate, that his mental health conditions would make custody onerous, but that the purposes of sentencing required imposition of a limiting term where Mr Edwin would be detained. His Honour was aware of the availability of home-based care in the home of Mr Edwin's son, but instead imposed a five-year limiting term/s to be served in circumstances of detention.

## **DECISION**

- 53 For all the above reasons the Tribunal determined that Mr Edwin has not spent sufficient time in custody. Given this finding then the Tribunal will not go on to determine whether the proposed conditional release order should be made.
- 54 On current medical evidence, as detailed above, the Tribunal notes that Mr Edwin continues to be diagnosed with a progressive cognitive impairment, namely vascular dementia, in addition to a number of other physical and mental health conditions, and as such he continues to be unfit for trial.
- 55 On review of Mr Edwin the Tribunal is satisfied that he suffers from a mental health and cognitive impairment, namely depression, and cognitive impairment due to vascular dementia, as set out above, and the Tribunal is satisfied that he is a person who needs care and treatment. On the evidence there are reasonable grounds for believing that care, treatment or control of Mr Edwin is necessary for Mr Edwin's own protection from serious harm and/or the protection of others from serious harm. In this respect the Tribunal has considered the continuing condition of Mr Edwin, including the likelihood of deterioration and the effects of that deterioration. Noting the evidence, detailed above, that care and treatment needs are being met, then Tribunal is satisfied

that his treatment needs are being met and that there should be no change to the current order for detention in a correctional facility.

56 The Tribunal notes that the Statewide Disability Service is open to working with all parties in assessing whether Mr Edwin could be detained in a secure aged care facility however it appears on the evidence that an ACAT assessment is required; and that the ACAT assessment may require the engagement of Mr CC, who has an enduring guardianship appointment. This may be a matter for the parties to further consider.

57 The Tribunal determined that the next review will be held within 6 months.

Magistrate Carolyn Huntsman  
**President**

Date 26 October 2023

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