Mental Health Review Tribunal
New South Wales

Case Name:	Mr Clarke
Medium Neutral Citation:	[2024] NSWMHRT 3
Hearing Date(s):	25 November 2022
Date of Decision:	3 January 2023
Jurisdiction:	s 78(b) Review of forensic patient Mental Health and Cognitive Impairment Forensic Provisions Act 2020
Before:	Magistrate Carolyn Huntsman, President MHRT Dr Josephine Anderson, Psychiatrist Mr Michael Gerondis, Community Member
Decision:	1. Pursuant to ss 78(b) and 80 of the *Mental Health and Cognitive Impairment Forensic Provisions Act 2020*, the Tribunal determines that Mr Clarke is not fit to be tried for the offence(s) for which he was found unfit. Mr Clarke will not become fit to be tried within 12 months of the Court's finding made on [date]. 2. Pursuant to s78(e) the Tribunal conducted a review of the Forensic Community Treatment Order (FCTO) made for Mr Clarke on [date]. The Tribunal made no change on review of the FCTO which therefore continues and is due to expire on [date].
Catchwords:	"may become fit to be tried for the offence" or "will not become fit to be tried for the offence"; "has become fit"
Legislation Cited:	*Mental Health Act 2007 (NSW)* *Mental Health and Cognitive Impairment (Forensic Provisions) Act 2020 (NSW) s36, s78(b), s80*
Cases Cited:	*R v Risi* [2021] NSWSC 769
Representation:	Mental Health Advocacy Service, Legal Aid Commission of NSW
File Number(s):	[2024] NSWMHRT 3
Publication Restriction:	This is a de-identified version of the decision

DECISION

1. Pursuant to ss 78(b) and 80 of the *Mental Health and Cognitive Impairment Forensic Provisions Act 2020*, the Tribunal determines that Mr Clarke is not fit to be tried for the offence(s) for which he was found unfit. Mr Clarke will not become fit to be tried within 12 months of the Court's finding made on [date].

2. Pursuant to s78(e) the Tribunal conducted a review of the Forensic Community Treatment Order (FCTO) made for Mr Clarke on [date]. The Tribunal made no change on review of the FCTO which therefore continues and is due to expire on [date].

SUMMARY

1. Mr Clarke is a forensic patient. Mr Clarke is currently detained at Facility A under an order made by the Supreme Court of NSW on [date].

2. On Supreme Court found Mr Clarke unfit to stand trial on the following charges:
   a) Murder [Court file number]

   but determined that Mr Clarke may become fit to be tried.

   Mr Clarke is also subject of a Forensic Community Treatment Order which is also for review in these proceedings.

STATUTORY CRITERIA

3. Under s 49 of the *Mental Health and Cognitive Impairment Forensic Provisions Act 2020 (*MHCIFPA), a person who is found unfit, but who may become fit within 12 months, is referred to the Tribunal for further review.

4. Under s 80(2) of the *MHCIFPA*, the Tribunal must decide if the person reviewed—
   a) has become fit to be tried for an offence, or
   b) has not become fit to be tried for an offence and will not, during the period of 12 months after the finding of unfitness by the court, become fit to be tried for the offence.

5. The Tribunal is to conduct that review as soon as practicable: s 78(b) of the *MHCIFPA*. However, the Tribunal may also adjourn the review for such reasons as it thinks fit: s 155 of the *Mental Health Act 2007*.

6. The test for fitness is set out in s 36 which provides:

"(1) For the purposes of proceedings to which this Part applies, a person is taken to be unfit to be tried for an offence if the person, because the person has a mental health impairment or cognitive impairment, or both, or for another reason, cannot do one or more of the following—

a) understand the offence the subject of the proceedings,

b) plead to the charge,

c) exercise the right to challenge jurors,

d) understand generally the nature of the proceedings as an inquiry into whether the person committed the offence with which the person is charged,

e) follow the course of the proceedings so as to understand what is going on in a general sense,

f) understand the substantial effect of any evidence given against the person,

g) make a defence or answer to the charge,

h) instruct the person's legal representative so as to mount a defence and provide the person's version of the facts to that legal representative and to the court if necessary,

i) decide what defence the person will rely on and make that decision known to the person's legal representative and the court.

(2) This section does not limit the grounds on which a court may consider a person to be unfit to be tried for an offence."

7. In addition, s 44(5) of the *MHCIFPA* provides:

"In addition to any other matter the court may consider in determining whether the defendant is unfit to be tried for an offence, the court is to consider the following—

a) whether the trial process can be modified, or assistance provided, to facilitate the defendant's understanding and effective participation in the trial,

b) the likely length and complexity of the trial,

c) whether the defendant is represented by an Australian legal practitioner, or can obtain representation by an Australian legal practitioner."

8. The Tribunal's determination is to be made on the balance of probabilities: s 80(3) of the *MHCIFPA*.

9. 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: s 45 of the *MHCIFPA*.

10. Mr Clarke is a forensic patient: s 72 of the *MHCIFPA*. At a review of a forensic patient, the Tribunal may make an order as to a person's continued detention, care or treatment in a mental health facility, correctional centre or other place, or his transfer to another place of detention: ss 81 and 82. The Tribunal is not permitted to release a person who has been remanded in custody by the court, but may make a recommendation as to the person's release: s 83 of the MHCIFPA.

11. 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: s 70(2) of the *MHCIFPA*.

12. The Tribunal has regard to the principles set out in s 68 of the *MHA* and the objects of the *MHCIFPA* set out in s 69 of that Act.

13. The Tribunal has also considered the matters set out in s 75 of the *MHCIFPA*, namely does Mr Clarke have a mental health impairment or cognitive impairment? 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?

14. The Tribunal is required to review the forensic community treatment order – refer 78(e) MHCIFPA.

EVIDENCE BEFORE THE TRIBUNAL

15. The Tribunal's registry keeps a summary of a patient's history, which draws on past Tribunal hearings. A copy is attached as Annexure A. The Tribunal has considered the information in this document and accepts it as an accurate summary.

16. The Tribunal has also considered the documents which are exhibited to these reasons. The Tribunal carefully considered the decision of the Supreme Court of New South Wales, and the contents of the reports provided to the Supreme Court. Those reports, containing expert assessments of Mr Clarke's mental state and fitness, are relatively recent. The Tribunal also had regard to the further evidence presented to the Tribunal on the question of fitness, for the purpose of the current review, by Dr A. The Tribunal gave particular weight to the evidence of Dr A as he was the treating psychiatrist for

Mr Clarke in a previous period when Mr Clarke became fit after being found unfit [date], as well as being his current treating psychiatrist. Dr A was able to detail Mr Clarke's progression towards becoming fit to plead in the previous period [date] and aspects of his current presentation which differ from the previous presentation in [date]. This was highly relevant to the question to be determined by the Tribunal, namely, whether Mr Clarke will not, during the period of 12 months after the finding of unfitness by the court, become fit to be tried for the offence.

17. In the Supreme Court proceedings the psychiatric history was set out in a report of Dr D. Dr D was previously retained by the prosecution in [year] when Mr Clarke faced the District Court for a series of serious offences of violence (earlier offences to the current index offence). Mr Clarke's current solicitors approached Dr D after he was charged with the current matter, and he provided a report which set out the mental health history. It was noted that the prosecution retained Dr E who provided reports.

18. The medical evidence and opinions before the Supreme Court were carefully considered by the Tribunal [detail omitted]. The Supreme Court observed that both experts held the opinion that Mr Clarke was most unlikely to be become fit within the next year, because of the chronic nature of his schizophrenic illness and because of his cognitive impairment. Neither expert would express a view on the test as articulated by the current Chief Judge at Common Law in in *R v Risi* [2021] NSWSC 769 (set out below), noting that there were no "real certainties" in psychiatry.

19. The Tribunal received evidence from the current treating psychiatrist, Dr A. In his written report Dr A reviewed the medical evidence presented at trial and detailed his own assessments. Dr A stated:

> "OPINION AND RECOMMENDATIONS
>
> **Psychiatric Issues**
> Mr Clarke has a diagnosis of a treatment resistant schizoaffective disorder. He has experienced symptoms including a disturbance of mood, thought disorder, delusions, and hallucinations with continuous signs of the disturbance that have persisted for at least 6 months. Although improved following a prolonged involuntary admission to the Facility C, Mr Clarke currently presents as still being psychotic. He is guarded, irritable, thought disordered and possibly responding to auditory hallucinations (although he denies it). Complicating his current treatment with high dose parenteral antipsychotic medication is a range of extra-pyramidal side-effects with Parkinsonism and features of mild tardive dyskinesia. Treatment with benztropine at the Facility C was associated with distressing symptoms of urinary hesitancy. Mr Clarke has very poor insight into his mental illness and treatment and only reluctantly complies with medication. Although clozapine is strongly indicated given his ongoing psychotic

symptoms and extra-pyramidal side-effects, he refuses to trial it. Alternative options need to be explored such as a change of his depot from a first generation to a second generation antipsychotic in view of his extrapyramidal side-effects.

Mr Clarke has a diagnosis of substance use disorder. This has recently relapsed in custody, and he is awaiting review by the drug & alcohol service regarding potential treatment.

Mr Clarke has been previously assessed to be in the borderline range of intellectual function.

Legal Issues
Mr Clarke re-entered custody [date] on a charge of murder. He was found unfit for trial at the [Location] Supreme Court on [date].

On re-assessment of his fitness on [date] –

- Mr Clarke displayed significant deficits in his knowledge and understanding of court process – he did not understand the role/function of the prosecution legal representatives or that of a jury.
- Mr Clarke appeared confused regarding the meaning of the pleas that were open to him. Although he indicated a preference to plead guilty, he was unable to consider a mental health defence as he refused to accept that he had schizophrenia.
- Mr Clarke was not able to understand the nature or relevance of what evidence was or how it could be used in the proceedings of a trial.
- Although Mr Clarke understood that he was charged with murder, he was not able to demonstrate an ability to give an account of what happened or answer the charge.
- Mr Clarke's ability to follow court proceedings was quite impaired given his level of distractibility and poor capacity to sustain concentration.
- Mr Clarke would have great difficulty providing legal instruction given his cognitive deficits, impaired knowledge and level of thought disorder.

Having regard to the decisions of R v Presser [1958] VR 45 and R v Kesavarajah (1994) 74 A Crim R100, in my opinion Mr Clarke remains unable to satisfy the minimum Presser criteria and continues to be unfit for trial.

It is possible that he could become fit with a trial of Clozapine but Mr Clarke has repeatedly refused to consider it."

20. In his oral evidence Dr A stated his opinion that Mr Clarke would not become fit within 12 months. He stated his strong view that waiting a further period of time would not result in Mr Clarke becoming fit for trial. He observed that Mr Clarke has great difficulty expressing himself, as well as in communicating and understanding the necessary concepts.

21. Dr A stated that in [the previous period, date omitted] he was treating psychiatrist for Mr Clarke and noted that in this period Mr Clarke had, after being initially unfit for trial, become fit and had improved in his mental state. Dr A stated that, at that time, Mr Clarke became fit because he responded well to 20 mg of olanzapine. He is not having a similar

positive response to medications over the time that he has been treated in custody on this occasion, he is much more treatment resistant than in previous years. Dr A noted that Dr D was of the opinion that Mr Clarke will not become fit and Dr A is of the same opinion. He also noted that there were issues with administration of high doses of atypical first generation antipsychotic medication because of side-effects, and changing medications to address the side-effects would not succeed in making him fit for trial.

22. Dr A was asked a question by Mr Clarke's legal representative whether, given the evidence of Mr Clarke's distractibility, having suitable breaks throughout the trial and modifications to trial process would allow Mr Clarke to participate and be considered fit for the trial process. Dr A observed that there was, for some patients, an ability to give education and orientation which leads to fitness for trial but that these kind of education and training measures would not restore Mr Clarke's fitness.

23. The whole problem for Mr Clarke, in Dr A's view, is that Mr Clarke has become much more treatment resistant. Dr A stated that it is for this reason (treatment resistance) that Mr Clarke has had a poor response to medication and remains mentally ill after several months of treatment. Dr A stated that during the previous period ([YEAR]) when Mr Clarke became well after a period of treatment, so as to become fit, this improvement was due to his positive response to treatment with olanzapine – a similar positive response to medication has not been demonstrated during this admission and, in Dr A's view, is not possible given the high level of treatment resistance now exhibited by Mr Clarke.

24. Dr A stated that, as he had been involved in Mr Clarke's treatment in [YEAR] and [YEAR], he had seen personally the improvement in those years given the positive response to medication – he is not seeing that progress currently and is of the firm opinion that such improvements will not again occur. Dr A states he can see a difference in the seriousness of Mr Clarke's mental illness, including the increased treatment resistance, at this time compared to how Mr Clarke presented in [YEAR].

25. Dr A was questioned about the possibility of a Clozapine trial and noted he did not believe that this would occur. Mr Clarke will not agree to take clozapine. Mr Clarke says "I do not need it I'm quite fine" - he repeatedly says he does not need it and does not want to take it. Dr A was of the view that a clozapine trial would not occur, and he has not been able to get such a trial to commence given Mr Clarke's refusal. Dr A indicated that, accordingly, it was not possible that Mr Clarke would become fit through taking

Clozapine.

26. Dr A was questioned about references to Mr Clarke being illiterate. Dr A stated that he did find a reference to cognitive impairment in screening undertaken in custody in [YEAR]. However, when Dr A looked after him in the previous period [YEAR] Mr Clarke could understand trial process and understand the necessary concepts after he began to improve in his mental health. For this reason he became fit for trial at that time. Dr A stated that it is not Mr Clarke's cognitive impairment that causes him to not be fit for trial, it is his mental illness which interferes with his ability to understand the necessary legal concepts and the legal process. Dr A's opinion was that Mr Clarke continues to be unfit for trial and will not become fit within 12 months of the court's finding of unfitness ([date]).

FINDING ON WHETHER MR CLARKE HAS BECOME FIT TO BE TRIED

27. Dr A's findings on fitness are set out in his written report and his evidence at the hearing detailed above. Whilst he refers to the Presser criteria he has addressed the criteria in s 36 of the *MHCIFPA* in assessing Mr Clarke's fitness. In particular Dr A's findings indicate Mr Clarke is currently unfit pursuant to s 36(1)(e),(f),(g),(h),(i) of the *MHCIFPA* – it is noted that a person is taken to be unfit to be tried for an offence, if the person, because of a mental health impairment or cognitive impairment, or both, or for another reason, cannot do one or more the matters specified in s 36. Given more than one of the matters listed in s 36(1) is identified by Dr A in his evidence then the test in s 36 is met, indicating Mr Clarke is currently unfit.

28. On all of the evidence detailed and discussed above, the Tribunal is satisfied that Mr Clarke has not become fit to be tried for an offence with which he is charged. On the evidence as to his current mental state, and the re-assessment of his fitness by Dr A, as set out above, the Tribunal is satisfied that Mr Clarke has not become fit to be tried and is currently unfit.

29. The Tribunal did consider whether accommodation in processes might be made so that Mr Clarke might be able to be considered fit, as set out in 44(5) of the *MHCIFPA*. The Tribunal, having regard to Dr A's evidence on this point, and the evidence as to Mr Clarke's mental state, did not find the trial process could be modified, or assistance provided, to facilitate Mr Clarke's understanding and effective participation in the trial, so as to render him fit for trial.

DISCUSSION OF EVIDENCE AND FINDING ON WHETHER MR CLARKE WILL NOT BECOME FIT TO BE TRIED (s80(1)(b) MHCIFPA)

30. The question of a person's fitness is to be determined on the balance of probabilities (s 80).

31. Justice Beech-Jones in *R v Risi* [2021] NSWSC 769 stated, in relation to the s47 test (the test for the court, as opposed to Tribunal):

> "I set out the provisions of s 47(1) earlier. That provision posits a binary choice for the Court as to whether a person "may become fit to be tried for the offence" or "will not become fit to be tried for the offence." The subsection does not contemplate the possibility that the Court may be in a state of uncertainty about whether one or another is the correct position. The contrast between the wording of the two sections suggests that a finding in terms of s 47(1)(b), the effect of which will be to exclude the MHRT from assessment of the accused, is one that should only be made if there is a real certainty as to the accused's lack of fitness during the relevant 12 month period."

32. The Tribunal's decision on reviews under s80 of the *MHCIFPA* does not involve the same test – s80 does not use the binary test of "may"/"will"; rather s80 refers to "has" and "will". The Supreme Court in making the fitness finding in relation to Mr Clarke discussed the construction of "will" in s47, and referred to the *R v Risi* construction of 'real certainty'; and also referred to Court of Criminal Appeal decisions in construing use of the word in the Bail Act ("realistically inevitable" refer paragraphs 17-25). Ultimately the Supreme Court indicated that:

> "s 47(1)(b) does not require a state of "absolute certainty". Even so, it is a very high standard of satisfaction whether one applies the language of Beech-Jones CJ at CL ("real certainty") or the Court of Criminal Appeal [used in Bail Act decisions] ("realistically inevitable")."

33. Section 47 provides:

> 47 Finding after inquiry that defendant is unfit to be tried.
> (1) If a defendant is found unfit to be tried for an offence following an inquiry, the court must also determine whether, on the balance of probabilities, during the period of 12 months after the finding of unfitness, the defendant—
> (a) may become fit to be tried for the offence, or
> (b) will not become fit to be tried for the offence.

34. Section 80 is the Tribunal review. It provides:

> 80 Reviews of persons found unfit to be tried for an offence
> (1) 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.

(2) The Tribunal must notify the court that made the finding of unfitness, the Director of Public Prosecutions and the person's legal representative if, on a review, it is of the opinion that the person reviewed—
  (a) has become fit to be tried for an offence, or
  (b) has not become fit to be tried for an offence and will not, during the period of 12 months after the finding of unfitness by the court, become fit to be tried for the offence.

(3) The Tribunal must make a determination as to the fitness of a person to be tried for an offence on the balance of probabilities.

Note—
The presumptions in section 45 apply to the person.

35. The Tribunal's task is to determine whether, on all of the evidence presented, Mr Clarke has become fit to be tried for an offence or has not become fit to be tried for an offence and will not, during the period of 12 months after the finding of unfitness by the court, become fit to be tried for the offence. This differs from the 'may'/'will' decisions to be made by a court under s47. However the Tribunal is required to make a decision, on the balance of probabilities, as to whether Mr Clarke "will not" become fit within the relevant 12 month period. Therefore the guidance of the Supreme Court on the construction of "will" is relevant.

36. The Tribunal has been guided by the Supreme Court decisions discussed above and has applied the construction of "will" in deciding the question of whether Mr Clarke will not become fit. The Tribunal has considered whether there is a "real certainty" that Mr Clarke will not become fit; and the Tribunal has on the evidence formed a very high standard of satisfaction in relation to the finding that Mr Clarke will not become fit. The Tribunal did note that the 'real certainty' test was discussed in *R v Risi* in the context that the court's decision would remove the Tribunal (MHRT) review - however it is not clear that this would indicate the need for the Tribunal to differently construe the statutory meaning of "will" in respect of a s80 decision. The decision that a person will not become fit for trial is a serious one which would require, in the Tribunal's view, a real certainty.

37. The Tribunal noted that the Supreme Court had observed, at the time of the decision in [date], - as to whether Mr Clarke may become fit, or will not become fit - that the court did not have the benefit of a psychiatrist who had recently examined Mr Clarke, and also that one of the reasons that the court could not find that Mr Clarke would not become fit within the 12 months was his recovery/becoming fit, in [YEAR].

38. By contrast the Tribunal has evidence from the current treating psychiatrist, who was

also the psychiatrist responsible for Mr Clarke's treatment in [YEAR/S]. That psychiatrist, Dr A, was able to give evidence as to Mr Clarke's current mental state, and his presentation and progress currently, as well as evidence about Mr Clarke's mental state and progress in the previous period [YEAR/S].

39. Dr A gave clear evidence that Mr Clarke's condition has deteriorated and is much more treatment resistant, and that Mr Clarke has not become fit to be tried and will not become fit to be tried within the relevant 12 month period. Dr A also noted that while a trial of clozapine might theoretically allow Mr Clarke to become fit there is no possibility that Mr Clarke will cooperate with the trial of clozapine given his consistent refusal to take clozapine. Dr A's opinion is that there is no prospect that Mr Clarke will take clozapine, and that he will not become fit to be tried within 12 months of [date].

40. Having regard to the test in s36 of the *MHCIFPA* (set out above) and the evidence of Dr A, and the evidence of Dr D and Dr E before the Supreme Court, as detailed above in these Reasons for Decision [detail omitted], then the Tribunal is satisfied that Mr Clarke will not become fit within 12 months of the finding of unfitness by the Supreme Court.

41. For reasons detailed below the current placement in the correctional centre, receiving treatment under a FCTO, is appropriate.

REVIEW OF FCTO – DISCUSSION AND FINDINGS

42. On [date], the Tribunal made a 12 month FCTO to expire on [date]. The FCTO is for review in the current proceedings.

43. Dr A's written report and oral evidence indicates that Mr Clarke continues to be mentally ill, with positive symptoms of his illness, and that he continues to be at risk of harm to self and others. Dr A stated that:

> "Mr Clarke was re-incarcerated on [date]. He was observed to be dishevelled, loud, with a restricted affect, irritable and providing vague response to questions regarding his mental health.
>
> On [date], Mr Clarke was reviewed after concerns were raised by corrective services staff that he was "continuously calling out and irritable." He was observed to be in a "state of severe psychotic agitation." He was "shouting and grandiosity with obvious delusional ideation." He was observed to be "physically violent, constantly striking the Perspex on the cell door and hurling abuse at staff."

Mr Clarke was admitted to the Facility D at [PLACE] where he was reported to be acutely psychotic, verbally aggressive and refusing medication.
Mr Clarke was subsequently scheduled …… and transferred to the Facility C on [date].

His speech was pressured and his thought form tangential. He reported that he owned the prison, could control other people's thoughts, that he received messages from the TV and that he was on a different plane than other people. He also reported hearing auditory hallucinations from his father that were sometimes commanding in nature however he would not expand on what was commanded. He was prescribed zuclopenthixol acetate 100mg intramuscularly on admission and commenced on sodium valproate 500mg orally twice a day.

On [date], Mr Clarke was assessed by Dr J, psychiatrist who noted he was "unable to give a coherent account or explanation of events preceding his transfer." He said he had to "get rid of his family." He was observed to be "talkative" and "agitated" "thought disordered," and displaying "delusions about family." He was given another dose of zuclopenthixol acetate at a dose of 100mg and commenced on depot zuclopenthixol decanoate at a dose of 200mg second weekly intramuscularly. This was progressively increased to 400mg every 2 weeks.

Mr Clarke was observed to gradually improve in mental state between [date] and [date] on injectable antipsychotic medication. He continued to exhibit signs of responding (answering unseen voices) and refused oral medications. He denied he had a mental illness.

By mid-[MONTH YEAR], Mr Clarke was described as less agitated and elevated. Though refusing oral medication up this point, he requested to be commenced on oral Quetiapine. He was initially commenced on 150mg per day and it was progressively increased to 600mg per day…..

By late [MONTH YEAR], Mr Clarke was described as having some ongoing persecutory ideation, thought disorder and mood lability/ instability. He was reluctant to mix with other patients….. Mr Clarke stated that he did not need an injection and that he did not have schizophrenia. He said that the depot injection caused him to mumble and all he needed was quetiapine to treat his anxiety. His dose of valproate was increased to 750mg bd. His depot zuclopenthixol decanoate was now documented as 350mg every 2 weeks.

In [MONTH YEAR], a work-up for clozapine was commenced but unfortunately Mr Clarke refused to accept a trial of with it.

Over [MONTH YEAR], Mr Clarke was guarded and restricted in affect and is mostly isolative on the ward. However, he did not demonstrate any ongoing delusions or persecutory themes, he denied any hallucinations, and he was settled and cooperative. He remained compliant with medication.

Mr Clarke was discharged to the Ward A step down unit in the Facility A [date] on a 12 month Forensic Community Treatment Order.

In early [MONTH YEAR], Mr Clarke disclosed that he was intermittently using illicit Buprenorphine on the unit. He was referred for review by Drug & Alcohol (still pending)."

44. Mr Clarke was reviewed by Dr A on [date] who noted ongoing symptoms as detailed in his written report and also agitation and irritability at times.

45. Dr A stated:

> "Mr Clarke requires high secure placement given the nature of his current charges, difficult to manage mental illness and ongoing substance abuse issues. He is currently complying with treatment and is settled. Ongoing placement in the Ward A step down unit in the Facility A meets his current security and mental health supervisory needs."

46. On the basis of Dr A's evidence as to Mr Clarke's current mental state, and the reports of experts before the Supreme Court, Dr D and Dr E, the Tribunal is satisfied that Mr Clarke has a mental health impairment, namely schizophrenia or schizoaffective disorder. He is currently a mentally ill person with ongoing psychotic symptoms and agitation at times. He has a continuing condition and risk of relapse due to non-compliance with treatment. He is a mentally ill person who requires treatment given the risk of harm to self and others.

47. The Tribunal determined that Mr Clarke is a mentally ill person who should not be detained in a mental health facility because appropriate care is available in a correctional centre under a FCTO. On all the evidence presented the Tribunal is satisfied that the FCTO is the least restrictive care consistent with safe and effective care; on review the Tribunal was satisfied that the FCTO should continue.

Magistrate Carolyn Huntsman
President

Date: [Date]

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