MENTAL HEALTH COURT

CITATION:	*In the matter of WAB* [2020] QMHC 3
PROCEEDING:	Reference
DELIVERED ON:	10 February 2020
DELIVERED AT:	Brisbane
HEARING DATES:	22 August 2019, 9 October 2019 and 10 December 2019
JUDGE:	Dalton J
ASSISTING PSYCHIATRISTS:	Dr SJ Harden and Dr JJ Sundin
DETERMINATION:	**Adjourn the hearing of this appeal to a date to be fixed**
COUNSEL:	Appellant self-represented S Robb for the Office of the Chief Psychiatrist AK Lossberg for Crown Law
SOLICITORS:	The Office of the Chief Psychiatrist Crown Law

NOTE: This judgment is published pursuant to s 790 of the *Mental Health Act 2016* (Qld). It has been anonymised.

[1] WAB had a prejudicial childhood and was the victim of violent abuse. He had head injuries as a child and young man. He began using drugs at around the age of 13 and had his first admission to a mental health ward after an attempted hanging at the age of 21.

[2] On 25 October 2013 the Mental Health Court made a Forensic Order inpatient with no limited community treatment in relation to WAB. At that time WAB was in jail and the Forensic Order ought to have been one with full LCT to accommodate this fact.[1]

[3] The evidence before this Court in 2013 was that WAB had schizophrenia and was of unsound mind at the time of the offences which were before the Court.

[4] The 2013 order has never come to an end; it has been reviewed regularly in the Mental Health Review Tribunal (MHRT) and confirmed on those occasions. Since the Forensic Order was made, WAB has spent only eight months outside an Authorised Mental Health Service or a jail. He manages to obtain illegal drugs both in hospital and in jail. He offends in other ways. He is very difficult to manage.

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1 *SAL* [2019] QMHC 3; *Florey* [2018] QMHC 12 and a decision of *Re M (No 2)* referred to in both *SAL* and *Florey* but not yet published.

[5] WAB acts for himself. He lodged an appeal on 11 June 2019 against the decision of the MHRT of 7 June 2019. That was a decision of the MHRT confirming a Forensic Order inpatient with very limited leave.

[6] The material before the Court indicated that WAB has an IQ of 68. I must say that I thought his ability to represent himself in Court was better than that very low score would indicate. Nonetheless, there were obvious difficulties with his representing himself.

[7] The basis for WAB's contention that the order of the MHRT ought to be set aside is that he does not in fact have schizophrenia, but pretended to have schizophrenia when he was examined for the purpose of the Mental Health Court proceedings in 2013. He explains that he had an uncle with schizophrenia and essentially copied his behaviour to achieve that diagnosis. He says that at the time he thought that pretending to have a mental illness would be an easy way out of his legal predicament, but now complains that he has spent nearly six years detained either in jail or hospital. He now realises that it would have been easier for him to have served his time in jail for the offences which came before the Mental Health Court in 2013 than to be subject to the Forensic Order for this length of time.

[8] One difficulty with WAB's appeal is that although there was a MHRT decision of 7 June 2019, it was superseded by another one on 5 July 2019. However, as the Tribunal decisions were very similar, that difficulty can be overcome as treating WAB's appeal as one from the decision of 5 July 2019.

[9] Another difficulty which WAB faces is the decision of Flanagan J in *SWZ*.[2] Flanagan J held that, "a current existing mental illness" was not "a prerequisite to the confirmation of a forensic order". – [35]. The question whether or not a Forensic Order will be confirmed or discharged depends upon, *inter alia*, the risk the person poses to the community, and absence of current illness is only one factor in making that assessment. I do note, however, that *SWZ* was a case involving depression which remitted, rather than a case like this where, if what the defendant now says is true, he did not have schizophrenia, and may not have had any mental illness, at the time this Court made the Forensic Order in 2013.

[10] It may at first seem unlikely that WAB, particularly considering his measured IQ, could imitate the signs and symptoms of schizophrenia so well that he in effect fooled the two psychiatrists who reported to the Mental Health Court in the 2013 proceedings, and that nothing of this subterfuge was detected by the Assisting Psychiatrists in 2013. However, it seemed to me, and to the psychiatrists assisting me on 9 October 2019, and 10 December 2019, that there might be something in the claim that WAB does not have schizophrenia. His treating doctor, Dr Singh, gives this information:

> "Background history of childhood trauma and strong history of anti-social behaviour from his adolescence which has appeared to continue and escalate into the present. Historical documentation of psychotic symptoms on two occasions have resulted in the diagnosis of paranoid schizophrenia and a

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[2] [2019] QMHC 2.

> forensic order. No such observations of any positive or negative symptoms of psychosis have been made since 2013, even in the context of heavy drug use. All observations since the diagnosis in 2013 include symptoms of poor impulse control, poor empathy, angry outbursts that manifest in physical violence and crime, suggesting antisocial personality traits. Appears to have deficits in executive functioning which could contribute to his antisocial traits and this has been previously documented in a 2015 cognitive assessment which noted an estimated IQ of 68. Highly unlikely that [WAB] has paranoid schizophrenia. However, he has been on antipsychotic [medication] while still an inpatient. The likelihood of him having psychotic episodes in the near future cannot be ruled out [if] he continues to use drugs and alcohol."[3]

[11] Because WAB has been on a hospital ward or in prison for all but eight months of the last six years, it is unlikely that psychotic symptoms have escaped attention. Further, he has managed to use illicit drugs fairly frequently in jail and in hospital. These drugs are known to worsen the symptoms of psychotic illness and, in susceptible individuals, produce drug-induced psychosis. WAB's not exhibiting psychotic symptoms over such a long period of time, despite drug use, does increase the likelihood that he does not have any psychotic illness.

[12] Sensibly the only way to test whether or not WAB does have schizophrenia is to observe him in a secure hospital environment where those treating him can be certain he is not taking illicit drugs and where they can wean him from antipsychotic medication in a controlled way to observe whether or not that leads to the re-emergence of psychotic symptoms – see the advice of my Assisting Psychiatrists on 9 October 2019, tt 1-10. My Assisting Psychiatrists also advised that WAB's treatment on the mental health ward of a normal, ie, not secure, hospital was well and truly sub-optimal. They noted that although staff of the hospital which was recently involved in WAB's case had attempted to have him taken to a secure mental health facility, the particular secure health facility in the relevant geographical area had refused a referral.

[13] The strong recommendation of my Assisting Psychiatrists was that WAB should go to a secure mental health unit so that he could be rendered free of illicit drugs, and his antipsychotic medication withdrawn, so that he could be observed. The hearing of 9 October 2019 concluded on the basis that the Chief Psychiatrist would liaise with the relevant health authorities to see if that result could be brought about (this Court has no power to order such a result).

[14] When the adjourned hearing in this Court resumed on 10 December 2019, WAB had been taken from prison to a secure mental health facility. WAB is being monitored for illegal drug use and his antipsychotic medication is being withdrawn. My Assisting Psychiatrists advised that this is a sensible medical plan and that WAB ought to remain on a Forensic Order inpatient category with no approved leave for three to four months in the secure facility so that his treating team and an independent doctor can review him so that some view can be formed as to whether or not he does in fact suffer from schizophrenia.

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[3] Report 29/5/2019, pp 6-7.

[15] It seems to me that where the appellant raises a real issue as to whether or not he ever had a mental illness this ought to be investigated.

[16] There is a second matter. The appellant has spent six years on a Forensic Order. If his treating doctor's opinion is correct, WAB has spent years on mental health wards when he has no illness which can be treated. This is obviously undesirable both from the point of view of WAB, and from the point of view of the health system, which has scarce resources. One main purpose of a Forensic Order is to protect the community. WAB has offended whilst on the Forensic Order. I think there is little doubt that he would have offended had he not been on a Forensic Order. I do not know that it is safe, or of any assistance, to speculate as to whether or not his offending would have been worse had he not been on a Forensic Order.

[17] In short, as to this second point, it does not appear that having WAB on a Forensic Order since 2013 has been successful from any party's point of view. Hopefully, some better way forward can be found.

[18] It seems to me, and to the psychiatrists who have assisted me with this matter, that ascertaining whether or not WAB does have, and ever did have, a mental illness, and if so, what it was or is, would be a sensible enquiry. Clarity as to WAB's mental condition must assist in determining whether or not WAB ought to be on a Forensic Order at all and, if he is to be on a Forensic Order, where he is best placed.

[19] There was some discussion at the hearing of 10 December 2019 as to whether or not this Court should adjourn the hearing of the appeal, and so stay seized of the matter in order to investigate WAB's mental condition, or deal with the appeal on the material which it had before it and hope that the MHRT would use its powers to investigate WAB's mental condition with a view to finding a better way forward for this man.

[20] In the end I think this Court is better to remain seized of the matter and undertake those investigations itself. There is no doubt that this Court has the power. The appeal from the MHRT is a re-hearing. Because the MHRT effectively ignored the issue about whether WAB has a mental illness, there is not sufficient material before this Court to deal with that issue unless reports are commissioned. There has apparently never been any attempt to confront these diagnostic issues by the MHRT.[4] I am also not aware that the MHRT has taken any steps to confront the other major issues in having this man remain on a Forensic Order: it does not appear to be doing him any good; his treating doctor does not believe he has a mental illness, yet he is detained on a hospital ward; secure facilities have refused him admission notwithstanding this is a preferable option, and lastly, but not least, WAB continues to offend on the Forensic Order. In my view it is not enough that the MHRT continues to confirm the Forensic Order every six months without having regard to the long-term situation its orders are creating.

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[4] The Tribunal hearings of 7 June 2019 and 5 July 2019 had Dr Singh's report (above), which clearly supported the idea that WAB may never have had a mental illness. Yet that highly significant fact does not seem even to have been recognised by the MHRT. Much less did the MHRT take any positive steps to clarify the position.

[21] There is a further problem in that the MHRT has seemingly not understood the interaction between a Forensic Order inpatient and the Corrective Services system. This has meant that WAB has been incarcerated in jail whilst on a Forensic Order inpatient.

[22] For all these reasons it seems to me that it is desirable that the appeal remain undetermined in this Court until this Court is able to obtain an independent review of this man's mental condition from an experienced reporting doctor and the issues as to the continuation of a Forensic Order and, if it is continued, its form, be fully ventilated in light of the best available information. That is the reason for my simply adjourning the hearing of the appeal at this stage.

[23] The course is somewhat unusual because it means that the undetermined appeal will lie in this Court notwithstanding that the regular six monthly review schedule continues in the MHRT. It is to be hoped that the MHRT will deal with those reviews having regard to what this Court is attempting. However, even if the MHRT does conduct reviews while this Court is seized of the appeal, I cannot see any great difficulty in giving WAB leave to amend his appeal at the final hearing of it, so that it refers to the most recent MHRT decision.

[24] Counsel for the Attorney-General submitted that I ought to simply deal with the appeal and dismiss it. He submitted that because of WAB's behaviour it was clear he needed to remain on a Forensic Order inpatient, and that the July 2019 order granted sufficient leave. It was said that my Assisting Psychiatrists had advised me that a Forensic Order ought to remain in place and that ought to be the end of the matter.

[25] I hope I have explained why I will not follow this course, and that my Assisting Psychiatrists did not advise me to do so. Their advice that WAB remain on a Forensic Order inpatient was in the context that he remain in the secure mental health facility where he is so that he can be observed; weaned from antipsychotic drugs, and ultimately, examined by independent psychiatrists appointed by this Court as part of a plan to reassess whether this man should be on a Forensic Order, and if so, what type.

[26] When delivering this judgment I anticipate making orders for the examination of WAB by independent psychiatrists and placing this matter on the Mental Health Court call-over list so that the appeal can be supervised towards a final hearing.

[27] That is the end of my reasons for adjourning the matter. I now turn to a separate issue which was raised by the circumstances of this appeal.

Interaction between Forensic Orders and Detention in a Jail

[28] At the time of the hearing before me on 9 October 2019 WAB was in prison even though he was subject to a Forensic Order inpatient. This was the Forensic Order originally made by the Mental Health Court in October 2013 and confirmed, most recently by the MHRT on 5 July 2019.

[29] From the material before this Court it seems that in June 2016 WAB received a custodial sentence. It appears he was living in the community at the time, and I am not certain whether his Forensic Order had been changed to a Forensic Order community at that stage. Perhaps it was a Forensic Order inpatient with full limited community treatment under the 2000 Act. In any event, in June 2017 it appears that WAB was released on parole with two years and eight months of a sentence left to run. (That must mean he is now very close to his full-time release date.) When released on parole in June 2017 WAB was taken to the Authorised Mental Health Service which had care of him under the terms of the Forensic Order; he remained there as an inpatient.

[30] It appears that on 27 December 2018 WAB was arrested on a warrant from the Parole Board. The material before me does not reveal the status of his Forensic Order at that stage, ie, whether it was inpatient or community.

[31] It appears that on 8 March 2019 the MHRT confirmed WAB's Forensic Order as being inpatient with no limited community treatment.[5] Later it seems WAB was removed from jail and taken back to the same hospital as a Classified Patient (on 9 May 2019).[6]

[32] Then it appears that on both 7 June 2019 and 5 July 2019 the MHRT confirmed the Forensic Order as an inpatient order. Escorted absences only were allowed by way of leave under the 7 June 2019 order. The order of 5 July 2019 gave more scope to allow leave at the discretion of the treating psychiatrist, up to seven unsupervised overnight absences per week. Both those orders were incompatible with WAB's status as a Classified Patient. A Classified Patient is (rightly) subject to a strict regime under Chapter 3 of the *Mental Health Act 2016.* It is quite separate from the provisions in the Act governing patients on Forensic Orders. It is much more restrictive, eg, a Classified Patient has very limited leave – see s 219 of the 2016 Act.

[33] It appears that WAB was still being detained on the hospital ward when, on 7 August 2019, he was taken from the hospital to jail pursuant to a warrant issued by the Parole Board. He remained in prison at the hearing on 9 October 2019.

[34] There remain legal difficulties with WAB's detention. WAB is now in a secure mental health facility which is where he ought to be, in my opinion, and in the opinion of the Assisting Psychiatrists (see above). However, he is not there as a patient on a Forensic Order inpatient. He is there as a Classified Patient.

[35] Classified Patients are prisoners who need either to be examined in an Authorised Mental Health Service, or to be cared for in an Authorised Mental Health Service because they have a mental illness – see s 61(b) of the 2016 Act. WAB is not properly a Classified Patient. He is not in hospital to be treated for a mental illness. The most up-to-date information this Court has is that no-one treating him believes he has a mental illness.[7] Certainly, if he has a mental illness it does not need to be treated in hospital.

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5 See report of Dr Singh, 29 May 2019, p 5.
6 Dr Singh's report, 29 May 2019, p 6.
7 Dr Singh's report, 29 May 2019 and report of Dr Kamavarapu, 4 December 2019, pp 8-9.

[36] More fundamentally, WAB is not properly a Classified Patient because he is not properly in the custody of Corrective Services. By an order of this Court, confirmed by the MHRT, WAB is required to be an inpatient in an Authorised Mental Health Service. This is not just a matter of language or form-filling-in. A Classified Patient has different (and lesser) rights than a patient on a Forensic Order. There is a very precise regime for making someone a Classified Patient and releasing someone from that status. At the moment the Chief Psychiatrist of Queensland is holding WAB otherwise than in accordance with law.

[37] The removal of WAB from a hospital ward to jail, see [33] above, was contrary to the Forensic Order made by this Court and confirmed on 5 July 2019 by the MHRT. Those orders required WAB to be held at an Authorised Mental Health Service as an inpatient.

[38] The definition of inpatient in the *Mental Health Act 2016* is as follows:

> "***inpatient*** means–
>
> (a) in relation to the category of a treatment authority, forensic order (mental health) or treatment support order, the person subject to the authority or order –
>
> (i) must be detained in an inpatient unit of an authorised mental health service while receiving treatment and care; and
>
> (ii) may receive limited community treatment; …" (my underlining)

[39] Further, inpatient unit is defined:

> "***inpatient unit,*** of an authorised mental health service, means a part of the service to which patients are admitted for treatment and care and discharged on a day other than the day of admission."

[40] Section 6(1) of the *Corrective Services Act 2006* provides that a person sentenced to a period of imprisonment must be detained in a Corrective Services facility. However, s 6(3)(d) of that Act provides that this is subject to the provisions of the *Mental Health Act 2016.*

[41] I am not aware of any decision of this Court which is contrary to the idea that a Forensic Order inpatient requires a patient to be held in an Authorised Mental Health Service. I am only aware of three decisions dealing with the matter and all three are to the effect that if this Court makes a Forensic Order inpatient, the patient is to be detained on a hospital ward, not held in prison. In the case of *SAL*[8] I reviewed my decision in *Florey*[9] and Justice Ann Lyons' decision on 30 September 2010 in *Re M (No 2).*[10] While I differed from Justice Lyons because I thought that a Forensic Order community would allow a defendant to be held in prison, we were both of the view that someone subject to a Forensic Order inpatient must be kept in hospital, not in a prison.

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[8] [2019] QMHC 3.
[9] [2018] QMHC 12.
[10] Still not published because of the requirements of the Act.

[42] On 7 August 2019 it was contrary to law for WAB to have been removed from the hospital ward and taken to prison. The Authorised Mental Health Service having charge of WAB under the Forensic Order ought to have attempted to persuade parole authorities not to arrest WAB. Were they unsuccessful in doing so, they ought to have made an urgent application either to the MHRT or to this Court.

[43] Unfortunately the history of WAB's interaction with this Court; the MHRT; his Authorised Mental Health Service, and Corrective Services shows that the arrest on 7 August 2019 was not the first time this Court's order had been disregarded. Not only that, from submissions made by counsel on behalf of the Attorney-General in this case, and in *SAL,* I suspect the practice may be widespread.

[44] In *SAL* I said the following:

> "[34] The Attorney-General's submissions rest on the assertion that there is a well understood and longstanding practice that 'warrants for imprisonment override any Forensic Order detaining a patient to [an Authorised Mental Health Service]'. This is said to be the effect of s 6 of the *Corrective Services Act*. I must say that my experience on the Mental Health Court is that a Forensic Order Inpatient is inconsistent with detention in jail. This was the basis for the decision in *M (No 2)* and the decision in *Florey*. Both the *Mental Health Act 2000* and the *Mental Health Act 2016* require persons subject to inpatient orders to be in an Authorised Mental Health Service. If there has been a practice in the MHRT consistent with the order under appeal in the current case, that practice has ignored these provisions. It has also ignored the position as set out in *Re M (No 2).* …"

[45] In this case counsel for the Attorney-General made submissions to me about the practice of the Mental Health Court which: did not accord with my experience, having sat on the Court for six years; were not supported by any case authority, and were directly contrary to the only cases I have been referred to in relation to these points: *SAL, Florey,* and *Re M (No 2).* The Chief Psychiatrist made submissions that accord with these last three cases I have mentioned and with my view that a patient on a Forensic Order inpatient cannot lawfully be removed to a prison.

[46] The Chief Psychiatrist, the MHRT and, it appears, the Attorney-General of Queensland need to ensure that their thinking about these matters is correct. If this Court makes a Forensic Order inpatient, and if that order is confirmed by the MHRT, the subject of the order is to remain in an inpatient unit, not be taken to jail. I cannot overstate the importance of this point. At stake is the liberty of citizens who are often unable to act effectively in their own interests, and obedience to orders of this Court.

This Court's Ancillary Powers

[47] Having regard to the nature of the issue involved, I found it utterly remarkable that on the hearing of this application counsel for the Attorney-General of Queensland submitted, "The issue of the legality of that removal [from a hospital ward to prison] is not within the jurisdiction of the Mental Health Court …" – t 1-7; "… My submissions are that the Mental Health Court in its jurisdiction doesn't have the ability to enquire

into legality or make rulings on unlawfulness or illegality", and, "… I do have the written instructions from the Attorney-General through the Crown Solicitor to make the submission that the issue of legality is outside the jurisdiction of the Mental Health Court – of its appeal jurisdiction." – t 1-8. These submissions were repeated in undated written submissions lodged on behalf of the Attorney-General after the hearing in December – paragraph 2.

[48] The Mental Health Court is a superior Court of record – s 637(1) of the *Mental Health Act 2016*. It is a statutory Court; unlike the Supreme Court it does not have plenary jurisdiction. It has jurisdiction to hear appeals from the MHRT – s 639(1), and at s 639(2) it is provided that:

> "(2) In exercising its jurisdiction, the court –
>
> (a) must inquire into the matter before it; and
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> (b) may inform itself in relation to the matter before it in any way it considers appropriate."

[49] At s 639(4) of the Act it is provided that a member of the Mental Health Court retains all the member's jurisdiction as a Supreme Court Judge. The meaning of this provision is problematic and I would not rely upon it in the present case. However, at s 640 of the Act it is provided that:

> "Without limiting the powers conferred on it under this or another Act, the Mental Health Court may do all things necessary or convenient to be done for the exercise of its jurisdiction."

[50] Such a power does not extend the Court's jurisdiction, but is an ancillary power.[11] The scope of such a power must be construed having regard to the subject matter in question and the Act as a whole – *Project Blue Sky Inc v Australian Broadcasting Authority*.[12]

[51] In *Cuttler v Browne* Muir JA had this to say about the powers of Courts and Tribunals over their own processes:

> "[52] The Court's power to protect its processes from abuse arising from the misconduct of those availing themselves of its processes was stated in the following terms in *Cocker v Tempest* and approved by the Court of Appeal in *Bhamjee v Forsdick (No 2)*:
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> > 'The power of each Court over its own process is unlimited; it is a power incident to all Courts, inferior as well as superior; were it not so, the Court would be obliged to sit still and see its own process abused for the purpose of injustice. The exercise of the power is certainly a matter for the most careful discretion.'
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> [53] That power, as the above passage makes plain, is not limited to courts of superior jurisdiction.

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[11] *Legal Services Commissioner v Madden (No 2)* [2008] QCA 301, [79], [93], and the authorities at footnote 24 of that decision.

[12] (1998) 194 CLR 355, 381, 382, cited in *Cuttler v Browne & Anor* [2010] QCA 346, [35].

[54] The principle extends to tribunals as explained in the reasons of Sheppard J in *Australian Securities Commission v Bell*:

> 'Unless there is a clear legislative intention otherwise, tribunals of all kinds will have the power to regulate and control their own proceedings. That power is implied into the statutory provisions pursuant to which a given tribunal is created. The power is implied because it is necessary that the tribunal have it in order to be able properly to discharge its functions: see D C Pearce & R S Geddes, *Statutory Interpretation in Australia* (2nd ed), par 33, p 37. I refer also to the decisions of Lockhart J in *Re Sterling; Ex parte Esanda Ltd* (1980) 44 FLR 125 at 129-130 and Toohey J (when a judge of this Court) in *Re Briggs; Ex parte Briggs v Deputy Commissioner of Taxation (WA)* (1986) 12 FCR 310 at 310-312 …'" (footnotes omitted)

[52] The Court of Appeal considered a 'necessary and convenient' power residing in the Legal Practice Tribunal in *Legal Services Commissioner v Baker (No 1).*[13] Justice Chesterman said this:

> "[12] Section 23 of the *Supreme Court Act* 1970 (NSW) provides that that court should 'have all jurisdiction which may be necessary for the administration of justice in New South Wales'. The grant of power to the Tribunal is wider: it has such power as is 'necessary or convenient' for the exercise of its jurisdiction. In *Dwyer v National Companies & Securities Commission* (1988) 15 NSWLR 285 the director of a company was served with a notice the effect of which was to prevent him acting as a director of any company without the leave of the Supreme Court. The director appealed from the decision of the regulator which had served the notice and sought a stay until his appeal could be heard. McLelland J thought that the power to stay the notice was incidental to the existence of a right of appeal to the court and derived both from its inherent power and from section 23.
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> [13] His Honour referred with approval to what had been said by Macfarlan J in *Ex parte Farren; Re Austin* (1960) 77 WN (NSW) 743 at 744, that the power conferred by section 23 'extends to whatever may be necessary to prevent any injustice occurring with respect to matters which come within its cognisance'.
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> [14] In *Veghelyi v Council of the Law Society of New South Wales* (1989) 17 NSWLR 669 the appellant sought an order from a judge of the Supreme Court that he be allowed to practise as a solicitor pending his appeal from the Law Society's refusal to issue him with a practising certificate. Section 37(2) of the *Legal Profession Act* 1987 (NSW) provided that subject to any order of the Supreme Court an appeal did not stay the effect of a refusal to issue a certificate. Smart J, following *Dwyer*, held that section 23 of the *Supreme Court Act* was a sufficient grant of power to order a stay, or to make an affirmative order that the applicant be permitted to practise pending his appeal. His Honour thought:

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[13] [2005] QCA 482.

> 'The basis of the jurisdiction to make an interlocutory order pending appeal depends upon the need to avoid injustice.' (At 676.)
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> [15] The (New South Wales) Court of Appeal said in *New South Wales Bar Association v Stevens* (2003) 52 ATR 602 at 620 [84], that Macfarlan J's statement in *Farren* was a good expression of 'the scope of the power to stay the effect of a decision subject to appeal …'. The court approved the decisions in *Dwyer* and *Veghelyi*.
>
> [16] These cases are more than adequate authority for the opinion that section 432(1) of the Act confers a power on the Tribunal to make an order deferring the operation of a recommendation that a practitioner's name be removed from the roll. If there were a proper case for a stay of an order made by the Tribunal injustice would be done if the stay could not be granted. In such a case an order granting a stay would be necessary or convenient for the exercise of the Tribunal's jurisdiction."

[53] In this appeal the evidence shows confusion about, and lack of understanding of, the interaction between Forensic Orders made under the *Mental Health Act 2016* and the provisions of the *Corrective Services Act* on the part of health authorities; Corrective Services officers; counsel for the Attorney-General (who appears regularly in the MHRT), and the MHRT. These misunderstandings have not just occurred on one occasion but on several involving WAB, and, as I explained above, I infer in other cases. As explained, it seems that these misunderstandings have resulted in wrongful arrests and actions contrary to orders of this Court. There is every reason to think that this Court has power under s 640 of the 2016 Act to enquire into these circumstances.

[54] I accept the point raised by counsel for the Attorney-General that no formal order or declaration about these matters ought be made without there being a Court proceeding which gives Corrective Services and the Parole Board the opportunity to be heard. One potential procedure which would allow such a hearing is for this Court to prefer contempt charges against those who remove patients from inpatient facilities where they are detained pursuant to this Court's order. Another possibility is for the Member constituting the Mental Health Court to adjourn proceedings in the Mental Health Court and begin proceedings in the *parens patriae* jurisdiction of the Supreme Court. Having regard to the difficulty with the order initially made, see paragraph [1] above; the fact that WAB must be near his full-time release date, see [29] above, and the fact that the Chief Psychiatrist is trying to correct the current situation and to educate Authorised Mental Health Services as to the correct law involved, it would seem at present that this case is not the best vehicle for such action. Of course, that may change in the future.

[55] Nonetheless there seems to be a great measure of utility in investigating and ventilating these issues in a way which might help to guide Authorised Mental Health Services, Corrective Services staff, the Parole Board and the MHRT in the future.