



Administrative Decisions Tribunal  
New South Wales

## Appeal Panel - External

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<b>CITATION:</b>	<b>VU v Miles [2006] NSWADTAP 19</b> <b>This decision has been amended. Please see the end of the decision for a list of the amendments.</b>
<b>PARTIES:</b>	APPELLANT VU RESPONDENT Miles
<b>FILE NUMBER:</b>	068004
<b>HEARING DATES:</b>	24/04/06
<b>SUBMISSIONS CLOSED:</b>	04/24/2006
<b>EXTEMPORE DECISION DATE:</b>	04/24/2006
<b>DATE OF DECISION:</b>	05/05/2006
<b>BEFORE:</b>	Hennessy N - Magistrate (Deputy President); Britton A - Judicial Member; Wunsch A - Non Judicial Member
<b>CATCHWORDS:</b>	Financial management order - making of interim order - Protected Estates - estate of person be subject to management
<b>MATTER FOR DECISION:</b>	Principal matter

<b>FILE NUMBER UNDER APPEAL:</b>	C/16653
<b>DATE OF DECISION UNDER APPEAL:</b>	01/24/2006
<b>LEGISLATION CITED :</b>	Administrative Decisions Tribunal Act 1997 Administrative Decisions Tribunal Rules (Transitional) Regulation 1998 Guardianship Act 1987 Mental Health Act 1990
<b>REPRESENTATION:</b>	APPELLANT L Goodchild, counsel  COUNSEL ASSISTING A Johnson, solicitor
<b>ORDERS:</b>	The appeal is upheld; The decision of the Mental Health Review Tribunal dated 24 January 2006 making an order that the estate of VU be subject to management under the Protected Estates Act 1983 for a period of six months is set aside.

**Section 126 of the *Administrative Decisions Tribunal Act 1997* applies to this decision.**

**Section 126 provides**

(1A) This section applies only to the following:

(a) proceedings in the Community Services Division of the Tribunal,  
(b) appeals to an Appeal Panel from a decision made by the Tribunal in the Community Services Division,

(b1) proceedings in relation to an external appeal made under section 67A of the Guardianship Act 1987 or section 21A of the Protected Estates Act 1983,

(b2) proceedings in relation to a reviewable decision made under the Guardianship Act 1987 or the Protected Estates Act 1983

(c) such other proceedings (or class or classes of proceedings) as may be prescribed by the regulations for the purposes of this section.

(1) A person must not, except with the consent of the Tribunal, publish

or broadcast the name of any person:

- (a) who appears as a witness before the Tribunal in any proceedings, or
- (b) to whom any proceedings before the Tribunal relate, or
- (c) who is mentioned or otherwise involved in any proceedings before the Tribunal,

whether before or after the proceedings are disposed of.

Maximum penalty: 10 penalty units or imprisonment for 12 months, or both.

(2) This section does not prohibit the publication or broadcasting of an official report of the proceedings that includes the name of any person the publication or broadcasting of which would otherwise be prohibited by this section.

(3) For the purposes of this section, a reference to the name of a person includes a reference to any information, picture or other material that identifies the person or is likely to lead to the identification of the person.

## **REASONS FOR DECISION**

1 VU is a man who has had at least four psychotic episodes necessitating admission to hospitals in New Zealand and Australia. The most recent episode occurred in December 2005 when VU was admitted to the Caritas Inpatient Unit of St Vincent's Hospital as an involuntary patient. On 17 January 2006, the Mental Health Review Tribunal (MHRT) dealt with two applications in relation to him. The first was an application by St Vincent's Hospital for a Community Treatment Order. The second was an application by Glenda Miles, a social worker, for an order under s 19(1) of the *Protected Estates Act 1983* (PE Act) that VU's financial affairs be subject to management by the Protective Commissioner.

2 Both applications were adjourned to allow VU an opportunity to devise a budget, for the hospital to determine whether accommodation was available, and to allow VU's cousin to give evidence to the MHRT. Both applications came before a differently constituted MHRT on 24 January 2006. The MHRT heard evidence from Ms Miles, Dr Powell (a psychiatric Registrar), VU and VU's cousin. Ms Goodchild, of counsel, represented VU. The MHRT ordered that an interim financial order be made under the PE Act for six months. VU has appealed to the Administrative Decisions Tribunal (ADT) against that decision.

## **Jurisdiction of the ADT**

3 Section 21A(1) of the PE Act provides that:

An appeal may be made to the ADT against an order by a Magistrate or the MHRT under this Division that the estate of a person be subject to management under this Act.

4 Section 118A of the *Administrative Decisions Tribunal Act 1997* (ADT Act) gives the ADT's Appeal Panel jurisdiction to hear and determine such appeals. Such an appeal may be made "as of right, on any question of law" or with the leave of the Appeal Panel, "on any other ground": s 118B(1) of the ADT Act.

## **Parties to the appeal**

5 The parties to this appeal were VU and Ms Miles who was the applicant before the MHRT. Ms Miles has indicated that she does not wish to participate in the appeal. Consequently, the only active party was VU. In those circumstances, we decided, pursuant to s 67(2A)(b) of the ADT Act and rule 41A(2) of the *Administrative Decisions Tribunal Rules* (Sch. 1 of the *Administrative Decisions Tribunal Rules (Transitional) Regulation* (1998)), to appoint the Crown Solicitor as a person to assist the ADT in these proceedings. Ms Anina Johnson, solicitor, appeared on behalf of the Crown to make submissions to assist the ADT in the appeal.

### **Grounds of Appeal**

6 The appellant put forward several grounds of appeal. One was that the MHRT had misconceived its interim order powers under s 20 of the PE Act. For slightly different reasons from those put forward by Ms Goodchild, we accept that submission. We set out our reasons below.

7 Part 3 Division 1 of the PE Act deals with the making of financial management orders in relation to people who are incapable of managing their own financial affairs. Depending on the circumstances, a financial management order may be made by the Supreme Court, by a Magistrate or by the MHRT. The Guardianship Tribunal can also make financial management orders for people who lack capacity. (See Part 3A of the *Guardianship Act 1987*.)

8 Section 19(1) of the PE Act was the provision relied on by Ms Miles in bringing her application to the MHRT in relation to VU. That provision states:

The MHRT may, on the application of any person having, in the opinion of the MHRT, a sufficient interest in the matter and whether or not it has previously considered the question, consider a patient's capability to manage his or her affairs and, unless satisfied that the patient is capable of managing his or her affairs, shall order that the estate of the patient be subject to management under this Act.

9 This provision refers to "a patient's capability to manage his or her affairs". Section 4 defines "patient" to have "the same meaning as in the *Mental Health Act 1990*." That Act defines "patient" in Schedule 1 to mean:

"patient"(except in Division 1 of Part 1 of Chapter 7) means a person who is admitted to a hospital in accordance with this Act and who is in the hospital following the person's admission, and includes a person so admitted while absent from a hospital either with or without leave of absence.

10 Consequently, the MHRT may only make a financial management order under s 19 in relation to a person who is admitted to a hospital in accordance with the *Mental Health Act 1990* and who is in hospital following the person's admission. The exception in relation to a person who is absent with or without leave is not applicable in this case. There was no dispute that VU was a "patient" within the meaning of that term in s 19, at the time the MHRT made its order on 24 January 2006.

11 Rather than making a continuing financial management order under s 19, the MHRT may make an interim order under s 20. That is what it purported to do in this case. Section 20 states that:

(1) A Magistrate or the MHRT may, if it appears to the Magistrate or MHRT necessary or convenient to do so, make an interim order under this Division for a specified period in respect of a patient *pending further*

*consideration of the patient's capability to manage his or her affairs .*

(2) Where another order under this Division is not made before the period for which an interim order made expires, the interim order shall be deemed to be revoked on the expiration of that period. (Emphasis added.)

12 The MHRT purported to make an interim order for a period of six months. In its Reasons for Decision at page 6, the MHRT wrote that:

Mr Green and Dr Campbell determined that a six month interim order was necessary and appropriate, assessing that six months of structure and stability in the community under an order may equip [VU] to again manage his own financial affairs.

13 Section 20 states that such an order is to be made "pending further consideration of the patient's capability to manage his or her affairs."

This phrase is unhelpfully expressed in the passive voice, but it means that the MHRT should re-list the matter before it to further consider the patient's capability to manage his or her affairs before the time period specified in the order expires. In this case, the MHRT did not make any directions about giving further consideration to VU's capability to manage his affairs. Instead the MHRT made what amounts to a temporary order in anticipation that VU would regain his capacity to manage his financial affairs in six months.

14 Financial management orders can be continuing or interim. There is no provision in either the PE Act or the *Guardianship Act 1987* for the making of temporary financial management orders. Temporary orders and interim orders are both made for a specified period but unlike a temporary order, an interim order under s 20 is made "pending further consideration of the patient's capability to manage his or her affairs". It is only made when it appears "necessary" and "convenient" to do so. An interim order may be necessary where there is an urgent need to make an order because a person's estate is being dissipated or there is a risk of financial exploitation. In that situation if the MHRT does not have sufficient information to be satisfied that the person is capable of managing his or her own affairs, it may make an interim order. If it does so, it should then make directions so that it can reconvene to further consider the patient's capability to manage his or her affairs. If, for whatever reason, another financial management order is not made before the interim order expires, then the interim order is automatically revoked at that time: s 20(2).

### **Conclusion**

15 Neither s 19 nor s 20 give the MHRT power to make temporary financial management orders. Those provisions only give it power to make a continuing order or an interim order for a specified period pending further consideration of the patient's capability to manage his or her affairs. The MHRT misconceived its powers under s 20 by making a temporary order instead of an interim order. That constitutes an error of law. There is no point remitting the matter to the MHRT to be heard and decided again because VU is no longer a "patient" and ss 19 and 20 of the PE Act only apply to "patients". For the same reason, there is no point considering whether leave should be granted for the ADT to hear the appeal on the merits.

### **Orders**

The appeal is upheld.

The decision of the Mental Health Review Tribunal dated 24 January 2006 making an order that the estate of VU be subject to management under the *Protected Estates Act 1983* for a period

of six months is set aside.

09/05/2006 - Replaced applicants name 'VP' with 'VU' - Paragraph(s) 1, 2, 5, 8, 10, 12, 13, 15, orders

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