Statement of Reasons

This is an edited version of the statement of reasons issued pursuant to section 756 of the *Mental Health Act 2016*. The patient and persons attending the hearing have been de-identified and, in some cases, may be allocated pseudonyms for privacy reasons. Other details that may lead to the identification of the patient may have also been modified or omitted. The modification or omission of these details does not affect its decision or its reasons for the decision.

Matter:	Forensic Order Review
Attendees	
Patient:	Attended
Patient's Legal Representative:	Attended
Community Psychiatrist:	Attended
Case Manager:	Attended
Attorney-General's Representative:	Attended
Decision	
Decision:	Forensic Order revoked Treatment Support Order made, community category, in accordance with the attached conditions.

The patient was placed on a Forensic Order by the Mental Health Court. He was found of unsound mind in respect of one charge of robbery and one charge of unlawful use of a motor vehicle.

Statutory Framework and Issues to be determined by the Tribunal

Set out in Appendix A to these Reasons is a summary of the principal provisions of the *Mental Health Act 2016* (**Act**) that are relevant to the Tribunal's conducting a review of a person's Forensic Order. Further reference will be made to these under "Application of evidence before the Tribunal to relevant provisions".

The issues for determination at the review were:

1. whether the Forensic Order for the patient should be confirmed or revoked;
2. if the Forensic Order is confirmed and the category is inpatient, should limited community treatment be approved for the patient, or should an authorised doctor be able to change the category to community;
3. if the Forensic Order is confirmed and the category is community, should the authorised doctor be able to change the extent of treatment in the community to the extent and
   subject to the conditions set by the Tribunal;
4. what, if any, conditions should be imposed on the Forensic Order;
5. if the Forensic Order is revoked, is there a further order or authority to be made; and
6. have the person's relevant circumstances been considered, defined in Schedule 3 of the Act as including the following:
    a. the person's mental state and psychiatric history;
    b. any intellectual disability of the person;
    c. the person's social circumstances, including, for example, family and social support;
    d. the person's response to treatment and care and willingness to receive appropriate treatment and care; and
    e. if relevant, the person's response to previous treatment in the community.

Clinical Report

The Tribunal was satisfied that the patient had been provided with the clinical report and given a reasonable opportunity to consider it within the required statutory timeframe.

Summary of evidence and findings

The Tribunal must confirm the Forensic Order if the Tribunal considers the Forensic Order is necessary, because of the person's mental condition, to protect the safety of the community, including from risk of serious harm to other persons or property.

1. The relevant circumstances of the person subject to the order

Mental state and psychiatric history

The patient has a long history of mental illness with his first diagnosis of psychosis approximately 20 years ago in the context of substance use. The patient's current diagnosis of paranoid schizophrenia is firmly established after an extensive number of admissions as noted in the clinical report.

The patient agreed with his diagnosis of schizophrenia and stated that if he stays on medication he remains well. The patient named his medication and highlighted that it has helped him. The patient explained he takes his medication because over the years he has found that if he does not take the medication he does not do well and stays stable with medication. He also said that the medication stops the voices. The patient reiterated he has not used illicit substances for a number of years.

The treating psychiatrist's clinical report and verbal evidence highlighted that over the last six months (and indeed that last few years) the patient has demonstrated excellent engagement with the treating team by attending all scheduled appointments and that the patient now sees value in his treatment.

The treating psychiatrist explained that the patient has been stable for the six months of review and for the last few years, that he accepts his diagnosis, and sees his symptoms as symptoms of an illness now and he is able to recognise the value of treatment. The treating psychiatrist explained that during the last six months she has reduced her contact with the patient from four to six weekly reviews. Similarly, the case manager has reduced contact with the patient from three times a week to once a week contact at the patient's home. However, the treating psychiatrist highlighted that often the patient is seen more frequently than once a week, as the case manager will take time to speak with him whilst visiting other co-consumers.

Despite the patient's stability, the treating psychiatrist report notes that the patient is affected by significant disability in social and occupational functioning largely related to a cognitive impairment arising from long-term severe mental illness. The patient now has considerable difficulties in executive functioning around problem solving, abstract thinking, future planning and attention and memory. He requires assistance with accessing the community.

The patient continues to attend Alcohol and Other Drugs Service (AODS) and over the last few months he successfully transitioned from daily oral suboxone to a monthly injectable preparation. The treating psychiatrist highlighted that the patient provides negative random urine drug screens (UDS) and that his last positive UDS was over four years ago.

In summary, the Tribunal noted that with his improving insight, the patient is currently compliant with all aspects of his treatment.

Any intellectual disability

The evidence did not indicate that the patient has an intellectual disability.

Social circumstances, including, for example, family and social support

The patient is a single man, with no dependents. His sibling (who lives interstate) was appointed Guardian for all personal decisions including health care. The Public Trust is appointed as his financial administrator. The patient's parents live relatively locally and he regularly speaks on the telephone with them. The patient also said he sees his uncle every now and then. He currently receives a National Disability Insurance Scheme (NDIS) package of support in the community for approximately 12 hours per week through non-governmental organisations (NGOs). The patient uses this support for attending appointments, assistance with domestic duties and psychosocial support to improve community access.

The patient explained he has no plans to use illicit substances or alcohol again and that he has not used alcohol in over four years. The patient highlighted that he feels things have been good, and he likes his support workers and going walking and to the library, the gym and to the movies. The patient also explained that he likes where he is currently living. The patient told the Tribunal that his "life is better now".

During the last six months, the patient has moved from an independent unit to a shared unit. He receives three meals a day and reports that he enjoys interacting with his flat mates. An Occupational Therapist assessment was completed and the patient is eligible for a supported independent living package, however, the patient stated he would like to remain in the shared accommodation as he enjoys living there.

Response to treatment and care and the person's willingness to receive appropriate treatment and care

The patient told the Tribunal that he feels his life is really good now. He noted that his support workers help him keep to his schedule. The treating psychiatrist highlighted that the patient engages well and complies with all aspects of his treatment and he is now talking with the team more about his illness. The treating psychiatrist also noted that the patient has the option of utilising more NDIS hours if he wishes to do so.

If relevant, the person's response to previous treatment in the community

The dossier reported that the patient has an extensive history of substance use, non-compliance with his treatment and leaving inpatient settings without permission. The treating psychiatrist highlighted the patient's stability during his two years within the current service and also his continued stability since he has resided within his new residence.

2. The nature of the relevant unlawful act and the period of time that has passed since the act happened

The patient was alleged to have stolen a car from a man unknown to him. The patient was reportedly non-compliant with medications, experiencing auditory hallucinations and using illicit substances at the time.

Whilst the index offences involved violence and were serious, the Tribunal noted that the patient has made very good progress with his rehabilitation and currently poses a low risk, if any, to the safety of the community and himself. The Tribunal gave consideration to the gravity of the offence and noted the treating team will continue to monitor the patient weekly, (and sometimes this is done more frequently as his case manager visits other co-consumers on other days), at his supported accommodation. The Tribunal formed the view that the patient poses a low risk of serious harm to persons in the community and to property. The offences did not involve a weapon and due to his paranoia, the patient reported to police.

The index offences occurred over 15 years ago and there has been no further offending. The patient has been on a Forensic Order for over 14 years.

3. Any victim impact statement relating to the relevant unlawful act

N/A

4. If the Mental Health Court made a recommendation about an intervention program for the person – the person's willingness to participate in the program offered to the person

The Mental Health Court did not make any recommendations about intervention programs for the patient.

5. Is the Forensic Order necessary, because of the person's mental condition, to protect the safety of the community, including from the risk of serious harm to other persons or property?

The Attorney-General's representative submitted that the Forensic Order should not be revoked because the patient had an extensive history of not complying with treatment and a lengthy history of illicit substance use. The Attorney-General's representative submitted that a greater period of stability was required within the community and that the Forensic Order was a protective factor for the patient as he was only discharged from a service some months ago and that the patient displayed a lack of insight into his illness and that there is still work to do with the treating team around transparency. The Attorney-General's representative noted that the patient required the oversight of the treating team under a Forensic Order to give him greater stability in the community. The patient's legal representative submitted that the patient's Forensic Order should be revoked based on the treating team's evidence.

The Tribunal was persuaded by the unanimous treating team and Assessment and Risk Management Committee (ARMC) evidence that the patient's risks could be adequately managed under a Treatment Support Order. The Tribunal considered the patient's relevant circumstances, and the Tribunal decided the Forensic Order was not necessary to protect the safety of the community for the following reasons.

- The index offences occurred over 15 years ago and the patient has progressed to the point where his treating psychiatrist considers him to now be of a low risk of harm to others (and himself) as he is well engaged with his treating team and the team have no concerns with the patient in the community. This opinion was supported by the ARMC. The patient complies with his medication and treatment and appointment regime and explained he understands he needs to continue to do so. The evidence indicated the patient has a developing insight into the link between his illness and the need for maintaining medication compliance to prevent relapse.

- Despite the patient being discharged from the service only some months ago and his extensive history of not complying with treatment, the treating team explained that the patient's mental state has been stable for four years. The treating psychiatrist clarified he has displayed excellent compliance over the last three years, and he has grown in his understanding of his mental illness and he has not demonstrated any signs or symptoms of acute relapse of psychosis in almost four years. The treating psychiatrist also elaborated that during her years of treating the patient she has observed his increasing awareness of his triggers and that especially over the last twelve months he has been increasingly open with the treating team and has acknowledged the value of treatment.

- The patient has a long history of substance abuse. The Tribunal noted that the patient's UDS have been negative to illicit substances for over four years. The patient emphasised to the

Tribunal he does not want to use illicit substances again and that he enjoys living with his flat mates as no one there uses alcohol or illicit substances. The treating psychiatrist opined that the patient's risk in this area is largely mitigated by ongoing support in the community and regular weekly random UDS testing. The ARMC also noted that the patient is well engaged with AODs.

- The treating psychiatrist noted that the patient's history of violent, abusive and aggressive behaviour was mostly whilst under the influence of illicit substances and that aggressive behaviour is out of character when he is at his baseline. The treating psychiatrist reported that the patient has not displayed risk taking behaviour, deliberate self-harm, threatening or actual violence towards others or any other criminal activities during the patient's extended inpatient admission. The treating psychiatrist further elaborated that since his discharge, there have been no concerning incidents to report during his time at his current residence. The treating psychiatrist also highlighted the patient does not drive a motor vehicle and has no future plans to do so.

- The patient is supported by: a generous NDIS package; his sibling being appointed as his Guardian; his parents; the Public Trustee for financial administration; and stable accommodation with flat mates who do not use substances.

- The treating team outlined that the patient's care plan is included within his recovery plan and that it adequately addresses the issues of safety of the community and that because of the patient's current stable mental condition he does not pose a threat of harm to the community. The treating psychiatrist reiterated that the patient has a low risk profile and she reports no concerns and no signs of aggression from the patient. The treating psychiatrist noted that the patient's greatest risk is his own vulnerability due to his low income and his cognitive and physical wellbeing. However, the treating psychiatrist highlighted that this vulnerability risk is mitigated by his strong community support through his NDIS package and through his regular case manager visits. The Tribunal also noted that due to the patient's cognitive impairment arising from long-term severe mental illness that the patient will continue to receive ongoing community support. The treating psychiatrist highlighted that if the patient did not comply with medication or used illicit substances he would be at risk of relapse however, due to the case manager often visiting the patient's residence and inadvertently seeing the patient there that this risk is mitigated. The treating psychiatrist also clarified that during the next review period the treating team will likely decrease case manager visits (specifically for the patient) to fortnightly, however, the reality is that he will continue to be inadvertently seen weekly as he is well known to other case managers and they will stop to talk with the patient when visiting other co-consumers.

The Tribunal was persuaded by the unanimous support from the treating team and the ARMC that the patient's Forensic Order should be revoked as his low risks can be adequately managed by the support he receives in the community form his treating team and his NGO workers. From the evidence, the Tribunal decided that the low risks posed by the patient could be adequately managed under a Treatment Support Order with the same community conditions and the care plan already in place. The Attorney-General's representative's submissions were relevant and given consideration. However, the Tribunal considered that the patient's low risk profile did not require him to be monitored under a Forensic Order. The Tribunal concluded that the patient's attitude towards his treatment and illicit substance use had changed and that his risks can be contained by a Treatment Support Order.

6. If limited community treatment has been approved, is the Tribunal satisfied there is not an unacceptable risk to the safety of the community, because of the person's mental condition, including the risk of harm to other persons or property?

With respect to risk, the Tribunal considers a Forensic Order is not necessary to protect the

community, therefore the Forensic Order will be revoked, in light of the patient's mental condition, as it is not necessary to protect the safety of the community. The Tribunal decided that a Treatment Support Order is necessary, and the category is community. The category must be community if the Tribunal is satisfied there is not an unacceptable risk to the safety of the community, because of the person's mental condition, including the risk of serious harm to other persons or property. Based on the evidence before the Tribunal there is low risk to the safety of the community due to the patient's mental condition. The Tribunal was persuaded that the patient's treatment and care needs and his and other people's safety and welfare can be adequately considered under a community category Treatment Support Order.

The Tribunal gave due regard to the unanimous evidence of the treating team and the ARMC regarding the patient's current risk profile. The Tribunal decided that a Treatment Support Order, community category is adequate to contain any risk the patient may pose to the community and property. The Forensic Order is not necessary to be made either for the safety of the community or the safety of the patient if a Treatment Support Order is in place. The patient has a serious mental illness and a history of illicit substance use and developing insight. However, being on a Treatment Support Order is sufficient to mean a Forensic Order is not necessary. There has been a change in the patient's approach to his mental illness he is now engaged with his team, his NGO workers and he is taking medication and staying away from alcohol and illicit substances. There were also no aggressive incidents stemming from this incident.

Human Rights

The Tribunal considered the relevant human rights set out in the *Human Rights Act 2019* (HRA). In particular, the Tribunal considers that the following human rights under that Act are potentially engaged and limited by the decision of the Tribunal: sections 17 (c),19, 21, 26, 31.

Taking into account the following, the Tribunal is satisfied that the limits imposed by the Tribunal's decision are lawful, proportionate to the circumstances, reasonable and justified in accordance with section 13 of the HRA for the following reasons:

- the criteria of the relevant test under the Act were met, thus the revocation of the Forensic Order and the making of a Treatment Support Order is lawful and within the jurisdiction of the Act – sections 442 and 450;
- the patient was afforded a fair hearing, section 31 HRA;
- the Treatment Support Order has been determined to be the least restrictive way for the patient to receive treatment and care in the community and the patient attends appointments in the community (section 19 HRA) and spends time with his family (section 26 HRA); and
- the human rights engaged have been balanced against the risk to the patient's health and wellbeing that is likely to eventuate if the patient does not receive treatment and care under the order. Indeed, the patient noted that his involuntary treatment provides him with stability (section 17 (c)) and he spoke freely about his illness and his views around this (section 21).

Conclusions of the Tribunal

The Tribunal weighed the submissions of the Attorney-General's representative against the unanimous evidence from the treating team, ARMC and the patient's legal representative. The Tribunal was persuaded that the Forensic Order should be revoked and a Treatment Support Order, community category was made.

There was consistent reiteration in oral evidence by the treating psychiatrist that the patient was stable and that his low risks could be adequately managed under a Treatment Support Order. This evidence was compelling.

The Tribunal acknowledges the differing submissions of the Attorney-General's representative. The

Tribunal gave thorough consideration to these submissions but found the evidence of the treating team more persuasive that there is not an unacceptable risk to the safety of the community if the patient's Forensic Order was revoked and he was placed under a Treatment Support Order.

For these reasons, the Tribunal decided to revoke the Forensic Order, make a Treatment Support Order community category and to order the same limited community treatment, as a less restrictive way for the patient to receive treatment and care in the community.

The Tribunal found that the patient has improved insight into his mental illness and is compliant with his recommended treatment. The Tribunal concluded that the low risks posed by the patient requires him to be under a Treatment Support Order in the community with the specified conditions.

Presiding Member

APPENDIX A
Statement of the law regarding Forensic Orders

The main objects of the *Mental Health Act 2016* (**Act**) are set out in section 3(2) and must be achieved in the way outlined in sections 3(2) and 3(3).

Chapter 12, Part 4 addresses the Mental Health Review Tribunal's (**Tribunal**) review of Forensic Orders (Criminal Code). The Tribunal must, within 21 days of receiving notice of the making of a Forensic Order (Criminal Code), conduct a hearing. At the hearing, the Tribunal must make a Forensic Order (mental health) unless the Tribunal considers:

(a) the person has an intellectual disability but does not have a dual disability; or
(b) the person has a dual disability but does not require treatment and care for their mental illness.

On the making of a Forensic Order (mental health) or Forensic Order (disability), the Forensic Order (Criminal Code) ends.

Section 433 provides that the Tribunal must conduct a **periodic review** of the Forensic Order –

(a) within 6 months after the order is made; and
(b) at intervals of not more than 6 months.

The Tribunal must also review the Forensic Order on application (an **applicant review**) by the forensic patient, an interested person for the patient, the Attorney-General, the chief psychiatrist or the director of forensic disability. Section 433(3) provides that the Tribunal may, on its own initiative, review a Forensic Order (a **tribunal review**).

Section 432(1) provides that the Tribunal must have regard to the following when reviewing a Forensic Order (mental health) or Forensic Order (disability):

(a) the relevant circumstances of the person subject to the order;
(b) the nature of the relevant unlawful act and the period of time that has passed since the act happened;
(c) any victim impact statement given to the Tribunal under section 155 or 742 relating to the relevant unlawful act;
(d) if the Mental Health Court made a recommendation in the order about an intervention program for the person – the person's willingness to participate in the program if offered to the person.

Section 438 provides that an application for an applicant review must state the orders that are sought and such order/s must be an order mentioned in Division 4 or 6 and are subject to any non-revocation period that may have been made by the Mental Health Court under section 137 (as required by section 442).

Section 441(1) provides that on a periodic review, the Tribunal must decide to confirm or revoke the Forensic Order for the patient. Section 441(2) provides that on an applicant review, the Tribunal must decide whether to make the orders sought and may make orders under Division 4 that it considers appropriate. Section 441(3) establishes that on a tribunal review, the Tribunal must decide any matter that was stated in a notice given under section 439(3) and may make orders under Division 4 that it considers appropriate.

Section 442 requires the Tribunal to confirm the Forensic Order if the Tribunal considers the order is necessary, because of the person's mental condition, to protect the safety of the community, including from the risk of serious harm to other persons or property. Also, during any non-revocation period for the Forensic Order, the Tribunal is taken to have confirmed the order.

If the Tribunal confirms the Forensic Order, the Tribunal may change the category of the Forensic Order. However, the Tribunal may change the category of the order to community only if satisfied there is not an unacceptable risk to the safety of the community, because of the person's mental condition, including the risk of serious harm to other persons or property.

Under section 445, if the Tribunal confirms the category of the Forensic Order as inpatient or changes it to inpatient, the Tribunal must:

- order that the person have no limited community treatment; OR
- approve that an authorised doctor or senior practitioner may authorise limited community treatment to the extent of, and subject to, the conditions decided by the Tribunal OR change the category of the order to community; OR
- order that the person have limited community treatment of a stated extent and subject to conditions.

Limited community treatment may only be approved or ordered if the Tribunal is satisfied there is not an unacceptable risk to the safety of the community arising from the person's mental condition.

Section 446 provides that if the Tribunal confirms the Forensic Order as community category or changes the category to community, the Tribunal must order that an authorised doctor or senior practitioner must not change the category to inpatient OR approve that they may at a future time or extent of treatment in the community to the extent and subject to the conditions of the Tribunal.

Chapter 12, Division 5 (sections 452 – 455) establishes that the Tribunal must not revoke a Forensic Order:

- during any non-revocable period of the Forensic Order;
- while a person remains unfit for trial (temporarily), unless the Tribunal makes a Treatment Support Order for the patient under section 450
- for Forensic Orders of patients charged with prescribed offences, the Tribunal must not revoke such a Forensic Order unless the Tribunal has obtained and considered an independent report.

If the Tribunal decides to revoke a Forensic Order (mental health), the Tribunal may make a Treatment Support Order or Treatment Authority for the patient if the Tribunal considers that a Treatment Support Order or Treatment Authority is necessary to protect the safety of the community, including from risk of serious harm to other persons or property. However, the Tribunal may only make a Treatment Authority for a patient on the recommendation of an authorised psychiatrist that the treatment criteria apply to the patient and that there is no less restrictive way for the person to receive treatment and care.

For a person who has a dual disability and is subject to a Forensic Order (mental health), if the Tribunal is satisfied the person no longer requires involuntary treatment and care for their mental illness. The Tribunal must revoke the Forensic Order (mental health) and make a Forensic Order (disability) for the person (section 457).

If the Tribunal decides to revoke a Forensic Order (disability), no further order may be made.