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
Nominated Support Person:	Attended
Psychiatrist:	Attended
Case Manager:	Attended
Attorney-General's Representative:	Attended
Decision	
Decision:	The Forensic Order is revoked and a Treatment Support Order is made. The category is community with attached conditions

The Mental Health Court decided the patient was of unsound made in respect of a number of offences and a Forensic Order was made. The offences included a number of offences over a six month period, including serious assault of police officer, breach of bail, driving a motor vehicle without a licence and wilful damage.

The Tribunal adjourned the previous hearing at the request of the patient's legal representative because there was no treating psychiatrist available to give evidence.

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 patient's father (who is also his nominated support person) confirmed that the patient received the clinical report within the statutory time frame.

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

Personal and social circumstances

According to the clinical report, the patient is a single man with an established diagnosis of schizoaffective disorder and diffuse brain injury. He lived in 24-hour supported accommodation and had extensive NDIS supports. His parents also provided support and were his legal guardians.

The patient told the Tribunal he enjoyed singing and activities provided by his NDIS support, including music therapy.

The patient said that he found his residence stressful and noisy. He avoided persons there who caused trouble and used drugs. He refused offers of drugs and alcohol from fellow residents. That residence had about over 50 residents and he had a number of friends there. The patient had not been involved in any violence or aggressive behaviour. He described some incidents in respect of other residents and how he avoided any involvement in it. He hoped to move to a supported independent living (SIL) in the future with his NDIS funding.

The patient listed his medical conditions, including his mental health diagnoses and treatment, which was consistent with the clinical report and treating team evidence. The patient explained his early warning signs, where he hears and sees things. He noted that he saw these things when the medication was starting to wear off. When this happened, he told the doctor, who increased his medication, which occurred two months ago. He stated he had seizures from time to time, which had been managed by the staff at his residence and he also wore an alarm, which alerted his father to any seizures. The patient stated he had a good relationship with his father and saw him regularly. His parents also looked after his money.

The patient's father confirmed the patient's evidence. The patient's anti-seizure medications had been changed and this had reduced the frequency of his seizures (which were a result of the brain injury). The patient's father considered his son's mental state was stable and he was happy. The patient's father indicated with the NDIS funding the plan was to find 24-hour supported accommodation for the patient, possibly sharing with one other person.

The evidence from the treating team and the patient indicated that the patient's family were well engaged and provided good support to the patient. It was also evident at hearing that the patient and his father had a very good relationship.

The Tribunal finds the patient's extensive NDIS support as well as his family support were strong protective factors which assisted in monitoring the patient's mental state, medication compliance and any risks.

Mental state and psychiatric history and response to treatment

The clinical report set out the patient's psychiatric diagnosis and history as well as the circumstances of his acquired brain injury.

In summary, he has been diagnosed with ADHD and as a young man was given a diagnosis of bipolar affective disorder. Some years ago, he was brought into emergency for threatening to kill a family member after a domestic dispute and discharged to his GP. The following year, the patient had an inpatient admission due to deteriorating mental state, having been found to be responding to internal stimuli, disorganised, thought disordered with grandiose delusions and aggressive behaviour. He was discharged as a voluntary patient. He next presented after the index offences, but was returned to police custody. A few years later, he was admitted to ICU with a head injury following a fall. He was psychotic at the time.

The patient spent time at the brain injuries unit and then transitioned to a rehabilitation service. He had admissions for seizures. He now lives at a residence which has 24-hour nursing supported accommodation.

The treating team confirmed (in the report and at hearing) that the patient's mental state was stable with no evidence of mood, psychosis or anxiety symptoms and that he was well engaged with treatment. The report also noted the patient had adequate insight into his mental illness. He had been compliant with medication and engaged well with the treating team.

The Tribunal noted when voluntary in the past, the patient was non-adherent to his treatment, which weighed in favour of maintaining the Forensic Order.

The Tribunal noted the ARMC indicated the patient had limited insight. However, at hearing the treating psychiatrist was of the opinion the patient had insight into his mental illness, the need for treatment and the consequences if he did not take his medication. The Tribunal noted the ARMC was months ago and preferred the more recent evidence of the treating psychiatrist. The Tribunal was also impressed with the patient's knowledge of the symptoms of his illness, the need for medication, the consequences if he did not take it and his recognition of his early warning signs. It was evident he had also demonstrated that he recognised those signs and acted upon them. It was evident also that the patient had been adherent and well engaged for approximately 2 years. Despite his brain injury, the Tribunal was impressed with the patient's enthusiasm and very cooperative attitude and his understanding of the consequences of medication noncompliance.

The Tribunal finds the patient had capacity to consent to treatment. The Tribunal considered the patient's insight, compliance with treatment and well engaged and cooperative attitude was a protective factor and weighed in favour of revoking the Forensic Order.

Any intellectual disability

According to the report, due to his ABI, the patient experiences cognitive difficulties remembering information and is easily distracted. This weighed against revoking the Forensic Order. However, the Tribunal noted the patient had significant supports in the community to support his daily living.

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

A summary of the index offences is set out in an independent psychiatrist's report in the dossier.

In summary, the patient was stopped by police while driving a car and noted to be driving without a licence. The patient was later intercepted at a train station for not holding a ticket. On another occasion, when police attended his home and arrested him in relation to an outstanding bail warrant he was verbally abusive and physically resisted arrest.

The Tribunal acknowledges the seriousness of the police assault. The remaining charges were relatively minor in comparison. The Tribunal also noted that approximately four years had passed since the offences and given the nature and circumstances of the offences weighed in favour of revoking the Forensic Order. Further, there had been no further offending.

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

There was no victim impact statement**.**

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 a recommendation about an intervention program.

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 patient sought a revocation of the Forensic Order and the making of a Treatment Support Order (TSO). The treating team and ARMC all recommended and supported the revocation of the Forensic Order and noted the patient's risks could be managed under a TSO. (The previous ARMC also recommended a TSO.) The team and ARMC recommended a TSO because the patient's mental state had remained stable, he had been compliant with medications and there were no concerns raised by his support workers, treating team or his parents. Further, he had not breached his conditions and was abstinent from substances and alcohol. The report also noted the patient's risks remained low and his insight was good.

At hearing, the treating psychiatrist confirmed the patient's mental state was stable and he was well engaged and had extensive and protective supports provided by his 24-hour supported accommodation, his large NDIS package supports and his supportive family. The treating psychiatrist stated she spoke with the support workers during the patient's medical appointments and they had no concerns. The treating psychiatrist stated the risks could be managed under a TSO.

In response to questions by the patient's legal representative, the treating psychiatrist stated the treating team would maintain the same level of management under a TSO. However, the level of monitoring and management had decreased since his discharge. The treating psychiatrist stated the risks to others were low due to medication and monitoring, though the patient was still vulnerable due to his ABI.

In response to a Tribunal question, the treating psychiatrist stated although the previous ARMC had recommended a stepdown, she had not recommended a TSO at the previous Tribunal review, because the patient was new to the service. She confirmed the patient's risks could be managed under a TSO.

In response to concerns about the possibility of change to the patient's accommodation, the treating psychiatrist was of the view such a change would be beneficial. Further, the treating psychiatrist stated she would not approve any accommodation that was not suitable and did not have 24-hour support. While it was acknowledged that the change itself could be a stress trigger, the treating team would ensure a gradual transition and be in close contact during that time. She noted in the past the patient's relapses had been due to medication non-compliance and due to drug use.

The Attorney-General's representative asked about the risks. The treating psychiatrist stated the patient can become disorganised and aggressive when psychotic, but medication mitigated the risk of relapse. The treating psychiatrist noted even the risk of irritability was low.

Submissions

The Attorney-General's representative submitted the Forensic Order should be confirmed because of the possible change in accommodation in the future and the level of support or the transition plan in that respect was unknown. Further, such a change could be a stressor and the ARMC had not mentioned the accommodation change.

The patient's legal representative submitted the evidence supported revoking the Forensic Order given the ARMC minutes. Besides the assault offences, the index offences were at the lower end. The risks were assessed as low. While the patient had been offered illicit substances, he refused them. He was willing to remain in his current accommodation until new suitable accommodation was

found. The new accommodation may possibly be more protective given the present accommodation was noisy. The evidence was the treating psychiatrist would only approve 24-hour supported accommodation. Even if he relapsed during an accommodation transition, the category could be changed to inpatient. The patient had a large NDIS support package, has the support of the family and therapy staff and the TSO would provide sufficient oversight and management. It was submitted the human rights engaged and limited were freedom of movement, equality and privacy.

Consideration and Conclusions

Having considered the evidence and submissions, for the following reasons the Tribunal was of the view that the Forensic Order be revoked and that the patient and his risks to others could be managed on a TSO.

This was because, firstly, the Tribunal accepted the treating team's evidence that the patient's mental state had been stable for two years, medication mitigated the risk of relapse, he was medication compliant, had good insight, engaged well and had no breaches of his conditions. The Tribunal accepted the evidence that the patient had good supports and his risks to others were low and there had been no issues of concern for some time.

Secondly, the ARMC (on two occasions) recommended and supported a stepdown to a TSO because the patient's mental state was stable, the focus of his care was physical, he did not present with psychotic symptoms, he had extensive supports, had refused illicit substances and was living in supported accommodation.

Thirdly, the Tribunal has considered the Attorney-General's representative's submissions and concerns regarding a possible change in accommodation and that the ARMC did not mention that. However, the Tribunal does not share those concerns. The ARMC noted the patient lived in 24-hour supported accommodation. While a change in venue may occur, there will be no change to 24-hour supported accommodation. The treating psychiatrist made it very clear that she would not approve any change that was not 24-hour supported accommodation and suitable for the patient. The treating psychiatrist also confirmed that any transition would be gradual and closely monitored for any stressors. The Tribunal accepted that evidence.

Further, the Tribunal considered that a proposed accommodation change was likely to be more beneficial to the patient and further reduce risks. The evidence was that the residence had a lot of residents and was noisy which made sleeping difficult at times. Further, the patient was required to avoid argumentative residents and those offering illicit substances. Further, the treating psychiatrist's and the patient's father's evidence was the new accommodation was likely to be a share house of only a small number of people. The Tribunal considered such an arrangement was likely to further reduce the risks than living in the current accommodation, not increase them. Further, the Tribunal was satisfied that with close monitoring by the team and gradual transition to new accommodation that any stressor triggers could be managed.

Fourthly, the Tribunal was impressed with the patient's evidence. He had a good understanding of his mental illness (and ABI) and importance of medication and was cooperative and well engaged. The treating team also confirmed the patient had insight and engaged well. The Tribunal finds the patient's level of insight and engagement weighed in favour of revoking the Forensic Order.

Fifthly, the patient had substantial supports by way of 24-hour supported accommodation which managed his medication and daily living, as well as significant NDIS funding. He had strong support from his family. The Tribunal was also impressed with the patient's father's evidence and level of helpful support and understanding of the patient's health and wellbeing, and the risks. The Tribunal considered the patient's 24-hour accommodation, support workers and his family support were strong protective factors which significantly mitigated risks of relapse by monitoring for medication compliance, early warning signs or stressors and keeping the patient happy and engaged.

Sixth, the patient had been abstinent from alcohol and illicit substances for some years and he had shown he could and did refuse offers of illicit substances, for which he should be commended. The Tribunal considered this aspect weighed heavily in favour of revoking the Forensic Order.

Seventh, while the assault charges were serious, the Tribunal considered the circumstances and nature of the other index offences was relatively minor. Further, they occurred four years ago, which is a sufficient time given they were at the lower end of gravity. This weighed in favour of revoking the Forensic Order.

Finally, given the above protective factors and management, the Tribunal considered the patient could be managed on a TSO. While the level of oversight would not change, the evidence was that the level of oversight had reduced after the patient was discharged. Further, he was reviewed by the case manager monthly, which is not intensive support. While he has 24-hour supported accommodation, the focus of his care, according to ARMC was to manage his physical issues.

For the above reasons, the Tribunal finds that the Forensic Order was not necessary, in light of the patient's mental condition, to protect the safety of the community.

The Tribunal revoked the Forensic Order.

Treatment Support Order and conditions

With revocation of the Forensic Order the Tribunal considered the patient's mental condition still needed clinical oversight and monitoring from the treating team, albeit not as frequently, to ensure the safety of the community. The Tribunal finds the patient has a mental condition which required treatment and some monitoring by the treating team to ensure any exacerbations of his illness were monitored and responded to appropriately. Further, given the patient's mental condition, need for treatment, supported accommodation, extensive supports in the community and cognitive impairment, the Tribunal considered that a TSO was necessary, because of his mental condition, to protect the safety of the community.

The Tribunal considered the patient's treatment care and needs and the safety of others could be managed in the community, particularly given his extensive supports in the community and his 24-hour supported accommodation.

The Tribunal found the conditions attached to the TSO were necessary to ensure the risks were managed in the community, particularly given the patient's need for 24-hour supported accommodation.

The Tribunal considered this was the least restrictive category and means to protect the safety of the community.

Human Rights

The patient's legal representative submitted the human rights engaged and limited were freedom of movement (s19), equality (s15) and privacy (s25). However, the Tribunal did not consider the patient's equality was limited as there was no evidence of discrimination or lack of recognition as a person before the law.

When considering s17(c), the Tribunal noted that the evidence was that the patient had capacity to consent to treatment and was agreeing to treatment. The Tribunal did not consider the right to a fair hearing (s31) was limited as the patient attended and gave evidence at the hearing, had legal representation, a nominated support person who assisted, was provided with relevant documentation and the Tribunal was legally constituted.

Accordingly, as the Tribunal finds these human rights were not limited, the decision in that respect is compatible with human rights (s8)(a).

The Tribunal accepted that the patient's freedom of movement was restricted because of a condition that he reside in a place approved by the treating psychiatrist. The Tribunal has serious doubts that that his privacy was limited by the decision as there was no evidence that his privacy, family, home or correspondence had been arbitrarily interfered with or that his reputation unlawfully attacked. However, the Tribunal has considered it in case it was potentially engaged, particularly in terms of privacy of medical information.

The Tribunal considered the relevant human rights set out in the *Human Rights Act 2019* and those potentially engaged and limited by the Tribunal's decision (s 19, and s25 (potentially)). Taking into account the following, the Tribunal is satisfied that the limits imposed by the Tribunal's decision are reasonable and justified in accordance with section 13 of *the Human Rights Act* because:

- the criteria of the relevant test under the Act were met and thus the confirmation of the order is lawful and within the jurisdiction of the Act
- the order has been determined to be the least restrictive way for the person to receive treatment and care
- the human rights engaged have been balanced against the risk to the person's health and wellbeing that is likely to eventuate if the person does not receive treatment and care under the order and the risks to the safety of others if not treated, living in appropriate supported accommodation and managed on TSO
- the Tribunal considered the risks to others (and risk to the patient, given his ABI vulnerability) outweighed any restrictions on his freedom of movement or privacy.

Accordingly, the Tribunal is satisfied the decision is compatible with human rights (s8).

Conclusions of the Tribunal

Decision

For these reasons, the Tribunal decided the Forensic Order is revoked and a TSO is made in the category of community. The authorised doctor may amend the TSO to reduce the extent of the treatment in the community received by the patient.

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.