



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.

Decision made prior to 1 January 2020 so *Human Rights Act 2019* not applicable

Matter:	Forensic Order Review
Attendees	
Patient:	Attended
Patient's Legal Representative:	Attended
Psychiatrist:	Attended
Attorney-General's Representative:	Attended
Other	Forensic Liaison Officer attended
Decision	
Decision:	The Forensic Order is revoked. A Treatment Support Order is made, community category, with conditions as attached to the Order

The patient was charged with common assault, willful damage and multiple counts of breach of a domestic violence order (DVO). The Mental Health Court made a Forensic Order for the patient on the basis of unsoundness of mind. The Forensic Order has been regularly reviewed and confirmed on each occasion since then.

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 received a copy of the clinical report 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's initial presentation to mental health services occurred approximately 5 years ago when he experienced his first manic episode and he became involved in a disturbance at his accommodation complex. He was admitted to hospital. An Involuntary Treatment Order (ITO) was made at that time but was revoked before the patient's discharge. The patient subsequently became non-compliant with his prescribed oral medication due to his concerns about side effects.

Subsequently, he self-presented to hospital in the same year in a highly agitated state. Another ITO was put in place and the patient was admitted. He required a number of seclusions. The second ITO was revoked early in the following year.

The index offence is alleged to have occurred around the period of the patient's first admission.

Following revocation of the second ITO, the patient moved suburbs. He was at that time attending scheduled appointments and was co-operative. The patient has, on the evidence of the treating team, remained asymptomatic and stable notwithstanding a gradual reduction in his depot medication to the current dose. He has required no further hospital admissions.

Any intellectual disability

The patient does not have an intellectual disability.

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

The patient lives in rental accommodation. He now resides with his ex-wife. The patient in his oral evidence said that while his ex-wife has been very supportive of him and they get on well, there is no reconciliation planned.

The patient said that he experienced side-effects of the prescribed medication but he now exercises, walks his dogs and plays golf fortnightly. The clinical report indicates that the patient has experienced an improvement in his level of energy and motivation and is more socially active following the reduction in the dose of his medication.

The patient is currently in receipt of a Newstart allowance and looking for paid employment. The patient stated that a new retail store was to open nearby, which he hopes might present an employment opportunity for him.

The patient stays in touch with his own family and is reported to have a significant network of friends with whom he now keeps in touch. The patient manages his own finances and expresses the view that the quality of his life has been significantly enhanced through the reduction in side effects from prescribed medication.

The Tribunal accepted the evidence of the patient in respect of his desire to get back into the workforce and in respect of the level of support he has in place, which is consistent with the treating team's statement in the clinical report that the patient has a large supportive network of family and friends.

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

The treating psychiatrist told the hearing that the patient has responded well to treatment and that he is currently asymptomatic. The treating psychiatrist said that the patient's mental state has remained stable and he has required no admissions for four years and that he has consistently remained compliant with his prescribed medication.

When asked about his view of the medication and whether he thought it was beneficial, the patient told the hearing that he has remained compliant with the medication because he knows he needs it. He acknowledged at the hearing that he has an illness that requires treatment. The patient said that he understands that he will always need medication and that if he stopped taking the medication, he would end up in hospital again.

The patient said that the reduction in his medication had made him feel more alive and that he would appreciate any further reduction in the future, but he accepts that this may not be possible. He also accepts the need to remain engaged with his treating team and compliant in the long term.

The treating psychiatrist, in oral evidence, told the hearing that the patient had complete insight into the need to remain compliant with the prescribed medication and that his response to the treatment has been excellent. The treating psychiatrist said that further reduction of the medication may be considered in the future. The treating psychiatrist added that the patient engages well with the treating team and is aware that he will need to continue with the medication in the long term.

The Tribunal finds that the evidence presented supports the treating team's view that the patient has responded well to the treatment regime and that a reduction in the medication has not led to any change in his mental state. Clearly on the evidence, the patient has a very good relationship with the treating team and exhibits a willingness to continue receiving appropriate treatment and care into the future.

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

The patient has been receiving his treatment and care in the community continuously since his last admission.

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

The alleged offending constituting the index offences occurred in approximately 5 years ago. There were offences of common assault, willful damage and alleged breaches of a DVO. The two assault charges and one willful damage charge followed a time when the patient was presenting in a manic and highly agitated state, partly clothed and making bizarre remarks. When confronted by two residents, the patient is alleged to have assaulted them and damaged property

The alleged breaches of a DVO were also said to have occurred approximately 5 years ago. It was alleged that the patient on a number of occasions repeatedly breached the conditions of a DVO by endeavouring to make contact with his ex-partner.

The alleged offending occurred a number of years ago and on the treating psychiatrist's evidence, there has been no relapse of his illness and no further offending since the index offence. The clinical report indicates that some further unwanted contact was attempted by the patient with his ex-partner. However, the patient explained that the DVO had expired and he had sought to make amends. The patient's explanation was supported by the treating psychiatrist, who stated that the treating team did not view the patient's actions at that time as a relapse of his illness. Nevertheless, a CFOS report was obtained subsequently and on CFOS recommendations, the treatment regime was changed.

The patient has made it clear at the hearing that he has no intention of making any further contact attempts with his ex-partner. In giving his oral evidence, the patient appeared to the Tribunal to be genuine and sincere.

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

The Tribunal took into account the interests of those affected by the index offences and the interests of the wider community.

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 made no such recommendation.

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?

In terms of insight and understanding of his mental illness and the need for treatment, the Tribunal noted the treating psychiatrist's evidence that the patient appears to have very good insight into both the nature of his illness and his need for ongoing treatment. The patient has accepted reductions in the medication and speaks enthusiastically about his increased energy levels, but at the same time, he acknowledges that he needs to continue with his prescribed treatment into the future. The Tribunal formed the view that when questioned by Tribunal members on this and other issues, the patient's answers were straightforward and an honest representation of his thoughts and beliefs. He stated clearly at the hearing that he does not want to return to the situation when non-compliance resulted in his hospitalisation. The Tribunal accepts the patient's evidence and finds that he does have good insight into his illness and the need for treatment.

The Tribunal finds on the evidence before it that the patient has engaged well with the treating team. He states that he will continue to remain engaged and cooperative with treatment requirements. He has to date, on the treating doctor's evidence, been compliant with treatment requirements, he has had an "excellent" response to the prescribed treatment and he understands the early warning signs of relapse.

The patient told the hearing that he has no intention of making any further contact with his ex-partner in the future. The treating psychiatrist clarified that the attempted contact was not indicative of a relapse, but was merely an error of judgment at the time. The Tribunal accepts the evidence of the treating psychiatrist on this issue and finds that there was not a relapse. The treating psychiatrist clarified at the hearing that the ARMC comment referring to the possibility of a renewal of the existing DVO when it expires, was directed at the victim's need to feel protected, rather than management of risks.

In respect of supportive networks and friends, the Tribunal accepts the evidence of the patient and the treating team that the patient has good supports in place and that he seeks to maintain and expand his involvement socially, especially since he has experienced improved energy levels. He has enjoyed and appreciated his social contacts. The patient lives with his ex-wife which adds an additional protective factor, as his ex-wife would, the hearing was informed, contact the treating team if there were any signs of a relapse. The Tribunal finds that there is a strong support network in place for the patient, which significantly reduces the risk of any change in his mental state going unnoticed.

The patient provides good support for his children, has reduced his alcohol intake and has undertaken voluntary work as reported by the treating team. The patient confirmed at the hearing his intention to seek paid work and has identified possible options.

The treating team's evidence to the hearing was that there have been no breaches of the conditions of treatment in the community and that the patient's claim that he has significantly reduced his alcohol use is supported by liver function testing that has been done. He does not use illicit substances and has returned only negative UDS results.

The Tribunal finds on the evidence presented that the patient is aware that the circumstances of the index offence arose because he was unwell, that he needs to continue his prescribed treatment to ensure these circumstances do not reoccur, that he is looking to re-engage fully in his living in the community and participate again in the workplace. The Tribunal also finds that the patient has engaged well with the treating team, that he is aware of the warning signs for any future relapse or deterioration in his mental state and that his desire to maintain his social connections and re-engage in the workforce are all protective factors that significantly reduce the risk of relapse.

In oral evidence to the hearing, the treating psychiatrist stated that the treating team believes that in view of the reduced risk of relapse and the protective factors in place, the current level of oversight and monitoring undertaken under the Forensic Order is no longer required. The treating psychiatrist said that the patient could be moved from two to four-weekly case manager reviews and from six to

eight-weekly consultant reviews. The treating psychiatrist expressed the view that because of the patient's excellent response to medication and his level of engagement with the treating team, seeing him four-weekly would be appropriate and manageable.

On the evidence before it, the Tribunal finds that a Forensic Order is no longer required to manage the risks to the safety of the community because of the patient's mental condition. The patient has good insight both in respect of the existence of his mental illness and also in respect of his need to continue treatment in the future. He engages well with the treating team, he has responded very well to the medication and he has a positive attitude towards establishing and maintaining a good network of friends and supports. He is looking actively to rejoin the workforce. He lives with his ex-wife who is supportive and provides an additional protective factor. There has been no offending before or since the index offence, the patient has been compliant with the conditions of treatment in the community and he does not use illicit substances.

On the basis of this evidence, the Tribunal finds that the level of oversight and monitoring provided under a Forensic Order is no longer necessary to manage the risks to the safety of the community because of the patient's mental condition.

The Tribunal finds that in view of the significant nature of the index offence, monitoring and supervision is still required to manage the risks to the safety of the community because of the patient's mental condition and that a Treatment Support Order can provide the requisite level of management. In making this finding, the Tribunal notes that the ARMC supports the treating team's recommendation of revocation of the Forensic Order and the making of a Treatment Support Order. The Tribunal further notes that the Attorney-General's representative at the hearing stated that it was open on the evidence before the Tribunal for the Tribunal to conclude that a Forensic Order is no longer required to manage the risks to the safety of the community but that a Treatment Support Order is required to manage those risks.

The patient has been receiving his treatment and care in the community successfully and without breaches of conditions. He has attended appointments, been compliant with the treatment and engaged well. There have been no further attempts to contact the ex-partner and no other offending. The Tribunal finds that the patient's continuing to receive treatment and care in the community does not present an unacceptable risk to the safety of the community because of his mental condition.

In respect of the conditions of treatment in the community, the Tribunal considers that the conditions established at the last review remain appropriate to assist in management of the risks to the safety of the community. The Tribunal concludes that the conditions established at the most recent review remain appropriate in assisting to manage the risks to the safety of the community and accordingly will continue to apply.

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?

The patient has been receiving his treatment and care continuously in the community since the Forensic Order was made. On the evidence before it, the Tribunal is satisfied that it remains appropriate for the patient to continue receiving treatment and care in the community. There has been no evidence of any breaches of his conditions, no further offending and the patient clearly understands the importance of continued treatment and compliance with all of the conditions and the requirements of the treating team.

Conclusions of the Tribunal

Significant factors in the Tribunal's decision that a Forensic Order is no longer needed to manage the risks to the safety of the community because of the patient's mental condition were the patient's

good level of insight and engagement, his record of compliance with treatment requirements and the strong evidence of a supportive network of family and friends.

The Tribunal in reaching its decision also took into account the serious nature of the index offence and its impact and concluded on the evidence that a Treatment Support Order is needed to provide the level of monitoring and supervision required to manage the risks to the safety of the community because of the patient's mental condition.

The Tribunal concluded that the Treatment Support Order should be community category and that conditions of treatment in the community as previously applied should continue to apply with the exception of the prohibition on driving without consent of the treating psychiatrist, which is removed.

For these reasons, the Tribunal has decided to revoke the Forensic Order and make a Treatment Support Order for the patient, community category, with conditions of treatment in the community as attached to the Order. The authorised doctor may amend the Treatment Support Order to reduce the extent of 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

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- (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.