



## 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
<b>Attendees</b>	
Patient:	Attended
Patient's support person:	Attended
Psychiatrist:	Attended
Forensic Liaison Officer:	Attended
Other attendees:	Public Guardian representative attended
<b>Decision</b>	
Decision:	The Forensic Order (Disability) is revoked. No further order is made.

The patient is a woman with an intellectual disability resulting from a chromosomal abnormality. The patient suffered a prejudicial childhood and has a history of abuse and neglect. The Mental Health Court made the patient subject to a Forensic Order (disability) after finding her not fit for trial (permanent) on charges of indecent dealing with a person with an impairment of mind and stealing.

### **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 the clinical report more than 7 days prior to the hearing.

### **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 does not have a mental illness.

### Any intellectual disability

The patient has an intellectual disability arising from a chromosomal disorder which has led to learning and language difficulties.

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

Both the treating team and the public guardian's representative confirmed that the patient is doing very well. Despite her prejudicial childhood and intellectual disability, she has developed much improved social and independent living skills and functions well in the community. She lives independently in a flat and is employed. She told the Tribunal that she enjoys the work and that it is much better than her previous job. The patient and the patient's support person confirmed that there are no changes anticipated to the accommodation arrangements currently in place.

The patient has NDIS support of 4 hours per day which she uses for social activities. Her support workers take her to and from work, shopping, to the gym, hiking and to visit her partner. She had a reduction in support services early this year and no longer has overnight support. According to her guardian, this was because she has been doing so well and is now more independent. The forensic liaison officer and the patient's support person confirmed that she has coped very well with the change.

The patient has commenced a relationship about 6 months ago and she reports the relationship is going well.

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

The Tribunal accepted the evidence of the treating psychiatrist and the forensic liaison officer that the patient has responded well to support and care provided under the Forensic Order, that she is well engaged with the treating team, has developed understanding of appropriate relationships and that there had been no incidents of concern for many years. The patient said that she had a good relationship with her case manager and is happy to keep working with the treating team even if the Forensic Order is not in place. The forensic liaison officer confirmed that the patient speaks regularly to her case manager and actively seeks help from her.

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

Not relevant.

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

The patient was charged with indecent dealing with a person with an impairment of mind and stealing. The offences were alleged to have occurred approximately 10 years ago. The details of the alleged offence are set out in the clinical report and the forensic dossier.

The treating psychiatrist and the forensic liaison officer confirmed that the patient has never shown signs of paraphilia but rather, at the time of the offence she lacked understanding of appropriate sexual boundaries. The Tribunal noted also that at the time of the index offence the patient was 19 years old (though developmentally much younger) and was herself the victim of neglect, sexually abusive and exploitative relationships.

Although the offence was serious, the Tribunal noted that more than 10 years have passed since the most serious of the alleged offences with no recurrence of similar offending.

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

None.

**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**

None.

**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 Tribunal was satisfied that a Forensic Order is no longer necessary to protect the community. The Tribunal accepted the evidence of the forensic liaison officer, that the patient has matured significantly since the index offence, that she has responded well to input from the case manager and the forensic liaison officer about appropriate sexual behaviour, safe sex and appropriate personal boundaries. The forensic liaison officer also told the Tribunal that the patient has demonstrated an ability to retain what she has learnt.

The patient is functioning well in the community and is motivated to move forward in her life.

The Tribunal also noted that the patient is involved in an age/developmentally appropriate relationship with her partner and has engaged well with the sex education provided.

The patient has been vulnerable to sexual and emotional abuse in the past, however the Tribunal accepted the evidence of the treating team that the current relationship is a healthy one and the treating psychiatrist did not think the usual “ups and downs” of the relationship would increase the risk to the community.

The Tribunal gave weight to the fact that there has been no evidence of any concerning behaviours for many years. The most recent report of any concern was approximately 5 years ago at which time, there were unproven allegations of inappropriate postings on the internet.

The Tribunal also noted that the patient is well supported in the community. She has an NDIS package which provides daily support as well as excellent support from her mother, the patient’s support person, the Office of the Public Guardian and mental health services.

The treating psychiatrist told the Tribunal that the risks to the community were now low and he could not identify any factors that would increase the risks to others, however the patient remains vulnerable to exploitation. The patient does not drink alcohol or use illicit substances, she does not receive treatment but attends all appointments and is well engaged with the team. The forensic liaison officer also told the Tribunal that the patient is “help seeking” and calls her case manager

regularly.

The treating team indicated that they would continue to be involved and provide support to the patient for at least 6 months or longer if necessary. The patient's support person would also notify the team if there were any concerns. The patient told the Tribunal that she would continue to work with her case manager and the treating team whether or not the order was in place.

The Tribunal also gave weight to the unanimous support from the treating team and members of the ARMC (including CFOS representative) for revocation of the Forensic Order

The Tribunal was satisfied that the risks to the community because of the patient's mental condition have significantly reduced since the index offence and that the Forensic Order should be revoked.

**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?**

Not applicable.

### **Conclusions of the Tribunal**

The Tribunal was satisfied that the risks to the community because of the patient's mental condition have reduced significantly since the index offence.

The patient has emotionally and psychologically matured in the intervening years, she has demonstrated an understanding of appropriate sexual behaviour and relationships, her condition is stable, she is well supported and functions well in the community, there have been no incidents of concern for many years and ten years have passed since the most serious of the alleged offences. In addition, the treating psychiatrist could not identify any factors that would increase the risk that the patient would pose to others and she lives in stable accommodation provided by her mother.

For these reasons, the Forensic Order (disability) was revoked and no further orders made.

**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.