



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 (Mental Health) Review
Attendees	
Patient:	Attended
Patient's Legal Representative:	Counsel, instructed by patient's legal representative attended
Psychiatrist:	Attended (by telephone)
Case Manager:	Attended
Attorney-General's Representative:	Attended
Other attendees:	Independent psychologist attended (by telephone) Support person attended
Decision	
Decision:	The Forensic Order is revoked

The patient was placed on a Forensic Order (mental health) in approximately 15 years ago after the Mental Health Court found he was not fit for trial (permanent) in relation to charges of indecent treatment of a child under the aged of 12 years.

At the prior hearing of this matter before the Tribunal, the Tribunal adjourned the hearing for the purposes of obtaining an examination report in accordance with s721 of the *Mental Health Act 2016 (Act)*. A psychologist prepared the Tribunal Ordered Examination report which was subsequently provide to the Tribunal and the parties.

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 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 within the statutory timeframe.

The written submissions made on behalf of the patient by his legal representative were only received shortly before the commencement of the hearing. The Attorney General's representative did not oppose the hearing continuing.

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

The patient's history was set out in detail in the clinical report, forensic dossier and the Tribunal Ordered Examination report. In his report, the psychologist outlined that the patient has a lifelong diagnosis of intellectual impairment and adaptive behavior deficits. The psychologist confirmed that the patient is not receiving treatment or care for a mental illness and that there are no signs of a

mental health disorder. The psychologist said that the patient is receiving care for his intellectual impairment. The psychologist confirmed this in his oral evidence to the Tribunal.

The treating psychiatrist outlined in his clinical report that the patient does not have a mental illness, rather he has a mild intellectual impairment. He is not prescribed any medication for any mental health condition. The diagnosis of a lifelong intellectual impairment was also confirmed in the report provided to the Mental Health Court.

He has fortnightly appointments with his case manager and four monthly reviews with the treating psychiatrist. He attends upon a psychologist monthly. He outlined in his report that the patient has engaged with him in treatment since for approximately 10 years and he participated in offence specific treatment sessions at the request of Disability Services Queensland. The psychologist outlined that when funding for this treatment unexpectedly ended, the patient has been unable to continue the treatment for a few years, when he then started to self-fund these sessions. These sessions are now provided under a mental health care plan provide by his general practitioner.

With respect to the patient's response to treatment and care and willingness to receive appropriate treatment and care, oral evidence provided by the treating psychiatrist indicated that the patient has complied with all the conditions of his Forensic Order and support that he receives from the treating team has been reduced. The treating psychiatrist outlined that the patient has coped with this support being reduced and that he has the capacity to learn new things. He said that the treating team are advocating for more support for the patient through the NDIS, rather than the from the treating team.

The patient told the Tribunal that he thinks he is doing well and that he is wanting to continue to see his psychologist every month.

With respect to his social interaction, the patient lives alone in rental accommodation. He receives daily NDIS support provided by a non-government organisation. The patient told the Tribunal that he enjoys this support and that he goes fishing with his support workers and they also help him with cooking a healthy varied diet. The patient independently travels on public transport to visit his parents. The patient also volunteers.

With respect to his response to current treatment and previous treatment, the patient does not receive treatment or care for a mental illness. He attends a psychologist for treatment for his intellectual disability. The patient is compliant with the current conditions of his Forensic Order and compliant with directions from his treatment team. There is no evidence to suggest that the patient is using illicit substances or consuming alcohol to excess.

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

The Mental Health Court found the patient to be permanently unfit for trial in relation to charges of indecent treatment of a child under the aged of 12 years. The alleged offences relate to the patient's behaviour towards his sibling's children. The clinical report summarises the circumstances of the index offences. He has not had any further criminal charges since the time of the index offences.

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

No victim impact statement was provided to the Tribunal.

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 Tribunal is satisfied that a Forensic Order is not necessary to protect the safety of the community for the following reasons.

The Tribunal heard evidence that the patient does not have a mental illness and does not require treatment or care for a mental illness. The evidence provided to the Tribunal clearly outlined that the patient has a lifelong diagnosis of intellectual impairment and adaptive behaviour deficits. He has been compliant with the conditions of the Forensic Order and attends all appointments as directed by his treating team. The patient attends upon his psychologist once a month for treatment of his intellectual impairment.

The treating team and the psychologist provided evidence to the Tribunal as to the current and historical risks and the proposed management including a risk assessment contained in the clinical report, as well as the Assessment and Risk Management Committee (ARMC) Minutes.

The patient has a history of sexual offending, which was the behaviour subject to the index offences. The psychologist provided written evidence to the Tribunal that the patient does not have a diagnosis of paedophilia, but rather deviance underpinned back a lack of understanding stemming from his disability, lack of experience and exposure to sexual abuse. The evidence before the Tribunal is that the patient has been receiving psychotherapy from his psychologist around these issues and that he has not reoffended since the index offences. The psychologist provided compelling oral evidence to the Tribunal that the patient is a low risk of recidivism and significant time has lapsed since the index offences. He said that he has acquired new skills and has a positive attitude and is motivated to change.

The psychologist provided evidence that the patient is currently a low risk of harm to others. He said that the patient has reduced intellectual functioning relative to his age peers. The psychologist outlined that the patient requires support with complex daily activities and he is not able to participate in social or occupational activities without significant support. The patient receives this support from a non-government organisation and is enjoying the responsibilities of maintaining his home environment and undertaking tasks. The psychologist said that the patient's current NDIS support package is insufficient, and he did experience anxieties when he had staff support reduced. However, the patient managed this reduction of support well. The psychologist provided oral evidence to the Tribunal that this increases the patient's vulnerabilities, however this is due to his support needs due to his disabilities, not for risk mitigation.

In his oral evidence provided to the Tribunal, the treating psychiatrist supported the low risk assessment provided by the psychologist. He said that the patient's level of risk to others has not changed over time and that although he has static risk factors, his current risk to others is low.

The patient does not have a history of illicit drug use or excessive alcohol consumption.

The initial recommendation of the treating team (prior to the hearing) and ARMC was that the Forensic Order be revoked and that a Treatment Support Order be made. Section 143 of the Act provides that a Treatment Support Order can only be made for a person if they are receiving treatment and care for a mental illness. The evidence before the Tribunal clearly indicates that the patient does not have a mental illness and does not receive, or require, any treatment or care with respect to a mental illness. On that basis, the treating psychiatrist and the psychologist recommended and supported in their oral evidence to the Tribunal that the Forensic Order be revoked and no further order be made.

The treating psychiatrist provided oral evidence to the Tribunal that the conditions placed upon the

patient by the Forensic Order could be gradually progressed and/or reduced, however this has already occurred at least over the past few years without any concerns. The treating psychiatrist provided evidence that if this occurred it would provide more opportunity for the patient to prove that he could be trusted, however he said that it is important for impaired offenders to have a sense of hope and a need to reinforce when things are going well. He said that the patient has consistently demonstrated that he can comply with the conditions placed upon him.

It seemed clear to the Tribunal that the psychologist knows the patient well and is committed to supporting him. The Tribunal finds on the evidence that the patient is well engaged with the psychologist and his treating team (as far as possible given he does not have a mental illness) and that he does not have a mental illness that requires treatment and care. The Tribunal further finds that although the patient is a low risk to others, any risk is mitigated by the support he receives from the psychologist and his support workers from a non-government organisation. The Tribunal are of the view that the patient is not a risk to other people or property or serious harm arising from any mental illness. The role of a Forensic Order is to manage the risk of serious harm to persons or property arising out of behaviour associated with mental illness rather than to prevent a person of sound mind committing criminal acts.

The Tribunal has considered carefully the requirement that the patient be treated in the least restrictive way possible and concluded that the Forensic Order is no longer necessary to protect the safety of the community.

In making the decision to revoke the Forensic Order, and make no further order, the Tribunal has taken into account all the relevant and reliable information before it. Notably, the ARMC minutes support a revocation of the Forensic Order and making of a Treatment Support Order, which was initially also supported by the treating team and the psychologist. Further oral evidence provided by the treating psychiatrist and the psychologist at the hearing supported the revocation of the Forensic Order as the patient presents as a low risk and is actively engaged with the psychologist. The Tribunal has given particular weight to the following matters:

- that the patient does not have a mental illness and does not require treatment and/or care for a mental illness. Rather, the patient is receiving treatment for his intellectual impairment;
- that the patient is actively engaged with the psychologist and is compliant with the conditions of the current Forensic Order;
- the compelling evidence of the psychologist regarding the patient's level of risk, current engagement with him, and his support of revoking the Forensic Order (rather than reducing the current conditions of the order);
- the evidence of the treating psychiatrist regarding the patient's level of risk and support of revoking the Forensic Order (rather than reducing the current conditions of the order); and
- the submissions of the patient's legal representative supporting the revocation of the Forensic Order;
- the submissions of the Attorney-General's representative which did not support the revocation of the Forensic Order, rather it was submitted to confirm the Forensic Order and reduce the conditions of the order.

As canvassed in these reasons, the patient's relationship with the psychologist and his support workers is good. If the Forensic Order is revoked, this level of engagement will unlikely change.

The Tribunal has therefore decided to revoke the Forensic Order and make no further order.

Conclusions of the Tribunal

The Tribunal has considered section 3 of the Act which requires the protection of the community be considered where persons have been diverted from the criminal justice system on the basis of being unfit for trial. The Tribunal has concluded that the Forensic Order was not required to protect the

safety of the community given the evidence of the psychologist, the treating psychiatrist and the patient's willingness to engage on a voluntary basis. The psychologist and the treating team consider the patient to be a very-low level risk to other, and the patient has made significant and continued steps in his recovery.

Decision

For these reasons, the Tribunal has decided to revoke the Forensic Order and made no further order.

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.