



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
Psychiatrist:	Attended
Case Manager:	MIRT Team Leader attended
Attorney-General's Representative:	Attended
Other attendees:	Forensic Liaison Officer attended
Decision	
Decision:	Confirm Forensic Order (community category with conditions)

The patient was placed on a Forensic Order having been assessed as unsound of mind in relation to a charge of assault occasioning bodily harm.

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 had legal representation during the hearing and all parties confirmed receipt of the documents that were before the Tribunal. The patient confirmed that he received the clinical report within the required legislative timeframe.

Summary of evidence and findings

The patient told the Tribunal that when he requested the review of his Forensic Order (FO) he wanted it revoked. However, he now seeks a step down to a Treatment Support Order (TSO). He would like permission to move suburbs to live. He believes the FO prevents him from travelling and would like the increased freedom of being on a TSO. When the Tribunal asked the treating psychiatrist what would need to happen before the treating team recommended the patient for a TSO he responded that the patient's mental health deteriorates quickly and there would need to be a longer phase of mental health stability.

The Tribunal must confirm the FO if the Tribunal considers it 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 clinical report states that the patient has a diagnosis of schizoaffective disorder. He first presented to mental health services in approximately 15 years ago and, since that time, he has had multiple admissions. Some of those admissions were in the context of non-adherence to medication and drug use. The patient's last admission was late last year in the context of non-compliance with his medication.

The treating psychiatrist's most recent assessment of the patient's mental state was conducted a few weeks ago. The patient's insight into his mental illness was assessed as partial, variable and fluctuating – contingent on his mental state. He was assessed as generally accepting of his diagnosis although he tended to have other explanations. His understanding of his psychological symptoms and experiences presented, at times, as "quite limited". The treating psychiatrist stated that the patient minimises the role of medication and would like to have his medication reduced or ceased. He assessed medication supervision as pivotal to the patient's treatment.

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

The clinical report states that the patient lives in a unit close to shops and his sibling. He is supported by his mother and his sibling. He has a National Disability Insurance Scheme (NDIS) package which he self-manages. During the hearing, the patient said he has supports that help him live alone and attend social engagements. He didn't have family that he could depend upon and spent his time on the internet. He has a strong faith and is involved in a Christian group. He was seeing a psychologist once a week but had a break late last year.

During the hearing the patient said he has hopes of having a relationship and a family in the future.

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

The clinical report indicates that the nature of the patient's mental health presentation remains constant. He continues to experience ongoing psychiatric phenomena, but its intensity reduces with the reinstatement of medication. When the patient is well he can manage his mental illness and is not distressed.

When the Tribunal asked the patient why he ceased his medications late last year he responded that the service provider raised their prices for medication supervision. He couldn't afford it and decided to medicate himself. He forgot to take his medication and decided he would see how he went without it. He believes his symptoms became worse because he was withdrawing from it, not because it was stopped. He does not believe he needs psychiatric treatment.

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

The patient has, apart from hospital admissions, received treatment for his mental illness in the community subject to conditions. The treating psychiatrist's evidence is that pivotal to the patient's treatment is medication compliance.

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

While in hospital, the patient struck a staff member in the face, hit him in the head and grabbed the staff member around the throat. He was charged with assault occasioning bodily harm. The consultant psychiatrist indicated in his report that the patient had firm persecutory and delusional beliefs about that particular staff member. The index offence was more than seven years ago and involved significant violence.

3. 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's legal representative submitted that the patient would like the FO revoked and a TSO made. His faith is an important protective factor, there have been no recent issues with aggression, and it was not clear what the risks to the community were. He would like the conditions placed on the patient regarding alcohol, illicit substances, driving a car and possession of a firearm removed.

The Attorney-General's representative submitted that, given the recent deterioration of the patient's mental state due to medication non-compliance, the FO should remain in place. The patient continues to have a significant level of oversight from mental health services in the community and the conditions related to alcohol and illicit substances have a clinical purpose. The condition related to driving a motor vehicle is standard. Those conditions should remain in place. The Attorney-General's representative submitted that it was open to the Tribunal to remove the condition related to the possession of a firearm.

The clinical report indicates that the patient has a long history of aggression and violence and potential self-neglect. In the past, he had been charged with common assault had physical altercations with other residents when an inpatient. When the patient is unwell he has delusions, is paranoid and can incorporate others – for example support workers – into his delusions.

The treating psychiatrist told the Tribunal that the patient's recent relapse led to his hospital admission late last year and presented an opportunity for his medication to be reviewed. He said prior to admission the patient did not disclose that he was having problems with his service provider about medication monitoring or that he had been medication non-compliant. He said the patient has poor and fluctuating insight and poor understanding of his mental illness. There are concerns about how the patient was managing his NDIS package and the Assessment and Risk Management Committee (ARMC) suggested an application be made to the Queensland Civil and Administrative Tribunal regarding the management of the patient's finances and NDIS package.

The treating psychiatrist said he continues to review the patient every three to four weeks since his discharge. The MIRT team leader said that she is still conducting home visits and/or telephone contact with the patient at least twice a week.

The evidence before the Tribunal is that the patient does not believe he needs ongoing psychiatric treatment. He is compliant with receiving his depot medication, but the treating psychiatrist considered daily oral medication supervision pivotal to the patient's treatment. Based on all the evidence before it, the Tribunal is of the view that if the patient was not on a FO, there is a significant risk that he would disengage with mental health services and cease all psychotropic medications.

When the patient ceased his oral medications he became paranoid and required admission. His mental state had deteriorated quickly and he represented a significant risk to others and himself. Having regard to the submissions of both representatives, the seriousness of the index offences, the patient's partial and fluctuating insight, his poor understanding regarding his mental illness and the

need for ongoing treatment, the Tribunal agrees with the recommendation of the treating team and the ARMC report that - to protect the safety of the community – the patient's FO should be confirmed. This will ensure the patient continues to be compliant with his depot and oral medications and his mental state continues to be assessed through significant oversight from his treating team.

The category of the Forensic Order is community.

4. 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, apart from hospital admissions, received treatment for his mental illness in the community. Since his most recent discharge late last year he has been successfully managed in the community with home visits and/or telephone contact at least twice a week, regular consultant psychiatrist review and daily medication compliance supervision by his new service provider. The Tribunal is satisfied that, in the context of the significant level of oversight from mental health services, there is not an unacceptable risk to the safety of the community, because of the patient's mental condition, including the risk of serious harm to other persons or property.

During the hearing, the treating psychiatrist confirmed that there are no concerns about the patient using alcohol or illicit substances at present. When the Tribunal asked the treating psychiatrist about the usefulness of those conditions, he responded that when the patient is unwell an important part of his clinical assessment is to test for those substances. When the Tribunal asked the treating psychiatrist whether he had any concerns about the patient driving he responded that he had not considered it.

The evidence before the Tribunal is that the patient has used illicit substances in the past but has not done so for some time. The Tribunal accepts the treating psychiatrist's evidence that testing for substances is an important part of the patient's assessment when he presents as unwell. In those circumstances the Tribunal has removed the conditions on the patient to abstain from alcohol and illicit drugs. However, the Tribunal has retained the condition that the patient must comply with random testing for those substances if required by his treating psychiatrist.

The Tribunal considered removing the condition restricting the patient from driving without the permission of his treating psychiatrist. The patient said he wanted the condition removed. He doesn't have a driver's license but would like to get one. The Attorney-General's representative submitted the condition was still required. The treating psychiatrist told the Tribunal that he had not turned his mind to whether the condition was still required. The patient had a car accident prior to the index offence when he was driving at nearly twice the speed limit. He was experiencing auditory hallucinations and was thought disordered. The Tribunal accepts this incident happened a long time ago but, in the context of a recent admission and no medical evidence, the Tribunal was not satisfied that the condition should be removed.

The treating psychiatrist told the Tribunal that he had no concerns about the condition preventing the patient from possessing a firearm or weapon. The Attorney-General's representative submitted it was a standard condition and that it was open to the Tribunal to remove it. The patient's legal representative submitted that the standard condition should be removed. The Tribunal determined the condition had no relevance to the patient's particular circumstances and it was removed.

No representations were made to remove or alter any of the other conditions and the Tribunal considered them to be still required. That is the Tribunal considered that it was still required for the patient to reside at a place approved by his treating psychiatrist, that he complies with his treatment in full, that he does not initiate contact directly or indirectly with the victim of the index offence and that he always carries a mobile telephone in working order.

The Tribunal is satisfied that there is not an unacceptable risk to the safety of the community if the patient accesses treatment in the community subject to the approved conditions.

Human Rights

The Tribunal acknowledges the *Human Rights Act 2019*. In particular, the Tribunal considers that the human rights related to medical treatment in the absence of a person's free and full consent, freedom of movement and the right to a fair hearing under that Act are potentially engaged and limited by the decision of the Tribunal. However, the Tribunal is satisfied that the restrictions placed on the patient by the Tribunal are lawful, proportionate to his circumstances and compatible with the *Human Rights Act*. The Tribunal reached this decision because 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.

Conclusions of the Tribunal

The Tribunal considered all the evidence before it and concluded that the patient poses a significant risk to others and potential self-neglect to himself when unwell. His risk of becoming unwell is high in the absence of ongoing psychotropic medication. The Tribunal has found that the patient continues to need the FO, community category, to protect the safety of the community. The Tribunal was satisfied that there was not an unacceptable risk to the safety of the community if he is treated in the community subject to the approved conditions.

The Tribunal confirmed the FO, community, subject to approved conditions.

Presiding Member

APPENDIX A

Statement of the law regarding Forensic Orders

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

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

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

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

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

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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.