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's Legal Representative:	Attended
Psychiatrist:	Attended
Case Manager:	Attended
Attorney-General's Representative:	Attended
Decision	
Date of decision:	
Decision:	Confirm Forensic Order, Inpatient Category

The patient is a man who has an established diagnosis bipolar affective disorder (**BPAD**) experiencing his first episode of mania approximately 15 years ago. He is recorded as being first treated on a Treatment Authority, shortly after his discharge from hospital for his first episode. He experienced a number of relapses between his first presentation and the occurrence of the index offence.

Approximately 10 years ago, the patient's parents contacted the mental health service with concerns about the patient's level of agitation and verbal aggression. Shortly after, Queensland Police Service (**QPS**) responded to an emergency call to the residence where they found that the patient had stabbed one of his parents. The patient was found by the Mental Health Court to have been of unsound mind at the time of the index offence. He was placed on a Forensic Order and detained at an Authorised Mental Health Service.

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 within the 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

The Tribunal did not have the benefit of hearing evidence directly from the patient as the panel were advised that he had chosen not to attend. The treating psychiatrist informed the panel that the patient was going to be admitted for inpatient treatment later that day as he has recently suffered a relapse of his illness secondary to a change in his medication regime. The panel were informed that the patient has gained considerable weight on the medication regime and as a result, the treating team had planned to gradually titrate the patient from one medication to another.

Unfortunately, despite close monitoring and oversight, the patient has suffered a relapse and has been demonstrating increased symptoms of mania including grandiosity, increased religious themes such as attending multiple churches and being over familiar with a female clinician. These are symptoms that the team advised are consistent with previous presentations. While the patient is described as usually having sound insight into his illness and signs of relapse, he was described by the treating psychiatrist as having lost his insight during the current relapse. The treating psychiatrist further advised that the current relapse occurred very quickly, however, the patient is generally very well engaged. In terms of the Forensic Order, the patient views it as a protective factor and feels that it is beneficial in his care, acting as a safety net. Even when manic, the patient remains adherent to his medication regime.

Mental state and psychiatric history

The Tribunal heard and accepted evidence that the patient has a long-standing diagnosis of a mental illness, namely BPAD. The patient presented with his first episode of psychosis approximately 15 years ago, with numerous admissions, until the commission of the index offence. At the time of the commission of the index offence the patient reported that he was communicating with God through music. The patient confirmed that at the time he thought that his parents were evil and that they stood in the way of wisdom and love.

The patient was initially inpatient until he was transitioned to a community care unit. The patient managed the transition to community living very well, being later discharged to a housing unit. The patient's parents continued to support him throughout his inpatient stay and transition into the community. While the patient was initially supported by the Mobile Intensive Rehabilitation Team (MIRT), he was transferred to an adult mental health team. He has remained well since his transition to the community, managing the transition between treating teams as well as psychosocial stressors. Early this year, the patient's general practitioner contacted his treating psychiatrist with concerns that the patient was demonstrating early symptoms consistent with a relapse into the manic presentation of his illness. The trigger for this admission is identified as being the result of a transition from one medication to another in order to manage physical side effects. The patient is identified as remaining adherent with medication (even when unwell) and being well engaged and compliant with all appointments for follow up and testing related to UDSs. This is identified as the patient's only relapse in mental state requiring admission since the commission of the index offence.

Any intellectual disability

The patient is not identified as having an intellectual disability.

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

The patient is supported in the community by an adult mental health team. He is also supported by his parents who had continued to support him since the index offence and throughout his transition back into community living. The patient also maintains contact with his sibling and has friends with whom he socialises occasionally, enjoying visits as well as going out for meals. In terms of further community support, the patient is a part of the church, engaging in their activities regularly and

donating money to assist. The patient has recently recommenced studying.

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

The patient is described by his treating team as being very adherent and well engaged. He attends appointments with the adult mental health team independently and discusses his mental health and well-being openly with the treating team. He independently manages his medication, which he receives in Webster packs from his local pharmacy. The patient has a strong therapeutic alliance with his treating team, seeing his case manager fortnightly and his treating psychiatrist on a monthly basis. He is medication adherent and is described as having good insight into the risks associated with non-compliance with the medication regime.

The patient is also noted to understand the deleterious effect that alcohol can have on his mental state and drinks minimally, with approval to consume up to three standard drinks per week.

With the exception of the most recent relapse, occurring at the time of the hearing for the review of the Forensic Order, the patient has maintained a positive response to ongoing treatment and care. Nonetheless, the Tribunal noted that at the time of the hearing the patient's treating team reported that he had relapsed into a manic episode, secondary to a change in his medication regime. It is noted that the change in medication occurred under the direction of the treating psychiatrist and was not self-driven by the patient, rather it occurred in order to address physical side effects of the medication. Notwithstanding, the team report that the patient's previously good insight has diminished and (at the time of the review) he was not recognising the decline in his own mental state and was not in agreement with the proposed admission. As a result, the Tribunal formed the opinion that the patient's insight and capacity are susceptible to fluctuation.

The Tribunal therefore noted that despite his strong history of willingly receiving treatment and care, his willingness to receive appropriate treatment and care is vulnerable to changes in his mental state and fluctuates when his metal state is compromised.

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

The Tribunal noted that the patient experienced his first episode of psychosis approximately 15 years ago. He is reported to have felt depressed at this time, discontinuing his university studies. The patient suffered numerous relapses resulting in numerous admissions for weeks each time. Historical reports contained in the forensic dossier indicate that at the time, recurring fluctuations and relapses in mental state occurred secondary to changes in medication, psychosocial stressors, sporadic over-consumption of alcohol and some intermittent compliance issues with medication. When unwell he was irritable in mood and disturbed in thought, expressing grandiosity and strong religious themes. At the time of the commission of the index offence, the patient was engaged with the treating team at the adult mental health team. He is reported to have been compliant with treatment however suffered a deterioration in his mental state when he was unable to return to work. The patient was ruminating about his inability to return to work, becoming increasingly frustrated and losing sleep. He was also reportedly disappointed that his regular case manager, with whom he had a strong treatment alliance was on leave.

The Tribunal formed the opinion that the patient's response to treatment in the community previously, closely resembles the circumstances of his treatment in the community currently. Despite his willingness to engage, his mental state is susceptible to fluctuations resulting from changes in his medication regime. He has not independently ceased or altered his medication regime.

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

The index offence occurred approximately 10 years ago at a time when the patient had suffered a deterioration in his mental state secondary to psychosocial stressors It is reported that the patient's mental state had been deteriorating for approximately a week prior to the index offence. His case manager, with whom he had a strong therapeutic relationship, was on leave.

The patient reports that at the time, he believed that he had been communicating with God through his music. The patient mistakenly believed that his parents were evil and inflicted multiple injuries on one of his parents by stabbing with a knife. An emergency call to police was made and when police responded the patient complied with their directions.

The patient was charged with attempted murder. The Tribunal accepted that this was a very serious offence and a very violent attack that occurred in the context of a relapse of an enduring mental illness for which the patient was undergoing treatment at the time. The Tribunal acknowledged that, with the exception of some ongoing behavioural disturbances while he was an inpatient, the patient's behaviour has been predominantly settled and he has responded well to medication and treatment since that time. He continued to have a supportive and loving relationship with his parents after the index offence and managed multiple transitions in accommodation. The Tribunal noted that there have been no further recorded incidences of violence or aggression since residing in the community.

The Mental Health Court, in their reasons for finding, accepted that the patient had a diagnosis of mental illness and that at the time of the commission of the offence, the patient was suffering a relapse of a manic episode.

The Tribunal formed the opinion that since the commission of the index offence, the patient has remained well engaged and adherent to treatment. Nonetheless, when unwell, the patient has a high propensity for violence. The index offence was some time ago however it was a very serious attack and warrants ongoing caution when considering the patient's placement on and conditions of the Forensic Order.

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

There is no Victim Impact Statement related to the commission of the index offence.

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 any recommendation about intervention programs for the patient.

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 heard that the patient has static risk factors including his major mental illness, past non-adherence to medication and the occurrence of the index offence which involved serious violence with a weapon against a loved one.

In relation to the matters to which the Tribunal must have regard, they considered the recurrence of symptoms resulting from the change in medication to be highly relevant. While the evidence presented suggested that the patient remains well engaged and medication adherent, the Tribunal acknowledged that the index offence also occurred in the setting of medication adherence and treatment oversight. Further, it appears, on the evidence in the clinical report, that relapses occur rapidly. When considering the terms of the Forensic Order, the Tribunal concluded that the change of category to inpatient, made by the treating team in order to facilitate an admission, was appropriate given the sudden deterioration in the patient's mental state in the week leading up to the review.

Nonetheless, given the strong treatment alliance, the evidence of good insight when well, the absence of any acts of violence or aggression since transferring to the community as well as the positive future focus of the patient, the Tribunal was satisfied that the category of the Forensic Order could be appropriately changed to community by the treating psychiatrist at the time when the patient's mental state reached baseline with enduring stability.

The Tribunal were reassured by the positive progress the patient has made in the community as well as by his commitment to ongoing treatment and medication compliance. Notwithstanding the current relapse, the patient has demonstrated good stability and awareness of his illness and the risks of non-compliance since his transition to the community. Despite the seriousness of the index offence, the Tribunal was satisfied, on the evidence, that the patient has not demonstrated any recurrence of violent or aggressive behaviour that was exhibited as part of the index offence. The Tribunal was also satisfied that the patient's insight, adherence and engagement with the treating team and his general practitioner currently aids in mitigating the potential risk he poses in the community.

The Tribunal accepted that the offences the patient committed were of a very serious nature, they also accepted that the patient continues to make positive progress with his rehabilitation. While acknowledging that the current relapse was not attributed to any fault of the patient, rather it was the result of a planned change in medication, conducted under the supervision of the team and done to address physical side effects, the Tribunal acknowledged that the patient's mental state continues to be susceptible to deterioration. Therefore, despite his demonstrated stability since transitioning to the community, the evidence before the Tribunal suggested that, when unwell, he continues not to be able to identify that his mental state has deteriorated. The Tribunal therefore formed the opinion that this is a serious risk factor that necessitates ongoing management under the Forensic Order. The Forensic Order thereby continues to provide the treating team with an avenue for swift intervention should future relapses occur and minimizes the potential risk of violent or aggressive acts such as the index offence occurring should the patient become unwell.

The Tribunal therefore decided to confirm the Forensic Order, inpatient category and to approve that an authorised doctor can change the category of the order to community subject to the conditions that the Tribunal approved.

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 Tribunal were minded to allow limited community treatment to be progressed on a staged and graduated basis at the discretion of the treating psychiatrist while the patient remains an inpatient. The Tribunal noted and placed great weight on the evidence that the patient demonstrates a strong therapeutic alliance with the treating team, and when well he demonstrates commitment to ongoing treatment, medication adherence and an awareness of the risks associated with a relapse of his illness. He has been stable in the community for a number of years and the current relapse occurred because of a planned change in medication by the treating team rather than by any behaviour instigated by the patient.

For these reasons, the Tribunal formed the opinion that limited community treatment should be authorised at the discretion of the authorised doctor because there is not an unacceptable risk to the safety of the community posed by the patient. Further, allowing staged and graduated LCT at the discretion of the treating psychiatrist will permit the patient to transition back into the community. The Tribunal noted that when he has transitioned back into the community during previous episodes, he has had the support of his parents.

Human Rights

The Tribunal acknowledges the *Human Rights Act 2019*. In particular, the Tribunal considers that

the following human rights under that Act are potentially engaged and limited by the decision of the Tribunal:

Section17: *Protection from torture and cruel, inhumane or degrading treatment*: The Tribunal accepts that the patient is receiving medical treatment that is, essentially, being given without his consent. The Tribunal is satisfied however, that the giving of the medication is lawful, proportionate to the circumstances and compatible with the *Human Rights Act*. The Tribunal reached this decision because of the risk associated with further deterioration in mental state secondary to not having his mental illness adequately treated. The Tribunal therefore considered that the patient's current lack of insight and capacity into his illness and the risks of further deterioration necessitates the provision of medication without his full consent.

Section 19: *Freedom of Movement:* The Tribunal accepts that the patient's freedom of movement is currently limited by virtue of his placement on the Forensic Order, inpatient category. The Tribunal is satisfied that this limitation on the patient's movement is lawful, proportionate to the circumstances and compatible with the *Human Rights Act*. The Tribunal reached this decision because the patient has suffered a relapse of his mental illness and is currently experiencing a manic episode. When he has been manic historically, his behaviour has been irritable and agitated, and at worst, violent and aggressive, resulting in the attempted murder of his father. Because of the risk associated with the patient's behaviour when unwell, the restriction on his human right to freedom of movement *is* balanced against the risk he may pose to other persons should he not receive treatment and care as an impatient under the order. In order to minimise this limitation on the patient's human right to freedom of movement, the Tribunal approved that an authorised doctor can change the category of the order at a future time. This was determined to be the least restrictive way for the patient to receive treatment and care in the current circumstances.

The Tribunal acknowledged that even when the category of the Forensic Order is changed to community there will be an ongoing limitation on the patient's ability to travel interstate or intrastate in that he must seek approval from the treating psychiatrist in order to do so. The Tribunal is satisfied that this limitation is also lawful, proportionate to the circumstances and compatible with the *Human Rights Act* because, on the evidence, the patient has suffered a rapid relapse secondary to modifications with his medication regime. When he relapses, he is identified as losing insight into his illness. Given the very serious nature of the index offence, the Tribunal considered that travel undertaken by the patient should be at the approval and oversight of the treating psychiatrist so as to minimise the risk of relapse and potential risk to the community should relapse occur.

Section 31: *Fair Hearing:* The Tribunal accepted that the patient was not afforded a public hearing and that the decision of the hearing will not be made public. The Tribunal considers the restriction on making such hearings and decisions public to be a protective factor in terms of maintaining the privacy of the patient. The Tribunal is satisfied that maintaining a closed hearing and not publishing the decision is lawful, proportionate to the circumstances and compatible with the *Human Rights Act*.

The Tribunal reached this decision because it was considered the patient's right to maintain privacy and confidentiality of personal information related to medical treatment. The Tribunal considered that opening the hearing to the public or publishing the decision would potentially be a breach of section 25 of the *Human Rights Act* in that the patient's privacy would be arbitrarily interfered with. In all other manners and respects, the patient was afforded procedural fairness, he was appointed a legal representative to appear on his behalf and he was afforded the right to participate openly and freely in the hearing of the review of his Forensic Order though he declined to attend.

The Tribunal therefore decided that though there have been limitations placed on the patient's human rights, the limitations that exist under the Forensic Order are reasonable and demonstrably justified in accordance with s13 of the *Human Rights Act* for the reasons discussed above.

Conclusions of the Tribunal

The relevant factors that influenced the decision of the Tribunal to confirm the Forensic Order were related to the seriousness of the index offence and the recency of the relapse for which the patient is currently an inpatient. While the patient is generally described as having good insight into his symptoms and illness, the evidence before the Tribunal indicated that when he suffers a relapse, that insight does not remain stable and he loses the ability to recognize that he is unwell and that he requires assertive treatment. Furthermore, given the circumstances of the current relapse, the Tribunal accepted that the patient remains susceptible to relapse secondary to modification of his medication regime, even when that modification is done under the authority and supervision of the treating psychiatrist. Notwithstanding, the Tribunal accepted the evidence of the treating team, that the patient has been stable, demonstrated good insight, medication adherence and a willingness to engage with treatment since his transfer from the inpatient ward of the authorised mental health service until his current relapse. Given the evidence related to his level of insight and ongoing positive engagement, the Tribunal provided approval for the authorised doctor to change the category of the Forensic Order to community in the future. The Tribunal considered that the transition back into the community could be satisfactorily managed by the treating psychiatrist without the need to come back before the Tribunal.

With respect to limited community treatment, the Tribunal considered that a gradual transition into the community when he is clinically well to be an effective way to achieve less restrictive treatment as he continues to rehabilitate. The Tribunal accepted that this transition could adequately be managed at the discretion of the treating psychiatrist. The Tribunal had regard to his level of insight when well and willingness to engage in ongoing treatment when making this decision.

The Tribunal therefore considered that despite the seriousness of the index offence and the evidence of a current relapse, a planned and gradual transition back into the community when the patient recovers would support further rehabilitation and not pose an unacceptable risk to the safety of the community. Furthermore, the ongoing strong therapeutic relationship with the treating team and the patient general practitioner as well as his willingness to engage with treatment, mitigates any potential risk.

For these reasons the Tribunal decided to confirm the Forensic Order, inpatient category and to approve the authorised doctor to change the category of the order to community, after a period of gradual transition and when the patient is well enough to be discharged.

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.