



Statement of Reasons

This is an edited version of the statement of reasons issued pursuant to section 756 of the *Mental Health Act 2016*. The patient and persons attending the hearing have been de-identified and, in some cases, may be allocated pseudonyms for privacy reasons. Other details that may lead to the identification of the patient may have also been modified or omitted. The modification or omission of these details does not affect its decision or its reasons for the decision.

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

Matter:	Forensic Order Review
Attendees	
Patient:	Attended
Patient's Legal Representative:	The patient's legal representative – ceased to act
Psychiatrist:	Attended
Case Manager:	Attended
Attorney-General's Representative:	Attended
Other attendees:	Psychologist attended
Decision	
Decision:	The Forensic Order is confirmed. The category is inpatient. Limited community treatment is approved in accordance

The patient applied for a review of the Forensic Order to be heard earlier than the statutorily scheduled six monthly review. The patient was placed on a Forensic Order after being found of unsound mind in relation to charges of serious assault, which arose from events occurring approximately 8 years ago. The circumstances are set out in the treating psychiatrist's report.

In his Application for Review, the patient said he was experiencing pharmaceutically induced psychosis, had limited freedom, had unwanted side effects and had learned his lesson. He clarified at the hearing that he wanted the Forensic Order revoked.

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.

Legal representation

A legal representative was appointed for the patient as required under s740(3)(c) of the Act where the Attorney-General is being represented. The patient's legal representative was appointed to act for the patient. At the commencement of the hearing, she indicated that the patient had provided her with written notice that he did not wish to be represented. The Tribunal was satisfied that the patient was an adult with capacity and was entitled therefore to waive in writing the right to be represented pursuant to section 740(4) of the Act. The patient's legal representative had not had any conversation with the patient beyond this issue and was not able to assist the Tribunal by remaining at the hearing.

Application of evidence before Tribunal to relevant provisions

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 history of the patient's psychiatric illness and treatment is set out in detail in the clinical report, to which all parties have access. He has continuously described a process where an unspecified source communicates with him but not as a voice. He has displayed ongoing paranoia about all aspects of psychiatry, mental health institutions, staff and medication. He was transferred to a secure inpatient unit due to non-compliance with his medication, and a resultant deterioration in mental state. He remained there until his recent transfer to a continuing care unit. He has had some extended periods of mental state stability, and some shorter periods of deterioration in mental state. He has sustained some quite intractable views on engaging with the treating team, and recommended rehabilitation activities. The clinical report noted that the treating team was pleased he did engage in some psychology sessions in earlier this year. The patient has never wavered from his view that his symptoms were caused by pharmaceuticals, that these have never been alleviated by his treatment and care, and that he would cease treatment if he were not an involuntary patient. He has a history of using illicit substances from a young age and he reported having used a number of substances at the time of the index offences. At the time of the hearing, his mental state was reported to be stable.

Any intellectual disability

There was no evidence that the patient had an intellectual disability.

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

The patient has recently moved from an inpatient unit to a continuing care unit. He has a supportive family, the primary supports being his parents. The clinical report notes that his parents have had ongoing concerns about their son's diagnosis and treatment. Quite recently, however, they had indicated greater acceptance of the treatment, and were pleased that he was to transition to the community. He has not been employed or involved in education for over six years.

A guardian was appointed by the Queensland Civil and Administrative Review Tribunal (**QCAT**) earlier this year for financial matters and provision of services as there had been concerns that the patient was lending money to others.

The patient told the Tribunal he just wanted to get on with a normal life; have a business, get a job, and a partner.

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

The medical evidence was that the patient has a treatment-resistant illness. His response to his fortnightly medication required close monitoring, in order that side effects can be managed if they emerge. He suffered side effects in the past and this has understandably made him wary of accepting medication. Psychoeducation continues about diagnosis, and the risks and benefits of medication. The aim is for the patient to be able to regain his formerly high level of functioning. He was at the time of the hearing, accepting oral medications which he had declined previously. The patient had indicated to the treating team that he would comply with the medication he was required to take whilst he was under the Forensic Order. He reaffirmed this at the hearing, also saying if the Forensic Order

was revoked, he would titrate himself off any medication and return to his normal functioning as a result. The medical evidence that the response to treatment in the community, and his willingness to continue treatment were historically problematic, and required involuntary management, was supported by the patient's own views.

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

The patient allegedly spat at a stranger who he met on the street. The stranger called out for assistance, a fight broke out, and nearby residents came to intervene. Further fighting ensued, and police officers attended. He allegedly punched and spat at the police officers, continuing to be aggressive when placed in the police vehicle. Queensland Ambulance Service (**QAS**) arrived to treat the patient but could not complete an assessment at that time due to his behaviour. Whilst in a holding cell, the patient was assessed by QAS officers; it was reported he was grinding his teeth and hitting his head on the concrete floor of the cell. He was taken to the hospital.

The patient was placed on a Forensic Order by the Mental Health Court after being found of unsound mind in relation to three charges of serious assault. Whilst there has been aggression since, there have been no subsequent charges.

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

There was no victim impact statement before 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 any recommendations about intervention programs.

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 patient was admitted to a continuing care unit after a period as an inpatient at a secure inpatient unit. He told the Tribunal that being at the continuing care unit was better than being at the hospital but was not the least restrictive option. He said he was still psychotic, could still hear birds talking to him, and this had never happened before he had antipsychotics. He said he believed his parents agreed with him. He said he spends his time cooking, cleaning and doing some study.

He said he had always believed his problems had been caused by medication. He was given a drug at a party and shortly thereafter had his first psychosis. He accepted he has an illness, but said it was medication induced. Asked by the Tribunal why treating doctors would take this approach, he said it could be incompetence, drug company kickbacks, he didn't know.

The patient said the comments of the treating team on risk were all based on out of date information. What was happening to him was wrong and needed to stop. All past behavioural problems had been since he had been taking or withdrawing from pharmaceuticals. He wanted the Forensic Order revoked and would slowly wean himself off the medication, to be back to normal. He said the clinical report was inaccurate, and the Forensic Order must be revoked. The Mental Health Court and a large body of people over time had neglected his situation.

The treating psychiatrist recommended to the Tribunal that the Forensic Order be confirmed. She had reviewed the patient's notes and believed he had a treatment-resistant schizoaffective disorder with residual symptoms. The diagnosis was made based on internationally recognised criteria. There had been a number of independent assessments over the years that had been consistent with this

diagnosis. Any adverse effects the patient had had from pharmacological treatment were likely to have been transitory. The treating psychiatrist said he had recommended one particular medication as treatment but the patient was reluctant to use it. There had been a previous unsuccessful trial.

In terms of risk, the treating psychiatrist said in the past there had been aggressive, bizarre dangerous and sexually inappropriate behavior. The Community Forensic Outreach Service (**CFOS**) referred to the fact the patient had a low stress tolerance and, even in the absence of psychosis, he easily experiences emotional dysregulation. In addition to the risks to others, he had also injured himself. There were no acute risks at the time of the hearing.

The treating psychiatrist said the patient continued to require involuntary treatment as he had impaired insight into his mental illness. He lacked capacity to consent to treatment and there were no less restrictive options which would ensure his treatment. Asked about the risks if the Forensic Order was revoked, the treating psychiatrist said it was clear that the patient was only complying with treatment and remaining abstinent from illicit substances because of the Forensic Order. There was a high risk of disengagement from treatment and follow up, and a consequent deterioration in mental state and functioning. The risks to the community, including to the patient's family, and to the patient would increase and be significant. Trials of community treatment had not in the past been as successful as hoped. There was a significant risk of relapse into substance use if he was not monitored closely in the community and also the possibility that he would act on command auditory hallucinations if very unwell. Even while subject to involuntary treatment, promptings with treatment were continually required and he was resistant to engaging with staff.

Transitions in living arrangements had been reasonably smooth. The case manager said she thought the patient had settled into his current residence to a degree, however, was self-isolating and was not wanting to engage with treatment. A National Disability Insurance Scheme (**NDIS**) package planning had commenced.

The clinical report noted that the patient had maintained his opposition to the diagnosis and the need for treatment whilst at his current residence, having stated on numerous occasions that should he be released from the Forensic Order, he would stop taking any medication. He had been adamant the anti-psychotic medication was in fact causing him to experience ongoing psychosis. He expressed this view emphatically at the hearing. The patient had agreed to remain adherent to medication whilst under the Forensic Order.

The Attorney-General's representative submitted that the Forensic Order should continue. They also submitted that there was no indication to change the conditions and that the category should remain inpatient, and the authorised doctor should not have the authority to change the category.

The Tribunal heard and considered carefully the patient's strong views. However, the weight of current medical evidence was consistent with the evidence and assessments of various doctors and treating teams over many years that the patient suffers from a mental illness and that there are ongoing risks to others and himself arising from his aggression if he becomes unwell. His lack of insight means that he is unlikely to comply with treatment, and therefore unlikely to remain as well as he is, without involuntary treatment. He has a fixed view about the causation of his symptoms and is unable to accept the medical evidence on diagnosis and the need for treatment, and the ongoing risks. The seriousness of the incidents which were the basis of the Forensic Order, and the impact offences of that nature would likely have on victims, has also been taken into account in finding that the Forensic Order continued to be required because of the patient's mental condition, to protect the safety of the community.

The Tribunal is satisfied that the category should remain inpatient. The Tribunal did not have persuasive evidence at this point to find there was not an unacceptable risk in changing the category to community. The patient remains unwilling to engage in many aspects of treatment and care in his new circumstances, and the change was not recommended by the treating team.

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 Act provides that the purpose of limited community treatment for the patient is to support his recovery by transitioning to living in the community whilst receiving the treatment and care he requires.

The Assessment and Risk Management Committee supported 7 nights leave for the patient and the transfer to his current residence. The Tribunal has not been made aware of any adverse incidents occurring whilst he has been at his current residence. Whether or not he is supervised when away from the Authorised Mental Health Service is a matter for the treating psychiatrist and team to determine. The treating psychiatrist has recommended that the limited community treatment continue as it is, and that any risks are manageable within the current conditions. The conditions included are necessary given the risks; it is important that he refrain from alcohol and illicit substances, given their impact on his mental state. The clinical report noted that the patient has argued in the past that illicit substances should be decriminalised but has recently acknowledged a potential risk from cannabis impacting negatively on his mental state. He has also indicated since being at his current residence that his abstinence is the reason he has been feeling the best he has for a long time.

The remaining conditions are necessary at this point of the patient's rehabilitation. His limited insight and judgment limit his ability to make sound decisions about many things, as demonstrated by the need for the appointment of a guardian.

The Tribunal is satisfied that at this time, the limited community treatment does not present 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.

Conclusions of the Tribunal

In confirming the Forensic Order, the Tribunal was persuaded by the current medical evidence, and the evidence provided by the patient himself about his reluctance to engage in rehabilitation activities, and his ongoing resistance to the diagnosis and need for treatment that to do otherwise could expose the community to risk, potentially serious. The Tribunal acknowledges that this is not the outcome the patient was seeking, and it did consider his wishes in making this decision.

The Forensic Order remains inpatient category. The evidence to the Tribunal was that the patient continues to require considerable encouragement and support to participate in treatment in order to remain suitable for a community setting.

The Tribunal accepted the treating team's evidence was that there was no less restrictive way for the patient to receive treatment, based on his seemingly intractable rejection of the diagnosis and need for treatment, and his self-confessed intention to wean off medication when matters were in his hands.

For the reasons set out above, the Tribunal has decided to confirm the Forensic Order and retain the category as inpatient. Limited community treatment was approved in accordance with the conditions on the Forensic 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.