



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	
Psychiatrist:	Attended
Case Manager:	Attended
Decision	
Decision:	The Forensic Order is revoked. A Treatment Support Order is made. The Category of the Treatment Support Order is Community. The Conditions of the Treatment Support Order are attached to the decision. An authorised doctor may amend the order to reduce the extent of treatment in the community received by the patient.

The patient has an established diagnosis of paranoid schizophrenia and is subject to a Forensic Order made by the Mental Health Court on the basis that he was of unsound mind at the time of committing the index offences. The Forensic Order is reviewed at six monthly intervals by the Mental Health Review Tribunal in accordance with the requirements of the *Mental Health Act 2016* (Qld) (**Act**). At the time of review, the category of the Forensic Order was community.

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 on the day of the hearing. He was not present for the hearing as he had elected to be absent of his own free will. The case manager advised the panel that the patient did not wish to attend the hearing and did not require an adjournment. This information had been confirmed by the case manager in speaking to the patient immediately prior to the hearing. The patient had indicated to the case manager an indifference towards the Forensic Order which was consistent with his previous approaches to Tribunal hearings. He had not attended a Tribunal hearing for some time. The Tribunal considered that an adjournment would only cause a delay in the proceedings. The Tribunal considered it was appropriate to continue with the hearing as it was in accordance with the patient's wishes.

Summary of evidence and findings

The Tribunal must confirm the Forensic Order if the Tribunal considers the Forensic Order is necessary, because of the person's mental condition, to protect the safety of the community, including from risk of serious harm to other persons or property.

1. The relevant circumstances of the person subject to the order

Mental state and psychiatric history

The clinical report of the treating psychiatrist details the patient's psychiatric history commencing approximately 20 years ago for his first presentation of psychosis. The treating psychiatrist has been his treating psychiatrist for approximately 9 years. Prior to that time, the patient was being regularly admitted to hospital for relapses of his mental illness. However, since the treating psychiatrist became involved in his treatment and care, the patient has been compliant with his medication and stable in his mental state.

Approximately 8 years ago, the patient experienced side effects from his medication, requiring that it be reduced in dose. The patient also suffered physical health issues. For a short time, he ceased cigarettes and cannabis but he recommenced in the following year.

The patient interacts with his treating team minimally, though this has improved over the last 7 years. He finds his interactions with the mental health service to be intrusive and any efforts by the treating psychiatrist to enforce more frequent interaction has been counter-productive. He is appropriately managed with a lower level of treatment. Treatment consists of ensuring that the patient receives his depot medication and his mental state is assessed for early signs of deterioration.

The treating psychiatrist considers that the patient is at his baseline and has been for some time. He reports no stressors or any psychotic symptoms. He continues to drink socially and use cannabis. The treating team do not consider that his current level of alcohol consumption or cannabis use impacts on his mental state. The patient refuses any offer of drug or alcohol education/rehabilitation. He is compliant with his medication regime and attends his appointments with his treating psychiatrist. The treating team believe that the patient will seek help if he is experiencing early warning signs.

Any intellectual disability

Not applicable.

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

The patient has stable accommodation with a flat-mate who he reports that he has a good relationship with. The accommodation is considered by the treating team to be stable. He has regular contact with family members. He is a musician and spends his time playing the guitar and recording songs.

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

The patient continues to drink alcohol and use cannabis. He refuses any assistance in relation to drug or alcohol education/rehabilitation. He is compliant with his medication regime and attends all arranged appointments with his treating psychiatrist. He declines any further interactions with his treating team or mental health services.

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

The patient has a long history with mental health services which includes periods of non-adherence to medication and relapses due to illicit substance use. His last admission to hospital for mental health reasons was approximately 13 years ago.

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

The index offences occurred approximately 17 years ago when the patient allegedly threatened a bank teller for money and had a weapon on him at the time. He was later apprehended by police. At the time of the robbery, the patient made no effort to conceal his identity.

Prior to the index offence, the patient is reported to have experienced homicidal ideation towards some family members. He was experiencing visual and auditory hallucinations. He reported a period of two weeks prior to the index offence where he was unable to sleep.

Although the offending was of a serious nature, the panel noted that the index offences occurred over 16 years ago and that the patient had been on a Forensic Order for a period of almost 15 years. The Tribunal considered the length of time should hold significant weight in determining the ongoing risk to the community from the patient's mental condition. Since this time, the patient has not committed any further offences, despite receiving minimal interaction with mental health services.

The panel also considered that although the patient had a weapon on him at the time of the index offence, he did not try to use it in the alleged robbery.

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

Not applicable.

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

Not applicable.

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 clinical report by the treating psychiatrist recommended confirming the Forensic Order but gave an alternate argument as to why the Forensic Order was not necessary to protect the safety of the community. The argument raised by the treating psychiatrist was clarified in his oral evidence and included the length of time since the index offence and being on the Forensic Order; a lack of history for violent offences and that there had not been a significant incident of violence since the index offence; the patient's stable mental state for a significant period of time; and that the current risk of violence was low.

The treating psychiatrist explained in his oral evidence that he did not have the full Assessment and Risk Management Committee (ARMC) support in recommending revocation and felt that he was bound to make his recommendations in the clinical report in line with the ARMC recommendation. When revocation was discussed at the ARMC, the treating psychiatrist stated that there had been a

reluctance by the Community Forensic Outreach Service (**CFOS**) representative to support revocation given the patient's continued alcohol and cannabis use and his lack of insight. The details of the discussion around a Treatment Support Order is detailed in the ARMC minutes and that some participants, including the Medical Director, supported a recommendation to the Tribunal for a Treatment Support Order.

The treating psychiatrist's oral evidence was that a Forensic Order was not necessary to protect the safety of the community. The treating psychiatrist also did not believe a Treatment Support Order or a Treatment Authority was required. He said it was questionable whether the patient met the criteria for a Treatment Authority as he has no positive symptoms and partial insight. The treating psychiatrist did not believe that the patient was an unacceptable risk, even if he was a voluntary patient, as he now believed that he would continue to take his medication for a period of time.

It is the treating psychiatrist's strong belief was that the patient would continue to engage with the treating team at the same level he is presently engaging, regardless of whether an Order was present or not. The treating psychiatrist believed there was little difference between a Forensic Order and a Treatment Support Order and that neither Order was necessary. He opined that the risk to the community from the patient's mental condition was low and had been for some time. He said that treatment consisted of medication compliance and monitoring mental state. Despite ongoing alcohol use and cannabis use, the patient's mental state remained stable. The patient had expressed to his treating team consistently that he was not interested in drug or alcohol counselling/rehabilitation. Historically, the patient will present to the clinic or hospital if he feels unwell.

The treating psychiatrist stated that there were no issues with compliance with medication. The treating psychiatrist said that the patient exhibits partial insight in that he "doesn't mind" the medication. He said that the patient was open about his drug and alcohol use. He also is prescribed medication which he uses to help him sleep which he obtains scripts from his General Practitioner. A couple of years ago, the patient had a relapse with some emerging symptoms in the community. This was successfully managed by the treating team and the patient without requiring an admission.

The Tribunal found the oral evidence of the treating psychiatrist to be persuasive. It was clear from the evidence that the treating psychiatrist had treated the patient for an extensive time period and that the treating team had therapeutic relationship with him and were familiar with his nuances. The panel noted the protective factors for the patient and that any risk to the community was directly related to a deterioration in his mental state. In considering the risk of safety to the community, the panel accepted the evidence of the treating psychiatrist that the current risk of safety to the community was low and that the strict oversight of a Forensic Order was no longer required.

The panel considered the length of time since the index offence and that the patient had not reoffended since. The panel also noted the extended length of time since his last mental health inpatient admission and that his last episode of emerging symptoms was managed in the community without the need for an admission. Since that time, the patient had been stable in his mental state without positive symptoms of his illness and was compliant with his medication without need for prompting or chasing.

The panel accepted the treating psychiatrist's evidence that the patient may not meet the treatment criteria and as such the panel considered that as he was not recommending a Treatment Authority, one could not be made pursuant to Section 451 of the Act. The Tribunal considered that it was not a choice between a Forensic Order and no Order. It noted that the patient would continue to receive ongoing treatment and care from the mental health service and that any ongoing risk to the community could be adequately addressed by a Treatment Support Order. It accepted the

proposition that a Forensic Order was not necessary if a Treatment Support Order was made. The panel considered that any ongoing risk, including de-stabilisation of the patient's mental state due to increased alcohol or substance use, could be managed under a Treatment Support Order

A Treatment Support Order was preferred by the Tribunal due to the low ongoing risk to the safety of the community, including from the risk of serious harm to other persons or property. It noted that the risk was mitigated by the patient's stable mental state; his protective factors including stable accommodation and supportive family; the monitoring of his mental state by mental health services; and the patient's continued compliance with receiving antipsychotic medication. The Tribunal considered that a Treatment Support Order could adequately protect the community by continuing to address the patient's adherence to treatment, monitor his ongoing cannabis and alcohol use and also monitor his mental state.

6. Considerations as to category, limited community treatment and conditions

The Tribunal was persuaded by the risk mitigation factors outlined above that there was not an unacceptable risk to the community if the patient remained in the community to receive treatment and care. The Tribunal considered that the appropriate category of the Treatment Support Order remained as community and that it was appropriate for an authorised doctor to amend the Treatment Support Order to reduce the extent of treatment in the community received by the patient. Particularly that it was appropriate for an authorised doctor to reduce treatment in the community in circumstances where the patient's treatment and care needs could not be met if the category was community or if there was concerns about his safety or the safety of others.

In his oral evidence, the treating psychiatrist stated that there has been no use of weapons since the index offence and that he had no concerns of weapons in addressing risk to the community. He said that the patient does not drive, nor that he had any intention to drive. The treating psychiatrist said that the patient does not travel interstate.

In determining the conditions of the Treatment Support Order, the panel believed that there was not a need to include conditions about driving and possessing weapons as these conditions did not address current risk. The panel determined that the risk to the community related solely to any deterioration in the patient's mental state and that whilst he was stable with ongoing cannabis and alcohol use, there may be a deterioration in the future if his use was to increase. Accordingly, the panel considered that it was appropriate to include conditions that allowed for testing of alcohol and illicit substance use.

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: right to a fair hearing (section 31); protection against having medical treatment without their full and informed consent (section 17); and right of liberty (section 30). However, the Tribunal is satisfied that the restrictions placed on the patient by the Tribunal are lawful, proportionate to the circumstances and compatible with the *Human Rights Act*. The Tribunal reached this decision because:

- The Forensic Order was reviewed in a reasonable period of time and the patient requested that the hearing proceed in his absence and without delay.
- That any limit on the patient's right of liberty by being involuntary detained as an inpatient would only occur in circumstances where his mental state had deteriorated. Accordingly, at

that point it would be necessary for him to be detained due to his own need for medical treatment and further, to mitigate any risk to the community from his mental condition. If that circumstance was to occur at some point in the future, then any limit would be reasonable and justified.

- The patient is currently accepting of his medication. In the future, if he did not accept his depot medication then the Forensic Order allowed for him to be treated without his full consent. This limitation placed on the patient's human right is reasonable and justified given that if he did not receive his prescribed medication, there would be a deterioration in his mental state and he would pose a risk to the community and to himself.
- The Treatment Support Order was considered to be the least restrictive of the rights and liberties of a person who has a mental illness whilst continuing to protect the welfare and safety of the community.

Conclusions of the Tribunal

The Tribunal accepted the evidence of the treating team as contained in the clinical report as well as the oral evidence of the treating psychiatrist and the case manager. The Tribunal considered the relevant circumstances of the patient, particularly the lack of offending since the index offences and the stability of his mental state. It considered the recommendations of the treating psychiatrist and his evidence of the risk to the community from the patient's mental condition including the mitigation of those risks given the patient's stable mental state, protective factors and compliance with prescribed medication. The Tribunal noted that the treating psychiatrist's recommendation to revoke the Forensic Order was not supported by the ARMC.

The Tribunal considered whether a Forensic Order was necessary, due to the patient's mental condition, to protect the safety of the community. The Tribunal concluded that the patient had demonstrated stability in his mental state and compliance with his treatment regime, despite his ongoing use of alcohol and cannabis. The Tribunal accepted the evidence of the treating psychiatrist that the patient's current level of alcohol and cannabis use did not impact of his mental state and that consequently, there had been a reduction in the risk to the community since the making of the Forensic Order. The Tribunal formed a view that the Forensic Order was not necessary to protect the safety of the community and revoked the Forensic Order.

The Tribunal determined that a Treatment Support Order was necessary to protect the safety of the community, given the risks to the community if the patient's mental state was to deteriorate. It noted the seriousness of the index offences and that there was a risk to members of the community if the patient became unwell due to his previous conduct. It considered that the appropriate category remained as community and that some of the conditions should be retained that were attached to the previous Forensic Order.

For these reasons, the Tribunal decided to revoke the Forensic Order. A Treatment Support Order was made, category as community with conditions of treatment in the community.

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.