# 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.**

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|---|---|
| Matter: | Treatment Authority Review |
| **Attendees** | |
| Patient: | Attended |
| Nominated Support Person | Attended |
| Consultant Psychiatrist: | Attended |
| Psychologist | Attended |
| Nurse Escort | Attended |
| **Decision** | |
| Date of decision: | 2020 |
| Decision: | Revoke the Treatment Authority |

## Background

Approximately six years ago, an authorised doctor assessed the patient and placed him on an Involuntary Treatment Order (ITO) under the *Mental Health Act 2000*. The ITO stated the patient appeared psychotic with no insight. He had homicidal and suicidal ideation and was refusing to remain in hospital. It was confirmed by a consultant psychiatrist. The ITO transitioned to a treatment authority (TA) under the *Mental Health Act 2016* (Act).

The Tribunal received an application from the patient for a review of his TA. He was seeking a revocation. He stated he had been off all medication and had shown "no residual effects of a mental illness". During his time at the inpatient unit he had completed all requirements asked of him and shown strength in his behaviour around others. He had many opportunities to abscond but didn't because he knew it would make his situation worse. He had developed better mechanisms to deal with his emotions and wanted to re-engage with his family. He understood he had done stupid things but said the past did not define him. He planned to enroll in a course upon discharge and remain in a day rehabilitation program to ensure he continued to make healthy decisions for the rest of his life.

## 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 TA. 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 treatment criteria in section 12 of the Act continue to apply to the person.
2. whether there is a less restrictive way for the person to receive treatment and care for the person's mental illness.
3. if a TA is confirmed, whether the category should be community or inpatient.
4. if the category is community, whether an authorised doctor may, at a future time, reduce the extent of treatment in the community received by the person.
5. if the category is inpatient, whether any limited community treatment is approved or extended for the person. If the Tribunal approves or extends limited community treatment, whether an authorised doctor may, at a future time, reduce the extent of treatment in the community received by the person.
6. what, if any, conditions should be imposed on the TA?

## Clinical Report

The patient told the Tribunal when he had received a copy of the clinical report.

The Tribunal is satisfied the patient received a copy of the clinical report within the statutory timeframes.

## Summary of evidence and findings

### Treatment Criteria

In order to be satisfied that the person should continue to be subject to a TA, all of the treatment criteria in section 12(1) of the Act must apply. The Tribunal considered each of the criteria in turn.

#### 1. Does the person have a mental illness?

The Act states that a mental illness is a "condition characterised by a clinically significant disturbance of thought, mood, perception or memory". However, a person must not be considered to have a mental illness because he takes drugs or alcohol and/or because he has been treated for a mental illness before.

The clinical report states the patient has a diagnosis of Dissocial Personality Disorder and Asperger Syndrome.

The psychologist told the Tribunal that the patient's diagnosis is difficult. She believed he met the criteria for Complex Post Traumatic Stress Disorder (PTSD), Generalised Anxiety Disorder and Autism Spectrum Disorder.

A few weeks prior, the treating psychiatrist had examined the patient and noted he had no psychotic or mood symptoms. He had shown no psychotic symptoms or abnormalities of thought since his admission to the inpatient unit earlier in the year.

The Tribunal accepts the patient has been diagnosed as having Dissocial Personality Disorder and Asperger Syndrome. However, there is no evidence indicating the patient has ever suffered a clinically significant disturbance of his memory and the treating psychiatrist assessed him as having no psychotic, mood or thought abnormalities. During the hearing, the treating psychiatrist said the patient is vulnerable to symptoms returning if he resumed illicit drug use.

The Tribunal was not satisfied the patient has a mental illness that is characterised by a "clinically significant disturbance of thought, mood, perception or memory."

#### 2. Does the person have capacity to consent to be treated for the illness?

The patient told the Tribunal he was sane and sober. He had returned from overnight leave at a family member's house and wants the TA revoked. He doesn't want to be in the unit. If the TA was revoked, he would go to the gym, attend TAFE and possibly get a job. In the short term, he would live with his family. He would be willing to go to a hostel that provided meals. He has been abstinent from illicit drugs for six months and accepts they affect him. He is on probation and - if he wasn't in the unit – is required to report to the police station regularly. He is subjected to random drug testing. If he returns a positive drug test he

would go to prison and he doesn't want to go to prison. He had no interest in using drugs and going to jail. The patient acknowledged that being in the unit had given him a routine and he is healthier with a routine.

The treating psychiatrist told the Tribunal that the patient had been prescribed an antipsychotic depot medication for a diagnosis of schizophrenia. The dose of that medication had been reduced since his admission to the unit and his last dose was a few weeks ago. There have been no symptoms of schizophrenia and - because of the minimal doses – the treating psychiatrist didn't believe the patient had a "primary diagnosis" of a mental illness. However, he considered a period of extended observation (about three months) was required for diagnostic clarification but the team don't think he has schizophrenia.

The clinical report stated that the patient had capacity to consent to his treatment. However, in the past, his capacity had been unstable in the context of his personality structure and intoxication. It stated the patient would benefit from a longer period in a protected environment enrolled in unit activities and attending drug and alcohol rehabilitation to facilitate his safe transition into the community. If the TA was revoked there would be a high chance of disengagement from those plans. The treating psychiatrist told the Tribunal that the patient has good insight and capacity.

The patient's evidence was that he didn't want to return to using illicit drugs and acknowledged he lost all reasoning when he used them. He recognised the benefits of being in a routine and was keen to remain engaged with ongoing non-pharmaceutical therapies. He is subjected to random drug testing as part of his probation and required to report to a police station. The treating psychiatrist's evidence was the patient had good insight and capacity.

The Tribunal acknowledges that the patient has become psychotic and had no capacity to consent to treatment in the past when he used illicit drugs. However, the overwhelming evidence before the Tribunal is that the patient currently does have good insight and capacity and - with the potential of being put in prison if he returned a positive drug test - he has no intention of using illicit drugs in the future.

The Tribunal is satisfied the patient understands the benefits of his current treatment and/or the adverse consequences of using illicit drugs.

The Tribunal is satisfied the patient has the capacity to consent to treatment.

3. **Are the person's illness and an absence of involuntary treatment or continued involuntary treatment likely to result in either:**
   a. **imminent serious harm to the person or others; or**
   b. **the person suffering serious mental or physical deterioration?**

The Tribunal was not satisfied the patient had a mental illness as defined under the Act and found he had capacity.

The Tribunal acknowledges that if the patient returned to using illicit drugs he could represent an imminent risk to himself and others and/or suffer serious mental deterioration. However, those risks and/or deterioration would not be a consequence of an absence of

treatment for a mental illness. Those risks and/or deterioration would be a consequence of the patient - as a person with personality vulnerabilities - using illicit drugs. Under the Act, using drugs or alcohol is not a mental illness.

**Relevant Circumstances**

In reaching a decision, the Tribunal had regard to the relevant circumstances of the person subject to the TA.

Mental state and psychiatric history

The clinical report indicates the patient first became involved with mental health services approximately ten years ago. He has required a significant number of hospital admissions because of situational crises, deliberate self-harm, suicide attempts and/or ideation, homicidal ideation and psychotic symptoms all in the context of illicit drug abuse.

The patient's nominated support person told the Tribunal the unit has provided the required support for the patient to be abstinent of drugs.

Any intellectual disability

The patient does not have any intellectual disability.

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

The patient has a supportive family. His National Disability Insurance Scheme is due to commence soon. He is on the disability support pension and the Public Trust manages his finances. He has no permanent accommodation and he has an appointed guardian.

The patient told the Tribunal he intends to go to the Queensland Civil and Administrative Tribunal to regain control of his finances.

The evidence before the Tribunal is that the patient has limited social supports in the community and no permanent accommodation.

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

The patient has had a positive response to pharmacological and non-pharmacological treatments and his mental state has improved significantly in the absence of ongoing illicit drug abuse.

The Tribunal is satisfied the patient will continue to be engaged in his non-pharmacological treatment if he wasn't on a TA.

**Less Restrictive Way**

The patient has been an inpatient at the unit since earlier this year. Due to COVID-19, there was a period where he had no access to leave.

The treating psychiatrist said the patient was an inpatient and had escorted leave. He had just been written up for some unescorted leave and has had overnight leave with his family. When the Tribunal asked why the patient's leave was escorted, he responded because of community stressors and his past coping skill was to use drugs.

The patient has cluster B personality traits. He does not have a mental illness as defined and - when he is abstinent from illicit drugs - he has not represented a risk to himself or others. He has insight into the adverse effects of illicit drugs on his mental health and has the capacity to consent to his treatment. He is currently on probation and required to report to the police station and undergo random drug testing. If he returns a positive drug test he will be put in prison.

The Tribunal was not satisfied there was no less restrictive way for the patient to receive adequate care and treatment other than under a TA (inpatient category).

**Human Rights**

The Tribunal acknowledges the *Human Rights Act 2019*. The patient received his clinical report within the statutory requirements and attended his hearing. The Tribunal allocated adequate time to hear the patient's review and considered his oral and written evidence. The Tribunal was satisfied the patient was afforded a fair hearing.

The human rights related to the patient's right to be recognised as equal before the law, freedom of movement, privacy and his right to liberty were potentially limited if the Tribunal had confirmed the TA and the Tribunal was not satisfied any restrictions placed on the patient would have been lawful under the Act and/or proportionate to his circumstances.

**Conclusions of the Tribunal**

The Tribunal concluded that the treatment criteria were no longer met. The Tribunal was not satisfied the patient had a mental illness as defined under the Act and accepted the treating consultant psychiatrist's opinion that he had good insight and the capacity to consent to his current treatment.

Section 421 of the Act states that the Tribunal must revoke the TA if it considers the treatment criteria are no longer applicable. The Tribunal therefore revoked the TA.

**Presiding Member**

## Appendix A

## Statement of the law regarding Treatment Authorities

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).

Section 413(1) of the Act provides the Mental Health Review Tribunal (**Tribunal**) must review a treatment authority within 28 days after it is made, each 6 months for the first year, and at intervals of not more than 12 months thereafter (a ***periodic review***).

Also, the Tribunal must review a treatment authority on application by the patient subject to the authority, an interested person for the patient or the chief psychiatrist (an ***applicant review***). Section 413(3) empowers the Tribunal, on its own initiative, to carry out a review of the treatment authority (a ***tribunal review***).

Section 419 provides that on a periodic review, the Tribunal must decide to confirm or revoke the treatment authority. On an applicant review, the Tribunal must decide whether to make the orders sought by the applicant, and on a tribunal review, the Tribunal must decide any particular matter stated in the notice given under section 418(3) and make orders under Chapter 12, Part 2, Division 4 as it considers appropriate.

Section 421 provides that on a review of a treatment authority, the Tribunal must revoke the authority if the Tribunal considers the treatment criteria no longer apply to the patient subject to the authority or there is a less restrictive way for the person to receive treatment and care for their mental illness. However, the Tribunal does not have to revoke the treatment authority on the basis that the patient has capacity if the Tribunal considers the patient's capacity to consent is not stable.

Section 412 provides that in making a decision in relation to a review of a treatment authority under Chapter 12, Part 2, the Tribunal must have regard to the relevant circumstances of the person subject to the authority. The Act defines **relevant circumstances** of a person, as each of 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 the person's willingness to receive appropriate treatment and care;
(e) if relevant, the person's response to previous treatment in the community.

Sections 423 and 428 provide that the Tribunal may change the category of the treatment authority from inpatient to community or from community to inpatient depending on the applicable conditions in those sections.

If the category of the treatment authority is community, the Tribunal must decide whether an authorised doctor may, at a future time, reduce the extent of treatment in the community received by the person the subject of the authority.

If the category of the authority is inpatient, the Tribunal may approve limited community treatment, or an extension of limited community treatment for the person. In deciding whether to do this, the Tribunal must have regard to the purpose of limited community treatment.

If the Tribunal approves or extends limited community treatment, it must also decide whether an authorised doctor may, at a future time, reduce the extent of treatment in the community received by the person.

Section 426 provides that the Tribunal may change, remove or impose a condition on the treatment authority. However, the Tribunal may not impose a condition on the treatment authority that requires the person to take a particular medication or dosage of that medication.

The Tribunal may order a treatment authority patient's transfer to another authorised mental health service under section 427.