



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 (mental health) review
Attendees	
Patient:	Attended
Patient's Legal Representative:	Attended
Nominated Support Person:	Attended
Psychiatrist:	Attended
Forensic Liaison Officer	Attended
Case Manager:	Attended
Attorney-General's Representative:	Attended
Decision	
Date of decision:	2021
Decision:	The Forensic Order is confirmed. The category of the Forensic Order is community.

The patient was made the subject of a forensic order (**FO**) by the Mental Health Court (**MHC**) further to a finding of unsoundness of mind in respect of two alleged offences of Assault Occasioning Bodily Harm (**AOBH**) and Serious Assault. The FO was subsequently reviewed by the MHRT at statutory intervals.

Statutory Framework

Appendix A to these reasons is a summary of the provisions of the Mental Health Act 2016 (**MHA**) that are relevant when the Tribunal reviews of a person's forensic order.

Clinical Report

The patient received a copy of the clinical report within the statutory timeframe. The late provision of a Community Forensic Outreach Service (**CFOS**) report was raised by the Tribunal at the outset of the hearing with both legal representatives being afforded the opportunity to request an adjournment if they needed more time to consider the document. The Tribunal confirmed with both of the legal representatives that notwithstanding the late provision of the CFOS report they had received all of the relevant material and were in a position to proceed with the hearing.

Matters to which the Tribunal must have regard

The Tribunal had regard to the factors in section 432 of the Act as follows.

The relevant circumstances of the person subject to the order

In reaching a decision, the Tribunal had regard to the patient's relevant circumstances.

Mental state and psychiatric history:

The patient's psychiatric history was set out in detail in the clinical report and Forensic Dossier and will only be briefly outlined here. The clinical report from the treating psychiatrist provided a diagnosis of paranoid schizophrenia. It commented that the psychiatric history was extensive and detailed. The report contained details of a first inpatient admission precipitated by circumstances where the patient had threatened his family with a knife. There was further reference to an occasion where the patient had made a weapon whilst unwell to protect himself from perceived danger.

The report confirmed that the patient had been subject to a treatment authority prior to the imposition of the FO. The treating psychiatrist gave evidence that she had met the patient a couple of times since she assumed responsibility for his treatment. Her report contained details of a mental state assessment which reported no evidence of perceptual abnormalities or thought disorder and noted that the patient had stated that he was all right on most days of the week. The treating psychiatrist gave oral evidence that the patient had made great progress and had a good understanding of his illness.

The patient gave evidence that he believed he was experiencing a form of psychosis and that his sleep patterns had an effect upon this. He said that the medication chilled him out and got his thinking straight but he was not sure about the effects of the injection or depot medication and was uncertain about what would happen if the depot medication were ceased. The patient stated that prior to his last hospital admission he had become nervous and stressed and experienced circular thoughts which were overwhelming. He added that he could see no reason for him to remain on a FO and could not identify any benefits from the FO but added it would mean a lot to him if the FO were replaced by a treatment support order (**TSO**).

Any intellectual disability:

There was no evidence that the patient had any form of intellectual disability.

Social circumstances, including family and social support:

The patient was accompanied to the hearing by his mother who confirmed that he had lived with her for the entire period that the FO had been in place. The patient's mother confirmed that her son accepted that he had a type of psychosis and believed that his sleep was a problem. She confirmed that he proactively used certain medication when he needed it and advised that his last use of that as needed medication was a few weeks ago. She estimated that the patient's use of as needed medication had occurred approximately five times in the last six months on a random basis.

The patient confirmed that he has a sibling who resided overseas. He added that he had not seen that sibling for quite some time and had been planning to visit but his travel plans had been put on hold due to the restrictions arising from the global pandemic. He confirmed that he enjoyed playing music and had enrolled in a course due to commence shortly.

Response to treatment and care and the person's willingness to receive appropriate treatment and care including the person's response to previous treatment in the community:

The case manager attended the review as part of the Mobile Intensive Recovery Team (MIRT) and further to her involvement with the patient in a case management role. She confirmed that she had known the patient for approximately one year and he had been supervised by the MIRT for a number of years. She advised that she had a number of colleagues with the MIRT who had contact with the patient and he was happy to meet with them as often as was required and never complained about the level of contact. The case manager stated that she had regular contact with the patient's General Practitioner regarding the administration of the depot medication and physical health issues. She stated that the patient was moving forward and planning to study and although there was some stress associated with this there were plans in place to support him.

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

The MHC delivered a finding of unsoundness of mind in respect of two alleged offences. An allegation of AOBH occurred in circumstances where the patient assaulted another patient whilst in hospital. A subsequent charge of Serious Assault arose in the context of an altercation with police.

The Tribunal noted that the offences were not of a prescribed nature and was not made aware of any further charges occurring since the index offences.

Any victim impact statement given to the Tribunal under section 155 or 742 of the Act relating to the relevant unlawful act

The Tribunal was not provided with a Victim Impact Statement for consideration at the hearing. The needs of victims were generally considered further to the provisions of section 6 of the Act.

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

The MHC did not make any recommendations with respect to intervention programs.

Summary of evidence and findings

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 treating psychiatrist's clinical report contained a recommendation that a TSO was the least

restrictive treatment option taking into account the progress that the patient had made over the previous twelve months. The CFOS psychiatric second opinion provided a recommendation that the patient's risks could be safely managed under a TSO subject to a number of specified factors being addressed as outlined below.

The CFOS opinion recommended the ongoing use of a depot antipsychotic due to the patient's history of noncompliance with oral medication resulting in rapid deterioration in mental state. The Tribunal noted the patient's oral evidence regarding his uncertainty about the effect or need for the depot medication and obtained further information from the treating psychiatrist regarding the depot medication. She confirmed that there were no plans to reduce or change the depot medication and added that the treating team would not recklessly cease the depot medication. The treating psychiatrist confirmed that she was reducing the dosage of prescribed medication which had been halved in a graduated manner over the last four months.

CFOS additionally recommended that a referral to a Community Care Team (**CCT**) should be considered by the treating team. The treating psychiatrist was asked specifically if the treating team had considered this taking into account the extended period of time that the patient had been managed by the MIRT. She replied that she did not know why the patient had not been previously transferred to a CCT but added that she considered that currently it was not the right time to consider moving him from the MIRT. She confirmed that he had recently started a new type of medication and she wanted to continue to monitor his reaction to this change. The treating psychiatrist also raised that the patient had additional stress associated with starting a new course of study and she wanted to monitor his reaction to this in the short term. She advised that the CCT offered less support than MIRT and stated that a decision would be made in the future about an appropriate time to transfer him to a CCT but currently he required a higher level of monitoring and supervision.

The CFOS recommendation additionally stated the treating team should increase monitoring of mental state and risk following any changes to the patient's medication as well as updating the Police and Ambulance Intervention Plan (**PAIP**). The case manager confirmed that the PAIP had recently been updated. CFOS additionally recommended that the treating team should consider whether the patient would be suited to independent living arrangements. The treating psychiatrist was asked to respond to this and stated that the team had not looked into it yet, but that the patient would move onto that when he was ready.

The forensic liaison officer gave evidence that she supported the recommendation for a TSO which was discussed and supported by the Assessment and Risk Management Committee (**ARMC**). The Tribunal noted that the CFOS opinion had been provided following the ARMC meeting and asked if there had been any further contact with CFOS regarding their additional recommendations. The forensic liaison officer advised that she was unaware of any further contact and the treating psychiatrist confirmed that she had not discussed the recommendations with the authors of the CFOS second opinion.

The Attorney-General's representative said that the FO should be confirmed with the current category and conditions unchanged. She acknowledged the progress made by the patient, in addition to the support he had from his mother and the treating team, but noted that he had a history of rapid mental state deterioration which caused him to become unwell and violent quickly. She added that the recent medication changes increased the current risk factors and stated that a referral to a CCT should be trialed prior to a TSO being considered. The Attorney-General's representative noted that the treating team's evidence that monitoring may be increased rather than reduced was contrary to the guidelines often considered in relation to suitability for a TSO.

The patient's legal representative submitted that the FO should be revoked and a TSO made with the same conditions attached further to the recommendations of the treating team supported by the ARMC. She stated that the patient had been making progress, had good insight into his illness and

was very compliant with treatment and actively engaged with his treating team.

The Tribunal was required to confirm the FO if it considered that it was necessary, because of the patient's mental condition, to protect the safety of the community from the risk of serious harm to other person's or property as required by section 442 of the Act. The Tribunal considered fully the conflicting submissions from the legal representatives together with all of the relevant documentation and oral evidence provided at the hearing.

In considering all of the evidence the Tribunal placed particular weight upon the recent CFOS recommendations and the evidence regarding the current reluctance of the treating team to transition the patient to a CCT. In so doing, the Tribunal preferred the submissions made on behalf of the Attorney-General's representative to the submissions made on behalf of the patient or the treating team's recommendation regarding revocation of the FO. The Tribunal considered the requirement that the patient be treated in the least restrictive way possible and concluded that the FO remained necessary to protect the safety of the community.

Category and conditions of the forensic order

The submissions from both of the legal representatives were that the relevant category of either an FO or TSO should be community with the existing conditions attached to the FO continuing. The recommendation from the treating team was that the relevant category should be community with no changes to the current limited community treatment conditions and this was confirmed in the treating psychiatrist's oral evidence to the Tribunal.

Taking into account the above circumstances, together with all of the available evidence, the Tribunal considered that it was appropriate to continue the FO at community category with no changes to the existing conditions.

Human Rights

The Tribunal acknowledges the *Human Rights Act 2019 (HRA)*.

In particular, the Tribunal considered that the following human rights under the HRA were potentially engaged and limited by the decision of the Tribunal. These were the rights that a person:

- must not be "subjected to medical or scientific experimentation or treatment without the person's full, free and informed consent." (section 17(c) HRA)
- has the right to freedom of movement within Queensland. (section 19 HRA)

However, the Tribunal was satisfied that the restrictions placed upon the patient were lawful and proportionate to the circumstances and compatible with the HRA. Taking into account the matters outlined above the Tribunal was satisfied that the limits imposed by the decision were reasonable and justifiable in accordance with section 13 of the HRA.

The relevant criteria of the Act were met resulting in confirmation of the FO being lawful and within the jurisdiction of the Act. The FO was determined to be the least restrictive way for the patient to receive treatment. The human rights engaged and limited were balanced against the risks to the safety of the community including the risk of serious harm to other persons or property if the patient did not receive ongoing treatment via the FO.

Conclusions of the Tribunal

The Tribunal considered section 3 of the Act which requires that the protection of the community be considered if persons diverted from the criminal justice system may be at risk of harming others. It also considered the requirement that treatment is to be provided in a way that is least restrictive of

the rights and liberties of a person and that any restrictions are only to the extent necessary to protect the person's safety and the welfare of others. The Tribunal considered that treatment should promote recovery and considered the needs and concerns of victims as outlined in section 6 of the Act.

The Tribunal made its decision on the balance of probabilities and considered and placed particular weight upon the following matters and circumstances.

- The CFOS second opinion and recommendation being contingent upon a number of prerequisite factors which had not yet occurred including but not limited to transition to a CCT.
- The extended period of time, over a number of years, that the patient had remained with the MIRT subject to a high level of supervision.
- The treating psychiatrist's evidence that the treating team could not currently consider a transition to a CCT as the patient's circumstances were not sufficiently stable to safely allow this.
- The submissions from the Attorney-General's representative, particularly that the requirement for an increased level of intensive monitoring was contrary to the appropriate circumstances where a TSO could properly be considered as an alternative to the existing FO.
- The evidence relating to a reduction in the dosage of one of the prescribed anti-psychotic medications coupled with the recent introduction of additional medication.
- The evidence relating to the patient's use of as needed medication within the last review period.
- The history of a rapid deterioration in mental state in circumstances where treatment had not been optimised.
- The change in the patient's treating psychiatrist within the current review period.

For these reasons, the Tribunal has decided: The FO is confirmed. The category of the FO is 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).

Below are extracts of sections from the Act relevant to the Tribunal's review of a forensic order.

432 Matters to which tribunal must have regard

- (1) In making a decision under this part in relation to a review of a forensic order (mental health) or forensic order (disability), the tribunal must have regard to the following:
 - (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.

Examples of decisions in relation to a review of a forensic order:

- deciding whether to confirm or revoke the order
 - deciding whether to confirm or change the category of the order
 - deciding whether the person is to receive any treatment in the community
 - deciding whether to change or remove a condition to which the order is subject or to impose a condition on the order.
- (2) Subsection (1) does not limit any other provision of this part that requires the tribunal to have regard to a stated matter

433 When reviews are conducted

- (1) The tribunal must review (a periodic review) the forensic order:
 - (a) within 6 months after the order is made; and
 - (b) at intervals of not more than 6 months after the review under paragraph (a) is completed.
- (2) Also, the tribunal must review (an applicant review) the forensic order on application by:
 - (a) the person subject to the order; or
 - (b) an interested person for the person mentioned in paragraph (a); or
 - (c) the Attorney-General; or
 - (d) if an authorised mental health service is responsible for the person—the chief psychiatrist; or
 - (e) if the forensic disability service is responsible for the person—the director of forensic disability.
- (3) Further, the tribunal may at any time, on its own initiative, review (a tribunal review) the forensic order.
- (4) If the tribunal receives written notice under section 213(3) of the amendment of the forensic order, the tribunal must review (also a tribunal review) the order within 21 days after receiving the notice.
- (5) This section is subject to sections 434 to 437 and chapter 16, part 2, division 6, subdivision 2.

441 Decisions

- (1) On a periodic review of the forensic order, the tribunal must decide to:
 - (a) confirm the order; or
 - (b) revoke the order.

Notes:

- 1 See subdivision 2 for the orders the tribunal may make if it confirms the order.
- 2 See subdivision 3 for the orders the tribunal may make if the order is a forensic order (mental health) and the tribunal revokes the order.
- (2) On an applicant review of the forensic order, the tribunal:
 - (a) must decide whether to make the orders sought by the applicant; and
 - (b) may make the orders under this division it considers appropriate.Example for paragraph (b):

If an applicant seeks an order changing the category of the forensic order from inpatient to community, the tribunal may decide not to change the category of the order, but may order that the person have limited community treatment of a stated extent.

- (3) On a tribunal review of the forensic order, the tribunal:
 - (a) must decide any particular matter stated in the notice given under section 439(3); and
 - (b) may make the orders under this division it considers appropriate.

442 Requirement to confirm forensic order

- (1) The tribunal must 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.
- (2) Also, during any non-revocation period for the forensic order, the tribunal is taken, for section 443, to have confirmed the order.

Note:

The tribunal must not revoke the forensic order during the non-revocation period for the order. See section 452.

- (3) Subsection (2) does not apply if the forensic order is a forensic order (mental health) and the tribunal decides to revoke the order under section 457.

444 Change or confirmation of category

- (1) The tribunal may change the category of the forensic order.
- (2) However, the tribunal may change the category of the forensic order to community, or confirm the category of the order as community, only if the tribunal is 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.
- (3) This section is subject to section 445.

445 Inpatient category – orders about treatment in the community

- (1) This section applies if the tribunal:
 - (a) confirms the category of the forensic order as inpatient; or
 - (b) changes the category of the forensic order to inpatient.
- (2) The tribunal must do 1 of the following:
 - (a) order that the person have no limited community treatment;

Note:

An order made under paragraph (a) may not be amended by an authorised doctor. See section 212(2).

 - (b) approve that an authorised doctor under section 212 or a senior practitioner under the Forensic Disability Act, section 20 may, at a future time:
 - (i) authorise limited community treatment for the person, to the extent and subject to the conditions decided by the tribunal; or
 - (ii) change the category of the order to community, subject to the conditions decided by the tribunal;
 - (c) order that the person have limited community treatment:
 - (i) of a stated extent; and
 - (ii) subject to the conditions decided by the tribunal, including whether, or the extent to which, an authorised doctor under section 212 or a senior practitioner under the Forensic Disability Act, section 20 may amend the forensic order in relation to treatment in the community.
- (3) The tribunal may make an order under subsection (2)(b) or (c) only if the tribunal is 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.
- (4) In deciding whether the tribunal is satisfied of the matters mentioned in subsection (3), the tribunal must have regard to:
 - (a) the purpose of limited community treatment; and
 - (b) the fact that:
 - (i) if an authorised mental health service is responsible for the person—an authorised doctor may increase the extent of treatment in the community for the person only if satisfied of the matters mentioned in section 212(3); or

- (ii) if the forensic disability service is responsible for the person—a senior practitioner under the Forensic Disability Act may authorise treatment in the community for the person only if satisfied of the matters mentioned in the Forensic Disability Act, section 20(2).

446 Community category – orders about treatment in the community

- (1) This section applies if the tribunal:
 - (a) confirms the category of the forensic order as community; or
 - (b) changes the category of the forensic order to community.
- (2) The tribunal must:
 - (a) order that an authorised doctor or a senior practitioner under the Forensic Disability Act must not change the category of the order to inpatient; or
 - (b) approve that an authorised doctor under section 212 or a senior practitioner under the Forensic Disability Act, section 20 may, at a future time, change the nature or extent of treatment in the community received by the person, to the extent and subject to the conditions decided by the tribunal.

Example of a change of extent of treatment in the community:
changing the category of the forensic order from community to inpatient, with or without limited community treatment

447 Conditions

- (1) The tribunal may:
 - (a) change or remove a condition to which the forensic order is subject; or
 - (b) impose a condition on the forensic order.
- (2) Without limiting subsection (1), the tribunal may impose a condition that the person must not contact a stated person, including, for example, a victim of the relevant unlawful act.
- (3) However, the tribunal may not impose a condition on the forensic order that requires the person to take a particular medication or a particular dosage of a medication.

450 Making of treatment support order

- (1) The tribunal must decide to make a treatment support order for the person if the tribunal considers a treatment support order, but not a forensic 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.
- (2) For making a treatment support order under subsection (1), sections 144 and 145 apply as if:
 - (a) a reference in the sections to the Mental Health Court were a reference to the tribunal; and
 - (b) a reference in the sections to the person the subject of the reference were a reference to the person subject to the forensic order.

451 Making of treatment authority or no further order

- (1) If the tribunal considers that neither a forensic order nor a treatment support 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, the tribunal may:
 - (a) make no further order for the person; or
 - (b) make a treatment authority for the person.
- (2) The tribunal may make a treatment authority for the person under subsection (1)(b) only on the recommendation of an authorised psychiatrist who considers, after examining the person, that:
 - (a) the treatment criteria apply to the person; and
 - (b) there is no less restrictive way for the person to receive treatment and care for the person's mental illness.
- (3) The treatment authority must state the following:
 - (a) the category of the authority;
 - (b) the authorised mental health service responsible for the person;
 - (c) the nature and extent of any limited community treatment the person is to receive;
 - (d) any conditions the tribunal considers necessary for the person's treatment and care, other than a condition requiring the person to take a particular medication or a particular dosage of a medication.
- (4) The tribunal may decide the category of the treatment authority is inpatient only if the tribunal is satisfied that 1 or more of the following can not reasonably be met if the category of the authority is community:

- (a) the person's treatment and care needs;
 - (b) the safety and welfare of the person;
 - (c) the safety of others.
- (5) However, if the person is a classified patient, the tribunal must decide the category of the authority is inpatient.
 - (6) In deciding the nature and extent of any limited community treatment under subsection (3)(c), the tribunal must have regard to the purpose of limited community treatment.
 - (7) If the tribunal decides 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.
 - (8) The treatment authority is taken to be a treatment authority made under section 49 by the authorised psychiatrist mentioned in subsection (2).
 - (9) Despite subsection (8) and section 413(1), the tribunal must review the treatment authority:
 - (a) within 6 months after the authority is made; and
 - (b) within 6 months after the review under paragraph (a) is completed; and
 - (c) at intervals of not more than 12 months after the review under paragraph (b) is completed.
 - (10) Sections 53 and 59 apply to the treatment authority as if a reference in the sections to the authorised doctor were a reference to the authorised psychiatrist mentioned in subsection (2).
 - (11) As soon as practicable after the treatment authority is made, the authorised psychiatrist mentioned in subsection (2) must decide the nature and extent of the treatment and care to be provided to the person under the authority.

452 Orders with non-revocation period

- (1) The tribunal must not revoke a forensic order under division 4 during any non-revocation period for the order.
- (2) Subsection (1) is subject to section 457.

453 Order for person temporarily unfit for trial

- (1) This section applies to a person subject to a forensic order if:
 - (a) a finding of unfitness has been made in relation to the person; and
 - (b) the proceeding against the person in relation to which the finding of unfitness was made has not been discontinued under section 490 or 491.
- (2) The tribunal must not revoke the forensic order unless a treatment support order is made for the person under section 450.

Note:

If, on a review under part 6, the tribunal decides the person is fit for trial, the forensic order ends on the person's appearance at the mention of the proceeding for the relevant offence. See section 497(2).

454 Order for person charged with prescribed offence

- (1) This section applies if a forensic order for a person was made on a reference in relation to a prescribed offence allegedly committed by the person.
- (2) The tribunal must not revoke the forensic order unless:
 - (a) the person has been examined, under an order made under section 721, by an examining practitioner; and
 - (b) the tribunal has obtained and considered the examining practitioner's written report on the examination.
- (3) This section is subject to section 452.