



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)
Attendees	
Patient:	Attended
Patient's Legal Representative:	Attended
Psychiatrist:	Attended
Case Manager:	Attended
Attorney-General's Representative:	Attended
Other attendees:	Forensic Liaison Officer
Decision	
Date of decision:	2021
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 remain in place, unchanged.

The patient was born overseas before moving to Australia as a child. He was placed on a forensic order by the Mental Health Court in relation to the offences of endangering particular property by fire and extortion.

Pursuant to section 433 of the *Mental Health Act 2016 (Act)*, the Tribunal listed a hearing for the periodic review of the patient's forensic order. The patient attended the hearing by telephone from his home, with the assistance of his case manager. Set out below are the Tribunal's reasons for the decision.

Statutory Framework

Appendix A to these reasons is a summary of the provisions of the Act that are relevant when the Tribunal reviews of a person's forensic order.

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

All of the available medical evidence supports that the patient has a diagnosis of paranoid schizophrenia. It is a diagnosis which has been made by numerous psychiatrists over a number of years. In an independent psychiatrist's report, the author examined the diagnosis carefully given the patient was in a prolonged period of remission and had only ever suffered a single prolonged psychotic episode (up to that point). The independent psychiatrist concluded that the patient's diagnosis was paranoid schizophrenia, which he considered to be in full remission at that time. The diagnosis of paranoid schizophrenia was made again by the treating psychiatrist, in his clinical report and confirmed in his evidence at the hearing.

The patient has no history of mental health issues or treatment prior to approximately 11 years ago. The most notable aspects of the patient's psychiatric history are from the period immediately after the alleged offences when he was first undergoing treatment. He underwent treatment as an inpatient and was placed on anti-psychotic medication for a period. However, some six years later the treating psychiatrist weaned the patient off medication until it was completely ceased, as he was of the view that the patient functioned better without medication. In conjunction with the patient's excellent progress, the treating team appear to have been considering applying for a revocation of the forensic order. It was a position which was agreed with by the independent psychiatrist.

Approximately three years ago, the patient travelled interstate without approval and became unwell. In line with previous recommendations made by the Community Forensic Outreach Service (**CFOS**), the patient was recommenced on antipsychotic medication at a low dosage.

The treating psychiatrist confirmed at the hearing that since this time, the patient has been well and remains on a low dose of medication. The treating psychiatrist stated in both the clinical report and at hearing that the patient had been in remission for at least two years.

In summary, the Tribunal notes that the patient has an established diagnosis of paranoid schizophrenia for which he is treated with a low dose of antipsychotic medication. He does not have a history of being psychiatrically unwell prior to the alleged offences and he has had long periods of remission since that time.

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

The evidence in both the clinical report and obtained at hearing suggests that the patient leads a relatively quiet lifestyle, with some family support and very limited social interaction. He told the Tribunal that he tends to stay at home and watch DVDs, although he said he was hopeful of seeing his child, who lives interstate, more with the removal of the forensic order.

The patient lives with a family member in a granny flat. The treating team advised that the patient had lived there for a few years and that it was considered stable accommodation. The treating team confirmed that there were no plans for the patient to reside elsewhere. The team also noted that they kept in touch with the patient's family member and that she would let the team know if she had any concerns about the patient's health or behaviour. The patient also has intermittent contact with his child, who lives interstate and who he may seek to visit in the future, should permission be granted by the treating team.

In terms of other community support, the treating team advised that this had been explored with the patient on a number of occasions, but that he was adamant he did not require further support or more community engagement. The team advised that they would continue to suggest and offer services but were not concerned about his lack of community engagement given the patient preferred his own company.

Response to treatment and care and the willingness to receive appropriate treatment and care

As discussed above, the patient's response to treatment has been very positive. After an initial period as an inpatient, he has predominately been successfully treated in the community to the extent that at one stage the treating team considered that he did not even require medication. He is presently treated with a low dose of medication and has been compliant with this regime for some time. He has not had an admission for several years. The treating team have no concerns about the patient's engagement with the team, albeit they noted that it was somewhat superficial. The treating psychiatrist advised in the clinical report and at hearing that he did not anticipate any significant change in the patient's mental state or risks in the intermediate to long term.

It appears the patient's primary setbacks in recent years have related to positive urinary drug screens (**UDS**). These positive results have occurred infrequently and the treating team opined that it related to the patient self-sabotaging his progress towards a step-down due to his concerns that it would mean the financial support he has via a disability support pension would be ceased. The patient's case manager advised at the hearing that even up until the day of the hearing, the patient required a lot of reassurance that a step-down to a treatment support order would not mean the loss of his pension. The team advised that the patient had predominately negative UDSs in the last few years and his most recent screens had all returned negative results.

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

The index offences relate to events which occurred when the patient allegedly went to an acquaintance's house seeking a sum of money that was owed to him. In so doing he allegedly set some rubbish alight while making various verbal threats. The patient later returned to the house, poured kerosene and made further threats. The patient was subsequently charged with endangering particular property by fire and extortion. The patient was placed on a forensic order by the Mental Health Court who found he was of unsound mind at the time of the alleged offences.

The Tribunal notes that the offences were serious in nature and could have resulted in terrible consequences. The Tribunal also notes that the offences arose in the context of financial stressors, a stressor which continues to this day given the patient would allegedly jeopardise his own health in order to remain on the disability support pension.

Nevertheless, the Tribunal notes that it has been over 12 years since the alleged offences, which is

a very considerable amount of time. This is particularly so given the patient has not committed any further offences in that time. Accordingly, the Tribunal considers this to be a factor which weighs in favour of revoking the forensic order.

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 Tribunal notes that the revocation of the forensic order is a matter which the treating team have considered over a number of years. For various reasons including the patient's alleged self-sabotage, a step-down has not been actively pursued until recently.

The treating team recommended that the forensic order be revoked and replaced with a treatment support order. The team's evidence at the hearing was compelling and consistent with the reasons they gave for a revocation in the clinical report. They spoke of the patient's consistent and sustained compliance with treatment and stable mental state and his low risk to the community. They considered that the patient's treatment would continue under the treatment support order and that the key risk mitigation tools would remain in place, including consistent treatment and reviews by the team as well as monitoring for illicit substance use. The Assessment and Risk Management Committee (**ARMC**) noted that the patient presents with fair insight into his illness, has been stable for a prolonged period of time and has low dynamic risks. They considered that the current risks are low and that he could be safely managed under a treatment support order.

The patient's legal representative's submissions on behalf of the patient reflected his views, wishes and preferences. She noted that in line with the treating team's evidence, the patient may be considered a low risk to the community and that it was therefore open to the Tribunal to revoke the forensic order and make a treatment support order with the same conditions. The legal representative noted, however, that it would be open to the Tribunal to also consider removing the condition regarding the restriction of alcohol consumption as the patient did not consume alcohol nor did he have any interest in doing so in the future.

The Attorney-General's representative submitted that the forensic order should be confirmed as community category and on the same conditions. The Attorney-General's representative highlighted that the patient has a history of illicit substance use and violence, as well as his guardedness and poor insight which had been noted in historical medical reports. The Attorney-General's representative submitted that the current risk to the community meant that the forensic order was still required.

The Tribunal carefully considered the evidence and the submissions of the legal representatives. While the Attorney-General's representative's submissions are not without merit, they predominately highlighted historical risk factors, which the Tribunal did not consider should be afforded much weight. This is because although the patient has a history of violence and illicit substance use, these did not outweigh the positive factors such as a very prolonged period of compliance with treatment and stable mental state; no re-offending in over 12 years and the treating team's strong evidence that the patient presents as a low risk to others.

The Tribunal accepted the recommendations of the treating team and the ARMC and agreed that the patient's risk to the community was significantly reduced following an extensive period of successful treatment in the community. The Tribunal noted that the major risks to the community were associated with the possibility that the patient would suffer a relapse, which is possible should he cease his medication and disengage with the treating team or if he were to commence using illicit substances. However, with some form of treatment and monitoring by the treating team, the Tribunal concluded that the risk to community was low.

Therefore, the Tribunal concluded that the forensic order is no longer necessary, in light of the patient's mental condition, to protect the safety of the community. However, with some level of risk to the community and the need for ongoing contact and monitoring, the Tribunal determined that the order should be replaced by a treatment support order, as per the recommendations of the treating team and the submissions of the patient's legal representative.

Category and conditions of the forensic order

The patient has been a community category for many years. There is no evidence to support that his treatment and care needs, the safety and welfare of himself or others is in doubt by remaining in the community nor was there any suggestion by the treating team or legal representatives that he required admission as an inpatient. The Tribunal determined that his treatment support order will continue as a community category. The Tribunal granted the authorised doctor the power to reduce the extent of treatment in the community, should the relevant criteria for that reduction be met at a future time.

While there was a suggestion by the patient's legal representative that the restriction of alcohol use could be removed as a condition because it served no purpose given the patient did not drink nor did he have future plans to. However, the patient's legal representative submitted that it was also open to keep the present conditions in place. The treating team supported that the conditions should remain in place, unchanged. Indeed, their evidence at the hearing was that they had not given extensive thought to the removal of these conditions, as they considered them necessary going forward under the treatment support order (should it be made).

The evidence supports that the conditions remain relevant to managing the risk to the community insofar as they relate to requiring the patient live at a place approved by the treating psychiatrist; complying with the required treatment; not consuming alcohol or taking illicit substances and complying with tests for same; not driving a motor vehicle unless permitted by the treating psychiatrist; and not making contact with the victim of the index offence. The Tribunal considers these conditions are important to manage risk, particularly as the patient transitions to a less restrictive mode of treatment.

Therefore, the Tribunal decided that conditions 1-6 as they presently exist under the forensic order should continue on the treatment support order, without change.

Human Rights

The legal representatives did not make submissions on the application of the *Human Rights Act 2019 (HRA)*. Nevertheless, the Tribunal considered the applicability of the HRA and determined that the patient's rights as set out in sections 17(c), 19 and 31 of the HRA were potentially engaged and limited by the Tribunal's decision.

Section 17(c): The Tribunal accepts that the patient is receiving medical treatment that is, essentially, being given without his consent. However, the Tribunal noted that the evidence was that he was accepting of treatment. The Tribunal notes that medication is important in keeping the patient well and minimising his risk to the community. Therefore, the Tribunal is satisfied that the giving of the medication is lawful, proportionate to the circumstances and compatible with the HRA.

Section 19: Even as community category, there is some limitation on the patient's right to freedom of movement insofar as he requires permission to travel and must live in a place approved by the treating psychiatrist. However, these were important conditions/restrictions given his mental illness, lack of insight and the continuing risk to the community. Therefore, the Tribunal is satisfied that this limitation is also lawful, proportionate to the circumstances and compatible with the HRA.

Section 31: The Tribunal was satisfied this right was not limited. The patient attended the hearing, had access to the documents prior to the hearing and was represented by a legal representative.

In summary, any limitation of rights is to ensure that the patient gets the treatment and supervision that he needs, as well as manage his risk to community. The Tribunal is satisfied that the limits imposed by its decision are reasonable and justified in accordance with section 13 of the HRA. Accordingly, the Tribunal is satisfied the decision is compatible with human rights (section 8 of the HRA).

Conclusions of the Tribunal

For the reasons set out above, the Tribunal decided to revoke the forensic order on the basis that it did not consider it necessary, because of the patient's mental condition, to protect the safety of the community, including from the risk of serious harm to other persons or property. However, the Tribunal considered it appropriate for the patient to continue to be managed under a treatment support order. The Tribunal determined that the category should remain community and that the existing conditions should remain in place, unchanged.

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.