



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
Case Manager:	Attended
Attorney-General's Representative:	Attended
Other attendees:	Attended
Decision	
Date of decision:	2021
Decision:	Forensic order confirmed, category community

The patient was placed on a forensic order by the Mental Health Court. The Mental Health Court made the order on the basis of unsoundness of mind in relation to charges of serious assault of police officer by biting or spitting, willful damage, assaulting or obstructing a police officer and contravening the direction of police. The patient attended the periodic review hearing by telephone.

Statutory Framework

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

Clinical Report

The patient stated he received the Clinical Report sometime the month prior to the hearing and he discussed it with his case manager. Although the exact date of receipt of the Clinical Report was not recorded in the clinical notes, the patient confirmed that it had been received on time.

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.

The Clinical Report details a recent mental state assessment for the patient which noted that the patient sees himself as having a mental illness needing medication and support and that he is agreeable to follow up.

The patient's past history includes suicidal thoughts and attempts, exposure to third party suicide, a long history of mental health involvement and history of trauma. The Clinical Report indicates that the patient was alleged to have been a perpetrator of domestic violence, however he indicated that a former partner was emotionally abusive to him. The patient has a significant forensic history with multiple incarcerations for a range of offences, including offences of violence.

At this stage, the patient displays many protective factors including that his mental state is stable and has been for some considerable time, he is compliant with treatment and medication, he has good insight into his illness, he has a small but supportive network, including family who live nearby, he is future oriented, and that he has engaged with psychological interventions to address his trauma and anger very well. He now lives alone and he has been referred to and has engaged with the community team since the move. He is currently looking for work. He stated that being on the forensic order is not impeding him, and that he is on a good road at the moment.

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

The index offences took place approximately five years ago. They include serious assault of a police officer by biting, spitting, etc, wilful damage, assaulting or obstructing a police officer and contravening direction of police. The patient has been stable with the support of regular case management, forensic liaison input and psychiatric review since then.

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 team recommended that the forensic order be confirmed and that there be no change to the category or conditions of the order. During the hearing, the treating team acknowledged that the patient has been stable and has been engaging well with them. He has been compliant with his medication and there have been no breaches of conditions. However, the treating team also stated that the patient has only moved house a relatively short time ago and that they are just getting to know him. They believed that a longer period of stability is required before they could be confident that the patient could remain well without the oversight of the forensic order. The Assessment and Risk Management Committee (**ARMC**) minutes did not recommend a step down to a treatment support order at this time, and recommended engagement with the treating team on the basis of his case manager/forensic liaison officer having fortnightly contact with him and a consultant psychiatrist reviewing him every three months. They also recommended ongoing urine drug screens, liaison with the patient's family, and facilitating engagement with employment or social activities.

The patient spoke on his own behalf at the hearing and stated that he definitely has a mental illness and needs treatment. The medication suits him well and he feels clearheaded. He stated that he has learned some skills from the therapy. He stated he wanted to look for some casual work. Aside from that, the forensic order did not bother him. He stated he was not expecting to be stepped down at this hearing. With regard to alcohol he stated that he has four drinks every fortnight over the space of eight hours but aside from that has consumed no drugs or alcohol. He has had no drug use for many years and has no outstanding charges.

The Attorney-General's representative submitted that the forensic order should be confirmed as per the treating team's recommendation on the same conditions. She submitted that a longer period of stability is prudent given the patient's recent move. The patient's legal representative submitted that the patient was happy to remain on the forensic order. The patient is hopeful for a step down at the next hearing to a treatment support order. He has had a stable mental state, is compliant, has good insight and is taking all medication. He previously engaged with a private psychologist to address issues regarding his trauma, and he plans to engage with a psychologist again. The patient acknowledges that he has an enduring mental illness and he is willing to partake in ongoing treatment. His risks are considered low across all domains. He is future-focused and looking for employment. The legal representative submitted that it is open to the Tribunal to confirm the forensic order with the current conditions.

The Tribunal notes that the patient has a significant mental illness and forensic history. His risks are currently low and can be managed in the community. The Tribunal notes that the ARMC did not support a step-down to a treatment support order or changes to the conditions. The patient has a treating team who are just getting to know him and helping him to adjust to life in a new residence, with a new team of support.

The Tribunal considers the order is necessary to protect the safety of the community, therefore the forensic order will be confirmed.

Category and conditions of the forensic order

All the evidence before the Tribunal was that the risks presented by the patient can be safely managed with the forensic order, community category. The submissions made by both legal representatives supported community category. The Tribunal was satisfied that the patient is compliant with his medication and well engaged with his treating team such that there is not an unacceptable risk to the safety of the community by having him treated in the community. The Tribunal decided that an authorised doctor may, at a future time, change the nature and extent of treatment in the community received by the person, to the extent and subject to the conditions decided by the Tribunal.

The Tribunal acknowledges that the patient has been compliant with the treatment plan developed by the treating team and is doing well. The Tribunal considers that conditions play an important role in mitigating risk to the community and providing clear boundaries on acceptable behaviour. The Tribunal considers that it is important that the patient continues to reside at premises known to and approved by his treating doctor. The treating team indicated that regular engagement with the treating team is still important for the patient at this stage of his treatment. The Tribunal considers that it is important for the patient to not use illicit drugs or possess firearms, both of which were factors in his index offending. The Tribunal considered each of the conditions on the forensic order and considered that in order to mitigate the identified risks it was necessary to keep all the conditions.

Human Rights

The Tribunal acknowledges the *Human Rights Act 2019 (Qld) (HRA)*. In particular, the Tribunal considers that the following human rights are potentially engaged and limited by the decision of the Tribunal: s.15, s.17(c), s.19, s. 25 and s. 37. Section 31 is also engaged, however the Tribunal is satisfied it is not limited given the patient attended the hearing by telephone, received the relevant material according to the statutory timeframes, had legal representation at the hearing, and received the decision of the Tribunal immediately.

The Tribunal is also satisfied that the limitations on the patient's human rights as a result of its decision are lawful, proportionate to the circumstances and compatible with the HRA. The Tribunal reached this decision because:

- the criteria of the relevant tests under the Act were met and thus the confirmation of the authority was lawful and within the jurisdiction of the Act
- the order, category and conditions have been determined to be the least restrictive way for the patient to receive treatment and care
- the aim of the limitations is to ensure the patient receives appropriate treatment for his diagnosed mental illness, and to ensure the community is protected from the risk of harm. The evidence was that the patient's stability and his ability to spend time in the community are a direct result of his treatment and support as provided under the forensic order and the conditions, and therefore the limitations achieve their purpose.
- the human rights engaged have been balanced against the risk to the community, and to the patient's health and wellbeing that is likely to eventuate if the patient does not receive treatment and care under the order.

Accordingly, the Tribunal is satisfied that the limitations are reasonable and demonstrably justified, and that its decision is compatible with the human rights in accordance with section 8 of the HRA.

Conclusions of the Tribunal

The Tribunal acknowledges that the patient is making progress in his rehabilitation. The evidence was unanimous that at this point to maintain the patient's current enjoyment of life in his new community following his recent move, and to protect the community, the support and monitoring required under the forensic order remains necessary. Maintaining the community category is the least restrictive way of the patient receiving the required treatment. For these reasons, the Tribunal has decided to confirm the forensic order, community category, with conditions of treatment in the community attached to the order.

Presiding Member

APPENDIX A

Statement of the law regarding Forensic Orders

The main objects of the *Mental Health Act 2016 (Act)* are set out in section 3(2) and must be achieved in the way outlined in sections 3(2) and 3(3).

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.