



## 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   |
| <b>Attendees</b>                   |   |
| Patient:                           | Attended  |
| Patient's Legal Representative:    | Attended  |
| Psychiatrist:                      | Attended  |
| Case Manager:                      | Attended  |
| Attorney-General's Representative: | Attended  |
| Forensic Liaison Officer:          | Attended  |
| <b>Decision</b>                    |   |
| Date of decision:                  | 2021  |
| Decision:                          |   |
|                                    | The Forensic Order is REVOKED.<br>A Treatment Support Order is made.<br>The Category of the Treatment Support Order is COMMUNITY, subject to the CONDITIONS attached to the decision. |

The patient was placed on a forensic order by the Mental Health Court which found the patient to be of unsound mind in relation to charges of common assault, going armed to cause fear and threatening violence. The patient was previously subject to a forensic order in relation to charges of intending to cause grievous bodily harm and wounding (the first forensic order).

### **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 received the clinical report.

### **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 outlined in the written material and oral evidence.

The written material outlined the patient's long history of treatment for paranoid schizophrenia after he developed concerns about terrorism. While subject to the first forensic order, the patient was treated in a secure mental health facility for some years. After a period of treatment in the community, the first forensic order was revoked. Shortly thereafter the patient's mental state deteriorated resulting in the index offences. The patient continued to experience symptoms of his illness in the context of likely non-compliance until the introduction of Clozapine.

The patient's mental state is currently stable and has been so for an extended period. The patient accepts that he has a mental illness. He is willingly compliant and engaged with treatment as well as a range of community activities with future work and study goals. The patient has a history of abusing alcohol and other illicit substances but has been abstinent and has not breached the conditions of limited community treatment for many years. The patient lives alone in stable accommodation and has plans to secure a trade qualification. He has supportive family overseas who keep in contact regularly and visit from time to time. He reports significant saving from previous part-time work and is keen to resume work.

The patient's treating psychiatrist outlined the patient's recent history of treatment explaining that the introduction of Clozapine has achieved a period of stability and improved insight of about five years. There are no management issues and the patient can participate in discussions about current world events with no ongoing ideas about past concerns. The treating team noted that the patient's social circumstances are stable and that he has a positive relationship with his treating team and family.

The patient spoke on his own behalf and expressed his views, wishes and preferences about his past and present treatment. He told the Tribunal that he accepts he has a mental illness and appreciates the benefits of his medication and the need for enduring compliance. He recognises the impact of Clozapine and is not bothered by minor side effects. The patient explained his daily activities and goals for the future including voluntary work and gaining qualifications for paid work. He said he was not concerned about recent overseas events. The patient said he is happy with his

current circumstances and although he has no plans to return to live overseas, he appreciates the ongoing support from his family there.

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

Approximately 7 years ago, the patient approached a car and threatened the driver with a large knife.

The Tribunal considered that the index offence involved the potential for considerable violence directly linked to the patient being unwell. The Tribunal was also mindful of the time that has passed and that the offences were committed shortly after the revocation of a previous forensic order for offences of a similar but more serious nature.

### **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 Tribunal revoke the forensic order and make a treatment support order. The recommendation was supported by the ARMC. During the hearing, the treating team confirmed the basis for the recommendation noting that the patient's risks are well managed and have been so for an extended period. If the forensic order was revoked there would be some changes to the treating team which would focus on community supports such as securing employment. The treating team identified that involuntary treatment is still required, but in a less restrictive way. Plans for continued, likely long-term involuntary treatment include initial review by the ARMC and at least monthly contact for Clozapine clinic. However, the team was of the view that considering the patient's improved insight and sustained stability, the forensic order is no longer necessary.

The patient's legal representative submitted that the forensic order should be revoked, and a treatment support order made. The submissions relied on the clinical evidence including the patient's continued stability, engagement with treatment and demonstrated ability to manage stressors including work in the recent past. The patient explained why he would prefer to be treated under a treatment support order.

The Attorney General's representative submitted that the forensic order should be confirmed given the patient's history of non-compliance and deterioration after the revocation of the first forensic order, the seriousness of the offences and similarity to previous offending. The submissions also advocated for the continuation of a more restrictive treatment order to monitor the planned resumption of study and return to work.

The Tribunal considered the expert medical opinion which universally asserted that the forensic order be revoked, and a treatment support order made. The patient's history of undetected deterioration and non-compliance after the revocation of the first forensic order is concerning. However, the distinguishable circumstances include the positive gains from Clozapine and the plans for ongoing involuntary treatment. On balance, the Tribunal accepted the medical evidence that involuntary treatment is required to safely manage the patient's risk of violence to the community but that this can be achieved in a less restrictive way. Accordingly, the Tribunal decided that the forensic order is no longer necessary to protect the safety of the community, that the forensic order is revoked, and a treatment support order is made.

## **Category and conditions of the treatment support order**

All the evidence before the Tribunal and the submissions from the legal representatives asserted that the risks presented by the patient can be safely managed in the community. The Tribunal was impressed by the patient's commitment to staying well and found that there is not an unacceptable risk to the safety of the community by having him treated in the community. The Tribunal decided that the category is community and 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 written and oral evidence from the treating team and the ARMC was that the current conditions are appropriate. On questioning the patient's treating psychiatrist said that the team did not believe that the patient would recognise the victims of the index offence. The treating psychiatrist also agreed that the patient does not currently use drugs or alcohol. However, he considered it appropriate that related conditions continue and indicated that risks would increase if the patient were to relapse into use of either drugs or alcohol. Both legal representatives submitted that it was open to the Tribunal to consider removing the related conditions. The Tribunal considered the conditions in the context of the step towards less restrictive treatment. On balance, the Tribunal accepted that the existing conditions represented an adequate and appropriate way to ensure ongoing assertive management of risk in the community and decided they are confirmed.

## **Human Rights**

The Tribunal acknowledges the *Human Rights Act 2019*. In particular, the Tribunal considers that the following human rights under that Act are potentially engaged and limited by the Tribunal decision:

- Section 15 Recognition and equality before the law
- Section 17(c) Medical treatment without consent
- Section 19 Freedom of movement
- Section 25 Privacy and reputation
- Section 31 Fair Hearing

The Tribunal was satisfied that the patient's right under section 31 was not limited given the patient received the relevant material according to the statutory timeframes, attended the hearing and expressed his views, wishes and preferences and was legally represented.

The Tribunal accepted that the patient is receiving medical treatment given without his consent limiting his rights under sections 17(c), 15 and 25. Nevertheless, the Tribunal is satisfied that these limitations are lawful, proportionate to the circumstances and compatible with the *Human Rights Act*. The Tribunal reached this decision because of the risk associated with deteriorations in the patient's mental state secondary to not having his mental illness adequately treated. The Tribunal therefore considered that the patient's history and the risks of further deterioration necessitate the provision of ongoing treatment without his full consent.

## **Conclusions of the Tribunal**

The Tribunal considered all the evidence and the patient's relevant circumstances to find that a treatment support order, not a forensic order, is necessary to protect the safety of the community. The Tribunal was satisfied that the existing conditions are necessary and appropriate to manage the risks identified.

For these reasons, the Tribunal decided to revoke the forensic order and make a treatment support order, community category subject to the conditions attached to the decision.

**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.