



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
Psychiatrist:	Attended
Case Manager:	Attended
Attorney-General's Representative:	Attended
Other attendees:	Attended
Decision	
Date of decision:	2021
Decision:	Forensic Order revoked. Treatment Support Order is made. The category is community. The conditions are attached

The patient is a middle aged male who was placed on a forensic order by the Mental Health Court. The Mental Health Court found the patient was of unsound mind in relation to serious assault police officer by biting spitting, willful damage, assault or obstruct police officer and contravene direction or requirement of police.

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 confirmed at the Hearing that he received the clinical report, within the statutory timeframe.

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 patient's psychiatric history was set out in detail in the clinical report and the forensic dossier. In the clinical report, the treating psychiatrist outlined that the patient has a primary diagnosis of paranoid schizophrenia. This was confirmed in oral evidence at the Hearing.

The clinical report outlines that the patient's mental illness history commenced almost 20 years ago. Historically his presentations have involved persecutory delusions, ideas of reference and paranoid ideation in the context of poor compliance with medication and polysubstance use, mainly tetrahydrocannabinol (THC). During the course of his illness he has required treatment in high dependency units, last demonstrated when he was transferred from a Correctional Centre where he was being detained in relation to the index offences and spent a month in the high dependency unit in hospital. Since discharge from hospital, the patient has remain well engaged with the treating team. The patient participated in regular, intensive psychotherapy, totaling twenty-two sessions. After experiencing difficulties with his neighbors, the patient moved to a different region and has engaged with a new mental health community team since.

The clinical report details a recent mental state examination for the patient which noted he didn't exhibit any signs of formal thought disorder, delusional, suicidal or violent ideation. The patient self-reported doing well and being focused on his recovery and employment and being agreeable to continue medication and the treatment plan.

At the Hearing, the patient informed the Tribunal that he agrees with his diagnosis and that the treating team has discussed it with him. The patient stated the symptoms of his illness include when he "starts to hear things, paranoia. It's more of a judgement on the person. If I don't get hold of it, that's why I keep a small amount of people around me". The patient also expressed that he can experience agitation and aggression when "I lapse".

The treating psychiatrist provided oral evidence to the Tribunal that he has had care of the patient for approximately a year. The patient has been very stable in his mental health and has dealt with

social circumstances without any difficulty including implementing anger management strategies when recently managing a confrontation with a neighbour.

There was no evidence at the Hearing that the patient has an intellectual disability.

With respect to social circumstances, the patient described family as good supports. He can talk to them about his paranoia and schizophrenia. One family member lives only a five-minute walk away and they talk daily on messenger. Recently, the family member visited his house to check on him concerned that she couldn't understand his text message. At the time, the patient just had difficulty expressing himself particularly via text message. The patient is estranged from his other family members but follows them on Facebook. The patient wants to keep his support network small. He feels safer at home and restricts the amount of contact he has with people to reduce his triggers as he can mistrust people which can cause him to become aggressive. He may consider meeting more people in the future. His main focus is to save enough money to join the gym to lose some more weight and to gain employment and potentially obtain a truck licence.

With respect to the patient's response to current treatment and previous treatment, he is currently managing his own Olanzapine and is happy to stay on it and doesn't want to take any risks by changing it. In this regard, the patient informed the Tribunal that he was experiencing problems with aggression on his previous medication and is more relaxed and has a clearer mind on Olanzapine. He stated "it's not an option to come off the medication, it wouldn't be good if I stopped it" as he would stop sleeping and would subsequently get anxious and nervous.

The treating psychiatrist informed the Tribunal at the Hearing the patient has good insight into his difficulties and treatment and is help seeking and active in his recovery process. He is compliant with his medication and attends all appointments. The treating team does not have any intention to change the patient's medication. The patient completed a lot of therapy prior to moving to the region. The treating psychiatrist and the patient are open to exploring further therapy that is goal oriented however, this is not an immediate consideration in the patient's treatment.

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

It is reported that the index offences arose due to the patient experiencing numerous stressors including stress associated with court matters related to custody of his children preceded by a messy break-up with his ex-partner. At the time, the patient expressed that it was the collision point where all the stress and frustration led to him "blanking out" and resulted in the subsequent charges. In relation to the index offences, the psychiatrist report expressed the impression that the patient's relapse of psychosis was likely in the context of disengagement from mental health support and treatment.

The Tribunal notes that the index offences were directly related to the patient's deterioration in mental state which resulted in him experiencing agitation and delusional beliefs. There was no evidence that the patient was intoxicated or under the influence of illicit substances at the time of offending. There is no evidence to indicate that the patient has attracted any new charges since the index offences.

Whilst the index offences were serious, the Tribunal noted that the patient has made very good progress and currently poses a low risk to the safety of the community and himself. The Tribunal gave consideration to the gravity of the offences which occurred over four years ago. All of the offending preceded the therapy and treatment he has received and there has been no further offending.

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 revoked and a treatment support order be made with the same conditions. During the Hearing it was acknowledged by the treating team that the patient has maintained a stable mental state with good compliance and engagement with treatment and care for over a year. The treating team informed the Tribunal that the patient did not require assertive management and that the risks to the community and himself have been low in all domains since the patient moved to the area a year ago. The patient has not used illicit substances for fourteen years and uses minimal alcohol. All urine drug screens (UDS) have been negative. He has attended all appointments and has a good therapeutic relationship with the treating team. The patient's social and psychological circumstances are very different to previously when he thought he was targeted because of his mental illness. He has not had any recent issues with local police however, a Police and Ambulance Intervention Plan (PAIP) is in place in the unlikely event it is required. The patient accepts he has a diagnosis of paranoid schizophrenia, knows he needs to maintain his medication for the long term and that he may relapse if he did not take his medication.

The ARMC minutes support a step down from the forensic order to a treatment support order.

The patient spoke on his own behalf at the Hearing and stated that the forensic order does not bother him as he is "getting on with things" however, "it is a stress". Ultimately, he would like to be stepped down to a treatment support order to "see how I am compared to the past". The patient informed the Tribunal that he got "a lot off his chest with the counselling", it helped a lot, his medication is "right" and he is much calmer now. He stopped using cannabis fourteen years ago and he has not used any substances since. The patient acknowledged the trauma that he carries and the impact it has on his mental state and his day to day life, particularly that he is quite socially isolated aside from daily contact with family.

In this regard, he continues to use the strategies he learnt with the clinical psychologist to manage the anxiety and fears of others and he may consider more private counselling in the future.

The patient's legal representative said that his instructions were to submit to the Tribunal that the forensic order should be revoked and a treatment support order should be made, community category with the same conditions. The patient's mental state has remained stable for a significant period of time and he has remained compliant with the prescribed treatment. The patient acknowledges that he has a mental illness that requires ongoing treatment and care. His current circumstances are remarkably different compared to the time of the index offending and he has a good support network. The patient wants to engage in the community in a meaningful manner and has recently demonstrated his ability to defuse the situation with his neighbour by implementing the anger management strategies he acquired through counselling. The patient's clinical management would effectively remain the same under a treatment support order.

The Attorney-General's representative submitted that the forensic order should be confirmed, community category with the same conditions on the basis that the patient has not demonstrated a long enough period of stability when weighed against his lengthy forensic history that involved serious harm to others, to include police and offences involving weapons. The Attorney-General stated the

patient has committed similar offences preceding the index offences and that he required more time to demonstrate stability under the forensic order.

The Tribunal considered the evidence and the submissions. There was unanimity in the evidence presented that the patient's risks could be managed adequately under a treatment support order. The Tribunal had particular regard to the evidence of the treating team that the patient's mental state has remained stable for over a year. It was acknowledged that the patient does isolate to avoid triggers however, he is very aware of how his trauma impacts on his day to day life and is actively implementing anger management strategies that were previously learnt in counselling to manage situations in the community. The treating team expressed that further counselling was not an immediate consideration for the patient. The focus is on his functioning in the community with specific goals in relation to his return to work and future social engagement. There are no concerns in relation to illicit substances, all of his UDS's have been negative and he does not consume alcohol.

The Tribunal considers that the forensic order is no longer necessary to protect either the safety of the community or the safety of the patient if a treatment support order is in place. The Tribunal is satisfied that the patient's mental illness is currently stable and that the low risks posed by the patient can be adequately managed under a treatment support order.

Category and conditions of the forensic order

All of the evidence before the Tribunal was that the risks presented by the patient can be safely managed under a treatment support order, community category. The submissions made by the patient's legal representative supported the step down to a treatment support order, community category. The submissions made by the Attorney-General's representative were relevant and given consideration. However, the Tribunal considered that the patient's low risk profile did not require him to be monitored under a forensic order. The Tribunal concluded that the patient's circumstances are significantly different compared to the time of the index offending. His mental state has been stable for a prolonged period, he is compliant with his medication, has a good support network and his low risks can be adequately managed under a treatment support order with the same community conditions and oversight already in place.

With revocation of the forensic order, the Tribunal considered that the patient's mental condition still requires clinical oversight from the treating team to ensure any exacerbations of his illness are monitored and responded to appropriately. The Tribunal acknowledges that the patient may not have any intention of breaching the conditions of the treatment support order however, the Tribunal considers that conditions play an important role in mitigating risks to the community and providing clear boundaries on acceptable behaviour. The Tribunal considered each of the conditions and considered it was necessary to keep all of the conditions in place to ensure the risks are managed in the community on a treatment support order.

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 decision of the Tribunal.

In particular:

- (a) s.15 – Recognition and equality before the law. The Tribunal is satisfied that consideration has been given to the patient’s human rights, without discrimination.
- (b) s17(c) - The right to protection from torture and cruel, inhumane or degrading treatment. The Tribunal is satisfied that the giving of medication is lawful and proportionate in the circumstances.
- (c) s19 - Freedom of movement. The patient is currently being managed in the community in the least restrictive manner possible.
- (d) s 25 - The right to privacy and reputation. The Tribunal is satisfied that accessing the patient’s private information is lawful under the legislative authority of the *Mental Health Act* as it is for the purpose of determining whether the patient meets the criteria for a treatment support order.
- (e) s 26 – Protection of families and children - In making the treatment support order, the Tribunal ensures that the patient receives treatment and monitoring by the treating team which is protective in preserving the relationship with family members.
- (f) s 31 – Fair Hearing. The Tribunal is satisfied that the patient was afforded a fair hearing. He was provided with the relevant material within the statutory timeframes. He was present at the Hearing and was given the opportunity to express his views, wishes and preferences. He was also legally represented at the Hearing; and
- (g) s 37 – Health service - The patient has the right to access health services and is currently receiving treatment and care.

However, the Tribunal is satisfied that the limits placed on the patient by the Tribunal are lawful, proportionate to the circumstances and compatible with the *Human Rights Act*. Taking into account the following, the Tribunal is satisfied that the limits imposed by the Tribunal’s decision are reasonable and justified in accordance with section 13 of the *Human Rights Act*:

- the criteria of the relevant test under the *Mental Health Act* were met and thus the confirmation of the order is lawful and within the jurisdiction of the *Mental Health Act*;
- the order has been determined to be the least restrictive way for the person to receive treatment and care; and
- the human rights engaged have been balanced against the risk to the person’s health and wellbeing that is likely to eventuate if the person does not receive treatment and care under the authority.

Conclusions of the Tribunal

The Tribunal weighed the submissions of the Attorney-General’s representative against the evidence from the treating team, ARMC and the patient’s legal representative. The Tribunal was persuaded that the forensic order should be revoked and a treatment support order, community category made.

There was consistent reiteration in oral evidence by the treating team that the patient is stable and that his low risks can be adequately managed under a treatment support order. This evidence was compelling.

The Tribunal acknowledges the differing submissions of the Attorney-General's representative. The Tribunal gave thorough consideration to these submissions however, found the evidence of the treating team more persuasive that there is not an unacceptable risk to the safety of the community if the patient's forensic order was revoked and he was placed under a treatment support order.

Accordingly, the Tribunal decided to revoke the forensic order and made 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.