



## 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.

<b>Matter</b>	Forensic Order (mental health)
<b>Attendees</b>	
Patient:	Attended
Patient's Legal Representative:	Attended
Psychiatrist:	Attended
Case Manager:	Attended
Attorney-General's Representative:	Attended
<b>Decision</b>	
Date of Decision:	2022
Decision:	Decision was to confirm the forensic order as inpatient category

The patient was placed on a forensic order by the Mental Health Court in 2014 and this review was a periodic review of that order. The order was made following a finding by the Mental Health Court that he was of unsound mind in relation to several offences committed in 2013.

### **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 only attended the hearing briefly before it could be confirmed that he had received the clinical report, but his legal representative confirmed that she was able to proceed with the hearing even if the patient did not return to the hearing. The hearing proceeded on the basis that the clinical report had been received within the statutory timeframes.

### **Matters to which the Tribunal must have regard**

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

### **The relevant circumstances of the person subject to the order**

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

#### *Mental state and psychiatric history:*

The patient has a diagnosis of paranoid schizophrenia with a secondary diagnosis of hypochondriacal disorder and a provisional diagnosis of body dysmorphic disorder. The primary diagnosis remains as paranoid schizophrenia. The patient's first presentation to mental health services appears to have occurred more than 20 years ago, and he has been in contact with multiple mental health services over the last 15 years, including several long admissions to inpatient units including a secure mental health rehabilitation unit and most recently as an inpatient to a mental health unit. The consultant psychiatrist reviewed the patient recently for the purposes of the clinical report provided to the Tribunal. His mental state at that review, as recorded by the doctor, was that his voice was raised with an aggressive tone. His affect was aggressive and

agitated with fixed thought forms that primarily he needed to leave the unit to go to the shops and talk to his brother. The doctor assessed his insight as impaired.

As mentioned earlier, the patient has had a long-term engagement with mental health services and since the index offences, has spent a significant amount of this period in inpatient units without developing any understanding of his illness. The evidence to the Tribunal is that the patient presents as hostile and is choosy as to who he wishes to interact with. He has deep seated racial biases. This is a long-term view that he has held. The clinical report records that the patient's engagement with services over the years has been poor and he has shown poor adherence to medication demonstrating a profound lack of insight into his mental illness. He has continued to use substances although the most recent urinary drug screen (UDS) was negative. However, recently, he refused to provide a UDS following return to the inpatient unit after a failed community placement. He has consistently attempted to absent himself from inpatient units expressing frustration with the inpatient category as the reason for this. He has consistently failed to form any sort of therapeutic relationship with treating teams which, according to the clinical team, is because of his itinerant lifestyle and profound lack of insight.

*Any intellectual disability:*

The patient does not have any intellectual disability.

*Social circumstances:*

The patient is a middle aged man with three adult children with whom he does not have any contact. His primary support in the past in the community has been his mother who recently passed. Historically there have been several domestic violence orders made in favour of his mother because of aggressive and threatening behaviors towards her. He does have other family including several siblings; however, it appears there is some animosity between himself and the family.

The patient's history since the index offence has been one of inpatient admissions to mental health services with brief periods in the community which have failed, because of non-compliance or other breaches of conditions of his orders. He has spent time in the community during periods of being absent without permission. The most recent required HDU admission on return and a re-titration of clozapine medication.

An NDIS application was successful, and the Public Guardian was appointed following a QCAT hearing with a view to obtaining Supported Independent Living (SIL) accommodation for the patient to progress his discharge to the community. The patient often states that he wishes to return home to family, however this is not suitable. There have been several attempts at community placement including a recent SIL accommodation placement which failed.

At that accommodation the patient became aggressive toward staff to a point where staff were required to lock themselves into the office and the Queensland Police Service were required to attend to have him removed. The patient refused to go back to the SIL accommodation stating he did not wish to move out of the catchment area, despite the agency being agreeable to supporting him there.

He has remained an inpatient since that time with the Guardian attempting to locate suitable SILS accommodation for him in the catchment area.

The evidence to the Tribunal is that the NDIS package will be sufficient to fund some SIL accommodation however because the patient wishes to remain in the catchment area, there will need to be a change of support providers

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

The patient has a profound lack of insight. He has stated an intent to continue to use cannabis as his preference although the last positive UDS was more than 4 years ago and the most recent was negative. However, following his return from unsuccessful SIL placement late last year, he refused to provide a UDS and remained withdrawn in his room.

As mentioned earlier, the patient attended the hearing briefly at the outset, making a statement that his aunty wanted all the injections stopped. The evidence from the treating team was that the patient would not be prepared to continue to take depot medication and indeed without involuntary treatment of some kind, would not engage with treatment.

*If relevant, the person's response to previous treatment in the community*

The response to treatment in the community is as outlined above. The treatment in the community has generally been short-term since the index offence because of non-compliance with medication or other breaches of conditions including the use of illicit substances.

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

The patient was placed on a forensic order because of five offences alleged to have occurred over a one month period more than 8 years ago. The details of those offences are as follows:

- (a) Breach of domestic violence – The patient was alleged to have breached a condition of a domestic violence order prohibiting him from going within 100 metres of his mother’s residence.
- (b) Commit a public nuisance – The patient was alleged to have caused a disturbance at a shopping centre by yelling obscenities and kicking doors and windows in the centre.
- (c) Willful damage, breach of DVO and breach of bail – The patient is alleged to have damaged a vehicle by striking it and damaging the rear window. He was also alleged to be within the prohibited distance from his mother’s home.

He was found of unsound mind in relation to each of the offences and placed on the existing forensic order.

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

No victim impact statement was provided.

**If the Mental Health Court made a recommendation in the order about an intervention program for the person – the person’s willingness to participate in the program if offered to the person**

The Mental Health Court did not provide a recommendation.

**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?**

It is clear from the evidence before the Tribunal that the patient's engagement with his treating team, whether as an inpatient or in the community, is limited. The relationship appears to be strained and in the face of a profound lack of insight into his illness, his medication compliance is doubtful and his express wish that he will determine whether he uses cannabis in the future or not is concerning. The evidence at the hearing was that the treating team felt he may have used cannabis when he was discharged late last year, given that he was refusing to provide a urine drug screen. It is highly likely that he would continue to be non-compliant and in such an event of non-compliance there would be a worsening of his mental illness and a significant increase in his risks to both himself and the community. He has in the past expressed suicidal thoughts, however, has not acted upon these. He is at chronically elevated risk of being absent without permission as he does not believe that he has a mental illness or requires medication and as a result does not require inpatient admission. This leads to his absconding behavior. The most recent clinical report records many instances of violence to his mother and others including:

- (a) There has been a DVO in place in favour of his mother for some time.
- (b) Direct threats were made to stab anyone from Queensland Health if they came to his home.
- (c) Verbal threats to 'smash the head' of the treating psychiatrist or kill him when he sees him as he believes that he was responsible for the strain on the relationship between he and his mother.
- (d) There are several other instances of aggressive behavior provided in the clinical report.
- (e) The aggressive behavior is both towards staff and residents at inpatient units and he has in the past fashioned weapons. Two years ago he was found to have made and secreted a weapon from unit-provided disposable razors.
- (f) He is quickly frustrated and prone to impulsive statements and threats and when his leave restrictions on the unit are imposed.
- (g) The most recent placement into the community was the SILS placement which failed requiring staff locking themselves in a room to protect themselves from the patient and QPS assistance was required.

Whilst there have been some risk management strategies implemented including the introduction of NDIS supports, which will enable the proper investigation of accommodation options. This followed the appointment of a guardian by QCAT some time ago. In addition, an occupational therapy assessment has been done, addressing how supports may better be provided.

The treating team indicated that they were seeking a revocation of the forensic order and the imposition of a treatment support order. They continued this position notwithstanding that the recent ARMC meeting did not support that position and felt that the forensic order should continue to gain stability. The team's explanation for seeking to continue the position of a revocation of the forensic order was for therapeutic reasons and to support the patient. It is noted from a review of the material before the Tribunal, including previous clinical reports and mental health court appeal transcripts that several times the Tribunal and the Mental Health Court have considered whether a revocation was appropriate, and the decision has been that the forensic order should continue.

The legal representative for the patient submitted that the patient would like a treatment support order to be made and wishes to secure accommodation for himself in the community. The legal representative submits that it was open to revoke the forensic order and make it a treatment support order as the evidence was that the difficulties were more to do with his personality rather than a mental illness.

The Attorney General submits that the forensic order should remain as it stands.

The Tribunal, having considered the risk, is of the view that the forensic order should be continued. Whilst it may be possible in the future for the patient to be managed on a treatment support order, it appears that the period of transition from inpatient to community is something that has historically caused difficulty for the patient and indeed the evidence at the hearing was that the team feels that he has developed a dependency on the inpatient unit. They went on to say that when the team were close to discharging him to the community, he presented some barriers to discharge for discharge.

The Tribunal is of the view that until such time as there is a successful transition to the community it is difficult to consider revoking the Forensic order.

## **Category and conditions of the forensic order**

The Tribunal is satisfied, having regard to all the evidence, that the current category as inpatient is the appropriate category. There are clearly significant risks when community placements have been tried and considering the unsuccessful placements over a lengthy period, the Tribunal considers that it is imperative that the patient is supportive of the placement. Considering his express views that he wishes to remain in the catchment area, his guardian is attempting to locate suitable accommodation in that area and to put services in place to allow that transition. Until that has occurred, the inpatient category is the appropriate category, however the Tribunal will approve that an authorised doctor may change the category of the order to community subject to the conditions attached. The Tribunal did consider, however, that the conditions attached to the Order are appropriate.

## **Human Rights**

The Tribunal is cognisant that Section 48 of the *Human Rights Act 2019* requires that the statutory provisions must be interpreted to the extent possible that is consistent with their purpose, in a way compatible with human rights.

The Tribunal felt that the following human rights had been engaged by the making of this decision: -

- Section 15 – Equality. By reason of the patient having a mental illness, he is subject to the review and the making and continuation of the Forensic Order. This is solely because of that mental illness. Other persons who do not have a mental illness are not subject to the same provisions, therefore this right is engaged.
- Section 17C – the making of the Forensic Order requires the patient to receive treatment involuntarily. This engages the patient's human right not to be subject to treatment without their consent.
- Section 19 – Freedom of Movement. The making of the order as inpatient category engages the rights of freedom of Movement. The making of an order as inpatient accords with s444(2) of the act. The Tribunal is satisfied that there is an unacceptable risk of changing the order to community unless this is done in a manner which complies with the conditions imposed on the orders. this human right. Considering the importance to the risk management of the

stability of accommodation the tribunal considers that the engagement of this Human right is justified.

- Section 31 – this Human Right has been engaged by the non-publication of the proceedings, but by non-publications of the proceedings, the Tribunal is satisfied that the human rights to privacy and reputation as provided by Section 25 of the *Human Rights Act 2019* are promoted.

The Tribunal was further satisfied that the limitations on the humans because of the decision are lawful, proportionate to the circumstances and compatible with the *Human Rights Act* because of the following: -

- (a) The criteria of the relevant tests under the *Human Rights Act* were met and the authority to make the order made as provided by the *Mental Health Act* were present, meeting the criteria of both the *Human Rights Act* and the *Mental Health Act*.
- (b) The Order which has been made has been determined by the Tribunal to be the less restrictive way for the Patient to be assessed.

In the circumstances, the Tribunal considered that the limitations were demonstrably justified as that term is used in the *Human Rights Act*.

### **Conclusions of the Tribunal**

The Tribunal has considered that the forensic order should be confirmed on the inpatient category but authorises an authorised doctor to change the category of the order to community subject to the conditions as decided by the Tribunal as attached.

For these reasons, the Tribunal has decided to *Confirm the Forensic Order as Inpatient Category*.

***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.