# 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.**

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|---|---|
| **Matter** | Treatment Support Order Review |
| **Attendees** | |
| Patient: | Attended |
| Nominated Support Person: | Attended |
| Psychiatrist: | Attended |
| Registrar: | Attended |
| Case Manager: | Attended |
| Other attendees: | Attended |
| **Decision** | |
| Date of Decision: | 2022 |
| Decision: | The treatment support order is confirmed.<br>The category of the treatment support order is community.<br>An authorised doctor may amend the person's treatment support order to reduce the extent of treatment in the community received by the patient. |

The patient is a middle aged woman who currently resides in a regional area with two of her children. The patient was placed on a forensic order more than 10 years ago. The Mental Health Court found the patient to be of unsound mind in relation to an offence of attempted murder and an offence of unlawful wounding. The court noted that illicit drug use in the build up to the offending accelerated a relapse of a pre-existing schizophrenic illness. Approximately 3 years ago, the forensic order was revoked by the Tribunal and the treatment support order was put in place.

**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 a person's treatment support order.

**Clinical Report**

The patient received the clinical report within the statutory timeframe. The Tribunal was satisfied that the patient had sufficient time to consider the clinical report prior to the hearing.

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

The Tribunal had regard to the factors in section 464 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 evidence contained in the clinical report and supplemented by the representatives of the treating team during the hearing demonstrated that the patient has been diagnosed with paranoid schizophrenia. The patient was also noted to suffer with poly-substance abuse; however, this condition was considered to be in remission. The patient's most recent mental state assessment noted that her insight was good, she was willing to engage with her team and willing to follow her treatment plan. It was noted that she accepts that she may have had a mental illness and recognizes that medication has helped her stablise.

It should be noted that the treating team's assessment in relation to insight differed from the assessment contained in the Community Forensic Outreach Service (CFOS) report, which described the patient's insight as partial.

The evidence further established that the patient has a history of a relapsing psychosis with delusions of reference, passivity phenomena and command hallucinations that have inspired self-mutilation and harm to her son. The patient has also experienced manic and depressive symptoms. The patient's previous psychotic episodes occurred in the context of illicit substance abuse and non-compliance with anti-psychotic treatment.

The report noted that there are no apparent residual symptoms when the patient is substance free and compliant with treatment.

Intellectual disability

There was no evidence that the patient suffered an intellectual disability.

Social circumstances

The patient resides in a regional area in department of housing accommodation with her teenage sons. The patient reports having few good friends but remaining busy with both family and work commitments. The patient is supported by her parents who also live in the area.

The patient currently receives a disability support pension.

At the time of the hearing the patient had been volunteering at a drug-users support service. Her most recent contract ended recently, however a positive reference from the organization indicated a willingness for the patient to return as volunteer, subject to appropriate COVID vaccination and a willingness to re-employ the patient should an opportunity for paid work arise.

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

The patient's initial response to treatment was poor as was her willingness to receive treatment. As is noted below the patient struggled with engagement, compliance, criminal offending, and drug use for many years after the initial forensic order was made.

To her credit these issues have resolved in more recent years during which time her mental state has been stable, she has not returned positive drug tests and has not been charged with further offending for more than 3 years.

Response to previous treatment in the community.

The material contained in the forensic dossier demonstrates that prior to the index offences the patient had a history of multiple admissions to the mental health unit. Her first contact with psychiatric services was more than 20 years ago. In the subsequent 9 years she was admitted on 10 separate occasions.

During this period the patient demonstrated poor compliance with medication, poor engagement with treating teams as well as substance abuse.

The patient's engagement, compliance and abstinence from illicit substances was intermittent throughout the following decade. The patient was also convicted of further offending while subject to the forensic order.

The patient had two admissions to hospital for non-compliance and non-engagement with her treating team and tested positive for cannabis.

The patient has had one period of being absent without permission and resumed cannabis, alcohol, and methamphetamine use.

In recent years the patient was convicted of drug offences and sentenced to four years imprisonment, wholly suspended. The period of suspension has now ended.

The patient was also further charged in relation to drug possession.

Her last positive urine test was two years ago when she returned a positive test for cannabis.

It should be noted that for more than 2 years, the patient has demonstrated good compliance with the conditions of her treatment support order, abstinence from drug use and stability in her mental state

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

The offences of attempted murder and wounding occurred more than 10 years ago. The victim (a child) had fallen asleep one evening and woke up the next morning with a prodding sensation in his chest. He was bleeding and the patient was standing over him with a knife in her hands. The patient screamed at the victim and is said to have started to stab herself in the chest with a knife before the victim disarmed her.

The patient then obtained another knife and chased the victim until she was disarmed by another occupant of the house who removed her from the house. The patient was taken to the hospital by ambulance and admitted to the mental health ward.

The Tribunal noted that the offences, were particularly serious involving the use of a weapon and violence to injure an unarmed, sleeping child. The Tribunal also noted that the physical injuries to the victim were said to be superficial. The Tribunal noted that offences occurred in more than a decade ago, making them very dated.

The Tribunal noted that the patient has subsequently committed drug related offending which resulted in her being placed on a suspended sentence.

**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 order was made because a forensic order (mental health) for the person was revoked and the Mental Health Court made a recommendation in the forensic order about an intervention program for the person – the person's willingness to participate if offered**

No such recommendation was identified.

**<u>Summary of evidence and findings</u>**

**Is the treatment support 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?**

**Oral Evidence of the Treating Team / Clinical Report -**

The treating psychiatrist stated that the team's plan is to move the patient from the Mobile Intensive Rehabilitation Team (MIRT) to the Continuing Care Team (CCT). This step is being taken in response to the advice given by CFOS and recommendation from the Assessment and Risk Management Committee (ARMC). The treating psychiatrist indicated that the team expects that this transition will demonstrate that the patient can manage safely without increase to her risks while receiving less intensive support.

The treating psychiatrist noted that the patient is currently having fortnightly reviews with her case manager and 3-monthly reviews with her psychiatrist. The move to the CCT will result in less contact with the treating team and less structured support.

The treating psychiatrist noted that the team had not had any concerns over last 6 months in relation to the patient's mental state, or compliance with treatment. The treating psychiatrist noted the difference of opinion regarding insight with CFOS, with CFOS seeing a need for continuing follow up due to a lack of insight to some extent.

It was noted that CFOS had recommended random UDS. The case manager advised that these are done every few weeks and the patient is compliant with doing these straight away.

The overall evidence of the team was that they are looking to step the patient into the lowest level of monitoring possible. As was noted in the clinical report, after consultation with CFOS and ARMC the patient's team supports the plan to transfer her care to the CCT. It is the team's view that if the patient can maintain her stable mental health and not engage in any antisocial behaviour, she should be considered for a revocation of treatment support order.

The ultimate recommendation of the team contained in the clinical report was that until the patient transitions to the CCT and demonstrates a period of stability under the reduced monitoring regime she should remain on the treatment support order.

**ARMC Minutes**

An ARMC meeting was conducted recently. At this time the patient was not considered to be suitable for progress towards a stepdown order. The minutes from this meeting note that a referral to the CCT will allow the patient to further stabilise.

**CFOS Report**

The CFOS report noted that the patient's insight remained partial and that she would benefit from ongoing psychoeducation.

The CFOS report identified that should the treatment support order be revoked the patient would move from intensive management to voluntary treatment, this would create a risk of rapid disengagement. It was noted that it would be beneficial for the patient to develop a therapeutic relationship with the CCT while subject to the treatment support order.

The CFOS report also noted that whilst the patient claims she would continue to engage on a voluntary basis, it is considered likely that if it were not for the treatment support order, she would disengage from mental health services and become non-compliant with medication. The CFOS report noted her ambivalence regarding her diagnosis, her statements that she did not need support and previous requests for a trial off antipsychotic medication as supporting this conclusion. Non-compliance with medication and disengagement with mental health services were noted to be two of the potential risk factors for future violence.

**Evidence of the patient**

The Tribunal considered the written material provided by the patient. In this material the patient asserts that she has been 100% compliant with medication since the index offence.

The patient stated that she rejected the assertion in the CFOS report that said she had wanted to stab the victim at the time of the index offence. She indicated that she finds the CFOS reports upsetting.

The patient indicated a strong desire to have her past drug addiction and illness behind her. She stated that she does not like the stigma associated with drug testing or the constant reminders of her past actions hanging over her shoulder.

The patient asserts that she has found the right medication and has no desire to cease medication. The patient noted that the medication combined with her abstinence from drug and alcohol use help to keep her well.

When asked about her early warning signs, the patient indicated that when she is becoming unwell her feelings and emotions don't match her environment and she overthinks things. The patient was able to draw a connection between her illness and periods of great stress. The patient also stated that she has been well for so long so doesn't know what it would look like to become unwell and that she can't imagine that it would happen.

The patient is hoping to return to work early next year, she has good supports at work and through her family. She noted that she spends a lot of time with her parents.

**Submissions**

The patient was represented by a legal representative. The legal representative submitted that the patient had excellent insight into her early warning signs and attributed her the stability in her mental state to medication compliance and abstinence from substances. The legal representative noted that the patient is seeking recognition for her efforts and wishes to be independent and autonomous. The patient's legal representative submitted that she intended to remain engaged with the treating team on a voluntary basis.

The patient's legal representative emphasised that the patient manages her own medication, and finances, and engages in meaningful paid work. The patient's legal representative submitted the patient's supportive workplace, supportive and loving family and strong relationship with her general practitioner constitute protective factors in her life.

The legal representative indicated that the patient feels that a transfer to CCT would be step backwards as she is now receiving less intensive oversight from MIRT, particularly in the context of less frequent contact due to COVID.

The patient's legal representative ultimately submitted that the patient's risks are historical and are currently low across all domains and for these reasons the treatment support order was no longer required for protection of the community.

**Tribunals Finding as to Risk**

The Tribunal found that the patient continues to present a risk of serious harm to the community. In reaching this finding the Tribunal weighed the written and oral evidence of the treating team, the contents of the ARMC minutes and the contents of the CFOS report and the written and oral evidence of the patient.

The Tribunal accepted the evidence contained in the CFOS report which suggested that the patient's insight remained partial. The Tribunal noted that this evidence found further support in the patient's demonstrated difficulties in articulating the early warning signs of relapse. The Tribunal found that the patient was only able to explain how she would know she was becoming unwell at a superficial level. This evidence also tended to support the portions of the CFOS report which suggested the patient would benefit from further psychoeducation around this issue. The patient's evidence that she does not know what her becoming unwell looks like was also persuasive on the issue of insight and the need for further psychoeducation.

Given that the Tribunal found independent support for the concerns raised surrounding insight in the CFOS report in the patient's oral evidence significant weight was attached to this evidence and it was preferred over the assessment of insight made by the treating team.

The Tribunal further noted that the patient has remained under the care of the MIRT team and was yet to transition to the less intensive supervision offered by the CCT. It was not submitted that a treatment authority was an appropriate order in this case, meaning that if the treatment support order were revoked the patient would become a voluntary patient. The Tribunal found that the sudden significant reduction in supervision that would occur were the treatment support order to be revoked posed an increased risk for disengagement with treatment. This finding outweighed the evidence from the patient that her intention was to continue with treatment irrespective of her voluntary status, particularly in the context of historical disengagement and non-compliance with medication.

Finally, the Tribunal considered the serious nature of the index offending, the patient's further offending during the period of her forensic order, her past disengagement with treatment and her past substance abuse issues. All these issues are suggestive of serious risk in the absence of the supports and supervision offered by the treatment support order.

Ultimately, these considerations lead the Tribunal to find that there remains a significant risk that the patient would disengage with treatment and support and cease taking medication if the treatment support order were to be revoked. The result of such disengagement would be a significant risk of a deterioration in her mental health which would place the community at risk of serious harm. The particular harm that concerned the Tribunal was a risk of a return to criminal offending and violence.

The Tribunal considers the order is necessary to protect the community, therefore the treatment support order will be confirmed.

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

The evidence before the Tribunal did not support the alteration of the category or conditions of the treatment support order. The patient remains on a community category order with conditions relating only to residence, compliance with treatment, alcohol consumption and drug use. Each of these conditions was considered independently and determined to be appropriate in the circumstances.

The Tribunal noted that the conditions on the current order are appropriate to facilitate the team's intention to continue to reduce their monitoring and intervention and go only to managing the risks of disengagement, medication non-compliance and substance use.

The patient has demonstrated an ability to comply with these conditions and the Tribunal determined that her risks are appropriately managed by the current conditions.

It was determined that an authorised doctor may amend the patient's treatment support order to reduce the extent of treatment in the community.

**Human Rights**

The confirmation of the treatment support order necessarily engages and potentially limits some of the patient's human rights. The engaged rights include:

s 15 Equality before the law.
s 17 Protection from torture and cruel inhuman or degrading treatment.
s 19 Freedom of movement.
s 25 Privacy and reputation.
s 26 Right to protection of families and children.
s 31 Right to a fair hearing.

It is noted that no specific submissions around human rights were received.

Where these rights are limited the Tribunal is satisfied that the restrictions placed on the patient by the treatment support order are lawful, proportionate to the circumstances and compatible with the Human Rights Act.

In reaching this decision, the Tribunal found the criteria of the relevant tests under the Mental Health Act to be met, consequently the confirmation of the treatment support order is lawful and within the jurisdiction of the Mental Health Act. After considering the evidence, it was the decision of the Tribunal that a community category treatment support order on the current conditions is the least restrictive way for the patient to receive treatment and care while ensuring the protection of the community from a risk of serious harm.

**Conclusions of the Tribunal**

After considering all the available evidence the Tribunal confirmed the treatment support order. The order was confirmed at the community category as the Tribunal was satisfied that this was the least

restrictive way for the patient to receive treatment and care while mitigating the risk of serious harm posed to the community.

The evidence relating to the patient's insight levels, her limited ability to identify her early warning signs, her risk of relapse if she was to disengage from treatment and cease medication compliance and the associated risk of a return to psychotically driven violent behaviour were all particularly relevant to this decision. It is noted that there was no evidence before the Tribunal capable of supporting a decision to change the treatment support order category to inpatient.

The conditions of the treatment support order were not altered as the Tribunal found them to be appropriate in managing the patient's treatment and risk in the least restrictive way available.

For these reasons, the Tribunal has decided that:

The treatment support order is confirmed.

The category of the treatment support order is community.

An authorised doctor may amend the person's treatment support order to reduce the extent of treatment in the community received by the patient.

The conditions of the treatment support order are as follows:

1. That the patient reside at a place approved in advance in writing by the treating psychiatrist.
2. That the patient comply with all appointments for follow up and prescribed treatment, including the taking of prescribed medication and undergo random tests for those medications, as required by the treating psychiatrist.
3. That the patient not use alcohol to excess and must comply with the limits imposed by the treating psychiatrist including random medical tests for those substances as required.
4. That the patient not use illicit drugs and must comply with random medical tests for those substances as required by the treating psychiatrist.

**Legal Member**

## APPENDIX A

**Statement of the law regarding Treatment Support 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).

**464 Matters to which tribunal must have regard**

(1) In making a decision under this part in relation to a review of a treatment support order, 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 order was made because a forensic order (mental health) for the person was revoked and the Mental Health Court made a recommendation in the forensic order about an intervention program for the person — the person's willingness to participate in the program if offered to the person.

   Note:
   See section 450 for when the tribunal, on deciding to revoke a forensic order (mental health) for a person, may make a treatment support order for the person.
   Examples of decisions in relation to a review of a treatment support 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.

**465 When reviews are conducted**

(1) The tribunal must review (a periodic review) a treatment support 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) a treatment support 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 chief psychiatrist.

(3) Further, the tribunal may at any time, on its own initiative, review (a tribunal review) a treatment support order.

(4) If the tribunal receives written notice under section 217(3) of the amendment of a treatment support order, the tribunal must review (also a tribunal review) the order within 14 days after receiving the notice.

(5) This section is subject to sections 466 to 469 and chapter 16, part 2, division 6, subdivision 2.

**472 Decisions**

(1) On a periodic review of a treatment support 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 it revokes the order.

(2) On an applicant review of a treatment support 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.

(3) On a tribunal review of a treatment support order, the tribunal:
   (a) must decide any particular matter stated in the notice given under section 471(3); and
   (b) may make the orders under this division it considers appropriate.

**473 Requirement to confirm treatment support order**

(1) On a review of a treatment support order, the tribunal must confirm the 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, the tribunal must confirm the treatment support order if:
   (a) a finding of unfitness has been made in relation to the person; and
   (b) the person has not been found fit for trial on a review of the person's fitness for trial under chapter 12, part 6; and
   (c) the proceeding for the relevant offence has not been discontinued under section 490 or 491.

**475 Change of category to community**

If the category of the treatment support order is inpatient, the tribunal must change the category of the order to community unless the tribunal considers that 1 or more of the following can not reasonably be met if the category of the order is community:
   (a) the person's treatment and care needs;
   (b) the safety and welfare of the person;
   (c) the safety of others.

**476 Community category – deciding whether authorised doctor may reduce treatment in community**

(1) This section applies if:
   (a) the category of the treatment support order is community; or
   (b) the tribunal changes the category of the treatment support order to community under section 475.

(2) The tribunal must decide whether an authorised doctor may, under section 216(1), amend the person's treatment support order to reduce the extent of treatment in the community received by the person.

**477 Inpatient category – limited community treatment**

(1) This section applies if the category of the treatment support order is inpatient.

(2) The tribunal may approve limited community treatment, or an extension of limited community treatment, for the person.

(3) In deciding whether to approve or extend limited community treatment under subsection (2), the tribunal must have regard to the purpose of limited community treatment.

(4) If the tribunal approves or extends limited community treatment under subsection (2), the tribunal must also decide whether an authorised doctor may, under section 216(1), amend the person's treatment support order to reduce the extent of treatment in the community received by the person.

**478 Conditions**

(1) The tribunal may:
   (a) change or remove a condition to which the treatment support order is subject; or
   (b) impose a condition on the treatment support 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 treatment support order that requires the person to take a particular medication or a particular dosage of a medication.

**480 Change of category to inpatient**

(1) This section applies if the category of the treatment support order is community.

(2) The tribunal may change the category of the order to inpatient, but only if the tribunal considers it is reasonably necessary for an authorised doctor to examine the person in order to review the person's treatment and care needs.
   Note:
   Under section 216, the authorised doctor who examines the person may change the nature or extent of the person's treatment in the community.

(3) If the tribunal changes the category of the treatment support order under this section to inpatient, the tribunal may authorise an authorised person to transport the person to an inpatient unit of a stated authorised mental health service.

(4) For subsection (3), an authorised person may transport the person to an inpatient unit of the stated authorised mental health service.
Note:
For the powers of an authorised person when detaining and transporting a person, see chapter 11, part 6, division 5.

**483 Making of treatment authority or no further order**

(1) 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) 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.

(6) 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.

(7) The treatment authority is taken to be a treatment authority made under section 49 by the authorised psychiatrist mentioned in subsection (2).

(8) Despite subsection (7) 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.

(9) 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).

(10) 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.