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 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:	Treatment Authority Review
Attendees	
Patient:	Attended
Psychiatrist:	Attended
Case Manager:	Attended
Adult Gardian:	Attended
Decision:	The Treatment Authority is confirmed. The category of the Treatment Authority is community. An authorised doctor may, at a future time, reduce the extent of the treatment in the community received by the patient.

The patient is a 65-year-old woman who was placed on a Treatment Authority by an authorised doctor three years prior to the hearing.

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 treatment authority.

Clinical Report

The patient received the clinical report.

Summary of evidence and findings

Do the treatment criteria apply?

Does the person have a mental illness?

The clinical report outlined the patient's history of treatment for Schizoaffective Disorder. The patient was treated interstate prior to receiving treatment in regional Queensland from about 25 years ago. The patient's reported symptoms have included disordered thinking, delusional beliefs, disinhibition, irritability, and poor self-care. When unwell, the patient experiences an exacerbation of religiosity and her letter writing becomes more vexatious. The patient has required hospital admissions and involuntarily treatment due to her longstanding belief that she does not have a mental illness that requires treatment. At the hearing, the patient's treating psychiatrist confirmed the diagnosis and treatment history.

In her self-reports and at the hearing, the patient clearly expressed her view that she does not have a mental illness. The patient adamantly rejects any suggestion that she has ever experienced symptoms of a mental illness. She explained her belief that she is wrongly and unfairly diagnosed. The patient attributes some of her past hospital admissions to a motor vehicle accident and feels that her spiritual beliefs are misinterpreted as symptoms. The patient is particularly concerned about mental anguish and physical injury which in her opinion is caused by her treatment. The patient said that her treatment is instigated and maintained by incompetent and unethical medical practitioners based on false information.

The Tribunal carefully considered the patient's clearly expressed views and her disagreement with her diagnosis. The Tribunal also considered the patient's history of presentations which have been observed and reviewed by different medical specialists over many years. The patient has a documented history of experiencing symptoms of a psychotic illness that have responded positively to anti-psychotic medication. On balance, the Tribunal found the patient has a mental illness, namely Schizoaffective Disorder.

Does the person not have capacity to consent to be treated for the illness, or if the person has capacity to consent, is that capacity not stable?

The clinical report stated that the patient does not have capacity to consent to treatment because she does not accept that she has a mental illness. The patient understands the experience of her symptoms by reference to a motor vehicle accident, even though the accident postdates her history of experiencing symptoms. The clinical report noted the patient has a history of ceasing medication followed by relapses of her illness when treated voluntarily.

The treating psychiatrist confirmed the treating team's opinion that the patient does not have capacity to consent to treatment. The doctor said that the patient's understanding of her illness and treatment does not change and her fixed religiose delusions restrict her capacity to make appropriate decisions about treatment. The patient's case manager detailed her unsuccessful efforts to help the patient understand her illness and how it impacts on the quality of her life.

In her self-reports and oral evidence, the patient explained at length her objections to diagnosis and treatment. She detailed the distress she feels because of unwarranted and unfair treatment imposed on her against her will. The patient believes her medication is causing her harm and that the team are not helping her in any way at all. She would prefer to stop her medication and not to have anything to do with the treating team.

The Tribunal carefully considered the patient's clear belief that she should be allowed to make her own decision to cease treatment which she believes would increase her overall health and wellbeing. However, the Tribunal is concerned that the patient's views about her past admissions to hospital underestimate the role played by her illness and the consequences for herself when she becomes unwell. The Tribunal found that the patient's limited ability to recognise her symptoms influence her understanding of the need for treatment and the consequences of not receiving that treatment. For these reasons, the Tribunal found that the patient does not have capacity to consent to be treated for her illness.

Are the person's illness and an absence of involuntary treatment or continued involuntary treatment likely to result in either:

a. imminent serious harm to the person or others; or

b. the person suffering serious mental or physical deterioration?

The clinical report stated that without involuntary treatment the patient would cease medication resulting in serious deterioration of both her mental and physical state. The team confirmed that without appropriate treatment, the patient's illness represents a range of risks including vulnerability, damage to reputation and mental state deterioration resulting in admissions to hospital. The treating psychiatrist noted that when unwell the patient becomes disinhibited and her compulsive letter writing increases to the point of nuisance for others. The team are particularly concerned that the patient's physical health is declining, and she is at increasing risk of serious health complications as revealed by her most recent admission.

In writing and at the hearing, the patient disagreed with the team's assessment of her symptoms and risks and does not accept that they are trying to help her in any way. The patient questions the competence and integrity of mental health services and their treatment of her over many years. In her view, her most recent admission was for rehabilitation only and she has no need for support as she has the Holy Spirit to help her. The patient believes the evidence of the treating team are slanderous accusations without basis and that her health and mental state would improve if she was free of treatment.

The Tribunal accepted that the patient would discontinue engagement with mental health services if the treatment authority was revoked which is her preference. While the patient does not accept the risks involved, the Tribunal formed the view that without treatment she would suffer a serious deterioration in her mental state with elevated risks in the domains of vulnerability, physical health, misadventure, and reputation. In reaching a decision, the Tribunal had regard to all the patient's relevant circumstances and found that the patient's illness and the absence of involuntary treatment is likely to result in imminent serious harm to herself.

Is there a less restrictive way for the person to receive treatment and care for the person's mental illness?

The evidence established that there is no appropriate alternate decision maker or advance health directive for the patient and that if there was, they could not ensure the patient's engagement with treatment and care given the level of assertive treatment required. Considering the findings above, the Tribunal found that there is no less restrictive way for the patient to receive care and treatment for her illness other than under a treatment authority in the community.

Relevant Circumstances

In reaching a decision, the Tribunal had regard to the patient's relevant circumstances detailed in the written and oral evidence. In summary, the patient has a long history of requiring involuntary treatment for an established diagnosis of Schizoaffective Disorder. The patient has no intention to voluntarily engage in treatment and finds all aspects of her treatment distressing and does not accept that there are serious risks of mental and physical harm to herself in the absence of treatment.

The patient lives alone in stable accommodation thirty minutes from the nearest regional town and spends most of her time watching television and writing letters. She has support from NDIS including assistance with domestic chores and transport but does not allow the treating team to engage with providers to help her fully utilise available support. The patient does not have any history of alcohol or illicit substance misuse. The public guardian confirmed that services are trying to increase the patient's supports and the safety of her home which is in poor repair. The patient has limited other social supports and minimal contact with family.

Category and conditions of the treatment authority

The Tribunal decided that the category of the treatment authority is community. Currently, the patient's treatment and care needs, as well as her safety and welfare are being reasonably met in the community. The Tribunal decided that an authorised doctor may, at a future time, reduce the extent of treatment in the community received by the patient.

Human Rights

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

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

The Tribunal was satisfied that the patient's right under section 31 was not limited given the patient received the relevant material according to the statutory timeframes, provided written self-reports and attended the hearing to express her views, wishes and preferences.

The Tribunal accepted that the patient is receiving medical treatment given without her consent limiting her rights under sections 17(c), 15, 19 and 25. The patient explained that she finds her treatment is unnecessarily cruel and debilitating. She has a clear preference to withdraw from all

aspects of her treatment and make her own treatment decisions. Nevertheless, the Tribunal is satisfied that the limitations are lawful, proportionate to the circumstances and compatible with the *Human Rights Act*. The Tribunal reached this decision because of the risk associated with deteriorations in the patient's mental and physical state secondary to not having her mental illness adequately treated. The Tribunal therefore considered that the patient's history and the risks of further deterioration necessitate the provision of ongoing treatment without her full consent.

Conclusions of the Tribunal

The Tribunal considered the patient's preference to live her life free from the intervention of mental health services and appreciates that involuntary treatment is very distressing for her. However, on balance, the Tribunal accepted the opinion of the treating team that the patient does have a mental illness that needs the treatment she is so strongly opposed to.

For these reasons, the Tribunal was satisfied that the patient's illness and an absence of continued involuntary treatment is likely to result in the patient suffering serious mental and physical deterioration and imminent serious harm to herself. The Tribunal is of the view that the patient's treatment and care needs, as well as her safety and welfare are currently being adequately and appropriately met in the community.

Accordingly, the Tribunal decided that the treatment authority is confirmed, and the category of the treatment authority is community.

Presiding Member

Appendix A

Statement of the law regarding Treatment Authorities

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 treatment authority.

412 Matters to which tribunal must have regard

(1) In making a decision under this part in relation to a review of a treatment authority, the tribunal must have regard to the relevant circumstances of the person subject to the authority.
Examples of decisions in relation to a review of a treatment authority:
- deciding whether to confirm or revoke the authority
- deciding whether to confirm or change the category of the authority
- deciding whether the person is to receive any treatment in the community
- deciding whether to change or remove a condition to which the authority is subject or to impose a condition on the authority.

(2) Subsection (1) does not limit any other provision of this part that requires the tribunal to have regard to a stated matter.

413 When reviews are conducted

(1) The tribunal must review (a periodic review) a treatment authority:
(a) within 28 days after the authority is made; and
(b) within 6 months after the review under paragraph (a) is completed; and
(c) within 6 months after the review under paragraph (b) is completed; and
(d) at intervals of not more than 12 months after the review under paragraph (c) is completed.

(2) Also, the tribunal must review (an applicant review) a treatment authority on application by:
(a) the person subject to the authority; 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 authority.

(4) If the tribunal receives written notice under section 210(3) of the amendment of a treatment authority, the tribunal must review (also a tribunal review) the authority within 14 days after receiving the notice.

(5) This section is subject to sections 414 to 416 and chapter 16, part 2, division 6, subdivision 2.

419 Decisions

(1) On a periodic review of a treatment authority, the tribunal must decide to:
(a) confirm the authority; or
(b) revoke the authority.

Note:
See subdivision 2 for the orders the tribunal may make if it confirms the authority.

(2) On an applicant review of a treatment authority, 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 authority, the tribunal:
(a) must decide any particular matter stated in the notice given under section 418(3); and
(b) may make the orders under this division it considers appropriate.

421 Requirement to revoke treatment authority

(1) On a review of a treatment authority, the tribunal must revoke the authority if the tribunal considers:
(a) the treatment criteria no longer apply to the person subject to the authority; or
(b) there is a less restrictive way for the person to receive treatment and care for the person's mental illness.

(2) However, subsection (1) does not apply if the tribunal considers the person's capacity to consent to be treated for the person's mental illness is not stable.
Example of when a person's capacity to consent is not stable:
the person gains and loses capacity to consent to be treated during a short time period.

423 Change of category to community
If the category of the treatment authority is inpatient, the tribunal must change the category of the authority to community unless the tribunal considers 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.

426 Conditions
(1) The tribunal may:
(a) change or remove a condition to which the treatment authority is subject; or
(b) impose a condition on the treatment authority.
(2) However, the tribunal may not impose a condition on the treatment authority that requires the person to take a particular medication or a particular dosage of a medication.

427 Transfer to another authorised mental health service
(1) The tribunal may order the person's transfer to another authorised mental health service to provide treatment and care for the person.
(2) In deciding whether to order the person's transfer under subsection (1), the tribunal must have regard to the following:
(a) the person's mental state and psychiatric history;
(b) the person's treatment and care needs;
(c) the capacity of the authorised mental health service to which the person is to be transferred;
(d) whether the transfer would be in the best interests of the person, including, for example, closer proximity to the person's family, carers and other support persons.

428 Change of category to inpatient
(1) This section applies if the category of the treatment authority is community.
(2) The tribunal may change the category of the treatment authority 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 209, 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 authority 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.