



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:	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:	Guardian, mental health worker
Decision:	Forensic Order confirmed

The patient is a middle-aged indigenous man. He is diagnosed with paranoid schizophrenia, paedophilia, a poly-substance misuse disorder and a moderate intellectual disability (IQ 48). The patient was placed on the forensic order by the Mental Health Court. This order followed findings that the patient was not fit for trial in relation to serious historical and more recent child sex offences.

In making the forensic order, the Mental Health Court had regard to evidence that the patient was at high risk of re-offending, particularly if he were to revert to previous abuse of intoxicants. The independent psychiatric opinion to the Court that a treatment support order would be insufficient was accepted. Regard was had to the sufficient support already in place via the National Disability Insurance Scheme (**NDIS**) to contain the risk and the category was made as community.

At this hearing, the Tribunal heard uncontested evidence that little had changed in terms of the patients' relevant circumstances (including the level of support provided) since the forensic order was made. Despite this, the treating team, with the support of the ARMC, recommended that the forensic order be replaced by a treatment support order.

Statutory Framework

Appendix A to these reasons is a summary of the provisions of the *Mental Health Act 2016* (**Act**) that are relevant when the Tribunal reviews of a person's forensic order.

Clinical Report

The patient received the clinical report 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

Mental State and Psychiatric History

In the clinical report, the treating team described the patient's current mental state as stable with no evidence of deterioration. This was attributed to the current treatment plan including the supported accommodation and medication that had helped him to stay stable and reduce risk to the community.

The patient's first psychotic episode was more than 20 years prior. This included auditory hallucinations that told him to do and say bad things, as well as paranoid thoughts. The patient was subsequently diagnosed with Schizophrenia. Excessive use of alcohol and the use of illicit drugs have been factors that exacerbate his psychosis.

At the hearing, the treating psychiatrist told the Tribunal about a single incident whereby the patient was allowed to leave his accommodation without a support worker, but that this had not happened again. She explained that the patient remained on the depot medication from a general practitioner. She said that oral medication had been considered and might be an option in the future.

In support of revoking the forensic order, the treating psychiatrist pointed the Tribunal to the fact that the patient served a lengthy period of imprisonment before he was placed on the forensic order. The fact that a person has spent time in jail may be relevant to their mental state, but the punitive effect of the imprisonment is irrelevant to the Tribunals' consideration of section 432. The Tribunal did have

regard to the fact that the patient had been compliant as a voluntary patient while he was in jail, but this was in the context of pending serious criminal offences and the structured and restricted environment in jail where he would have no contact with children and no access to alcohol or drugs. The lengthy period of imprisonment was not raised as a matter in support of the mitigation of current risk.

Intellectual Disability

The Tribunal considered the patient's dual disability. He has a diagnosis of moderate intellectual disability and requires treatment for paranoid schizophrenia. He receives full time care funded by the NDIS. His level of care has remained consistent since prior to the forensic order being made. The patient's successful placement into supported accommodation was one of the factors considered by the Mental Health Court when determining that the category of the forensic order ought to be community. It remained a relevant factor for the same reason at this review.

In terms of risk, the Tribunal was informed that sexual offending programs and treatment, or alcohol and drug rehabilitation counselling, had not been available to the patient due to his intellectual impairment. Consequently, the sole method implemented to mitigate the risks of reoffending and substance abuse relapse had been constant supervision in the community.

Social Circumstances

The patient has a public guardian appointed for accommodation, health care, provision of services and legal matters. He receives a high level of support from the NDIS. He is cared for full time, and the conditions of the forensic order, prior to this review, required that a support worker accompany him when he is away from his accommodation.

The patient has two younger sisters. He speaks to one sister on occasion and enjoys weekly video calls to his mother. The patient has a strong connection to his culture. He has expressed the desire to return to country to visit his mother. At the hearing, the Tribunal was told that the treating team and other stakeholders were planning for the patient to undertake the trip. A detailed plan was described which gave the Tribunal insight into the structure that the patient requires in order meet his needs and protect the community from him.

Response to Treatment

The patient has a history of non-compliance with oral medication, but he had been compliant with the current medication regime, including a depot. His NDIS-funded support workers transported him to receive the depot. As the treating team highlighted to the Tribunal, the patient's response to treatment in the community had been positive, in a large part due to the support being provided and restriction being imposed. He was well supported by the NDIS package and the community treatment he was receiving for his Paranoid Schizophrenia was successfully maintaining his mental state. Despite the treating team's assertion that a treatment support order would be sufficient to mitigate risk, it was apparent that the level of restriction and oversight provided by the forensic order was a necessary part of the patient's successful treatment.

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

The Tribunal had regard to the length of time since the index offences. The allegations related to historical and more recent offending. The Tribunal also had regard to the opinion of the independent

psychiatrist (as considered by the Mental Health Court) that the patient's offending behaviours show that he is a high risk for future sexual offending, particularly if he were to revert to use of intoxicating substances.

The index offences involved alleged serious harm to children. The Tribunal heard that sexual offending programs had not been suitable for the patient because of his long-standing cognitive impairment. For these reasons, the nature of the index offences remained a relevant factor in the Tribunal's determination of risk despite the length of time that had elapsed.

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 thrust behind treating team's recommendation to revoke the forensic order after only 18 months was, firstly, the time that the patient spent in jail before the forensic order was made, and secondly, the level of support he now has and the stability that had created.

The patient's legal representative's comprehensive submissions also referred to the success of the support provided in achieving stability, as well as the sufficiency of a treatment support order to achieve an appropriate level of risk mitigation for the community. He also appropriately addressed the relevant considerations created by the *Humans Rights Act 2019*.

The Tribunal's position regarding the time that the patient served in jail is outlined under the heading '*Mental State and Psychiatric History*' on page 2 of these reasons. The Tribunal did not have regard to the punitive effect of that period of imprisonment when it considered the test in section 442.

With respect to the assertion that the current period of stability in the patient's mental state warranted the revocation of the forensic order, the Tribunal was guided by submissions of the Attorney-General's representative and *MGL [2017] QMHC 7*. The Tribunal must not approach the application of section 442 as though it needs to make a choice between the forensic order and a treatment support order, weighing up which is more suitable following a period of successful treatment and care. The Tribunal is required to determine if the forensic order is necessary according to the test in section 442, with regard to section 432.

The level of the patient's community treatment and care had remained static for the 18 months during which the forensic order had been in place. His stability and successful treatment were a result of the restrictions imposed by the order and the care provided by the NDIS.

No change to the patient's risk profile was apparent on the evidence. The lack of availability of appropriate sexual offending programs and treatment, or drug and alcohol counselling and rehabilitation had left constant supervision as the only means of risk mitigation at this time. The evidence did not show that over time less restriction and care had been required to mitigate risks. It was certainly not the case that the patient's risk profile was so reduced as to now require less clinical management and oversight. Nor was it the case that the offending was minor or that the risk of reoffending was substantially reduced.

The recommendation for step down by the ARMC and treating team (which became the evidence that informed the submissions of the patient's legal representative) was not supported by a reduction in clinical management, oversight and risk, that the Tribunal would expect to see before it revokes a

forensic order. The Tribunal found that the forensic order remained necessary, because of the patient's mental condition, to protect the safety of the community.

Category and conditions of the forensic order

The evidence before the Tribunal clearly supported the conclusion that community treatment had successfully mitigated risk to the community, and that confirming the forensic order in the community category did not present an unacceptable risk.

The Tribunal ordered that an authorised doctor may, at a future time, change the nature and extent of treatment in the community received by the person, to the extent and subject to the conditions decided by the Tribunal.

The Tribunal decided not to change any conditions on the forensic order. The condition requiring the patient to reside in twenty-four hour supported accommodation remained appropriate because the level of care provided by it continued to mitigate the risks that the patient posed, as did the restrictions on alcohol and drugs provided in conditions 3 and 4.

The Tribunal considered that the nature of the index offences and the opinion of the treating psychiatrist that was accepted by the Mental Health Court supported the continuation of condition 5.

Condition 6 was the most restrictive. It required that the patient be always with one of his support workers when he is in the community. The Tribunal had regard to the barriers that this condition placed on the patient's freedom of movement, as was evidenced by his recent desire to return to country. This was balanced against the risk that the patient posed to the community as outlined in the report to the MHC, as well as the nature of the index offences and the ongoing risk to children that the patient might happen upon if he were to venture alone into the community.

Human Rights

The Tribunal considered the relevant human rights set out in the *Human Rights Act 2019*.

Sections 17(c) and 19 were engaged and limited by the Tribunal's decision. It was determined that the patient's continued involuntary treatment was necessary according to the relevant test under the Act. That treatment requires that he attend appointments and reside in twenty-four hour supported accommodation. It also prohibits the use of alcohol and illicit drugs. The conditions also placed restrictions on the patient's contact with children and require that he remain with a support worker when in the community.

The Tribunal was satisfied that the limits imposed by its decision are reasonable and justified in accordance with section 13 of the *Human Rights Act*. Without the forensic order and its conditions there remained a risk of the patient placing members of the community at risk.

The patient's stability in the context of his supported accommodation and successful community treatment were important factors. The Tribunal considered it reasonable to require that he remain in such accommodation. Historically, substance use has increased risks. Conditions prohibiting the consumption of substances including alcohol and illicit drugs were justified to mitigate such risk. The condition restricting the patient's contact with children remained justified due to the nature of the index offending and the absence of any evidence suggesting a reduction in the risks considered by the Mental Health Court when making the forensic order.

The Tribunal ensured that the patient received a fair hearing pursuant to section 31. He attended the hearing and was ably represented by his legal representative who communicated his views and wishes and advocated effectively on his behalf.

The Tribunal also considered sections 27 and 28 of the *Human Rights Act*. The Tribunal recognised that the restrictions placed on the patient by its decision affected his ability to return to his country and spend time with other First Nations people there. The Tribunal was satisfied that the patient's cultural rights were considered and that its decision to restrict those rights is demonstrable justified. That is because of the risk of that the patient would present to the community if the forensic order (including conditions) was not continued. The Tribunal was encouraged to hear that the patient would be supported to visit country in a safe way.

Conclusions of the Tribunal

The forensic order was confirmed. Without the forensic order in place the risk of disengagement with treatment would not be satisfactorily managed. The reduction in oversight would lead to an increase of risk that the patient would not be adequately managed and may harm another. The Tribunal was persuaded that there was not an unacceptable risk to the community for the patient to be managed by a community category forensic order.

The Tribunal decided to confirm the forensic order. The category of the forensic order was made community. The Tribunal approved that an authorised doctor may, at a future time, change the nature or extent of treatment in the community, received by the patient, to the extend and subject to the conditions decide by the Tribunal.

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.