



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
Registrar:	attended
Decision:	Treatment Authority confirmed, inpatient category

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.

Background

The patient is a middle-aged woman who was recently placed on a treatment authority.

Pursuant to section 413(1(a) of the Act, the Tribunal scheduled a hearing to review the patient's treatment authority. The President gave approval pursuant to section 716(3) for this review to be heard with fewer than three members.

The patient attended the hearing briefly to advise the Tribunal of her views and request an adjournment so as to allow her barrister to represent her and so that the Chief Psychiatrist could attend the hearing. She then left the hearing and later returned to reiterate her views. The treating team were represented by the treating psychiatrist and the registrar.

For the following reasons, the Tribunal decided to confirm the Treatment Authority as inpatient category.

Summary of evidence and findings

Do the treatment criteria apply?

Does the person have a mental illness?

The treating psychiatrist diagnosed the patient as suffering from Schizophrenia. It was noted in the mental state examination on by the treating psychiatrist that, inter alia, the patient exhibited grandiose content such as believing that she was a Chief Justice of the High Court of Australia and the owner of the Apple Corporation.

The treating psychiatrist's evidence at hearing regarding the patient's psychotic presentation was consistent with the observations set out in the clinical report. The treating psychiatrist also noted that a second opinion had been provided by a doctor at the hospital and that the treating team had received collateral information from the patient's former private psychiatrist in another State who had also diagnosed Schizophrenia.

The patient was not able to engage in any meaningful discussion of her illness at the hearing. She repeatedly made a number of grandiose statements such as being the Prime Minister, Chief Justice and insisted that she had a different name.

In light of the above evidence, the Tribunal was satisfied that the patient suffers from a mental illness.

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 treating psychiatrist stated in the clinical report, and confirmed in her evidence at the hearing, that the patient strongly disputes that she has a mental illness and had been unable to demonstrate insight into the nature of her delusions. The treating psychiatrist concluded that the patient was unable to demonstrate an understanding of the nature of her psychotic disorder and was unable to

weigh up the risks, benefits, and alternatives of the treatments offered, or the consequences of not receiving treatment.

The Tribunal's observation of the patient at the hearing confirmed much of the treating psychiatrist's comments about the patient's recognition and acceptance of her illness. She told the Tribunal that she did not believe that she had a mental illness nor that she had ever had one and insisted that she be immediately released from the hospital.

Given the Tribunal's finding regarding the presence of a mental illness and the patient's insistence that she does not, in conjunction with her refusal to continue treatment, the Tribunal determined that she does not have capacity to consent to treatment.

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 Tribunal took into consideration the circumstances under which the patient was first placed under a treatment authority, which were set out in the clinical report. It was noted that prior to the admission, the patient was observed to be sitting on the stairs of the Uniting Church where she was talking to herself, covering her ears with both hands, and appeared distressed. When approached by clinicians, she introduced herself by her alias and made various grandiose statements such as that she was the creator of the internet, Facebook and Apple.

Soon after, the patient was again seen opportunistically on outreach by mental health clinicians at which time she stated she was Justice Spartacus and she requested the clinician's mobile phone so she could contact the British High Court. She stated that she was the creator of Apple and that her company had been stolen and that she lost the house she owned following this theft. She reported that she had attended the hospital for physical health concerns and that while at the hospital, they advised that she was going to be reviewed by mental health services, but she declined and subsequently left the hospital.

The patient was adamant that she did not have a mental illness or need treatment for her mental health. She denied having an income or receiving Centrelink. She had no Medicare card or identification and reported that they had been stolen. The patient further stated that police had threatened to fine her for trying to bathe in a fountain, and that she had not eaten for five days. She had attended the Police Beat earlier in the day voicing her concerns about her company, Apple, being stolen.

Prior to being transported to the nearest hospital via the Queensland Police Service, the patient declined for her luggage bag to be taken with her to hospital, requesting that it remain outside the church and not moved. When police asked the patient if she had any belongings or weapons on her, she pulled her skirt and shirt up, exposing her underwear and breasts. On admission, the patient reported sore feet and was observed to have blisters on her soles and she was also sunburnt.

The treating psychiatrist outlined a number of the risks in the clinical report that concerned the treating team should the patient's treatment cease. However, the treating psychiatrist explained at the hearing that the primary risk was of serious mental deterioration should treatment not continue, which she considered unlikely due to the patient's unwillingness and incapacity to engage in treatment. The treating psychiatrist noted that a number of risks arose should the patient's treatment cease with a resulting deterioration in her mental health. These risks included:

- An increased risk of vulnerability. It was noted that the patient's wallet, purse, cards and shoes were allegedly stolen during an assault prior to her admission. The patient is from another State and did not have stable accommodation at the time of her admission.
- An increased risk of misadventure and damage to reputation. It was noted that the patient wrote confronting messages on her suitcase like "I am a nazi," and drew a swastika on her forehead. She had also been involved in confrontations with co-consumers while an inpatient.
- An increased risk of intentional harm to self and others, albeit these risks were considered to be appropriately mitigated via involuntary admission and commencement of appropriate antipsychotic and benzodiazepine medications.

The Tribunal accepted the treating psychiatrist's evidence that in the absence of a treatment authority the patient was likely to become non-compliant with her treatment regime, noting her continuing desire to cease treatment and her present lack of insight into her illness. The Tribunal also noted that prior to admission, the patient had not eaten for several days, had blistered feet and was sunburnt.

The Tribunal was therefore satisfied that in the absence of the treatment regime provided via the treatment authority, the patient's mental and physical health was likely to suffer a serious deterioration and place her at an increased risk of vulnerability, misadventure, reputational damage, and harm to herself and/or others.

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

Given the patient's lack of capacity and ongoing disagreement about her illness and the appropriate treatment, the Tribunal concluded that voluntary treatment was not appropriate at this stage.

There is no evidence of any formal arrangements for guardianship in accordance with section 13 of the Act. The treating team advised that they had endeavoured to get as much information as possible from the patient about her family or support network to enable them to involve these people in her care, however, the patient had largely refused to engage in these discussions.

Therefore, the Tribunal determined that there is no less restrictive way for the patient to receive treatment and care.

Relevant circumstances

In reaching a decision, the Tribunal had regard to the patient's relevant circumstances. The Tribunal had regard to her diagnosis of Schizophrenia and her disagreement with that diagnosis and the treatment plan.

The Tribunal noted the patient's psychiatric history, which at present is an incomplete picture due to her being from interstate and her general unwillingness to engage with the treating team. However, the team have managed to obtain some information from a former private psychiatrist in order to confirm the patient's diagnosis and gain some understanding of her treatment history.

The Tribunal noted that due to the patient's lack of capacity, her willingness to engage in treatment was still limited and that her response to treatment was partial. The treating psychiatrist noted that

the treating team are still waiting for an improved response to the medications that are being administered.

Category and conditions of the treatment authority

The treating psychiatrist's evidence at the hearing was that the patient required further treatment as an inpatient given she was still acutely unwell and did not yet have suitable accommodation in the community. The patient was unable to engage in a meaningful conversation about her treatment and care but stated that she wished to be released from the hospital.

The Tribunal noted the circumstances under which the patient was admitted a few weeks earlier and the vulnerable circumstances she was in at the time, as set out above. The Tribunal also considered that the patient was still unwell and did not have capacity to consent to treatment.

Accordingly, the Tribunal was satisfied that the patient presently required treatment as an inpatient in order to ensure her treatment and care and safety and welfare.

Human Rights

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

- Section 17(c) – the right to protection from torture and cruel, inhuman or degrading treatment, in this case treatment without the patient's full consent;
- Section 19 – the right to freedom of movement;
- Section 25 – the right to privacy and reputation and to not have this unlawfully or arbitrarily interfered with; and
- Section 31 – the right to a fair hearing.

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

- the criteria of the relevant test under the Act were met and thus the confirmation of the authority is lawful and within the jurisdiction of the Act;
- the treatment authority, as an inpatient category has been determined to be the least restrictive way for the patient to receive treatment and care and ensure her safety and welfare;
- the human rights engaged have been balanced against the risk to the patient's health and wellbeing that is likely to eventuate if she does not receive treatment and care under the treatment authority; and
- The patient attended the hearing, albeit briefly, and had access to the relevant documents prior to the hearing. She was able to briefly express her views at the hearing. Although the

patient requested an adjournment in order to have her barrister represent her at the hearing, the Tribunal took evidence that she had been provided relevant contact information for Legal Aid and the Independent Patient Rights Adviser and that her assertions that she had retained a barrister were part of her delusions. Therefore, in line with section 733 of the Act and section 31 of the HR Act, the Tribunal is satisfied that the patient was provided with natural justice and procedural fairness.

Conclusions of the Tribunal

The Tribunal concluded that the treatment criteria were met as the patient has a mental illness, does not have the capacity to consent to be treated for the illness, and the absence of involuntary treatment for that illness is likely to result in serious deterioration of her mental and physical health. The Tribunal determined that there is presently no less restrictive way for the patient to receive treatment and care for her illness other than under a Treatment Authority, inpatient category.

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.