



**ACT**  
Government  
Health

# Mental Health, Justice Health and Alcohol & Drug Services (MHJHADS)

## Forensic Provisions



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Forensic mental health orders are a new feature in the Mental Health Act 2015. A forensic mental health order may be made by the ACT Civil and Administrative Tribunal (ACAT) where a person with a mental illness or mental disorder is involved with the criminal justice system.

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The ACAT may make:

- a Forensic Psychiatric Treatment Order (FPTO) for a person with a mental illness; or
- a Forensic Community Care Order for a person with a mental disorder.

## **The purpose of forensic mental health orders is to:**

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- identify and provide for the care, treatment and support of people subject to criminal proceedings who are living with a mental illness or mental disorder;
- promote the least intrusive treatment and care of those people;
- ensure the safety of members of the community from the risk of serious harm; and
- provide a process to allow important information about the person to be shared under appropriate controls with people who have been harmed by the person's conduct.

## **Circumstances a forensic mental health orders will be made**

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Where the person with a mental illness or mental disorder is:

- detained in a correctional centre or place of detention; or
- serving a community-based sentence; or
- referred to the ACAT by a court where the person has been deemed as 'unfit to plead' or 'mentally impaired' (see glossary for definitions of these terms) under the *Crimes Act 1900 (ACT)* or the *Crimes Act 1914 (Cwlth)*.

Before the ACAT makes a forensic mental health order the ACAT must be satisfied that the person not only has a mental illness or mental disorder but must also believe on reasonable grounds that the person:

- is doing or is likely to do serious harm to themselves or someone else; or
- is suffering or is likely to suffer serious mental or physical deterioration; and
- has seriously endangered or is likely to seriously endanger, public safety.

The ACAT must also be satisfied that the treatment, care or support is likely to improve the person's condition and reduce the risk to the person, another person or to public safety. The ACAT must also be satisfied that treatment cannot be provided in a way that is less restrictive to the person's freedom of choice and movement. It is not required to consider decision making capacity in making a forensic mental health order.

Finally, the ACAT must be satisfied that in the circumstances that a mental health order should not be made.

## **How long can a forensic mental health order last?**

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The ACAT may make an order for three months. If a person has been subject continuously to orders for 12 months or more, the ACAT may make an order for up to 12 months.

## The main differences between a mental health order and a forensic mental health order are:

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- a person's decision making capacity is not a criterion for making a forensic mental health order; and
- the ACAT must be satisfied that the person presents a risk of serious endangerment to the community to be placed on a forensic mental health order; and
- the ACAT has an additional important and active role in decisions about the person's care and support arrangements under a forensic mental health care order. This includes decisions about whether a person will be detained or released from a mental health facility. It also includes whether a person will be given leave from a mental health facility; and
- a person who was harmed by the person on a forensic mental health order is entitled to certain information about the order. The person receiving the information is known as the 'affected person'.

## Forensic Psychiatric Treatment Order (FPTO)

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### ***What will a FPTO cover?***

A FPTO may set out the facility that the person is to be admitted to, the types of treatment, care or support (other than ECT or psychiatric surgery) the person is to receive, any restrictions on people the person can communicate with, where the person must live (if not detained in a facility), any people or places that the person must not approach or any activities that the person must not undertake.

## ***What is the role of the Chief Psychiatrist if a FPTO is granted?***

If a FPTO is granted, the Chief Psychiatrist (or their delegate) must determine:

- whether a person needs to be treated in a mental health facility;
- if the person is being treated in the community, when and where they need to attend to receive treatment, care or support;
- the nature of the treatment the person is to receive, including any medication to be given; and
- where the person may be directed to live, if the FPTO does not state place of residence.

In considering the types of treatment, care or support that the person is to receive, the Chief Psychiatrist (or their delegate) should consult with:

- the person;
- those who have parental responsibility, if the person is a child;
- the Guardian;
- the Attorney;
- the Nominated Person;
- the Corrections Director-General, if the person is a detainee, on bail or parole; and
- the Children and Young People's Director-General, if the person is a child who is a detainee, on bail or a community based sentence.

The Chief Psychiatrist must give a copy of their determination to the following people:

- the person;
- those who have parental responsibility, if the person is a child;
- the ACAT;

- the Public Advocate;
- the Guardian;
- the Nominated Person; and
- the Health Attorney.

### ***Can a FPTO be ceased?***

If the Chief Psychiatrist (or their delegate) believes that a FPTO is no longer required, they must notify ACAT and give notice to those above in stating the reasons they believe the FPTO is no longer required and seek their input.

Either the carer or nominated person is able to:

- make a submission to the ACAT if they believe that the order should not be ceased; and
- apply to the ACAT to attend the hearing.

## **Forensic Community Care Order (FCCO)**

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### ***What will a FCCO cover?***

A FCCO may set out the types of treatment, care or support a person is to receive, where the person is to live or be detained and any restrictions on communications, and people or places that the person cannot approach.

### ***The role of the Care Coordinator (or their delegate) if a FCCO is granted is to:***

- when and where the person needs to attend to receive treatment, care or support;
- ensure that the nature of the treatment, care or support, including any side effects are explained to the person.

In considering the types of treatment, care or support that the person is to receive, the Care Coordinator (or their delegate) should consult with the following people, if they are involved in the person's care:

- the person;
- those who have parental responsibility, if the person is a child;
- the Guardian;
- the Attorney;
- the Nominated Person;
- the Health Attorney;
- the Corrections Director-General, if the person is a detainee, on bail or parole; and
- the Children and Young People's Director-General, if the person is a child who is a detainee or on bail.

The Care Coordinator (or their delegate) must give a copy of their determination to the following people, if they are involved in the person's care:

- the person;
- those who have parental responsibility, if the person is a child;
- the ACAT;
- the Public Advocate;
- the Guardian;
- the Attorney; and
- the Nominated Person; and
- the Health Attorney.



## ***Can a FCCO be ceased?***

If the Care Coordinator (or their delegate) believes that a FCCO is no longer required, they must notify ACAT and give notice to those above stating the reasons they believe the FCCO is no longer required and seek their input.

Either the carer or nominated person is able to:

- make a submission to the ACAT if they believe that the order should not be ceased; and
- apply to the ACAT to attend the hearing.

## **Leave on a forensic mental health order**

If the ACAT has ordered the detention of a person at an approved mental health or approved community care facility under a FPTO or FCCO, the ACAT may grant or cancel leave on application or on its own review. The Chief Psychiatrist and the Care Coordinator may grant leave in special circumstances and where the safety of the person, anyone else or the public will not be seriously endangered.

If leave is cancelled, a police officer, authorised ambulance paramedic, doctor or mental health officer may apprehend the person and take them to a relevant facility. If a person is detained, the person in charge of the approved mental health facility must advise the ACAT and Public Advocate within 12 hours.

## Feedback

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Mental Health, Justice Health and Alcohol and Drug Services encourage and support consumer and carer participation and feedback. If you wish to provide comments your first point of contact should be the team leader of the Mental Health Team you are working with. This will allow you to confidentially discuss the matter, and in the case of a complaint seek a resolution at this point. If your complaint is not resolved to your satisfaction at this point, the Team Leader will provide you with the Consumer Listening and Learning Feedback Form. The form should then be sent to the Consumer Engagement and Feedback Team.

If assistance is required to complete the form and ensuring the relevant information is provided, please contact the Consumer Engagement Feedback Team.



**Phone** 6244 2740



**Fax** 6244 4619



**Hours** 8.30 am to 5.00 pm  
Monday to Friday



**Mail** Consumer Engagement Feedback  
Team, GPO Box 825 Canberra  
ACT 2601



**Email** [HealthFeedback@act.gov.au](mailto:HealthFeedback@act.gov.au)

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<http://www.health.act.gov.au/health-services/mental-health-act/smoke-free-environment>



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