

Psychiatric Treatment Orders, Forensic Psychiatric Treatment Orders and Restriction Orders

Issues covered include:

- Application criteria and content
- Role of the Chief Psychiatrist (or Delegate)
- Contravention, review and revocation process

For an explanation of all technical definitions and terms used in this module, please refer to the *Definitions of terms used in the Mental Health Act 2015*

<https://health.act.gov.au/services-and-programs/mental-health/mental-health-act-2015#definitions>

Psychiatric Treatment Order

A Psychiatric Treatment Order (PTO) authorises the involuntary treatment, care and support of a person with mental illness as an inpatient or in the community.

Duration – up to six months

Criteria for a Community Care Order

The ACAT may make a PTO under s. 58(2) of the Act, if:

- The person has a mental illness, and either:
 - The person lacks decision-making capacity to consent to the treatment, care or support and refuses to receive the treatment, care or support, or
 - The person has decision-making capacity to consent to the treatment, care or support, but refuses to consent, and
- ACAT believes on reasonable grounds that, because of the mental disorder, 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

• ACAT is satisfied that:

- The harm or deterioration, or likely harm or deterioration, outweighs the person's right to refuse to consent, and
- Treatment, care or support is likely to reduce the harm or deterioration, or the likelihood of harm or deterioration, and
- A FPTO should not be made instead, and
- The treatment, care or support to be provided under the PTO cannot be provided in a less restrictive way that would involve less restriction of the freedom of choice and movement of the person.

When ACAT can make a Psychiatric Treatment Order

ACAT can make a PTO (s. 58(1)):

- following an assessment of a person conducted as part of an Assessment Order (AO)
- If an application is made to ACAT for a Mental Health Order (a consultant psychiatrist may make an application on behalf of the Chief Psychiatrist) (**Note:** ACAT has the discretion to make either a PTO or CCO, depending on what criteria are met as part of the application)
- If an application is made to ACAT for a Forensic Mental Health Order (**Note:** ACAT can make a Forensic Psychiatric Treatment Order (FPTO) even if the application was for a PTO, if it is satisfied that the relevant criteria are met and that a FPTO is more appropriate), or
- If the person has been referred to ACAT by the ACT Supreme Court or ACT Magistrates Court after being found not guilty of a criminal offence by reason of mental impairment, or unfit to stand trial for a criminal offence.

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Content of a Psychiatric Treatment Order

The PTO will state the conditions and duration of the Order (s. 59) and if the person is to be given treatment, care or support – this may include medication, a counselling, training, therapeutic or rehabilitation program, limits placed on person's communication or restrictions on where the person can live or who they can visit. The person must comply with the content of the Chief Psychiatrist's determination.

Alert: All restrictive practices must be the minimum required to ensure the safety of all concerned.

Restriction Orders (RO)

In addition to making a PTO, the ACAT may make a Restriction Order for up to three months, if it believes on reasonable grounds that:

- It is in the interests of the person's health and safety or the safety of someone else or the public to do so, and
- The treatment, care or support to be provided under the PTO cannot be provided in a less restrictive way.

A Restriction Order may state either or both of the following:

1. That the person must:
 - live, but not be detained at a stated place, e.g. an approved mental health, community care or another stated place; or
 - be detained at a stated place, e.g. an approved mental health or community care or other facility.
2. That the person must not approach a stated person or stated place or undertake stated activities.

For a person on a PTO and a RO, there may be an additional requirement:

- If person is to be detained at an approved mental health facility, the Order may state whether the person may be granted leave from the facility.
- ACAT may, on application, grant leave to a person detained at an approved mental health facility.

Role of the Chief Psychiatrist (and Delegates)

Determine the treatment, care and support to be provided – within five working days after the day the Order is made, must determine, in writing, the times when and the place where the person is required to attend to receive treatment, care or support, or undertake a counselling, training, therapeutic or rehabilitation program, in accordance with the Order.

Explain the treatment, care or support – before any treatment, care or support can be given to a person under a PTO, must ensure explain to the person the nature and effects of the proposed treatment, care or support. This includes explaining any side effects which may be likely to occur. The explanation must be provided in a way that the person is most likely to understand and may require involving an interpreter, support person (such as a Carer, decision supporter or Nominated Person). Communication preferences expressed in the person's Advance Agreement must also be respected as far as possible.

Limits on communication – may place limits on the communications of a person on a PTO/FPTO with other people if the Order states that limits may be imposed on the person's communication, and the limit is consistent with the Order, and the Chief Psychiatrist has reasonable grounds to believe that the limit is necessary and reasonable to avoid harming the person's treatment, care or support (s. 62(1-2)).

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The Chief Psychiatrist must explain to the person, in a way that they are likely to understand, the nature and reason for the limit and the time for which the limit is in place.

Alert: The Chief Psychiatrist may never prevent a person from communicating with the Public Advocate or the person's legal representative (s. 74(3)).

Key differences between a PTO and a Forensic Psychiatric Treatment Order (FPTO)

For a person to be considered for an FPTO, they must have:

- A mental illness, and
- Involvement with the criminal justice system, e.g. the person is:
 - A detainee
 - A person serving a community-based sentence
 - A person released on parole
 - A person released on licence under s. 299 of the [Crimes \(Sentence Administration\) Act 2005](#)
 - A young detainee
 - A young offender
- A person covered by a bail order that includes a condition that the person accept supervision under s. 94.1 of the [Bail Act 1992](#)
- Must fulfill the criteria of public endangerment, in addition to risk to the person or others, including the community
- ACAT is not required to consider a person's willingness to consent to treatment, care or support when making a Forensic Mental Health Order
- There are additional oversight and limitations, including:
- The affected persons register comes into effect

- There is a higher threshold for granting leave, and
- Additional people involved in the person's care – e.g. the Corrections Director-General or the Children and Young People's (CYP) Director-General, if the person is involved with criminal justice system, must be consulted.

Contravention of a Mental Health Order

The Act makes a distinction between two kinds of contravention:

1. Non-compliance in the community.

Within seven days of the contravention, tell the person verbally that a failure to comply with the Order may result in the person being apprehended and taken to an approved mental health facility or approved community care facility for treatment, care or support.

If the person does not comply, complete the *Contravention of Mental Health Order - Written Warning or Contravention of a Forensic Mental Health Order - Written Warning* form and give a copy of it to the person.

If the person still does not comply, the Chief Psychiatrist may authorise the *Notification of Contravention and Authorisation to Require a Person to be Detained* form. This form enables an authorised officer to apprehend the person and take them to the approved mental health facility or approved community care facility or another place for assessment, treatment, care or support.

If the person consents to receiving treatment, care or support after the *Notification of Contravention and Authorisation to Require a Person to be Detained* has been served, treatment, care or support may be given at a place other than an authorised mental health facility, if the clinician(s) involved believe that it is safe to do so.

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2. Absconding from care

A person is considered to have absconded if they leave the approved mental health or community care facility at which they have been admitted under a PTO/FPTO with/without a RO without permission.

Alert: A person does not abscond if they fail to return to the facility after being out on approved leave, or if they do not comply with the terms of the leave, except if they are a Correctional Patient or a Correctional Detainee on a CPT/FPTO and detained in a secure mental health facility.

Once the person is re-detained, the treating team must inform ACAT and the Public Advocate about the contravention and apprehension (s. 76(4)). ACAT must then review the PTO/FPTO or RO within three days (s. 79(3)(d)). The Order may be extended, additional conditions may be imposed, or a RO may be made if there is not already one in place.

Review and revocation of Mental Health Orders

A PTO/FPTO or RO is in force until it expires, but can be reviewed and revoked by ACAT at any time before its expiry, including:

- at the tribunal’s own initiative and routine pre-expiry review by ACAT
- the Chief Psychiatrist (or Delegate) believes that the PTO/FPTO/RO is no longer appropriate or necessary

Before applying to have the Order revoked, the Chief Psychiatrist or (Delegate) must contact the person’s Carer and Nominated Person (if applicable) and tell them why they believe the person no longer meets the PTO/FPTO criteria, or why a RO is no longer necessary. They must ask the Carer and Nominated Person if they have any information that may indicate that the PTO/FPTO (with/without a RO) is still appropriate.

The Chief Psychiatrist (or Delegate) must also inform the Carer and Nominated Person that:

- they plan to make an application to ACAT to revoke the Order, subject to the information they receive from the Carer or Nominated Person
- they will also inform the Public Advocate about why the application is being made
- they have the right to provide ACAT with a written statement about their views, and to apply to ACAT to attend the review hearing (s. 72(3))
- If the Chief Psychiatrist (or Delegate) believes that the application for the revocation of the PTO/FPTO or RO should still proceed after hearing the views of the Carer and Nominated Person, they must make an application to ACAT to revoke the Order
- the Care Coordinator or Delegate must complete the Application for Revocation for PTO/FPTO, or RO, and send this to ACAT and the Public Advocate
- ACAT will then review the PTO/FPTO and/or RO within 72 hours, which will usually be done without holding a hearing unless the application for the revocation is opposed by the person’s Carer or Nominated Person (s. 79(3)).

If ACAT agrees that the person no longer meets the criteria for a PTO/FPTO, ACAT must revoke *all* Mental Health Orders that apply to the person (s. 79(5)). If, however, the Chief Psychiatrist (or Delegate) is only seeking that the RO be revoked, ACAT can revoke or vary the RO without affecting the PTO.