

# Leave for people detained under Forensic Mental Health Orders

Issues covered include:

- Additional restrictions on the granting of leave for people on a Forensic Mental Health Order (FMHO) who are admitted to an approved mental health facility or approved community care facility (Division 7.1.8)
- Revoking leave
- Review and appeal of leave decisions.

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-programsmental-health/mental-health-act-2015#definitions>

The Chief Psychiatrist or Care Coordinator are the only people who can approve leave for a person on a Forensic Mental Health Order (FMHO). The only exception being If ACAT has that the person be admitted to an approved mental health or community care facility, in which case, ACAT may grant a period of leave.

**Alert:** See granting leave for special conditions around leave for correctional patients.

## Consultation with relevant officials

If a person on a FMHO, who also has a Corrections Order, is granted leave, ACAT, the Chief Psychiatrist or Care Coordinator (or their delegate) is required to consult with the following people, otherwise known as 'relevant officials for the Order':

- If the person is a detainee – the Corrections Director-General
- If the person is a young detainee – the Children and Young People's Director-General, or
- If the person is not a detainee or a young detainee – the relevant Director General for the Order.

## ACAT ordered detention

If ACAT orders the detention of a person ACAT may grant the person leave if either the person themselves or the Chief Psychiatrist or Care Coordinator applies to ACAT for leave (s. 119).

### Relevant officials for Forensic Mental Health Order

- If the person is a detainee – the Corrections Director-General
  - If the person is a young detainee – the Children and Young People's Director-General, or
  - If the person is not a detainee or a young detainee – the relevant Director General for the Order.
- ACAT may grant leave for any purpose it believes is relevant, if:
    - the relevant officials do not raise concerns about the appropriateness of the leave, and
    - the safety of the person, anyone else or the public is not seriously endangered.

ACAT may refuse the application for leave if the person has applied for leave for the same purpose in the past six months and that application was refused.

Conditions may be attached to the granting of leave, including the person:

- accepting treatment, care or support as required
- enrolling and participating in educational, rehabilitation, recreational, therapeutic or training programs
- not using alcohol and other drugs
- undergoing drug testing and other medical tests
- abiding by set standards of conduct

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- not associating with stated people or kinds of people
- not visiting stated places, or kinds of places
- not travelling interstate or overseas
- not engaging in any other activities ACAT deems relevant for the circumstances and the safety of all.

### Leave approved by the Chief Psychiatrist or Care Coordinator

A person on a FMHO who is admitted at an approved mental health or community care facility may be granted leave by the Chief Psychiatrist or Care Coordinator either if the person themselves applies for leave, or if the Chief Psychiatrist or Care Coordinator applies for leave on behalf of the person.

Before granting leave, the Chief Psychiatrist or Care Coordinator must notify both ACAT and the relevant officials of the application for leave.

Leave may be granted if the relevant officials do not raise concerns about the appropriateness of the leave and the safety of the person, anyone else or the public is not seriously endangered.

The Chief Psychiatrist or Care Coordinator cannot grant leave if the person has applied to ACAT for leave for the same purpose in the previous six months and that application was refused.

If leave is granted, the purpose of the leave and the length of the leave must be clearly stated. The Chief Psychiatrist or Care Coordinator must give written notice of the granting of leave to the:

- person
- the relevant officials.

Conditions may be attached to the granting of leave, including the person:

- accepting treatment, care or support as required
- enrolling and participating in educational, rehabilitation, recreational, therapeutic or training programs

- not using alcohol and other drugs
- undergoing drug testing and other medical tests
- abiding by set standards of conduct
- not with stated people or kinds of people
- not visiting stated places, or kinds of places
- not travelling interstate or overseas
- not engaging in any other activities ACAT deems relevant for the circumstances and the safety of all.

### Leave in emergency or special circumstances

A person on a FMHO who is admitted to a mental health facility because either ACAT has ordered the detention or the Chief Psychiatrist or Care Coordinator has admitted the person can approve mental health or community care facility may be granted leave by the Chief Psychiatrist if there is an emergency or special circumstances for granting the leave.

The Chief Psychiatrist or Care Coordinator cannot grant the emergency or special circumstances leave if an application has been made for the same type of leave and the application has been refused.

If the leave is granted, the Chief Psychiatrist or Care Coordinator must notify the:

- person, and
  - If the person is a detainee – the Corrections Director-General
  - If the person is a young detainee – the Children and Young People’s Director-General, or
  - If the person is not a detainee or a young detainee – the relevant Director General for the order.

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### Emergency leave

Emergency leave is generally limited to leave from a secure mental health or community care facility for a person requiring urgent medical care that cannot be provided in the mental health or community care facility.

**Alert:** When transferring a person to receive urgent medical treatment, the clinical needs of the person must be the priority. The relevant officials should be notified as soon as possible after the emergency has passed.

Approval for transfer of a correctional patient, from a secure mental health facility, for emergency medical treatment **must** be sought from the Chief Psychiatrist. **This decision cannot be delegated.**

### Special circumstances leave

Special circumstances leave may include, but is not limited to, leave to visit a family member who has a life-threatening illness, injury, to attend a relative's funeral or to attend court (s. 122).

Before granting special circumstances leave, the Chief Psychiatrist or Care Coordinator must obtain the agreement of the relevant officials.

### Revoking leave

#### ACAT approved leave

ACAT may revoke leave granted to a person on a FMHO under s. 119 of the Act:

- On application by the Chief Psychiatrist or Care Coordinator, e.g. prior to the person going on leave the person has an elevated suicide risk, a significant deterioration in their mental or physical health, or they have contravened a condition of leave when previously on leave, e.g. returned a positive urine screen or escaped or absconded while last on leave.
- If the person is on a Corrections Order, on application of the Corrections Director-General, or

- In any case of its own initiative, e.g. ACAT believes that it is necessary to revoke leave because the person is:
  - doing, or is likely to do, serious harm to themselves or someone, or
  - suffering, or is likely to suffer, serious mental or physical deterioration, or
  - seriously endangering, or likely to seriously endanger, public safety.

Before revoking the leave, ACAT must consult with the person and relevant officials.

If leave is revoked, the relevant officials must be notified.

If a person's leave is revoked, an authorised person may apprehend the person and return them to the relevant facility. The authorised person may use reasonable assistance and minimum force necessary (including searching the person and seizing an item) to enter any premises to apprehend, remove or take the person to the approved mental health facility (ss. 263 and 264). See also report and record of use of restraint, involuntary seclusion and forcible giving of medication.

If the person is detained at the facility, the Chief Psychiatrist or Care Coordinator must notify ACAT and Public Advocate, in writing, within 12 hours.

#### Leave approved by the Chief Psychiatrist or Care Coordinator

The Chief Psychiatrist or Care Coordinator may revoke leave granted to a person on a FMHO under s. 121 or s. 122 of the Act:

- If the person is on a Corrections Order, on application of the Corrections Director-General, or
- If the Chief Psychiatrist or Care Coordinator believes that it is necessary to revoke leave because the person is:
  - doing, or is likely to do, serious harm to themselves or someone, or
  - suffering, or is likely to suffer, serious mental or physical deterioration, or
  - seriously endangering, or likely to seriously endanger, public safety.

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Before revoking the leave, Chief Psychiatrist or Care Coordinator must consult with the person and relevant officials.

If leave is revoked, these same people must be notified of the revocation of leave.

If a person's leave is revoked, an authorised officer may apprehend the person and return them to the relevant facility.

If the person is detained at the facility, the Chief Psychiatrist or Care Coordinator must notify ACAT and Public Advocate, in writing, within 12 hours.

**Review and appeal of leave decisions**

A person has the right to seek ACAT review of the following decisions:

- Refusal to grant leave to a person on a FPTO (s. 121)
- Refusal to grant leave in emergency or special circumstances to a person on a FPTO (s. 122)
- Revocation of leave by the Chief Psychiatrist or Care Coordinator (s. 123)
- Refusal to grant leave to a correctional patient (s. 143), and
- Revocation of leave to a correctional patient (s. 144).

If a leave decision has been made by ACAT, the person may also appeal that decision.