

# 11: Forensic Community Care Order

Some people who are also involved with the criminal justice system may become unwell because of their mental disorder and may need compulsory treatment. In these situations, a Forensic Community Care Order (FCCO) may be made.

## What is a mental disorder?

A mental disorder is a condition that interferes with your perceptual interpretation, comprehension, reasoning, learning, judgement, memory, motivation, or emotion.

Common causes of a mental disorder include dementia (e.g., Alzheimer's disease), intellectual disability, acquired brain injury and other degenerative neurological conditions.

A mental disorder can significantly affect your ability to function in day-to-day life.

## What is a FCCO?

A FCCO is a type of Mental Health Order, made by the ACT Civil and Administrative Tribunal (ACAT), when you require treatment and care for your mental disorder and,

- are detained in a correctional facility, another place of detention or are serving a community- based sentence, on parole, or
- where a court has found you to be 'unfit to plead' or 'mentally impaired' under the *Crimes Act 1900 (ACT)* or the *Crimes Act 1914 (Commonwealth)*.

A Forensic Community Care Order is made to enable you to receive the assessment, treatment, care or support you need but are refusing to do so.

This means treatment, care or support can be given without your consent.

## When can a FCCO be made?

The Care Coordinator can apply to ACAT for a FCCO. The application must include a proposed plan for treatment, care, or support.

ACAT can make a Forensic Community Care Order if:

- you have a mental disorder, and
- because of your mental disorder
  - you are doing or are likely to do serious harm to yourself or someone else, or
  - your physical or mental health is getting worse, or is likely to get worse, and
- because of your mental disorder, you are seriously endangering or are likely to seriously endanger public safety,
- treatment, care, or support is likely to reduce the risk of harm to yourself or others,
- ACAT are satisfied that a Forensic Psychiatric Treatment Order (FPTO) should not be made instead
- ACAT are satisfied that a Mental Health Order should not be made instead, and
- treatment, care, or support cannot be given in a way that involves less restriction on your freedom of choice and movement.

ACAT does not need to consider decision-making capacity to make a Forensic Mental Health Order.

## How is a FCCO made?

Before making a Forensic Psychiatric Treatment Order, ACAT will hold a hearing.

The hearing is a formal meeting, and you will be invited to attend.

You can bring a support person(s) with you and have a lawyer to represent your interests. Information from your treating team, and your views and those of your carer, nominated person or family can be put forward, both verbally and in writing, to ACAT.

In making a Forensic Community Care Order, ACAT will consider:

- the proposed plan for treatment, care, or support
- your views and wishes
- what your Advance Agreement or Advance Consent Direction says (if you have these)
- what the opinions are of those who care for you day to day
- what the opinions are of those at the hearing
- what the opinions are of the affected person (if there is one)
- what the opinions are of each person consulted (see below)
- that any restrictions placed on you should be the minimum required
- any other options for treatment, care or support that are available, including the aim of that treatment, its benefits and whether it is likely to be upsetting, cause discomfort or side effects
- any other medical history

If you were referred to ACAT by a court under the *Crimes Act 1900* or the *Crimes Act 1914*, they will consider:

- the nature and circumstances of the alleged offence
- the effect that your mental illness may have on your behaviour in the future, and
- whether, if you were not detained, your safety or the safety of others would be at risk

- the views of the Victim of Crimes Commissioner if there is a registered affected person, and
- anything else under the law.

## Who is consulted?

Before making a Forensic Community Care Order, ACAT will try to talk to:

- your parents, or the people who have parental responsibility (if you are a child)
- your guardian (if you have one)
- the person who holds power of attorney for you (if you have one)
- your nominated person (if you have one)
- your health attorney (if you have one)
- the Care Coordinator if they are likely to be responsible for providing treatment, care, or support
- the Corrections Director-General if you are a detainee, on bail or parole, and
- the Children and Young People's Director-General, if you are a child who is a detainee or on bail.

## What if a FCCO is made for me?

Your treating team will decide on your specific treatment, care, or support.

A Forensic Community Care Order may state one or more of the following:

- that you are to be given treatment, care, or support
- that you may be given medication for your mental disorder as prescribed by a doctor
- that you are to participate in counselling, training or a therapeutic or rehabilitation program
- that limits may be imposed on communication
- where you must live or be detained, and/or
- where you can go and who you can see.

If a FCCO has been made for you, the Care Coordinator (or their delegate) is responsible for coordinating your treatment, care, or support. The Care Coordinator must:

- decide when and where you will receive treatment, care or support, counselling, training or a therapeutic or rehabilitation program, and
- and ensure that treatment, care, and support does not cause undue stress.

The Care Coordinator will, where possible, consult with you to make these decisions. They may also talk to the same people that ACAT consulted. These decisions will be made within five working days of the Order being made and this information will be given to you in writing.

Before any treatment, care or support is given, it will be explained to you in a way that you understand.

## How long will I stay on a FCCO?

A FCCO can only be made for up to three months at a time.

However, if you have already had a FCCO for 12 months or longer (i.e., 4 x three-month Orders in a row), ACAT can make an Order for up to 12 months.

If the Care Coordinator (or their delegate) believes that you no longer need a FCCO, they will tell ACAT and ask them to review the Order.

## Limits on communication

As part of a FCCO, limits can be placed on who you are able to communicate with. The limitation must be consistent with the Order, necessary and reasonable and must not reduce

the effectiveness of your treatment, care, or support. You will be told the reasons for the limitation, what the limitations are and how long they will be in place (a maximum of seven days at a time).

## Can I have leave whilst on a FCCO?

If you are on a FCCO and are required to stay at an approved mental health facility, you have the right to apply for leave. Leave refers to a period outside a facility that has been agreed on between you and your treating team.

The authority who determined that you need to stay in an approved mental health facility (ACAT or the Care Coordinator) can give you permission to leave in certain situations if you apply for it.

Before granting leave, ACAT or the Care Coordinator must:

- seek agreement from the Director-General Corrections (if you are a detainee) or Children and Young People's Director General (if you are a young detainee)
- be satisfied that no serious concerns have been raised following this consultation, and
- be satisfied that your safety, and the safety of others will not be seriously endangered.

ACAT or the Care Coordinator can also cancel your leave. They can do this if they have concerns about the safety of yourself or others, or if you break a condition of your leave. If leave is cancelled then a Mental Health Officer, doctor, authorised ambulance officer or police officer can apprehend and take you to a relevant facility.