

# 13: Forensic Psychiatric Treatment Order

Most people with a mental illness willingly and actively seek help and can make decisions about what kind of treatment, care or support they want. There may however be times when you become unwell as a result of your mental illness and cannot make those decisions (you don't have decision-making capacity), or you refuse help, despite there being a risk of harm to yourself or the community. In addition to this you are detained in a correctional facility, at a place of detention or are serving a community-based sentence, on parole, or a court has found you to be 'unfit to plead' or 'mentally impaired' a Forensic Psychiatric Treatment Order may be made.

## What is a mental illness?

A mental illness is a condition that seriously impairs (either temporarily or permanently) functioning in one or more areas of your thought, mood, volition, perception, orientation, or memory. It may include delusions (false beliefs), hallucinations (e.g. seeing or hearing things that are not there), disorder of thought, disturbance of mood or irrational behaviour.

## What is a FPTO?

A FPTO is a type of Order, made by the ACT Civil and Administrative Tribunal (ACAT) when you require treatment and care for your mental illness and:

- are detained in a correctional facility, or
- are detained at another place of detention, or
- are serving a community-based sentence, or
- are 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 FPTO 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 FPTO be made?

The Chief Psychiatrist can apply to ACAT for a FPTO. The application must include a proposed plan for treatment, care, and support.

ACAT can make a FPTO if:

- you have a mental illness, and
- because of your mental illness
  - 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 illness, you are seriously endangering or are likely to seriously endanger public safety
- treatment, care, and support are likely to reduce the risk of harm to yourself or others, or improve your condition
- 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 FPTO.

## How is a FPTO made?

Before making a FPTO, 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, as well as 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 FPTO, 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/or anything else under the law.

## Who is consulted?

Before making a FPTO, 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 Chief Psychiatrist if they are likely to be responsible for providing treatment, care, or support
- the Director-General Corrections if you are a detainee, on bail or parole and/or
- the Children and Young People's Director-General, if you are a child who is a detainee or on bail.

## What if a FPTO is made for me?

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

A FPTO may state one or more of the following:

- the approved mental health facility that you will stay at
- that you must undergo treatment, care or support, counselling, training, or a therapeutic or rehabilitation program
- that limits may be imposed on your communication
- where you must live or be detained, and/or
- where you can go and who you can see.

If a FPTO has been made for you, the Chief Psychiatrist (or their delegate) is responsible for your treatment, care, and support.

The psychiatrist must decide:

- whether you need to stay at an approved mental health facility (such as a hospital) to receive treatment, care, or support
- when and where you will receive treatment, care, or support, if you are living in the community

- what treatment, care and support you will be given (and ensure that it does not cause undue stress)
- where you must live if the Order does not already state this.

The psychiatrist 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 FPTO?

A FPTO can only be made for up to three months at a time. However, if you have already had a FPTO 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 your psychiatrist believes that you no longer need a FPTO, they will tell ACAT and the Order will be reviewed.

## Limits on communication

As part of a FPTO, 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 FPTO?

If you are on a FPTO and are required to stay at an approved mental health facility you have the right to apply for leave. Leave refers to a period of time 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 Chief Psychiatrist) can give you permission to leave in certain situations if you apply for it.

Before granting leave ACAT/the Chief Psychiatrist 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
- be satisfied that your safety, and the safety of others will not be seriously endangered.

ACAT or the Chief Psychiatrist 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.