

Practice Direction

Forensic No.7

Forensic Community Treatment Orders



This Practice Direction is issued under s160(3) of the *Mental Health Act 2007* (MHA).

1. Purpose

- 1.1. This Practice Direction sets out the procedures and timeframes which apply to applications for Forensic Community Treatment Orders (FCTO) made under s99 of the *Mental Health and Cognitive Impairment Forensic Provisions Act 2020* (the MHCIFPA).
- 1.2. This Practice Direction does not prevent the Tribunal from deciding that a departure from these procedures is appropriate in the individual circumstances of a particular case.
- 1.3. This Practice Direction should be read in conjunction with the Ministry of Health's Forensic Mental Health Services Policy Direction PD2012_050. This policy is based on the *Mental Health (Forensic Provisions) Act 1990*, and continues to apply where there is an equivalent provision under the current MHCIFPA.
- 1.4. NOTE: In line with NSW Government policy, the Tribunal may be closed over the Christmas/New Year period. The timeframes set out in this Practice Direction may be adjusted by the Tribunal registry to accommodate the Tribunal's closure.

2. Forensic Community Treatment Orders

- 2.1. An application for a FCTO should be made on the form that is on the Tribunal's website and should be sent to the Tribunal by email. The application should be made six weeks to the requested hearing date given limited Tribunal resources.
- 2.2. Applications for a subsequent FCTO should be emailed to the Tribunal at least six weeks before the requested date for the hearing.
- 2.3. At least five business days before the hearing date, the applicant should provide:
 - 2.3.1. An individualised treatment plan.
 - 2.3.2. A report from treating psychiatrist/doctor, including a report on the efficacy of the current or any previous CTO/FCTO (if relevant).
 - 2.3.3. A report from psychiatric case manager, and other involved professionals e.g. primary nurse, social worker, occupational therapist.
 - 2.3.4. Written submissions (if any) from the person, family or friends where available.
 - 2.3.5. Background documentation, e.g. discharge summaries where available.
 - 2.3.6. Copies of recent clinical entries in the Justice Health and Forensic Mental Health Network (the Network) file (if possible, at least 10 clinical reviews, including two psychiatric reviews).

2.3.7. Any relevant information from Corrective Services NSW, the Serious Offenders Review Council or the Parole Authority.

2.4. If the person concerned wishes to obtain legal advice or representation, the treating team should assist the person by contacting the Mental Health Advocacy Service of Legal Aid NSW, or their own lawyer.

3. Notice of application to the person

NOTE- A delay in providing the Tribunal with confirmation of service on the affected person of the application for the FCTO and a copy of the treatment plan may delay listing of the matter for a hearing. It is important that the confirmation of Service form is completed as soon as possible and lodged with the Tribunal – see further below.

3.1. The affected person is to be given notice of the application for an FCTO. The applicant for a community treatment order must notify the affected person in writing of the application (s52 of the *Mental Health Act 2007* (MHA)) and s99(2) of the MHCIFPA (see also cl 16 of the *Mental Health and Cognitive Impairment Forensic Provisions Regulation 2021* (MHCIFP Regulation)).

3.2. The notice of the application is to include a copy of the proposed treatment plan for the affected person (s52(2) MHA and s99 of MHCIFPA and cl 16 of the Regulation).

3.3. The Tribunal website has a form being 'Confirmation of Service of Notice'. The applicant should download the 'Confirmation of Service of Notice' form from the Tribunal website. This form is required to be completed and returned to the Tribunal and confirms the service of the notice of the application for a FCTO and copy of the treatment plan upon the person.

3.4. The Tribunal will issue notice of a hearing to the applicant upon the matter being listed for hearing. This should be served on the affected person.

3.5. If the affected person is legally represented, the Tribunal will send notice and any documentation to their lawyer.

3.6. If a FCTO is made, the Tribunal will provide a copy of the order to the treating team as soon as practicable after the hearing. The treating team should provide a copy of the order and treatment plan to the person who is the subject of the order.

4. FCTO Reviews

Sections 100 and 78(e) provide that people who are subject to a FCTO and in a correctional centre or detention centre must be reviewed no later than three months after the FCTO has been made, and at least once every six months during the term of the order.

4.1. The Tribunal's Registry will fix the FCTO review date and advise the treating team.

4.2. One week prior to the hearing date, the treating team must provide the Tribunal with:

4.2.1. a psychiatric report outlining whether or not the FCTO should continue and why (one page recommended); and

4.2.2. a copy of the clinical notes for previous 2 months including notes of most recent psychiatric review.

- 4.3. The treating team must advise the person who is the subject of the FCTO that the FCTO will be reviewed, and ask the person whether they wish to obtain legal advice before the review hearing; the treating team should assist the person by contacting the Mental Health Advocacy Service of Legal Aid NSW, or their own lawyer.
- 4.4. The treating team must advise the Tribunal in writing one week prior to the scheduled hearing if either:
 - 4.4.1. the person wishes to participate in a hearing for the review of the FCTO; or
 - 4.4.2. the treating team wishes to participate in a hearing for the review of the FCTO.
- 4.5. If neither the treating team nor the person concerned wishes to participate in the review hearing, the review will be conducted on the papers.
- 4.6. A review hearing may be conducted by the Tribunal constituted by a Presidential member: cl 9 of the *Mental Health and Cognitive Impairment Forensic Provisions Regulation 2021* (MHCIFP Regulation).
- 4.7. Following the review, a copy of the Tribunal's determination will be provided to the affected person's legal representative (if applicable) and the treating team. If the affected person is not represented, the treating team should ensure that the affected person receives a copy of the Tribunal's determination.
- 4.8. The review period for a FCTO may be extended by the Tribunal for a maximum of 12 months: s77. The person subject to the FCTO, their designated carer, or their treating team may request this of the Tribunal, or the Tribunal may extend the review on its own motion.

5. FCTO variations

- 5.1. An application for a FCTO variation should be made on the form that is on the Tribunal's website and should be sent to the Tribunal by email, with the new treatment plan.
- 5.2. The treating team is responsible for providing the affected person with a copy of the treatment plan and a completed 'Notice of application and hearing to vary a Forensic Community Treatment Order' form [Notice of Application to Vary FCTO](#).

6. Evidence required with application for variation or revocation of FCTO by Tribunal

- 6.1. Where the person is in correctional facility or in a mental health facility, the Notice and treatment plan must be provided to the affected person with sufficient time to allow the person to seek legal or other assistance. If the affected person wishes to speak to a lawyer, the treating team should assist them contact the Mental Health Advocacy Service of Legal Aid NSW, or their own lawyer.
- 6.2. Where the affected person has been released to the community all reasonable attempts should be made to provide notice of the variation application.
- 6.3. If the affected person is legally represented, the Tribunal will send notice to their lawyer, along with any material provided in support of the application, as set out in paragraph 9.4 of this Practice Direction.

7. Who can apply to vary an FCTO and in what circumstances?

- 7.1. A person authorised by Justice Health and Forensic Mental Health Network may apply to the Tribunal to vary or revoke a forensic community treatment order under s65(2) of the MHA (cl 20 of the MHCIFP Regulation).
- 7.2. An application to vary or revoke a forensic community treatment order may also be made under s65(3) of the MHA on the grounds the person subject to the order is released, or proposed to be released, from a correctional centre.
- 7.3. An application under s65(3) where the person is released or proposed to be released can be made by the person set out in paragraph 5.1 of this Practice Direction above, or
 - 7.3.1. the affected person,
 - 7.3.2. the psychiatric case manager of the affected person,
 - 7.3.3. any person who could have applied for the order.
- 7.4. Circumstances where an application can be made include where there has been a substantial or material change in the circumstances surrounding the making of the order; or relevant information has become available that was not available when the order was made.

8. Revocation of FCTO other than on application to Tribunal

- 8.1. The MHCIFP Regulation provides (cl 20) that a medical officer authorised by Justice Health and Forensic Mental Health Network may revoke an order (FCTO) under s66 of the MHA.
- 8.2. A person who revokes a forensic community treatment order under the MHCIFP Regulation (cl 20) or s66 of the MHA, must notify the Tribunal in writing of the revocation within 7 days after the revocation.

9. The application may be determined on the papers in certain circumstances

- 9.1. If the affected person is linked to the Community Transition Team (CTT) within Justice Health and Forensic Mental Health Network, and neither the treating team nor the affected person wishes to participate in the review hearing, the review will be conducted on the papers.
- 9.2. If the variation is granted, the Tribunal will provide a copy of the order and signed treatment plan to the treating team as soon as practicable after the hearing. The treating team should provide a copy of the order and signed treatment plan to the person who is the subject of the order.
- 9.3. If the affected person does not wish to attend the hearing for variation/revocation of FCTO it can be determined on the papers.
- 9.4. The Applicant should organise a report be provided to the Tribunal in support of the variation/revocation application (one page recommended).

10. Adjournments

- 10.1. A Tribunal panel may adjourn a FCTO hearing for such reasons as it thinks fit: s155 MHA.
- 10.2. The Tribunal constituted by the President or Deputy President may also adjourn a FCTO review hearing: cl 5 of the MHCIFP Regulation.

10.3. An adjournment application may be listed at the request of the affected person, their treating team or the Tribunal's own motion, and may be determined on the papers, without the need for attendance of any participants.

Magistrate Carolyn Huntsman
President

Dated: March 2025

Version:	President:	Review Date:
1. Practice Direction: Forensic Community Treatment Orders and reviews of correctional patients	Lakatos J	December 2021
2. Practice Direction: Forensic No. 7 – Forensic Community Treatment Orders Reviewed, renamed and reformatted	Magistrate Huntsman	March 2025
3. Next scheduled review		June 2026