

FORENSIC COMMUNITY TREATMENT ORDERS

WHAT IS A FORENSIC COMMUNITY TREATMENT ORDER (FCTO)?

A FCTO is a legal order made by the Mental Health Review Tribunal. It sets out the terms under which a person must accept medication and therapy, counselling, management, rehabilitation and other services. It is implemented by the Justice Health and Forensic Mental Health Network (JHFMHN), a mental health facility or other agency as prescribed by the regulations that has developed an appropriate treatment plan for the individual person.

A FCTO authorises compulsory care for a person not in a mental health facility. Most people subject to a FCTO are detained in a correctional centre and are provided treatment under the FCTO by JHFMHN.

If a person breaches a FCTO by not complying with the conditions of the order, the person may be taken to a mental health facility (usually Long Bay Hospital) and given appropriate treatment, including medication. A person who breaches a FCTO detained in a correctional centre, must be assessed for transfer to a mental health facility under section 86 of the *Mental Health and Cognitive Impairment Forensic Provisions Act 2020* (MHCIFPA). In addition, treatment may be given in accordance with the FCTO if it is appropriate for clinical reasons.

A FCTO continues to operate once a patient or inmate has been released. However, it is necessary to apply to the Tribunal to have the FCTO varied to transfer management of the person's treatment to a community mental health service on release.

FCTOs can be made for any period of time up to 12 months. It is possible for a person to have consecutive FCTOs.

WHO CAN THE TRIBUNAL MAKE A FCTO FOR?

The Tribunal may make a FCTO for:

- a forensic patient
- a correctional patient in a mental health facility ordered to be transferred to a correctional centre
- a person subject to an order for transfer to a mental health facility from a correctional centre or detention centre who has not yet been transferred
- an inmate in a correctional centre.

WHEN CAN THE TRIBUNAL MAKE A FCTO?

A FCTO may be made in the following circumstances:

- on review of a forensic or correctional patient
- on an application to the Tribunal.

A person detained in a mental health facility need not be immediately discharged if a FCTO is made unless they are in the Forensic Hospital.

WHO CAN APPLY FOR A FCTO?

Most FCTOs will be applied for by:

- a medical officer authorised by the Chief Executive of JHFMHN: s 16 *Mental Health and Cognitive Impairment Forensic Provisions Regulation 2021* (MHCIFP Regs).

The following persons may also apply for a FCTO: s 51(2) *Mental Health Act 2007* (MHA):

- the authorised medical officer of a mental health facility in which a person is detained or is a patient;
- a medical practitioner who is familiar with the clinical condition of the person;
- a director of community treatment of a mental health facility who is familiar with the clinical condition of the person; or
- a designated carer or principal care provider of the person.

HOW DOES THE TRIBUNAL DECIDE ABOUT A FCTO APPLICATION?

The Tribunal must be satisfied that:

- the person would benefit from the FCTO as the least restrictive alternative consistent with safe and effective care
- the treatment plan is appropriate and implementable.

WHEN DOES A FCTO COME TO AN END?

A FCTO ends on the date stated on the order, or if no date is specified, 12 months after the order was made. If you are applying for a further FCTO, a hearing should be held before the current order ends to ensure continuity of care. However, an application can be made for a new order if a previous FCTO has expired.

A FCTO will also end if:

- the director of the mental health facility revokes the FCTO
- a medical officer authorised by JHFMHN revokes the FCTO
- the person successfully appeals to the Supreme Court
- the Tribunal revokes the FCTO or orders that it has no effect.

If the director of the mental health facility or a medical officer authorised by JHFMHN revokes the FCTO, they must notify the Tribunal in writing within 7 days of the revocation (see Attachment 3 below).

A FCTO has no effect while the person is detained in a mental health facility, but the time on the order will continue to run.

HOW TO APPLY TO THE TRIBUNAL FOR A FCTO?

As soon as you are aware that you need to apply to the Tribunal for a FCTO you should start making the necessary arrangements.

Justice Health should be involved in the preparation of the treatment plan and be available to give evidence at the Tribunal hearing. If the person is already on a FCTO, information about the efficacy of the current FCTO should be provided.

TREATMENT PLANS

Section 54 MHA requires that all treatment plans must:

- specify the method, frequency and the place at which treatment is to be provided
- provide a general outline of any other treatment or services to be provided.

Treatment plans that are implemented within a correctional environment are necessarily quite different to those being implemented in the community. The plan must specify the type of medication to be administered with a particular frequency (eg. fortnightly) by a particular method (eg. oral). However, the location for those in correctional centres may vary for reasons beyond the control of the individual or JHFMHN. To account for this possible variance the location could be stated such as 'the clinic of the facility within which he/she is detained'.

The treatment plan should also describe any other treatment or services the patient will engage in, including any psychological therapies, drug and alcohol counselling, or education in relation to the need for medication and developing a self-management regime. The Tribunal understands that the type of services available in the correctional setting are somewhat limited, and may not be available for each person for whom an FCTO is being sought.

MAKING THE APPLICATION

To book a hearing you will need to email an application form to the Tribunal (email: MHRT-Forensic@health.nsw.gov.au).

Application forms are available on the [MHRT website](#) or see Attachment 1.

The Tribunal has a roster for when panels visit mental health facilities and other locations where forensic patients are detained. If you need to have a hearing before the next panel is due to visit please contact the Tribunal so that alternative arrangements can be made.

Applications for a FCTO should be emailed to the Tribunal **at least three weeks before** the requested date for the hearing. For more information, please see the Tribunal's [Practice Direction for FCTOs and reviews of correctional patients](#).

If your application is urgent you should phone the Tribunal after emailing the application.

ADJOURNMENT OF A FCTO

Although the Tribunal has power to adjourn proceedings, it does not have power to extend the operation of community treatment orders beyond their expiry date by granting an adjournment.

Unless a new order is made before the expiry of the existing order, the affected person will no longer be subject to the order. Therefore, to ensure continuity of care, JHFMHN should apply to the Tribunal early enough and with sufficient information to ensure that a hearing is held by the Tribunal to allow for an order to be made within time. Any adjournment will only have effect during the term of the existing order.

PREPARATION FOR THE HEARING

The applicant or delegate should:

- Provide written notice of the application and the treatment plan to the person and discuss the reasons for it and record in progress notes that this has been done.
- Organise and prepare reports and necessary documentation.
- Ensure that a treatment plan addressing the client's individual needs has been prepared.
- Explain the hearing process to the affected person and inform of the hearing date and time. Ask the person if they wish to be represented and facilitate representation if necessary.
- Inform the patient's designated carer or principal care provider, relatives and other key people of the hearing and encourage them to attend, unless the patient objects.
- Where the person is detained in a mental health facility, liaise with the treating team at the correctional centre who will be responsible for the person's care on discharge from the facility, and have them available to participate in the hearing by video conference or telephone.
- Organise an interpreter for the person or his or her family where necessary.
- Ensure that an appropriate level of security is arranged, if necessary.

For more information, please see the Tribunal's [Practice Direction for FCTOs and reviews of correctional patients](#).

WHO SHOULD PARTICIPATE IN THE HEARING?

- The affected person - if the person is unable to attend in person, arrange for his or her participation by video or telephone.
- The person's lawyer, if applicable.
- The applicant (who is usually a medical officer from Justice Health).
- The person's designated carer or principal care provider carer, family, friends and support persons.
- Everyone who has prepared a written report for the Tribunal.
- The treating psychiatrist/doctor.
- Other involved professionals, for example the primary nurse, social worker.

If family or friends are unable to come to the hearing, they may still make their views known by writing to the Tribunal before the hearing. It might also be practicable for the Tribunal to hear their views by video or telephone.

REPORTS AND DOCUMENTS REQUIRED

See the Tribunal's [Practice Direction for FCTOs and reviews of correctional patients](#).

The Tribunal will refer to the reports during the hearing. For this reason, the authors of reports should be available to come to the hearing to answer any questions arising from the reports. Sometimes the Tribunal arranges for the authors of reports to talk with Tribunal members by video or telephone.

The Tribunal may make reports available to the patient and his or her legal representative.

MEDICAL RECORDS

The law allows patients and their representatives to inspect or have access to the patient's medical records (s 156 MHA). However, it is possible to ask the Tribunal to order that medical records not be disclosed for some good cause. This might happen, for example, if the treating medical practitioner believes that disclosure of the information may be harmful.

If you consider that there is a need for a preliminary hearing to discuss the disclosure of medical records, you should phone the Tribunal to arrange this well before the scheduled hearing.

AFTER THE HEARING

If the Tribunal makes a FCTO, a copy of the order and the accompanying treatment plan should be given to the person. A copy should also be kept in the person's JHFMHN file. The Tribunal will keep the original order.

Applicants and case managers should be prepared to answer questions from the client and their family about the nature and effect of the FCTO. You should also explain the person's right to have the order varied or revoked, or to appeal against a decision of the Tribunal.

You might find it helpful to refer the affected person to the Legal Aid NSW for further information. You can contact them through LawAccess on 1300 888 529.

BREACH OF A FCTO

The legislation provides certain powers for authorised agencies to enforce FCTOs and to deal with breaches by the affected person. A breach occurs when a person fails to comply with one of the obligations in the approved treatment plan. There are a number of steps to the breach process. It can end with the affected person being readmitted to a mental health facility.

A technical breach of a FCTO does not automatically result in breach proceedings. The process commences and continues at the discretion of the treating team.

The steps set out in s 19 of the MHCIFP Regs regarding a FCTO breach are as follows:

1. If the affected person refuses or fails to comply with the order, the medical officer authorised by JHFMHN should take all reasonable steps to implement the order and inform the affected person that he or she is not complying with the conditions of the order, and remind the person of the possible consequences.
2. If the person still does not comply with the order, the medical officer authorised by JHFMHN needs to decide if there is significant risk of deterioration of the person's mental or physical condition.
3. The authorised medical officer must then ensure that the affected person is informed that if he or she still refuses or fails to comply with the FCTO, the person may be given treatment in accordance with the FCTO.
4. If the affected person still fails to comply, the authorised medical officer must cause the affected person to be assessed for the purpose of issuing orders for his or her transfer to a mental health facility pursuant to s 86 of the MHCIFPA.
5. If it is appropriate to do so, for clinical reasons, the authorised medical officer may cause the affected person to be given treatment in accordance with the FCTO. If this occurs, the officer must notify the Tribunal in writing within two business days after the treatment is given (see Attachment 4).

JHFMHN is responsible for breaching a patient who is detained in a correctional centre. Once a person has been released from custody, the FCTO is required to be varied to transfer the management of their treatment to a community mental health service.

REVIEWS OF FCTOS

The Tribunal must review the case of a person subject to a FCTO who is detained in a correctional centre no later than 3 months after the order is made and at least once every 6 months during the term of the order. The review period may be extended up to 12 months at the request of the patient or their carer, or on the Tribunal's own motion (s 77 MHCIFPA).

The review hearing can be conducted on the papers. The review is generally heard by the President or a Deputy President sitting alone.

The treating team must advise the affected person that the FCTO will be reviewed, and ask the person if they wish to participate in the review hearing.

If the person concerned wishes to obtain legal advice or representation, they should contact Legal Aid NSW for further information through LawAccess on 1300 888 529.

The treating team must advise the Tribunal in writing if either

- the person wishes to participate in a hearing; or
- the treating team wishes to participate in a hearing.

If neither the treating team nor the person concerned wishes to participate in the review hearing, the Tribunal will ordinarily arrange for the review to be conducted on the papers. However, the Tribunal may decide to conduct the hearing before a three member panel and/or with parties in attendance, if considered appropriate.

If the hearing is conducted on the papers a report by the treating team is required but the person and the treating team are not required to attend the hearing.

The treating team and the affected person or their legal representative will be advised of the outcome of the review after the hearing.

VARYING A FCTO

The Tribunal can vary a FCTO at any time on its own motion or on the basis of an application. However, an application may only be made if:

- there has been substantial or material change in the circumstances surrounding the making of the order: s 65(3) MHA; or
- relevant information not available when the order was made has become available s 65(3) MHA; or
- the person is released or proposed to be released from a correctional centre: s 20 MHCIFP Regs.

An application may only be made by:

- the affected person
- the psychiatric case manager implementing the order
- a person authorised by JHFMHN
- a person who could have applied for the current order.

Typically a variation is needed when there has been a substantial change in the treatment plan. For example, a new treating team is involved or a new medication has been introduced which requires regular blood tests and this is not covered in the original treatment plan.

The application for variation of a FCTO is at Attachment 2.

VARYING A FCTO ON RELEASE FROM CUSTODY

A FCTO continues to operate once a patient or inmate has been released. However, it will be necessary to apply to the Tribunal to have the FCTO varied to transfer management of the person's treatment to a community mental health service on release.

JHFMHN should apply for a variation of the order as the provider currently responsible for the FCTO. However, the new treating team in the community may also apply for the variation.

JHFMHN should make contact with the receiving community treating team to arrange a new treatment plan to be developed that is to take over the management of the person once released. If possible, both treating teams should be involved in the Tribunal hearing to consider the application for variation.

This process should be planned prior to the person's release from custody, and should include some liaison with parole, particularly in cases of non-automatic parole. Where a person is being released following a parole decision, the treating team should ensure that the Parole Board is aware of the person's mental health needs, and the requirements and time needed to ensure that the necessary supports are in place should the person be granted parole. The Parole Board's review date and determination should be communicated to the Tribunal so that the Tribunal can co-ordinate hearing times as much as possible.

The application for revocation of a FCTO is at Attachment 2.

WHAT SHOULD I DO IF I CANNOT MAKE CONTACT WITH THE CLIENT TO PROVIDE NOTICE OF THEIR VARIATION HEARING?

On some occasions the community team cannot make contact with the affected person about the hearing to vary their FCTO to a CTO. This may happen if they are missing from their current accommodation. In this instance the community team cannot breach the affected person because the order has not yet been varied.

The community team can ask that the hearing proceed and provide evidence of the attempts to contact their client about the hearing, and the details of any past contact with the person.

The Tribunal can consider the individual circumstances of the situation to make a decision about whether or not it is appropriate to vary the order in the absence of the affected person receiving formal notice.

WHEN SHOULD I APPLY FOR A COMMUNITY TREATMENT ORDER (CTO)?

In some instances, an application for a Community Treatment Order under s 51 of the MHA may be required, rather than a variation of the existing FCTO. This may be particularly applicable if the FCTO is due to expire shortly.

Please see the [Civil Hearing Kit: Community Treatment Order](#) for more information on applying for Community Treatment Orders under the MHA.

REVOKING A FCTO

The Tribunal can revoke a FCTO at any time on its own motion or on the basis of an application. However, an application may only be made if:

- there has been substantial or material change in the circumstances surrounding the making of the order: s 65(3) MHA; or
- relevant information not available when the order was made has become available: s 65(3) MHA; or
- the person is released or proposed to be released from a correctional centre: s 20 MHFPA Regulations.

An application may only be made by:

- the affected person
- the psychiatric case manager implementing the order
- a person authorised by JHFMHN

- a person who could have applied for the current order.

The director of community treatment of a mental health facility or a medical officer authorised by JHFMHN may also revoke a FCTO if it is of the opinion that the affected person is not likely to benefit from a continuation of the order (s 66 MHA). In that case, there is no need for a Tribunal hearing. However, if the director or medical officer does revoke the FCTO, they must notify the Tribunal in writing within 7 days of the revocation (see Attachment 3).

If a person on a FCTO wishes to have the order revoked, they can contact Legal Aid NSW for further information through LawAccess on 1300 888 529.

The application for variation or revocation of a FCTO is at Attachment 2.

APPEALING A FCTO

The affected person may appeal to the Supreme Court (s 67 MHA) if:

- the term of the FCTO exceeds 6 months or no term is specified on the order, against the duration of the order; or
- on any question of law or fact arising from the order or its making.

If the person is a forensic or correctional patient, they may appeal by leave of the Supreme Court (s 150 MHCIFPA):

- on a question of law, or
- on any other question.

Affected persons considering an appeal should be referred to Legal Aid NSW for further information on 1300 888 529.

ATTACHMENTS

The attachments are available through these links:

1. [Application for a FCTO](#)
2. [Application for Variation or Revocation of a FCTO](#)
3. [Notice of Revocation of a FCTO](#)
4. [Notice of Enforcement of Treatment](#)