

# Forensic provisions

## Fact sheet 5

The *Mental Health Act 2000* (the Act) provides processes to ensure matters of criminal responsibility and fitness for trial are examined when an involuntary patient is charged with an offence. The Act also provides processes for decisions to be made about legal proceedings against the person; in particular, whether proceedings are continued or discontinued. These processes are set out in Chapter 7 of the Act.

### When do the forensic provisions apply?

The forensic processes usually begin when a patient on an involuntary treatment order or forensic order is charged with an offence. In this instance, the Director of Mental Health is notified and the legal proceedings are suspended.

The patient's treating psychiatrist must provide a report to the Director of Mental Health about the person's mental condition within 21 days.

### Is the person's treatment affected during this period?

No. The person can continue to receive treatment under their involuntary treatment order or forensic order. However, if the patient is a classified patient, special requirements apply as a result of the classified status (for example, to authorise limited community treatment). See *Fact sheet 4 – Classified patients*.

### What happens with the psychiatrist's report?

When the Director of Mental Health receives the psychiatrist's report, the Director must refer the matter to either the Director of Public Prosecutions or the Mental Health Court for a decision about the charges.

If the involuntary treatment order or forensic order is ceased before the Director of Mental Health refers the matter, the legal proceedings are recommenced.

### What does the Director of Public Prosecutions decide?

The Director of Mental Health refers matters to the Director of Public Prosecutions if the charge is:

- a simple offence
- an indictable offence that is not of a serious nature
- a serious offence, if the Director of Mental Health reasonably believes the patient was not of unsound mind at the time of the offence and the patient is fit for trial.

The Director of Public Prosecutions can decide that:

- proceedings be continued (ie. returned to the court for the charges to be decided)
- proceedings be discontinued
- the matter is to be referred to the Mental Health Court.

### Does the Director of Public Prosecutions' decision affect the person's treatment?

No. The person can continue to receive treatment under an involuntary treatment order or forensic order.

### What is the Mental Health Court?

The Mental Health Court is constituted by a Supreme Court Judge who has been appointed as a member of the Court. The Judge sits (and makes decisions) alone, but is assisted by two experienced psychiatrists who advise the Judge on the psychiatric evidence.

The Mental Health Court has inquisitorial powers that enable issues to be fully investigated and allow the Court to accept material that might otherwise be inadmissible in court proceedings. Hearings are usually open to the public.

### How are matters referred to the Mental Health Court?

A matter may be referred to the Mental Health Court by the person charged or their legal representative, the Attorney-General, the Director of Public Prosecutions or the Director of Mental Health.

The reference may relate to a person with a mental illness or a person with an intellectual disability.

### What does the Mental Health Court decide?

The Mental Health Court usually makes decisions in relation to indictable offences; however, simple offences can also be determined if the person is charged with both.

The Court decides:

- whether the person was of unsound mind in relation to the offence (ie. not criminally responsible)
- whether the person is currently fit for trial and, if the person is unfit for trial, whether the unfitness is of a permanent nature.

The Court cannot make a decision about unsoundness of mind if the facts relating to the offence are in dispute.

### What happens if the person is found fit for trial?

If the person is found fit for trial, the proceedings are continued. The person may continue to receive treatment under an existing involuntary treatment order or forensic order.

### What happens if the person is found of unsound mind or unfit for trial?

If the person is found of unsound mind or permanently unfit for trial, the proceedings are discontinued. The Court may also make a forensic order for the person.

If the person is found unfit for trial but not permanently unfit, the proceedings are suspended and regular reviews of the person's fitness for trial are conducted by the Mental Health Review Tribunal. The Mental Health Court must make a forensic order in this instance. If the person becomes fit, the legal proceedings are continued.

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### What happens if a forensic order is made?

If a forensic order is made, the person is detained to an authorised mental health service as a forensic patient. The Mental Health Court may approve that the person has limited community treatment.

The forensic order is regularly reviewed by the Mental Health Review Tribunal (see *Fact sheet 6 – Mental Health Review Tribunal*). The Tribunal may approve limited community treatment for a forensic patient and is empowered to revoke the forensic order. Strict criteria apply to these decisions and the Tribunal must take account of the person's treatment needs and community safety.

### Further information

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