

# Tips for making application to the Mental Health Review Tribunal for step down

## Making an application to step down from forensic order to treatment support order

When making an application to the Mental Health Review Tribunal (MHRT) for a forensic order to be revoked and a treatment support order to be made for a person, there are several key criteria the MHRT must consider. These criteria need to be addressed within step down applications and the clinical rationale should be fully explained for each of the points listed below.

### What's necessary?

The MHRT must decide to make a treatment support order for a person if the MHRT considers a treatment support order, but not a forensic order, is necessary, because of the person's mental conditions, to protect the safety of the community, including from the risk of serious harm to other persons or property.

### What criteria are considered to determine whether a treatment support order is necessary?

The MHRT must consider:

- (a) the relevant circumstances of the person – this includes the person's:
  - mental state and psychiatric history
  - intellectual disability (if any)
  - social circumstances (including for example family and social support)
  - response to treatment and care
  - willingness to receive appropriate treatment and care
  - response to previous treatment in the community (if relevant)
- (b) the nature of the relevant unlawful act and the period of time that has passed since the act happened
- (c) If the Mental Health Court (MHC) made a recommendation about an intervention program for the person – the person's willingness to participate in the program offered to the person

The MHRT will also consider the victim impact statement. The MHRT will already have a copy of the statement.

## Protective factors

The purpose and objects of the *Mental Health Act 2016* (Act) are not only diversionary and remedial, but also act as protective factors for both the patient and the community. Decisions made by the MHRT must be in accordance with the purpose and objects of the Act.

To assist the MHRT, information relating to the future risk assessment, management, monitoring and review of the person should be outlined in detail to support the application. These management strategies will be viewed by the MHRT as the protective factors in place to safeguard the community. When providing this information it is important to demonstrate that the level of oversight and scrutiny required for the person is less than has been previously required under the forensic order. This is because the Act's intention is the level of oversight and scrutiny for a person on a treatment support order must be less than that necessary for a person on a forensic order.

## When to apply for a step down

- The person is engaged in treatment and demonstrates insight into the need for ongoing treatment.
- The person's offences were relatively minor or an appropriate amount of time has passed since the offending occurred.
- There have been limited or no breaches of the forensic order – this includes breaches due to drug and alcohol use.
- The risk assessment, management, monitoring and review of a person requires a less stringent option because their treatment and care needs and risk profile are so reduced to require a lower level of management and oversight.

## References

The MHC recently handed down a decision that lays out the statutory framework and practical differences between forensic orders and treatment support orders. A summary is attached. A copy of the full decision of *MGL, Re* [2017] QMHC 7 is available at: <https://www.sclqld.org.au/caselaw/QMHC/2017/007>

Other useful fact sheets in relation to the mental health court, forensic orders and treatment support orders are available at: <https://www.health.qld.gov.au/clinical-practice/guidelines-procedures/clinical-staff/mental-health/act/topics/courts-forensic>

# Statutory framework and practicalities of a forensic order

## If the Mental Health Court makes a forensic order for a person, the following occurs:

1. The Mental Health Court (MHC) must decide whether the category is inpatient or community. The MHC may decide that the category is community only if the MHC considers there is not an unacceptable risk to the safety of the community.
2. The MHC may approve limited community treatment only if the MHC considers there is not an unacceptable risk to the safety of the community.
3. An authorised doctor may authorise treatment in the community only to the extent approved by the MHC or Mental Health Review Tribunal (MHRT).
4. The MHC may impose appropriate conditions on the order, including, for example, a non-contact condition.
5. The MHC may make recommendations about intervention programs, for example, drug and alcohol programs, anger management counselling, programs or sexual offender programs.
6. The MHC may impose a non-revocation period for a person charged with a prescribed offence.
7. A psychiatrist will assess and determine treatment and care within 7 days of the patient becoming a forensic patient.
8. The Assessment and Risk Management Committee (ARMC) must review treatment and care of the patient within 30 days of the order being made.
9. The first ARMC meeting is to consider the appropriateness of a Community Forensic Outreach Service (CFOS) referral.
10. CFOS must review all forensic order patients charged with prescribed offences within 60 days of the order being made, excluding patients detained as an inpatient at The Park High Security Unit.
11. The ARMC must review forensic order patients at least twice per year.
12. The ARMC must determine the frequency of review of the patient by the case manager, forensic liaison officer and an authorised psychiatrist.
13. The clinical director of an AMHS is to be notified and briefed if:
  - a. a matter requires escalation to the Chief Psychiatrist i.e. due to media attention, controversial events or situations, serious and/or continued breaches of LCT or any other matter of significance
  - b. the patient's risk profile is assessed by the treating team to have changed from low/moderate to high
  - c. there has been a material change to the patient's circumstances, or
  - d. the patient's limited community treatment (LCT) is breached, suspended or cancelled.
14. On notification of events listed in 13, the clinical director may determine the ARMC should meet to review the treatment and care of the patient.
15. The Chief Psychiatrist may determine that an ARMC should be held to review the patient's treatment and care.
16. The patient must be reviewed in accordance with the Australian Government's National Standards for

Mental Health Services at least every 3 months.

17. The patient must have a Care Plan and interventions to manage risk must be documented in the Care Plan.
18. Liaison with, or referral to, CFOS must occur when:
  - a. the patient's risk of violence is escalating
  - b. the patient is an inpatient at The Park High Security Unit and is transitioning to the community, or
  - c. revocation of a forensic order is being considered to determine whether there is a need for CFOS opinion.

At all other times, referrals can be made on CFOS referral criteria.

19. An Involuntary Patient Summary with current information and circumstances must be uploaded to CIMHA.
20. The patient must be photographed and have their photograph uploaded to CIMHA.
21. Administrators of AMHSs are to report to the Chief Psychiatrist quarterly regarding the treatment and care of patients.
22. The Attorney-General's representative has a right to appear at the MHRT review of the forensic order and may make submissions for the protection of the community on the appropriateness of proposed changes to the order, for example, changes to LCT conditions, of the order, or stepping-down to a treatment support order.

# Statutory framework and practicalities of a treatment support order

## If the Mental Health Court makes a treatment support order for a person, the following occurs:

1. The Mental Health Court (MHC) must decide whether the category is inpatient or community. The MHC may decide that the category is inpatient only if the MHC considers the person's treatment and care needs, the safety and welfare of the person, or the safety of others cannot reasonably be met if the category is community.
2. The MHC may approve LCT.
3. An authorised doctor may authorise treatment in the community subject only to the MHC or Mental Health Review Tribunal (MHRT) deciding whether the authorised doctor may reduce the extent of treatment in the community received by the person.
4. The MHC may impose appropriate conditions on the order, including, for example, a non-contact condition.
5. The Assessment and Risk Management Committee (AMRC) will review the treatment and care of a patient subject to a treatment support order if:
  - a. the patient has been 'stepped down' from a forensic order to a treatment support order (review must be done within 90 days of the treatment support order being made)
  - b. the patient has a change to their risk profile and has been assessed as high by the treating team, or
  - c. the clinical director, administrator or Chief Psychiatrist determine the ARMC should review the patient.
6. Other than the circumstances outlined in (5), monitoring and review timeframes for the patient are as determined by the treating psychiatrist.
7. The patient must be reviewed in accordance with the Australian Government's National Standards for Mental Health Services at least every 3 months.
8. The patient must have a Care Plan and interventions to manage risk must be documented in the Care Plan.
9. An Involuntary Patient Summary with current information and circumstances must be uploaded to CIMHA.
10. The patient may be photographed if determined by the treating team, clinical director or administrator as appropriate.