

## Forensic Orders

Forensic Orders are made primarily by the Mental Health Court for individuals charged with a serious offence who are found of unsound mind at the time of an alleged offence or are unfit for trial. People on a Forensic Order may be provided with involuntary treatment and care and, if necessary, detained in an authorised mental health service or the Forensic Disability Service. The Forensic Order is routinely reviewed by the Mental Health Review Tribunal.

### Who makes a Forensic Order?

Where the Mental Health Court decides a person was of unsound mind at the time of an alleged offence or is unfit for trial, the Court may:

- make a Forensic Order
- make a Treatment Support Order
- make no order for the person.

Greater oversight and review is required for people on a Forensic Order than a Treatment Support Order.

A Forensic Order must be made if the Court considers it necessary to protect the safety of the community, including from the risk of serious harm to other persons or property.

A Forensic Order may also be made by the Mental Health Review Tribunal in limited circumstances, specifically:

- where the Supreme Court or District Court makes a Forensic Order (Criminal Code), it is then referred to the Tribunal to decide whether to make a Forensic Order (mental health) or Forensic Order (disability) for the person, and
- where the Tribunal approves a request to transfer a person on the

equivalent of a Forensic Order from interstate, the Tribunal must decide whether to make a Forensic Order (mental health) or Forensic Order (disability) for the person.

### Are there different types of Forensic Orders?

There are two types of Forensic Order–

- Forensic Order (mental health)
- Forensic Order (disability)

**Forensic Order (mental health)** is made if:

- the person's unsoundness of mind or unfitness for trial is due to a mental condition other than an intellectual disability, or
- the person has a dual disability (a mental illness and an intellectual disability) and needs involuntary treatment and care for their mental illness, as well as care for their intellectual disability.

**Forensic Order (disability)** is made if:

- the person's unsoundness of mind or unfitness for trial is due to an intellectual disability, and
- the person needs care for their intellectual disability but does not need treatment and care for any mental illness.



## What decisions can be made regarding Forensic Orders?

### Non-revocation period

If the Court makes a Forensic Order in relation to an offence that is a 'prescribed offence', the Court may set a non-revocation period on the order of up to 10 years. Prescribed offences are murder (and attempted murder), manslaughter, grievous bodily harm, and rape (and attempted rape).

### Intervention programs

In making a Forensic Order, the Court may also make recommendations regarding intervention programs relevant to the person's treatment and care such as substance use programs.

### Determining if treatment is required as an inpatient or in the community

The Court must also decide the category of the order – inpatient or community.

If the Court decides that the category of the order is inpatient, the Court may approve limited community treatment for the person. Limited community treatment allows a person to leave an inpatient unit for periods of up to seven days.

The Court may only allow treatment in the community (a community category or limited community treatment) if there is not an unacceptable risk to the safety of the community, because of the person's mental condition, including the risk of serious harm to other persons or property.

### Conditions

The Court may also impose any conditions it considers appropriate, including a condition that the person does not contact a stated person such as a victim of the unlawful act.

## Mental Health Court decisions for people on an existing order or authority

If a person subject to a Treatment Support Order or Forensic Order is charged with new offences and the matter is heard by the Mental Health Court, the Court may:

- amend the existing order to include the new charges, or
- revoke the existing order and make a new order.

The new order may be a Forensic Order or Treatment Support Order regardless of which order the person was on previously. Charges from the previous order may be either dismissed or included on the new order.

If the Mental Health Court makes a Forensic Order (Mental Health) or Treatment Support Order for a patient subject to an existing Treatment Authority, the Treatment Authority ends.

### What does a Forensic Order (disability) provide for?

A Forensic Order (disability) allows for care to be provided to the person but **not treatment**. Care includes the provision of rehabilitation, the development of living skills and the giving of support, assistance, information and other services. Care **does not** include the administration of medications.

A Forensic Order (disability) **does not** authorise the administration of medications for behavioural control reasons, for example, chemical restraint for the management of challenging behaviours. Should a person subject to a Forensic Order (disability) require such medications a guardian or a disability service provider may apply to the Queensland Civil and Administrative

Tribunal (QCAT) to seek approval for the use of restrictive practices. Restrictive practices approvals apply only in community settings and do not apply when a patient is admitted to an inpatient setting.

See Factsheet: *Individuals with an intellectual disability*

### **Seclusion and mechanical restraint**

The *Mental Health Act 2016* sets out strict criteria for the use of seclusion and mechanical restraint. These provisions apply to patients in an authorised mental health service subject to a Forensic Order, including Forensic Order (disability).

Seclusion and mechanical restraint must only be used as a last resort to prevent harm to patients and others where less restrictive interventions have been unsuccessful (or are not possible).

### **What are the options if a Forensic Order (disability) patient requires treatment for a mental illness?**

If a person subject to a Forensic Order (disability) requires treatment for a mental illness, consent from the person must be sought.

If the person is unable to give consent, treatment can be approved by a substitute decision maker such as the Public Guardian or personal guardian.

If consent cannot be obtained from the person or a substitute decision maker, and the person meets the relevant criteria within the *Mental Health Act*, it may be appropriate to make a Treatment Authority for the person to enable them to receive the required treatment for their mental illness.

As with all people within the mental health system, the authorised doctor must be satisfied a Treatment Authority is the least restrictive option available to meet the person's treatment needs.

### **How do Treatment Authorities and Forensic Orders (disability) interact?**

If a person is placed on a Treatment Authority and it is inconsistent with their Forensic Order (disability), the Forensic Order (disability) will prevail to the extent of the inconsistency.

#### **Example:**

An authorised doctor cannot attach conditions to a person's Treatment Authority which are inconsistent or contrary to their Forensic Order (disability).

Both orders are independently reviewed by the Mental Health Review Tribunal.

### **What is the role of the Mental Health Review Tribunal?**

The Tribunal reviews Forensic Orders every six months. In addition, the relevant person, someone on the person's behalf, or the Chief Psychiatrist can apply for a review at any time.

When a review is undertaken, the Tribunal may confirm or revoke the order. A Forensic Order cannot be revoked during any non-revocation period set by the Court or if the patient remains temporarily unfit for trial.

If the Tribunal confirms the order, the Tribunal may:

- decide the category of the order (community or inpatient)

- approve limited community treatment or an extension of limited community treatment, or
- impose, change or remove a condition of the order.

In addition, the Tribunal may revoke a Forensic Order and make a Treatment Support Order.

The Tribunal may also order the person's transfer to another authorised mental health service or a transfer out of Queensland.

If a person has been approved by the Tribunal to transfer out of Queensland, the requirement to conduct periodic reviews are suspended while the person subject to the order is out of Queensland.

See Fact Sheets: *Treatment Support Orders and Mental Health Review Tribunal*

### **What is the role of an authorised doctor?**

Generally, for a person subject to a Forensic Order, an authorised doctor is responsible for providing appropriate patient treatment and care.

An authorised doctor is also responsible for deciding treatment in the community (community category and limited community treatment) in a way that is consistent with decisions of the Court and Tribunal.

See Fact Sheet: *Treatment in the Community*

If the Court or Tribunal decides that the person is to have limited community treatment and/or may receive treatment at a future time in the community, the

authorised doctor should consider victim issues e.g. changing the place at which the person resides may bring them into contact with a victim.

For a person subject to a Forensic Order who is detained in the Forensic Disability Service, a senior practitioner is responsible for providing appropriate care and managing treatment in the community.

### **Support for victims**

A registered victim of an unlawful act has a right to receive particular information about the person subject to a Forensic Order. This is known as an 'Information Notice'.

Any eligible person must apply to the Chief Psychiatrist or Director of Forensic Disability for the Information Notice.

In most cases, the Information Notice (and applicant details) are confidential from the patient.

If there is an Information Notice in place and a person's Treatment Support Order or Forensic Order is revoked and replaced with a new order or amended to a new order, the Information Notice continues under the new order.

See Factsheet: *Support for Victims*

## **More information:**

Mental Health Act 2016

[www.health.qld.gov.au/mental-health-act](http://www.health.qld.gov.au/mental-health-act)

Contact your local mental health service

1300 MH CALL (1300 642255)

[www.qld.gov.au/health/mental-health/help-lines/services](http://www.qld.gov.au/health/mental-health/help-lines/services)

## **Resources:**

Factsheet: [Treatment support orders](#)

Factsheet: [Treatment in the community](#)

Factsheet: [Mental Health Review Tribunal](#)

Factsheet: [Individuals with an intellectual disability](#)

Factsheet: [Support for Victims](#)