

# Forensic Orders

Forensic orders are made primarily by the Mental Health Court for persons charged with a serious offence who are found of unsound mind at the time of an alleged offence or unfit for trial. Persons on a forensic order may be treated or cared for without consent and, if necessary, detained in an authorised mental health service (AMHS) or the Forensic Disability Service. The ongoing status of a forensic order for a patient is 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, or
- make no order for the person.

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, namely:

- 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 transfers 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 made by the Court – a forensic order (mental health) and a forensic order (disability).

A 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 the person's mental illness, as well as care for the person's intellectual disability.

A 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 the person's intellectual disability but does not need treatment and care for any mental illness.

## What decisions can be made regarding forensic orders?

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).

In making a forensic order, the Court may also make recommendations about intervention programs, such as drug and alcohol programs, and anger management counselling programs. The person's willingness to participate in these programs, if offered to the person, is considered by the Tribunal when the forensic order is reviewed.

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 patient. Limited community treatment allows a person to leave an inpatient unit for periods of up to 7 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.

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

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

The Tribunal reviews forensic orders every 6 months. When a review is undertaken, the Tribunal may continue 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 continues the order, the Tribunal may decide the category of the order, limited community treatment and any conditions on the order in the same way as the Court decides these matters.

In addition, the Tribunal may revoke a forensic order and make a treatment support order (*see Fact Sheet: Treatment Support Orders*).

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

For a forensic patient, 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*).

For a forensic patient in the Forensic Disability Service, a senior practitioner is responsible for providing appropriate care and managing treatment in the community.