



New South Wales

Mental Health (Forensic Provisions) Regulation 2017

under the

Mental Health (Forensic Provisions) Act 1990

His Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Mental Health (Forensic Provisions) Act 1990*.

BRAD HAZZARD, MP
Minister for Health

Explanatory note

The object of this Regulation is to remake, with minor amendments, the provisions of the *Mental Health (Forensic Provisions) Regulation 2009*, which is repealed on 1 September 2017 by section 10 (2) of the *Subordinate Legislation Act 1989*.

The Regulation:

- (a) requires the Mental Health Review Tribunal (*the Tribunal*) to review the case of a person subject to an order for transfer from a correctional centre to a mental health facility if the person is not transferred after 14 days, and
- (b) provides for the Tribunal to be constituted by a President or Deputy President for reviews of certain orders, and
- (c) prescribes certain psychologists as a class of persons who may provide reports to the Tribunal for the purposes of determining whether to make an order releasing a forensic patient or correctional patient, and
- (d) sets out procedures for appeals to the Tribunal against decisions by the Secretary of the Ministry of Health not to grant a forensic patient or correctional patient leave of absence from a mental health facility, and
- (e) modifies the application of Part 3 of Chapter 3 of the *Mental Health Act 2007* (which relates to community treatment orders) to community treatment orders made in relation to forensic patients, correctional patients, inmates of correctional centres and persons subject to orders for transfer to mental health facilities, and
- (f) prescribes persons who may transport persons to or from places for the purposes of the *Mental Health (Forensic Provisions) Act 1990*, and
- (g) sets out additional information that may be covered by an information sharing protocol between the Ministry of Health and the Department of Justice, and
- (h) prescribes as forensic patients certain persons found not guilty of an offence by reason of mental illness or mental impairment under a law of Norfolk Island, who are transferred and detained in New South Wales under New South Wales law.

This Regulation is made under the *Mental Health (Forensic Provisions) Act 1990*, including sections 33 (5A), 58 (1), 67 (2), 73 (4) and (5), 74 (d), 76E (4), 76F (2), 76J (2) (b) and 77 (the general regulation-making power).

This Regulation comprises or relates to matters set out in Schedule 3 to the *Subordinate Legislation Act 1989*, namely matters of a machinery nature and matters that are not likely to impose an appreciable burden, cost or disadvantage on any sector of the public.

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Part 1 Preliminary

1 Name of Regulation

This Regulation is the *Mental Health (Forensic Provisions) Regulation 2017*.

2 Commencement

This Regulation commences on 1 September 2017 and is required to be published on the NSW legislation website.

Note. This Regulation replaces the *Mental Health (Forensic Provisions) Regulation 2009*, which is repealed on 1 September 2017 by section 10 (2) of the *Subordinate Legislation Act 1989*.

3 Definitions

(1) In this Regulation:

forensic community treatment order means a community treatment order made under section 67 of the Act.

the Act means the *Mental Health (Forensic Provisions) Act 1990*.

Note. The Act and the *Interpretation Act 1987* contain definitions and other provisions that affect the interpretation and application of this Regulation.

(2) Words and expressions used in this Regulation have the same meaning as they have in Part 5 of the Act.

(3) Notes included in this Regulation do not form part of this Regulation.

Part 2 Tribunal proceedings

4 Limited reviews of person subject to transfer order

- (1) For the purposes of section 58 (1) of the Act, the prescribed period is 14 days after the making of the order.
- (2) The Tribunal may be constituted by the President or a Deputy President for the purposes of conducting a review under section 58 of the Act.

5 Limited reviews of person subject to forensic community treatment order

The Tribunal may be constituted by the President or a Deputy President for the purposes of conducting a review under section 61 (3) of the Act.

6 Matters to be considered by Tribunal

For the purposes of section 74 (d) of the Act, a person is of a class of persons prescribed for the purposes of that paragraph, for the purpose of providing a report as to the condition of a person (other than a person who is suffering from a mental illness), if the person:

- (a) is a registered psychologist, and
- (b) has, in the opinion of the Tribunal, appropriate experience or training in forensic psychology or neuro-psychology.

7 Appeals against decisions of Secretary about leave of absence

- (1) An appeal in writing under section 76F of the Act is to be made by giving a notice of appeal, in the form approved by the Secretary, to the medical superintendent of the mental health facility in which the forensic patient or correctional patient making the appeal is being detained.
- (2) The medical superintendent must forward the notice of appeal to the Tribunal within 2 working days after receiving it and must notify the Secretary of the appeal within that period.
- (3) An oral appeal under section 76F of the Act is to be made by telling the medical superintendent of the wish to make an appeal.
- (4) The medical superintendent must provide written notice of an oral appeal to the Tribunal within 2 working days after the appeal is made and must notify the Secretary of the appeal within that period.
- (5) A copy of the written notice is to be given to the forensic patient or correctional patient making the appeal and a copy is to be kept by the medical superintendent as a record of the appeal.

Part 3 Community treatment orders

8 Modification of provisions of Mental Health Act 2007

Part 3 of Chapter 3 of the *Mental Health Act 2007* is modified as set out in this Part for the purposes of the making of a forensic community treatment order.

9 Applications for forensic community treatment orders

- (1) For the purposes of the application of section 51 of the *Mental Health Act 2007*, an application for a forensic community treatment order may also be made by a medical officer authorised by the Chief Executive of Justice Health and Forensic Mental Health Network.
- (2) Sections 52 (3) and 53 (3) (c) of the *Mental Health Act 2007* do not apply to an application for a forensic community treatment order.

10 Treatment plans

- (1) For the purposes of the application of section 53 (2) (a) of the *Mental Health Act 2007*, the Tribunal is to consider a treatment plan for the affected person proposed by Justice Health and Forensic Mental Health Network or by a declared mental health facility.
- (2) For the purposes of the application of section 53 (3) (b) of the *Mental Health Act 2007*, the treatment plan is to be proposed by Justice Health and Forensic Mental Health Network or by a declared mental health facility.
- (3) For the purposes of the application of section 56 (1) (a) of the *Mental Health Act 2007*, a forensic community treatment order is to nominate Justice Health and Forensic Mental Health Network, or a declared mental health facility, to implement a treatment plan.

11 Implementation of forensic community treatment orders

- (1) For the purposes of the application of section 57 (2) and (4) of the *Mental Health Act 2007* to a treatment plan proposed by Justice Health and Forensic Mental Health Network, a medical officer authorised by Justice Health and Forensic Mental Health Network may exercise the same functions under those subsections as the director of community treatment of a declared mental health facility.
- (2) Section 57 (5) of the *Mental Health Act 2007* does not apply to a forensic community treatment order.

12 Breaches of forensic community treatment orders

- (1) This clause applies to any of the following persons who are subject to forensic community treatment orders (an *affected person*):
 - (a) a forensic patient, correctional patient or other person who is detained in a correctional centre,
 - (b) a person who is subject to an order for transfer from a correctional centre but who has not been transferred.
- (2) Sections 58–64 of the *Mental Health Act 2007* do not apply to an affected person and are replaced by subclauses (3)–(5).
- (3) A medical officer authorised by Justice Health and Forensic Mental Health Network must take the steps set out in subclauses (4) and (5) if an affected person in any way refuses or fails to comply with the forensic community treatment order and the officer is of the opinion that:

- (a) Justice Health and Forensic Mental Health Network has taken all reasonable steps to implement the order, and
 - (b) there is a significant risk of deterioration in the mental or physical condition of the affected person.
- (4) The officer must cause the affected person to be informed that any further refusal or failure to comply with the order may result in the person being given treatment in accordance with the forensic community treatment order.
- (5) If there is a further refusal or failure to comply with the order:
 - (a) the officer must cause the affected person to be assessed for the purpose of issuing certificates for the purpose of a transfer of the person under section 55 of the Act to a mental health facility, and
 - (b) the officer may cause the affected person to be given treatment in accordance with the forensic community treatment order, if the officer thinks it appropriate for clinical reasons to do so, and must notify the Tribunal within 2 working days after the treatment is given.

13 Variation or revocation of forensic community treatment orders

- (1) For the purposes of the application of section 65 (2) of the *Mental Health Act 2007* to a forensic community treatment order, an application to vary or revoke an order may also be made by a person authorised by Justice Health and Forensic Mental Health Network.
- (2) For the purposes of the application of section 65 (3) of the *Mental Health Act 2007* to a forensic community treatment order, an application to vary or revoke a forensic community treatment order may also be made if the person subject to the order is released, or proposed to be released, from a correctional centre.
- (3) For the purposes of the application of section 66 of the *Mental Health Act 2007* to a forensic community treatment order, a medical officer authorised by Justice Health and Forensic Mental Health Network may also revoke an order.
- (4) A medical officer who revokes a forensic community treatment order under subclause (3), or a director of community treatment who revokes such an order under section 66 of the *Mental Health Act 2007*, must notify the Tribunal in writing of the revocation within 7 days after the revocation.

Part 4 Miscellaneous

14 Transport of defendants in Local Court proceedings

- (1) For the purposes of section 33 of the Act, the following persons are prescribed as persons who may take a defendant to or from a place:
- (a) if the defendant is on remand or serving a sentence of imprisonment (other than a defendant detained in a detention centre)—a correctional officer or a police officer,
 - (b) if the defendant is a juvenile and is detained in a detention centre—a juvenile justice officer,
 - (c) in any other case—a member of the NSW Health Service, a police officer, a correctional officer, a juvenile justice officer or a person who provides a transport service approved for that purpose by the Secretary.
- (2) In this clause:
- correctional officer** has the same meaning as in the *Crimes (Administration of Sentences) Act 1999*.
- juvenile justice officer** has the same meaning as in the *Children (Detention Centres) Act 1987*.

15 Exchange of information

For the purposes of section 76J (2) (b) of the Act, the following information is prescribed as information to which an information sharing protocol may relate:

- (a) information concerning former forensic patients or correctional patients transferred, or proposed to be transferred, to correctional centres,
- (b) information concerning persons (other than forensic patients and correctional patients) who are, or may be, subject to forensic community treatment orders,
- (c) information concerning persons (other than forensic patients and correctional patients) who were formerly subject to forensic community treatment orders and who have been released from a correctional centre and are subject to community treatment orders,
- (d) information concerning visitors to forensic patients and correctional patients who are reasonably believed to pose a security risk to the good management and order of a correctional centre or mental health facility.

16 Forensic patients

For the purposes of section 42 (b) of the Act, the class of persons prescribed is the class of persons consisting of persons each of whom, whether before or after the commencement of this clause:

- (a) is found not guilty of an offence under the law of Norfolk Island by reason of mental illness or mental impairment, and
- (b) is transferred to and being held in the custody of this State, under a law of this State that provides for the person to be held in the custody of this State, pursuant to an order made or warrant issued following the finding.

17 Savings

Any act, matter or thing that, immediately before the repeal of the *Mental Health (Forensic Provisions) Regulation 2009*, had effect under that Regulation continues to have effect under this Regulation.