

# Mental Health (Forensic Provisions) Regulation 2017

[2017-480]



New South Wales

## Status Information

### Currency of version

Repealed version for 4 February 2019 to 26 March 2021 (accessed 23 December 2024 at 6:15)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **Repeal**

This Regulation was repealed by sec 167(b) of the [Mental Health and Cognitive Impairment Forensic Provisions Act 2020 No 12](#) with effect from 27.3.2021.

### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

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New South Wales

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# Mental Health (Forensic Provisions) Regulation 2017



New South Wales

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This Regulation replaces the *Mental Health (Forensic Provisions) Regulation 2009*, which is repealed on 1 September 2017 by section 10 (2) of the *Subordinate Legislation Act 1989*.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

#### **5A Adjournments**

The Tribunal may be constituted by the President or a Deputy President for the purpose of adjourning a review under 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.

#### **7A Submissions to Tribunal by victims**

- (1) This clause applies to submissions by victims of forensic patients under section 74A of the Act.
- (2) A victim may make a submission about any of the following:
  - (a) the forensic patient's behaviour, both past and present, and the impact of the behaviour on the victim and the victim's family,
  - (b) the risk posed by the forensic patient to the victim, the victim's family or any other person,
  - (c) the impact on the victim and the victim's family if leave is granted to the forensic patient or the patient is released, whether unconditionally or subject to proposed conditions,
  - (d) the conditions that should be imposed on a grant of leave to or release of a forensic patient, including non-association and place restriction conditions.
- (3) A submission may be made in writing or orally to the Tribunal.
- (4) The Tribunal must acknowledge the receipt of a submission.
- (5) A victim who makes a submission to the Tribunal may, with the leave of the Tribunal, raise questions that the Tribunal considers to be appropriate for discussion during the proceedings.

#### **7B Disclosure of victims' submissions by Tribunal**

- (1) The Tribunal may disclose an edited version of a submission by a victim of a forensic patient to the legal representative of a forensic patient if:
  - (a) the Tribunal determines under section 74A of the Act that a submission is not to be disclosed to a forensic patient, and
  - (b) the Tribunal is of the opinion that information contained in the submission should be provided to the legal representative of the patient for reasons of procedural fairness, and
  - (c) the legal representative has agreed to the non-disclosure conditions in subclause (2).
- (2) The non-disclosure conditions are as follows:

- (a) the legal representative must only disclose to the forensic patient general information about the submission of a kind specified by the Tribunal,
  - (b) in the case of information about proposed place restrictions, general information about the areas the proposed restrictions apply to and the reasons for the victim's proposal may be disclosed, but not information identifying the location of the residence or place of work of the victim or the victim's family or friends or of other places frequented by the victim,
  - (c) the edited submission must not be disclosed to the forensic patient without the consent of the Tribunal.
- (3) If the forensic patient is not represented by a legal representative, the Tribunal may appoint an Australian legal practitioner to act on behalf of the forensic patient for the purposes of this clause.
- (4) Before disclosing an edited version of a submission, the Tribunal must:
- (a) inform the victim of the proposed disclosure, and
  - (b) give the victim an opportunity to withdraw or amend the submission, and
  - (c) if the edited version is not created by the victim, provide the victim with a copy of the edited version and give the victim an opportunity to request amendments to the edited version, and
  - (d) if the edited version is created by the victim, give the victim an opportunity to amend the edited version.
- (5) The edited version may be created by the victim or the Tribunal.

### **7C Representation of victims**

- (1) A nominated representative of a victim may represent the victim at a hearing of the Tribunal at which the victim is entitled to make a submission.
- (2) A nominated representative is not eligible to represent a victim at a hearing unless:
  - (a) the representative has completed and lodged with the Tribunal a statutory declaration, in the form approved by the Secretary, as to confidentiality, and
  - (b) the victim has authorised the representative in writing to attend the hearing and represent the victim.
- (3) A nominated representative is not to be the legal representative of a victim unless leave is granted by the Tribunal.
- (4) A nominated representative of a victim who represents a victim at a hearing may do anything at the hearing that the victim may do.

#### **7D Disclosure by Tribunal to treatment team**

- (1) The Tribunal may disclose all or part of, or a summary of, a submission received from a victim of a forensic patient to a person who is treating the forensic patient or a delegate of the person.
- (2) The submission must be disclosed on the condition that the person to whom the information is disclosed does not disclose the information to the forensic patient.

### **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 3A Victims Register**

### **13A Information to be in Victims Register**

For the purposes of section 76L (2) (b) of the Act, the following matters are to be included in the Victims Register in relation to each registered victim of a forensic patient:

- (a) particulars of the information used to verify the identity of a victim,
- (b) the name of the forensic patient,
- (c) whether the victim has obtained, or is the subject of, or is seeking to obtain, a non association condition or place restriction condition under section 76 of the Act,
- (d) whether or not the victim made a victim impact statement to a court in proceedings against the forensic patient,
- (e) any dates relating to the events the subject of court proceedings against the forensic patient or a victim of the forensic patient that may cause distress to a victim if Tribunal hearings were held on those dates,
- (f) the name and contact details of an emergency contact for the victim if the victim is unavailable when notice is given under clause 13D (1) (d) or (2).

### **13B Verification of victim's identity and status before registration**

- (1) A person must not be registered on the Victims Register unless the Commissioner of Victims Rights is satisfied as to the person's identity and that the person is a primary victim or a family victim of an act of violence committed by a forensic patient.
- (2) A person requesting registration on the Victims Register as a victim of a forensic patient must provide the following to the Commissioner:

- (a) at least 1 of the person's current Australian driver licence, current passport or birth certificate,
- (b) the name of the forensic patient,
- (c) if available, at least 1 of the following documents, to enable verification that the person is a victim:
  - (i) the case number of the Director of Public Prosecutions for each offence committed by the forensic patient that is relevant to the victim,
  - (ii) the hearing number for the Tribunal,
  - (iii) the police event number for each offence committed by the forensic patient that is relevant to the victim,
  - (iv) the claim number for any assistance claimed by the person under the *Victims Rights and Support Act 2013*.
- (3) The Commissioner may require a person who applies to be registered on the Victims Register, or any other person, to execute undertakings or other documents relating to disclosure or publication of information contained in the Register.
- (4) The Commissioner may request a victim to provide further information for the purposes of the Victims Register.
- (5) A failure by the victim to provide information under subclause (2) or further information under subclause (4) does not prevent the registration of a victim on the Victims Register.
- (6) The Commissioner must notify a registered victim in writing when the victim is registered on the Victims Register.

### **13C Administration of Victims Register**

- (1) The Commissioner of Victims Rights may remove the name of a victim from the Victims Register if:
  - (a) the forensic patient ceases to be a forensic patient or is no longer a forensic patient for reasons related to acts committed by the forensic patient that are relevant to the victim, or
  - (b) all limiting terms imposed on the forensic patient for acts committed by the forensic patient that are relevant to the victim have expired, or
  - (c) an extension order or interim extension order is in force in respect of the forensic patient.
- (2) The Commissioner of Victims Rights must give notice in writing of removal from the

Victims Register to a person whose name is removed from the register.

### **13D Notifications by Commissioner of Victims Rights**

- (1) The Commissioner of Victims Rights must give notice in writing of the following to a registered victim of a forensic patient:
  - (a) particulars of proposed orders to be sought in relation to the forensic patient at a hearing of the Tribunal, and the location of that hearing,
  - (b) particulars of the reasons for decisions by the Tribunal about an application for a grant of leave to, or the release of, the forensic patient,
  - (c) if there is an application for an extension order or interim extension order or an extension order or interim extension order is made in relation to the forensic patient,
  - (d) any safety concerns relating to the victim known to the Commissioner in relation to a hearing before the Tribunal or arising out of a breach of an order relating to the forensic patient,
  - (e) if the forensic patient is reclassified as an involuntary patient.
- (2) Despite subclause (1), notice may be given by telephone if the Commissioner is of the opinion that there is a risk of immediate harm to the victim or another person.
- (3) The Commissioner must give notice in writing to the victim of a matter within 1 working day after notice is given of the matter to the victim by telephone.
- (4) Notice under this clause must be given in a timely manner.

**Note—**

Section 6A of the [Victims Rights and Support Act 2013](#) applies the Charter of rights of victims of crime to victims of forensic patients making submissions to the Tribunal. In particular, that section requires victims to be notified in a timely way of the release of or granting of leave to a forensic patient.

### **13E Disclosure of information to Tribunal**

The Commissioner of Victims Rights may, with the consent of the victim, disclose to the Tribunal information contained in the Victims Register and other information relating to the victim.

### **13F Publication of information in Victims Register**

- (1) A registered victim or any other person must not publish any information contained in the Victims Register.

Maximum penalty: 10 penalty units.

- (2) This clause does not apply if the Tribunal or a court consents to or orders the

publication or the information is publicly available.

- (3) In this clause, **publish** means disseminate or provide access to 1 or more persons by means of the internet, radio, television or other media.

### **13G Notice in writing**

A notice in writing under this Part may be given to a victim by any of the following methods:

- (a) by personal delivery to the victim,
- (b) by post to the address specified by the victim for the service of documents of that kind,
- (c) in the case of a victim who has not specified an address for service—by post to the residential or business address of the person last known to the person serving the document,
- (d) by email to an email address specified by the victim for the service of documents of that kind.

## **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) (Repealed)
  - (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) (Repealed)

### **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.