

# Justice Health NSW Procedure

## Forensic Community Treatment Order

Issue Date: 5 March 2025



# Forensic Community Treatment Order

**Procedure Number** 6.013

**Procedure Function** Continuum of Care

**Issue Date** 5 March 2025

**Next Review Date** 5 March 2028

**Risk Rating** High

**Summary** The purpose of this procedure is to describe a consistent set of obligations and responsibilities for the treating team for initiating, managing, breaching, varying, and revoking a FCTO.

**Responsible Officer** General Manager Custodial Mental Health

**Applies to**

- ☐ Administration Centres
- ☒ Community Sites and programs
- ☒ Health Centres - Adult Correctional Centres or Police Cells
- ☐ Health Centres - Youth Justice Centres
- ☒ Long Bay Hospital
- ☐ Forensic Hospital

**Other:**

**CM Reference** PROJH/6.013

**Change summary** Changed administration officer group email to [REDACTED] and updated links

**Authorised by** Service Director, Custodial Mental Health

## Revision History

#	Issue Date	Number and Name	Change Summary
1	November 2010	Procedure – Forensic Community Treatment Orders	New procedure
2	July 2020	6.013 Forensic Community Treatment Orders	Updated as per changes in the Mental Health Act (2007)
3	May 2023	6.013 Forensic Community Treatment Order	Inclusion of a new role of FCTO Administration Officer and more prescriptive guide. Added checklists.
4	November 2023	6.013 Forensic Community Treatment Order	Changes to monitoring FCTO to CTO variance processes. Inclusion of applications and Hearing outcomes forwarded to the Forensic Mental Health Systems Manager
5	March 2025	6.013 Forensic Community Treatment Order	Changed administration officer group email to [REDACTED] and updated links

## PRINT WARNING

Printed copies of this document, or parts thereof, must not be relied on as a current reference document.

Always refer to the electronic copy for the latest version.

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## 2. Preface

A Forensic Community Treatment Order (FCTO) is a legal order made by the Mental Health Review Tribunal (the Tribunal). It sets out the terms under which a person must accept medication and therapy, counselling, management, rehabilitation, and other services. It is implemented by the Justice Health and Forensic Mental Health Network (Justice Health NSW), a mental health facility or other agency as prescribed by the regulations that has developed an appropriate treatment plan for the individual person. FCTOs can be made for any period up to 12 months. It is possible for a person to have consecutive FCTOs.

A FCTO authorises compulsory care for a person not in a mental health facility. Most people subject to a FCTO are detained in a correctional centre and are provided treatment under the FCTO by Justice Health NSW. If a person breaches a FCTO by not complying with the conditions of the order, the person may be taken to a mental health facility (usually Long Bay Hospital) and given appropriate treatment, including medication.

A FCTO continues to operate once a patient has been released, Justice Health NSW remain legally responsible for the patient's care for the duration of the order. However, it is necessary to apply to the Tribunal to have the FCTO varied to transfer management of the person's treatment to a community mental health service on release.

## 3. Procedure Content

### 3.1 Application Process

- 3.1.1 The consideration for the need of a FCTO for patients housed at a designated Custodial Mental Health (CMH) Hub (Long Bay Hospital Mental Health Unit (MHU), Mental Health Screening Units (MHSU), Hamden POD, 3 Wing and 13 Wing) must be discussed as part of the patient's ward round review or case review.
- 3.1.2 The consideration for the need of a FCTO for patients in ambulatory centres will be considered between the CMH treating team managing this patient during a Psychiatrist Clinic.
- 3.1.3 The treating team should discuss the planned FCTO application with the patient and record this discussion in the patient's Justice Health electronic Health Services (JHeHS) health record.
- 3.1.4 The Psychiatric Case Manager (the Psychiatric Case Manager is the clinician who will be managing the patient alongside the Psychiatrist) completes an [Application for a Forensic Community Treatment Order](#) and [FCTO Treatment Plan](#) in collaboration with the patient.
- 3.1.5 The [Application for a Forensic Community Treatment Order](#) and [FCTO Treatment Plan](#) must include the following:
  - Brief background of the patient's history and Psychiatric Case Manager's contact with the patient.
  - An opinion on the efficacy of the current, or any previous CTO or FCTO.
  - An opinion as to how the FCTO will benefit the person as the least restrictive, safe, and effective care option.
  - Details of the treatment plan, including conditions placed on the patient and Justice Health NSW in respect of delivering safe and effective care. The [FCTO Treatment Plan](#) must at a minimum outline the following requirements:
    - The reviews by the Psychiatric Case Manager/delegate which must be no longer than monthly.
    - The reviews by the treating Psychiatrist which must be no longer than every 3 months.

- Reviews can be more frequent due to clinical need.
  - Pathology to be completed at least 6 monthly for the purpose of monitoring of medication levels and associated medical side effects of psychotropic medications. For patients on clozapine, pathology tests are more frequent and must be completed as per [6.053 Guidelines for the Management of Patients on Clozapine](#).
  - Current medication – this must be written in plain language so that it is understood by the patient. For example: 10mg Olanzapine tablet at night.
  - Conditions of the treatment plan that Justice Health NSW is prepared to enforce.
  - Other interventions required to address issues such as substance use.
  - Psychosocial issues including family and social supports.
  - Plans for the patient's ongoing care and future treatment and management.
  - Plans to address or referrals for vocational/rehabilitation goals.
  - Observations in relation to patient's symptoms.
  - Ensure that the documents are signed by the relevant persons.
- 3.1.6 For patients that are waiting for their FCTO hearing, a medical hold should be considered and completed for the patient to remain in the centre until the hearing has been attended. This is to ensure that the patient remains in the centre under the originating team. Please be aware that patients on medical holds may be moved to a different centre to attend court and will be returned to the originating centre as per the medical hold. Refer to Policy [1.263 Medical Holds](#).
- 3.1.7 A PAS waitlist with reference to an FCTO application in the note section is to be made. This is to ensure if the patient were to be transferred then the receiving clinician will be aware of the FCTO application and liaise with the team who have made the application.
- 3.1.8 When the FCTO is part of the discharge planning process from a Custodial Mental Health hub area, the originating treating team must liaise with the receiving treating.
- 3.1.9 It is the responsibility of the originating treating team to complete any reports required and be present at the Tribunal hearing.
- 3.1.10 The originating treating team must notify the allocated CMH Administration Officer (AO) via [REDACTED] that the patient has moved to a different health centre and/or if there is a change in the treating team.
- 3.1.11 If the originating team have begun discussion of applying for an FCTO but not yet made an application for an FCTO prior to patient transfer this must be handed over to the receiving treatment team. The receiving team are then to assess the patient and document the decision as to whether to proceed with an FCTO application.
- 3.1.12 During the completion of the [Application for a Forensic Community Treatment Order](#) and [FCTO Treatment Plan](#), the Psychiatric Case Manager/delegate must check to see if the patient would like to provide a written submission in relation to the FCTO application. The Psychiatric Case Manager must forward any written submission from the patient to [REDACTED]
- 3.1.13 The Psychiatric Case Manager must check that the [Application for a Forensic Community Treatment Order](#) and [FCTO Treatment Plan](#) are signed and completed correctly and forwarded to [REDACTED]. The Psychiatric Case Manager must document this completion into JHeHS progress notes.
- 3.1.14 On receipt of the [Application for a Forensic Community Treatment Order](#) and [FCTO Treatment Plan](#) and any other written submissions to [JHFMHN](#) [REDACTED]. The AO must forward the documentation to the Tribunal via [REDACTED] and Forensic Mental Health Systems Manager (FMHSM) via the [REDACTED]
- 3.1.15 3.1.15 The AO will upload all application paperwork to JHeHS under 4.1 Mental Health Legal section. On receipt of the application paperwork, the Tribunal will arrange a hearing date and time and confirm the details with the allocated AO via [REDACTED]



- 3.1.16 The AO will inform the treating team via email of the hearing details and book the relevant room/equipment for the relevant date and create a calendar meeting. This email will also outline the documentation required and the relevant timeframes for completion.
- 3.1.17 The Psychiatric Case Manager/delegate must complete with the patient the [Nomination the Designated Carer\(s\) form](#) and upload the completed into JHeHS under the 4.1 Mental Health Legal section. This form must be uploaded to JHeHS even if the patient refuses to complete the form or does not want to nominate a designated carer.
- 3.1.18 The treating Psychiatrist or delegate must complete a Psychiatry Report outlining the following and forward to [REDACTED] **at least ten working days before the hearing:**
- Patient's legal status, sentence, and parole details.
  - Brief background of the patient's history and events leading to the current hospitalisation or the current FCTO application, including co-morbid conditions, for example substance abuse, intellectual disability, and other relevant conditions.
  - History of treatment, including previous admissions and treatment under previous CTOs or FCTOs.
  - The patient's response to treatment and willingness to continue with treatment.
  - Opinion as to current diagnosis and how the FCTO will benefit the patient, and whether it is the least restrictive form of care.
  - Psychosocial issues, including family or social supports.
  - Current medication and any recent or relevant changes to treatment.
  - Plans for the patient's ongoing care and future treatment and management.
  - Proposed length of order.
  - Opinion on the patient's best placement, giving regard to the different levels of access to mental health care across the custodial setting as well as factors relating to security, access to vocational activity, and access to visits.
  - The patient's attitude towards the application.
  - Viewpoint of family and carers concerning the FCTO.
  - Confirmation that the contents of the report have been discussed with the patient.
- 3.1.19 The Psychiatric Case Manager/delegate must collate the following documentation and forward to [REDACTED] **at least 10 working days before the hearing:**
- any available relevant health background information, e.g., discharge summaries, reports.
  - recent clinical entries from JHeHS.
  - any relevant information from Corrective Services NSW, SORC or the Parole Authority.
- 3.1.20 Additional reports can be provided by health care professionals involved in the care of the patient, for example, primary health nurses or psychologist. Any additional reports must be forward to [REDACTED] **at least ten working days before the hearing.** These reports should include:
- Brief background of the patient's history and author's contact with the patient.
  - An opinion as to how the FCTO will benefit the patient.
  - Other information as relevant to the health professional's involvement with the patient.
  - Confirmation that contents of the report have been discussed with the patient and his or her viewpoint obtained.
- 3.1.21 On receipt of the relevant report and documentation, the AO must forward the documentation to the Tribunal via [REDACTED] and [REDACTED] **at least five working days before hearing.**

- 3.1.22 The AO must upload all reports to JHeHS under 4.1 Mental Health Legal section.
- 3.1.23 If a FCTO application is urgent, the NUM1/2 must phone the Tribunal on 9816 5955 once the AO has sent the relevant documentation and ask to speak to a Senior Forensic Officer to confirm receipt and reason for urgent hearing request. The NUM 1/2 will document this communication in JHeHS progress notes and forward an email to [REDACTED] to ensure that the AO is up to date with any changes or issues.
- 3.1.24 For more information, please see the Tribunal's [FCTO Information Kit](#) and the [Mental Health Act 2007 NSW](#).

For noting:

Reports should:

- Be written in plain and simple English and avoid, where possible, the use of medical or technical jargon.
- Provide, as appropriate, a full and frank description of the patient's circumstances (see note above).
- Avoid comments that could be interpreted as judgmental.
- Address the specific issues that the Mental Health and Cognitive Impairment Forensic Provisions Act 2020 (MHCIFPA) requires the Tribunal to consider.
- Clearly identify the sources of the author's information. These sources may be direct personal observations of the author of the report or may be information obtained from file notes or other professionals involved in the person's care.

Medical/Health Records

The law allows patients and their representatives to inspect or have access to the patient's medical records (s156 MHA). However, it is possible to ask the Tribunal to order that the medical records not be disclosed. This might happen, for example, where the treating medical practitioner believes that disclosure of the information may be harmful.

If you consider that there is a need for a preliminary hearing to discuss the disclosure of medical records, you should phone the Tribunal to arrange this well before the scheduled hearing.

### 3.2 Pre-Hearing Process

- 3.2.1 The Tribunal will forward the *Notice of Hearing and Confirmation of Service of Notice* form via [REDACTED] and the AO will then forward this notice to the Psychiatric Case Manager/delegate.
- 3.2.2 The Psychiatric Case Manager/delegate must:
- Provide and discuss with the patient the *Notice of Hearing* letter and a copy of the [FCTO Treatment Plan](#).
  - Inform the patient of the hearing date and time.
  - Ascertain from the patient if they wish to be represented by Legal Services – this information must be added to the *Confirmation of Service Notice form*.



- Be prepared to answer questions from the patient about the nature and effect of the FCTO and be able to explain the right to have the order varied, revoked, or to appeal against a decision of the Tribunal.
  - Encourage the patient to utilise the Mental Health Advocacy Service for further information (phone 9745 4277).
  - Inform the patient's designated carer or principal care provider, relatives and other key people of the hearing and encourage them to attend, unless the patient objects.
  - Confirm with the patient whether they would like their designated carers or principal care provider, relatives, or other key people to attend and obtain the names and telephone numbers.
  - Document the discussion in the patient's JHeHS health record.
  - Forward the *Confirmation of Service of Notice* form and any names and telephone numbers of people that the patient would like to attend the hearing to [REDACTED] and [REDACTED]
  - Inform CSNSW of the date and time for the hearing to ensure CSNSW are aware of this requirement.
- 3.2.3 On receipt of the Confirmation of Service of Notice form and information relating to patient family or carers attending the hearing, the AO must forward to [REDACTED]
- 3.2.4 The AO must upload this form to JHeHS under 4.1 Mental Health Legal section.
- 3.2.5 Where the patient refuses to physically accept the documents, the Psychiatric Case Manager/delegate is to leave a copy of the documents in the patient's cell and inform them that they are served with an application for a FCTO.
- 3.2.6 Where a patient requires an interpreter for the hearing the Psychiatric Case Manager/delegate is to inform the AO via [REDACTED]. The Tribunal will organise an interpreter.
- 3.2.7 The AO must arrange access to the Correctional Centre for the Tribunal members or interpreters where the hearings will take place.
- 3.2.8 Where the hearing is via videoconferencing the AO must forward all relevant attendees with the relevant dial-in details.

### 3.3 Day of Hearing

- 3.3.1 The Psychiatric Case Manager/delegate must liaise with the relevant CSNSW Functional Manager to arrange that the patient attends the hearing.
- 3.3.2 Where the hearing is occurring on-site, a clinic staff member collects the Tribunal members from the gate and escort them to the relevant room.
- 3.3.3 Where an on-site interpreter is required or a family or carer is present, a clinic staff member collects them from the gate and escort them to the relevant room.
- 3.3.4 Staff and anyone else that have prepared a written report for the Tribunal must be available to attend the hearing in person or via videoconferencing at the designated time.
- 3.3.5 The Tribunal or treating team may communicate with each other regarding changes in timing of the hearing on the day such as hearings running early or late, or access issues.
- 3.3.6 During the Hearing, the Tribunal members may refer to the reports provided, therefore, the report authors should participate in the review of the patient's clinical presentation and answer any questions arising.
- 3.3.7 The Tribunal may make a FCTO for an affected person if the Tribunal determines that:
- (a) no other care of a less restrictive kind, that is consistent with safe and effective care, is appropriate and reasonably available to the person and that the affected person would benefit from the order as the least restrictive alternative consistent with safe and effective care, and

- (b) a declared mental health facility has an appropriate treatment plan for the affected person and is capable of implementing it, and
- (c) if the affected person has been previously diagnosed as suffering from a mental illness, the affected person has a previous history of refusing to accept appropriate treatment.
- 3.3.8 The outcome of the FCTO application will be made by the Tribunal members at the hearing, with the President informing the patient and treating team.
- 3.3.9 Where the Tribunal make a FCTO, the Psychiatric Case Manager/delegate should:
- complete a [Medical Hold - Forensic Community Treatment Order form \(JUS200.100\)](#) and forward to [REDACTED] and provide a copy to the Manager of Security (CSNSW).
  - Upload the [Medical Hold - Forensic Community Treatment Order form \(JUS200.100\)](#) to the patients JHeHS health record.
- 3.3.10 Where the Tribunal make a FCTO, the Psychiatric Case Manager/delegate must:
- Create a FCTO PAS Alert on JHeHS as per the process outlined in the [Clinical Applications Business Process - Management of FCTO Alert](#).
  - Complete a Health Problem Notification Form (HPNF) stating that the patient is on a medical hold for a FCTO, requires ongoing mental health review, and requires placement in a correctional centre that has on-site mental health cover. The HPNF must also outline signs CSNSW are to look out for when the patient is unwell and report to Justice Health NSW staff.
  - Update the patient's PAS waitlists with the Psychiatric Case Manager/delegate and Psychiatrist as per the Treatment Plan review timeframes – the required time frames should be documented in PAS.
  - The Psychiatric Case Manager/delegate will document the outcome and discussions of the hearing in the patients JHeHS health record.

### 3.4 Post Hearing

- 3.4.1 Where the Tribunal makes a FCTO, they will forward a copy of the order and treatment plan to [REDACTED] the AO will then forward the order and treatment plan to the Psychiatric Case Manager and email to [REDACTED] and upload to JHeHS 4.1 Mental health legal section
- 3.4.2 The Psychiatric Case Manager/delegate should provide a copy of the FCTO order and treatment plan to the patient and discuss the outlined requirements. This discussion must be documented in the patient JHeHS health record.

### 3.5 Appealing Against a FCTO

- 3.5.1 As per the Tribunal's [FCTO Information Kit](#) where a patient wishes to appeal against a FCTO:
- 3.5.1.1 The affected person may appeal to the Supreme Court ([s 67 MHA](#)) if:
- The term of the FCTO exceeds 6 months or no term is specified on the order, against the duration of the order; or
  - On any question of law or fact arising from the order or its making.
- 3.5.1.2 If the person is a forensic or correctional patient, they may appeal by leave of the Supreme Court ([s 150 MHCIFPA](#)):
- On a question of law, or
  - On any other question.
- 3.5.1.2 Affected persons considering an appeal should be referred to Legal Aid NSW for further information on 1300 888 529.

### 3.6 FCTO Case Management

- 3.6.1 The ongoing management of the patient as per their [FCTO Treatment Plan](#) must be implemented by the treating team where the patient is located.
- 3.6.2 The treating team is responsible for ensuring the patient is reviewed as outlined in the [FCTO Treatment Plan](#) and that any interventions are implemented.
- 3.6.3 Mental health reviews as per the Treatment Plan are required to be captured through the Nurse, Allied Health and Psychiatrist PAS Waitlists. The PAS waitlist priority level allocated must correlate with the timeframes outlined in the [FCTO Treatment Plan](#).
- 3.6.4 Where the patient is transferred from one treating team to another, the receiving treating team must receive a handover. This handover must include:
  - Date the FCTO was made and will expire.
  - When the next FCTO review is due.
  - Date of last psychiatrist review, date of last Psychiatric Case Manager/delegate review.
  - Any issues or concerns with the patient management under the FCTO.
  - Any known signs that patient is becoming unwell.
  - The handover must be documented in JHeHS progress including details in a verbal handover and emails.

### 3.7 Breaches of a FCTO

- 3.7.1 The legislation provides certain powers for authorised agencies to enforce FCTOs and to deal with breaches by the affected person. A breach occurs when a person fails to comply with one of the obligations in the approved [FCTO treatment plan](#). There are several steps to the breach process, which could lead to the affected person being admitted to a mental health facility.
- 3.7.2 Justice Health NSW is responsible for breaching a patient who is housed in a correctional centre.
- 3.7.3 A technical breach of a FCTO does not automatically result in breach proceedings. The process commences and continues at the discretion of the treating team.
- 3.7.4 The steps set out in clause 19 of the [MHCIFP Regulation 2021](#) regarding a FCTO breach are as follows:
  - If the affected person refuses or fails to comply with the order, the medical officer (treating Psychiatrist) authorised by Justice Health NSW should take all reasonable steps to implement the order and inform the affected person that they are not complying with the conditions of the order and remind the person of the possible consequences.
  - If the person still does not comply with the order, the treating Psychiatrist needs to decide if there is significant risk of deterioration of the person's mental or physical condition.
  - The treating Psychiatrist must then ensure that the affected person is informed that if he or she still refuses or fails to comply with the FCTO, the person may be given treatment in accordance with the FCTO.
  - If the affected person still fails to comply, the treating Psychiatrist must cause the affected person to be assessed for the purpose of issuing orders for his or her transfer to a mental health facility pursuant to [s 86 of the MHCIFPA](#).
  - Completion of a [s 86 MHCIFPA](#) order should be completed as per normal CMH processes.
  - If it is appropriate to do so, for clinical reasons, the treating Psychiatrist may cause the affected person to be given treatment in accordance with the FCTO. If this occurs, the officer must notify the Tribunal in writing within two business days after the treatment is given.

### 3.8 Tribunal Review of FCTOs



- 3.8.1 The Tribunal must review the case of a person subject to a FCTO who is detained in a correctional centre no later than 3 months after the FCTO is made and at least once every 6 months during the term of the order. The review period may be extended up to 12 months at the request of the patient or their carer, or on the Tribunal's own motion ([s 77 MHCIFPA](#)).
- 3.8.2 The Tribunal will advise Justice Health NSW of the hearing date via [REDACTED], the AO will forward the hearing information to the treating team and outline relevant documentation required.
- 3.8.3 The treating team must complete the following and forward to the [REDACTED] at least ten working days before the hearing.:
- A psychiatric report outlining whether the FCTO should continue and why (one page recommended); and
  - A copy of the clinical notes since:
    - The date on which the FCTO was made; or
    - The last review of the FCTO.
- 3.8.4 The AO will forward the received paperwork to the Tribunal via [REDACTED] and to the [REDACTED] at least five working days before hearing.
- 3.8.5 The AO will upload the relevant reports to JHeHS section 4.1 Mental Health Legal section.
- 3.8.6 The Psychiatric Case Manager/delegate must advise the patient that the FCTO will be reviewed, and ask the person if they wish to:
- Obtain legal advice before the review hearing.
  - Participate in the review hearing.
  - Be legally represented at the hearing.
- 3.8.7 If the patient wishes to obtain legal advice or representation, they should contact Legal Aid NSW for further information through LawAccess on 1300 888 529 or via their prison phone account.
- 3.8.8 If neither the treating team nor the patient wishes to participate in the review hearing, the Tribunal will ordinarily arrange for the review to be conducted in the absence of the patient which is called 'conducted on the papers.' However, the Tribunal may decide to conduct the hearing before a three-member panel and/or with parties in attendance, if considered appropriate.
- 3.8.9 Where a hearing is not conducted on the papers the treating team must attend the hearing with the patient. The process outlined in the Day of Hearing section, points 3.3.1-3.3.10 above should be followed.
- 3.8.10 Where a patient has recently been transferred to a new location then the originating treating team will discuss with the receiving treating team as to which team will complete the psychiatrist report and/or be present at the hearing. This will be determined, and consideration given whether the receiving team has had adequate time to familiarise themselves with the patients and their care treatment needs.
- 3.8.11 The originating treating team must notify the allocated CMH Administration Officer (AO) via [REDACTED] that the patient has moved to a different health centre and/or if there is a change in the treating team.

### 3.9 Variation of FCTO

- 3.9.1 The Tribunal can vary a FCTO at any time on its own motion or based on an application. However, an application may only be made if:
- There has been substantial or material change in the circumstances surrounding the making of the order: [s65\(3\) MHA](#); or
  - Relevant information not available when the order was made has become available [s65\(3\) MHA](#); or
  - The person is released or proposed to be released from a correctional centre: [clause 20\(2\) MHCIFP Regulation 2021](#)

- 3.9.2 An application may only be made by:
- The affected person
  - The Psychiatric Case Manager/delegate implementing the order
  - A person authorised by Justice Health NSW
  - A person who could have applied for the current order

### **3.10 Release Planning**

- 3.10.1 A FCTO continues to operate once a patient has left custody, therefore, it is imperative that the Psychiatric Case Manager/delegate apply to the Tribunal to have the FCTO varied to a CTO.
- 3.10.2 Patients in a CMH Hub area and subject to a FCTO should be referred to the Community Transitions Team (CTT) to assist with the patient's transition from custody to the community.
- 3.10.3 The Psychiatric Case Manager/delegate or CTT clinician must start liaising with the receiving mental health community team around one month prior to the patient's release date. The patient must have a confirmed address to commence this transfer of care process.
- 3.10.4 Where a person is being released following a Parole Board decision, the treating team should ensure that the patient's parole officer is aware of the person's mental health needs, and the requirements and time needed to ensure that the necessary supports are in place should the person be granted parole.
- 3.10.5 The Psychiatric Care Manager/delegate or CTT clinician will continue to engage with the receiving CMHT until the patient is discharged and provides a transfer of care handover and document in the patient's JHeHS health record.
- 3.10.6 The Forensic Mental Health Systems Manager will monitor the FCTO to CTO variation processes.
- 3.10.7 Where the patient's FCTO has not been varied and the Tribunal has not received a CTO application and treatment plan from the CMHT within 2 to 4 weeks of release the Forensic Mental Health Systems Manager notifies the Custodial Mental Health team via the regular Current FCTOs excel report.
- 3.10.8 The CNC Forensic Patients will investigate as to the current community address and which LHD CMHT the patient is currently or will be under.
- 3.10.9 The CNC Forensic Patients will contact the LHD CMHT to ask them to follow up on the development of the application and treatment plan to ensure that the Tribunal receives these as soon as practicable. The CNC Forensic Patient will continue to liaise with the CMHT until this is completed.
- 3.10.10 Where the CMHT determine on assessment of the patient that they are actively engaging in their care and deem that a CTO is not required, the CNC Forensic Patients must commence a FCTO revocation in consultation with the Clinical Director Custodial Mental Health as per section 3.13 below. All verbal or email handover/correspondence/application processes must be documented in the patients progress notes in JHeHS.
- 3.10.11 The process of revocation of an FCTO is followed as per section 3.13.1-3.13.9.
- 3.10.12 Where issues arise during consultation between Justice Health NSW and the CMHT treating teams and these issues cannot be resolved at a local level, the CNC Forensic patients must escalate to the Clinical Director Custodial Mental Health. The Clinical Director Custodial Mental Health must escalate these concerns to the LHD Community Director in consultation with the FMH Partnership Coordinator. Prior to the escalate to the LHD Community Director, more local resolution processes must be attempted through the NUM or Nurse Manager Custodial Mental Health and their equivalent positions at the LHD.

### **3.11 Variation – FCTO to CTO in Custody**



- 3.11.1 The Psychiatric Case Manager/delegate or CTT clinician must make a referral to the relevant CMHT via the State-wide Mental Health helpline (MHTAL) telephone 1800 011 511 and forward all relevant paperwork.
- 3.11.2 Once this referral has been accepted by the MHTAL the Psychiatric Case Manager/delegate or CTT clinician must contact the CMHT Team Leader to inform them of the referral and provide a comprehensive verbal handover. The Psychiatric Case Manager/delegate or CTT clinician must discuss the need for a variance of the FCTO to CTO and help in developing the CTO treatment plan.
- 3.11.3 Once there is agreement for the FCTO variation the Psychiatric Case Manager/delegate or CTT Clinician must complete the [Application for Variation or Revocation of a FCTO](#) form and [Notice of Application and Hearing to Vary a FCTO](#) form and forward to [REDACTED]
- 3.11.4 The AO will forward the received paperwork to the Tribunal via [REDACTED] and upload to JHeHS 4.1 *Mental Health legal* section.
- 3.11.5 Where the need to vary a patients FCTO whilst in custody the treating team must complete the following and forward to [REDACTED]
- Community Treatment Plan received from the other LHD CMHT
  - One page Report in support of the application (Justice Health NSW report).
- 3.11.6 The AO will forward the received paperwork to the Tribunal via [REDACTED] and [REDACTED] and upload to JHeHS 4.1 Mental Health Legal section.
- 3.11.7 The Psychiatric Case Manager/delegate or CTT clinician must advise the patient that the FCTO will be reviewed, and ask the person if they wish to:
- Obtain legal advice before the review hearing.
  - Participate in the review hearing; and
  - Be legally represented at the hearing.
- 3.11.8 If the person concerned wishes to obtain legal advice or representation, they should contact Legal Aid NSW for further information through LawAccess on 1300 888 529 or via their prison phone account.
- 3.11.9 If neither the treating team nor the person concerned wishes to participate in the review hearing, the Tribunal will ordinarily arrange for the review to be conducted on the papers. However, the Tribunal may decide to conduct the hearing before a three-member panel and/or with parties in attendance, if considered appropriate. The review hearing can be conducted on the papers.
- 3.11.10 Where a hearing is not conducted on the papers the treating team must attend the hearing with the patient. The process outlined in the Day of Hearing section, points 3.3.1 -3.3.10 above should be followed.
- 3.11.11 Where a person is being released following a Parole Board decision, the treating team should ensure that the patient's parole officer is aware of the person's mental health needs, and the requirements and time needed to ensure that the necessary supports are in place should the person be granted parole. The Parole Board's review date, and its determination should be communicated to the Tribunal so that the Tribunal is able to co-ordinate its hearing times.
- 3.11.12 The Psychiatric Case Manager/delegate or CTT clinician will continue to engage with the receiving CMHT until the patient is discharged and provides a transfer of care handover and document in the patients JHeHS health record.

### 3.12 Variation – Unplanned Release from Custody

- 3.12.1 Where the patient's discharge is unplanned due to court processes or diversion to community mental health care, the Psychiatric Case Manager/delegate must make every effort to vary the patients FCTO on release.

- 3.12.2 The Psychiatric Case Manager/delegate must make a referral to the relevant CMHT via the State-wide Mental Health helpline (MHTAL) telephone 1800 011 511 and forward all relevant paperwork.
- 3.12.3 Once this referral has been accepted by the MHTAL the Psychiatric Case Manager/delegate must contact the CMHT Team Leader to inform them of the referral and provide a comprehensive verbal handover. The Psychiatric Case Manager/delegate must discuss the need for a variance of the FCTO to CTO and offer assistance in developing the CTO treatment plan.
- 3.12.4 Once there is agreement for the FCTO variation the Psychiatric Case Manager/delegate must complete the [Application for Variation or Revocation of a FCTO](#) form and [Notice of Application and Hearing to Vary a FCTO](#) form and forward to [REDACTED]
- 3.12.5 The AO will forward the received paperwork to the Tribunal via [REDACTED] and [REDACTED] and upload to JHeHS 4.1 Mental Health Legal section
- 3.12.6 The Forensic Mental Health Systems Manager will monitor the FCTO to CTO variation processes.
- 3.12.7 Where the patient's FCTO has not been varied and the Tribunal has not received a CTO application and treatment plan from the CMHT within 2 to 4 weeks of release the Forensic Mental Health Systems Manager notifies the Custodial Mental Health team via the regular Current FCTOs excel report.
- 3.12.8 The CNC Forensic Patients will contact the LHD CMHT to ask them to follow up on the development of the application and treatment plan to ensure that the Tribunal receives these as soon as practicable. The CNC Forensic Patient will continue to liaise with the CMHT until this is completed.
- 3.12.9 Where the CMHT determine on assessment of the patient that they are actively engaging in their care and deem that a CTO is not required, the CNC Forensic Patients must commence a FCTO revocation in consultation with the Clinical Director Custodial Mental Health as per section 3.13.1-3.13.9 below. All verbal or email handover/correspondence/application processes must be documented in the patients progress notes in JHeHS.
- 3.12.10 The process of revocation of an FCTO is followed as per section 3.13.1-3.13.9.
- 3.12.11 Where issues arise during consultation between Justice Health NSW and the CMHT treating teams and these issues cannot be resolved at a local level, the CNC Forensic patients must escalate to the Clinical Director Custodial Mental Health. The Clinical Director Custodial Mental Health must escalate these concerns to the LHD Community Director in consultation with the FMH Partnership Coordinator. Prior to the escalate to the LHD Community Director, more local resolution processes must be attempted through the NUM or Nurse Manager Custodial Mental Health and their equivalent positions at the LHD.

### 3.13 Revocation of FCTO

- 3.13.1 Where a patient is released and a FCTO has not been varied, Justice Health NSW remain legally responsible for the patients care for the duration of the order. Where a patient has been identified as being released without variation to their FCTO occurring Justice Health NSW must communicate with the LHD as outlined above in section 3.12.
- 3.13.2 If all attempts to vary the FCTO have failed, and it has been agreed that the patient is lost to care or the FCTO is unable to be varied the CNC Forensic Patients must inform the Clinical Director, Service Director CMH and Nurse Manager via email.
- 3.13.3 The CNC Forensic Patients should collaborate closely with the CMHT and ensure the following steps have been taken prior to making the final decision to revoke the FCTO:
- Rigorous attempts have been made to follow-up and engage the patient subject to the FCTO in the community.
  - Consultation has occurred with identified family and/or carers.

- Engagement and agreement from the relevant LHD about the decision to revoke the FCTO has been made; and
  - If an agreement cannot be reached, then the treating team is to escalate the situation to their line managers.
- 3.13.4 The steps to follow up with the patient in the community, consultation with family and/or carers and discussions with the CMHT and the rationale for revocation of a FCTO must be documented in the patient's progress notes in JHeHS.
- 3.13.5 Once the steps above have been completed CNC Forensic Patients must complete the [Notification of Revocation of Forensic Community Treatment Order Form](#) outlining the relevant information and forward to [REDACTED]
- 3.13.6 The Forensic Mental Health Systems Manager will ensure an Authorised Justice Health NSW Officers (NSW Clinical Director Forensic Mental Health, Clinical Director Custodial Mental Health, Clinical Director Community Forensic Mental Health Services) reviews and signs the [Notice of Revocation](#) form.
- 3.13.7 Once the [Notification of Revocation of Forensic Community Treatment Order Form](#) is signed the Forensic Mental Health Systems Manager will forward the completed form to the Tribunal via [REDACTED] and will upload to JHeHS 4.1 *Mental Health Legal* section.
- 3.13.8 An FCTO can be revoked under section 65 of the NSW Mental Health Act 2007. This is where an appeal has been made to the court or the Tribunal and revocation has been granted.
- 3.13.9 For more information, please see the Tribunal's [FCTO Information Kit](#) and the [Mental Health Act 2007 NSW](#).

## 4. Definitions

### Delegate

A delegate is a mental health professional that performs the duties of the psychiatric case manager regarding an FCTO. This delegate can be part of the originating treating team or the mental health clinician in the receiving facility that is now providing care for the patient. This can be any clinician, not necessarily a registered nurse. This can be an AIN, EN, EEN, or any allied health staff member. This is so that there is continuing compliance with the Act without the limitations of restricting duties to one clinician who has sole responsibility. The psychiatric case manager may be a NUM for example who delegates tasks to a staff member such as completing the Notice of Service form. This staff member is considered a delegate. The term delegate is an agreed language between health service and the Tribunal.

### Must

Indicates a mandatory action to be complied with.

### Psychiatric Case Manager

A psychiatric case manager is a mental health professional. Their responsibility is to coordinate with the psychiatrist and the FCTO admin officer in applying for an FCTO, managing a patient on an FCTO, providing a handover of a patient that is being transferred to a different centre, and varying or revoking a FCTO on release.

### Should

Indicates a recommended action to be complied with unless there are sound reasons for taking a different course of action.

## 5. Related documents

Legislations	<a href="#"><i>Mental Health Act 2007</i></a> (NSW) <a href="#"><i>Mental Health and Cognitive Impairment Forensic Provisions Act 2020</i></a> (NSW) <a href="#"><i>Mental Health and Cognitive Impairment Forensic Provisions Regulation 2021</i></a> (NSW)
Justice Health NSW Policies, Guidelines and Procedures	<a href="#"><i>1.230 Health Care Interpreter Services – Culturally and Linguistically Diverse and d/Deaf Patients.</i></a> <a href="#"><i>1.263 Medical Holds</i></a> <a href="#"><i>1.434 Working with Carers and Families</i></a> <a href="#"><i>6.53 Guidelines for the Management of Patients on Clozapine</i></a> <a href="#"><i>Clinical Applications Business Process - Management of FCTO Alert</i></a>
Justice Health NSW Forms	<a href="#"><i>FCTO Treatment Plan</i></a> <a href="#"><i>JUS200.100 Medical Hold - Forensic Community Treatment Order Form</i></a> <a href="#"><i>JUS025.114 Notification of Revocation of Forensic Community Treatment Order Form</i></a> <a href="#"><i>Nomination of Designated Carer(s) form</i></a>
NSW Health Policy Directives and Guidelines	<a href="#"><i>PD2012 050 Forensic Mental Health Services</i></a>
Other documents and resources	<a href="#"><i>Application for a Forensic Community Treatment Order</i></a> <a href="#"><i>Application for Variation or Revocation of a FCTO</i></a> <a href="#"><i>Notice of Application and Hearing to Vary a FCTO</i></a> <a href="#"><i>Notification of Revocation of Forensic Community Treatment Order</i></a>



## 6. Appendix

The checklist below is an optional tool for clinicians to use to assist in ensuring all procedural requirements have been completed

### 6.1 Application for an FCTO – Case Manager/Delegate Checklist

Application for an FCTO – Case Manager/Delegate Checklist	
Action	Completed
Discussion of reason for applying or continuation of an FCTO documented into JHeHS.	
Application for a Forensic Community Treatment Order and <a href="#">FCTO Treatment Plan</a> completed and emailed to [REDACTED].	
Complete with the patient the <a href="#">Nomination of Designated Carer(s)</a> form and upload into JHeHS.	
Collate documentation in preparation for the hearing and forward to [REDACTED]	
Provide and discuss with the patient the Notice of Hearing form and a copy of the <a href="#">FCTO Treatment Plan</a> and document into JHeHS.	
Confirmation of Service Notice form completed and forwarded to [REDACTED]	
Psychiatrist report has been completed and forwarded to [REDACTED]	
Inform the patient's designated carer or principal care provider, relatives and other key people of the hearing and encourage them to attend, unless the patient objects, document in JHeHS and forward their details to [REDACTED]	
<b>If the FCTO has been granted</b>	
Medical hold completed forwarded to [REDACTED]; PAS alert created and form uploaded into JHeHS.	
HPNF updated.	
FCTO PAS alert created.	
PAS Waitlist for psychiatrist and MH nurse need to be update to state patient is on an FCTO and frequency of reviews.	



## 6.2 Managing a patient on an FCTO - Case Manager/Delegate Checklist

Managing a patient on an FCTO - Case Manager/Delegate Checklist	
Action	Completed
Psychiatric Case Manager/delegate review the patient according to the <a href="#">FCTO Treatment Plan</a> .	
Psychiatric Case Manager/delegate to book appointments for the psychiatrist to review the patient according to the <a href="#">FCTO Treatment Plan</a> .	
Psychiatric Case Manager/delegate maintain the waitlists for the reviews – the notes must mention that the patient is on an FCTO.	
<b>FCTO review hearings</b>	
Psychiatric Case Manager/delegate to ensure that the psychiatrist can review the patient in a timely manner before the FCTO review hearing to complete a psychiatric report.	
Psychiatrist report has been completed and forwarded to [REDACTED]	
Ask the patient if they wish to attend the hearing, document in JHeHS and forward to [REDACTED]	
If the patient wishes to attend the hearing then ask if they would like legal representation and family or carers present at the hearing, and forward these details to [REDACTED].	
<b>Transferring a patient on an FCTO</b>	
<p>Email the mental health clinician working at the receiving centre a handover of the patient and details of the FCTO.</p> <ul style="list-style-type: none"> <li>• Date the FCTO started and expires</li> <li>• Date of next FCTO review</li> <li>• Last psychiatric case manager/delegate and psychiatrist review dates</li> <li>• Any issues that arose while the patient was managed under the FCTO</li> <li>• Any known signs that patient is becoming unwell.</li> </ul>	

### 6.3 Varying and Revoking an FCTO - Case Manager/Delegate Checklist

Varying and Revoking an FCTO - Case Manager/Delegate Checklist	
Action	Completed
Patients housed in the CMH Hub area and subject to a FCTO should be referred to the Community Transitions Team (CTT)	
If the patient has a confirmed address, liaise with the receiving CMHT around one month prior to the patient's release date.	
Make a referral to the relevant CMHT via the State-wide Mental Health helpline (MHTAL) telephone 1800 011 511 and forward all relevant paperwork.	
Contact the CMHT Team Leader to inform them of the referral and provide a comprehensive verbal handover, discuss the need for a variance of the FCTO to CTO and offer assistance in developing the CTO treatment plan.	
Complete the <a href="#">Application for Variation or Revocation of a FCTO</a> form and <a href="#">Notice of Application and Hearing to Vary a FCTO</a> form and forward to [REDACTED]	
<b>Issues with variance – patient in the community</b>	
Contact the CMHT team leader to discuss the need for the application and treatment plan to be forwarded to the Tribunal as soon as practicable. Continue to liaise with the CMHT until this is completed. All communication must be documented in the patient's progress notes in JHeHS.	
End PAS alert.	