

# Justice Health NSW Procedure

## Managing Forensic Patients in Correctional Centres

Issue Date: 24 July 2024



# Managing Forensic Patients in Correctional Centres

**Procedure Number** 6.014

**Procedure Function** Continuum of Care

**Issue Date** 24 July 2024

**Next Review Date** 24 July 2027

**Risk Rating** High

**Summary** Provide direction and guidance to Justice Health and Forensic Mental Health Network (the Network) staff to ensure the effective care coordination of forensic patients that are managed within the correctional environment.

**Responsible Officer** Clinical Nurse Consultant Recovery and Reintegration - 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

**CM Reference** PROJH/6014

**Change summary** Amendments of new MHCIFP Act 2020, expanded details of CNC-FP role. Added role of administrative officer. Updated MHRT procedure in line with Long Bay, MRRC and remote centres.

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

## Revision History

#	Issue Date	Number and Name	Change Summary
1	July 2020	6.014 Management of Forensic Patients in Correctional Centres	First issue
2	July 2022	6.014 Management of Forensic Patients in Correctional Centres	Nil change
3	July 2024	6.014 Management of Forensic Patients in Correctional Centres	Amendments of new MHCIFP Act 2020, expanded details of CNC role including title name. Added role of Administrative officer Updated MHRT procedure in lieu with Long Bay, MRRC and remote centres

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## 1. Preface

The purpose of this procedure is to outline the processes that are relevant to the care of forensic patients in custody who have a mental illness and are Justice Health and the Forensic Mental Health Network (Justice Health NSW) agency lead. The aim is to provide direction and guidance to Justice Health NSW staff to ensure the effective care coordination of forensic patients.

A forensic patient is a person who the court has:

- Found unfit to be tried for an offence and ordered to be detained in a correctional centre, mental health facility or other place.
- Nominated a limiting term and ordered to be detained in a prison, hospital, or other place.
- Found the act proven but the person not criminally responsible by reason of mental health impairment or cognitive impairment.

In accord with the Ministry of Health Policy Directive [PD2012 050 Forensic Mental Health Services](#), all forensic patients must have a named consultant psychiatrist, who is responsible for the provision of psychiatric services for the patient and a named clinician who is responsible for the coordination of care for the patient.

The Recovery and Reintegration Clinical Nurse Consultant (CNC) is the care coordinator of forensic patients experiencing mental illness and managed under Justice Health NSW lead agency. This position, in conjunction with the treating team, is responsible for the coordination of care, treatment and other services provided for the forensic patient. For further information on lead agency allocation, see [1.192 Primary Agency for Forensic Patients in Custody \(Adults\)](#).

### Legislation

The [Mental Health Act 2007](#) (hereafter, the [MHA](#)) and the [Mental Health and Cognitive Impairment Forensic Provisions Act 2020](#) (hereafter, the [MHCIFP Act](#)) provide for the detention, care and treatment of forensic patients. The [MHCIFP Act](#) creates the categories of forensic patients.

The [MHCIFP Act](#) contains a series of principles pertinent to the care of forensic patients, including:

- a) to protect the safety of members of the public,
- b) to provide for the care, treatment, and control of persons subject to criminal proceedings who have a mental health impairment or cognitive impairment,
- c) to facilitate the care, treatment, and control of any of those persons in correctional centres or detention centres through community treatment orders,
- d) to facilitate the provision of hospital care or care in the community through community treatment orders for any of those persons who require involuntary treatment,
- e) to give an opportunity for those persons to have access to appropriate care,
- f) to protect the safety of victims of forensic patients and acknowledge the harm done to victims.

### Mental Health Review Tribunal

The Mental Health Review Tribunal (hereafter, the Tribunal) is a specialist quasi-judicial body constituted under the MHA. The Forensic Division of the Tribunal has a statutory role in making decisions relating to forensic patients. Guidance on the Tribunal, refer to the website at [www.mhrt.nsw.gov.au](#), or by speaking to a Senior Forensic Officer on [REDACTED]

Sections of the MHCIFP Act which are most relevant to the Tribunal hearings are:

- section 78(a) – first hearing after being given limiting term

- section 78 (b) – first fitness hearing
- section 78(c) – first hearing/review after APNCR verdict
- section 78(d) – regular reviews of forensic patients

For further information on Tribunal proceedings, please refer to [Mental Health Review Tribunal - Forensic Procedures \(nsw.gov.au\)](https://www.health.nsw.gov.au/mental-health/review-tribunal-forensic-procedures)

## 2. Procedure Content

### 2.1 Referral

2.1.1 The Recovery and Reintegration Clinical Nurse Consultant (CNC) is the care coordinator of forensic patients with mental illness. This position, in conjunction with the treating team, is responsible for the coordination of care, treatment and other services provided for the forensic patient.

2.1.2 Where a person becomes a forensic patient or when a forensic patient enters custody, the Tribunal notifies the Forensic Mental Health Systems Manager (FMHSM).

2.1.3 The FMHSM in turn, notifies the Clinical Director Custodial Mental Health (CDCMH), Recovery and Reintegration CNC and other relevant delegates of a person's new forensic patient status or a forensic patient entering custody. The FMHSM and treating team receives all police and court related documents from the court, the FMHSM uploads these documents into HPRM and JHeHS in section 4.1 Mental Health Legal section.

2.1.4 All forensic patients are allocated to a primary agency which acts as a provider of services. CSNSW are the primary agency where the primary problem is cognitive impairment, with Justice Health NSW the primary agency when the primary presenting problem is mental health related or due to behavioural and psychological symptoms of dementia (BPSD).

2.1.5 Policy [1.192 Primary Agency for Forensic Patients in Custody \(Adults\)](#) provides guidance in the allocation of primary agency processes.

2.1.6 The Recovery and Reintegration CNC is the care coordinator of forensic patients with mental illness. For patients with BPSD, the FMHSM must refer the patient to the Clinical Nurse Consultant – Older Person's Mental Health Service (OPMHS) as the appointed care coordinator for the forensic patient. Refer to [6.020 Older Person's Mental Health Service](#).

2.1.7 Once the management of the forensic patient is confirmed as Justice Health NSW the Recovery and Reintegration CNC must:

- Review the patient's relevant documentation and confirm the placement of the forensic patient is in accordance with the legal order,
- Complete a PAS Waitlist MRR-HCL-FCNC for initial assessment,
- Liaise with the NUM or CMH Outreach Services team in the patient's location to ensure a psychiatrist is allocated to the patient's care.

2.1.8 Once the management of the forensic patient is confirmed as Justice Health NSW the FMHSM must ensure that the "Risk/Forensic Patient" Alert is entered on PAS with the comments reading either – 'CSNSW primary agency' or 'Justice Health NSW primary agency'.

### 2.2 Assessment

2.2.1 A comprehensive mental health and risk assessment must be completed during the initial assessment by the Recovery and Reintegration CNC and the treating psychiatrist. This is to ensure the patients historical and current mental health issues and risks are identified, strategies are developed in collaboration with the patient and family/carers to manage the identified risks. The patients' strengths should also be identified to assist with managing the identified risks.

2.2.2 The Recovery and Reintegration CNC must provide the forensic patients with the [Information Sheet: Forensic Patients and the Tribunal](#).

2.2.3 A comprehensive mental health and risk assessment will involve clinical assessment and information gathering in the following areas:

- Reason for referral
- History of presenting problems (onset, duration, course, severity)
- Culturally and Linguistically Diverse assessment including parents and carers
- Past psychiatric/mental health history (including past episodes of mental health problems, episodes of care, hospitalisations, Community Treatment orders (CTO)/Forensic CTOs (FCTO), seeing GP, Psychiatrist, or psychology for MH care)
- Legal issues (including next court date, earliest release date, latest release date, protection status, charges, previous gaol experience and previous Juvenile Justice experience, other legal issues such as civil cases)
- Drug and alcohol history (current and past substance use, previous treatments, features of dependence)
- Family medical/mental health history (e.g., mental health, addiction or significant medical issues of close relatives and their experience of illness and care)
- Medical history (medical conditions and treatments, relevant investigations, and results)
- Allergies and adverse drug reactions (includes non-medication allergies)
- Physical appearance (e.g., grooming, posture, clothing, cleanliness,
- Current treatments (include medication details, recently ceased medications and reasons, history of treatments and effectiveness, side-effects, or adverse outcomes).
- Developmental and personal history (family, perinatal and adolescent development, social and intellectual development, recreational, educational and employment history; premorbid personality; abuse and neglect history)
- Current functioning and supports (accommodation issues, financial issues, gambling issues, social, educational, vocational functioning; any rehabilitation needs)
- Activities of Daily Living (such as sleep issues, appetite, exercising, self-care, hygiene)
- Parental status and/or other carer responsibilities (pregnancy issues, access to children in shared residence or visits, care responsibilities)
- Mental status examination
- Risk assessment (risks of suicide, deliberate self-harm, harm through misadventure or self-neglect; harm to others, harm from others including exploitation)

2.2.4 The Recovery and Reintegration CNC must develop a Multidisciplinary Care Plan in consultation with the forensic patient.

2.2.5 The details of Multidisciplinary the Care Plan in JHeHS must include:

- Specific actions.
- Who is responsible for a particular action in the plan.
- What is the timeframe for actions to be completed or frequency of ongoing actions.

2.2.6 It is a requirement under [Section 72 of the MHA](#) that patients/consumers treated under the MHA may have, if they wish, a designated carer.

2.2.7 The Recovery and Reintegration CNC must complete a s72 [Nomination of Designated Carer\(s\)](#) form with the Forensic Patient. The completed form or the refusal documented on the form must be uploaded to JHeHS under 4.0 Legal Correspondence.

2.2.8 The Recovery and Reintegration CNC must document the completion of the [Nomination of Designated Carer\(s\)](#) form or reason for refusal to complete in the patient's progress note in JHeHS.

- 2.2.9 It is a requirement under [Section 72A of the MHA](#) to nominate a ‘Principal Care provider’ – an individual who is primarily responsible for providing support or care to the person. A principal care provider of a forensic patient may also be a designated carer of the person.
- 2.2.10 The Recovery and Reintegration CNC must complete a s72A [MHRT Identification of Principal Care Provider form](#) with the Forensic Patient. The completed form or the refusal documented on the form must be uploaded to JHeHS under 4.0 Legal Correspondence.
- 2.2.11 The Recovery and Reintegration CNC must document the completion of the [MHRT Identification of Principal Care Provider form](#) or reason for refusal to complete in the patient’s progress note in JHeHS.
- 2.2.12 Once the patient has given consent to engage with relevant family and carers, the Recovery and Reintegration CNC must contact the individuals and provide an update to care and gain collateral information to assist with the care, treatment, and care planning of the patient.

## 2.3 Interventions

### Recovery and Reintegration CNC Reviews

- 2.3.1 The Recovery and Reintegration CNC has the primary care-coordination responsibility of Justice Health NSW managed forensic patients in consultation with the treating psychiatrist and MDT.
- 2.3.2 The Recovery and Reintegration CNC must engage with the forensic patient regularly and complete mental health and risk assessments review every 4-8 weeks, or more frequently as needed.
- 2.3.3 These reviews should focus on building a therapeutic relationship, discussing forensic matters such as Tribunal reports, discussions around referrals, education to promote fitness and release planning.
- 2.3.4 The Recovery and Reintegration CNC in consultation with the patient must review and update the MDT Care Plan.
- 2.3.5 Post review, the Recovery and Reintegration must complete:
  - Relevant progress notes in JHeHS;
  - Standard Outcome Measures in CHIME;
  - Relevant risk assessments such as HCR-20, STATIC-99, CRAM in consultation with the MDT;
- 2.3.6 Forensic patients who are assessed as acutely unwell or have more complex needs and require more intensive care at a Mental Health Assertive Care Area, referrals must be made as per Procedure 6.139 [Custodial Mental Health Patient Flow Procedure](#).
- 2.3.7 In addition to the referral to a Mental Health Assertive Care Area the Recovery and Reintegration CNC must complete the following:
  - Updated the Health Problem Notification Form (HPNF) as per Policy [1.231 Health Problem Notification Form \(Adults\)](#) to advise CSNSW that the forensic patient is on the waitlist for a Mental Health assertive Care Area (whilst waiting acceptance) and not to be moved from the centre until transfer to an appropriate area.
  - Complete a Medical Hold as per Policy [1.263 Medical Holds](#). This ensures the patient remains at the location providing mental health services until transfer can be facilitated.

### Referrals

- 2.3.8 The Recovery and Reintegration CNC and treating team identify patients’ needs through the ongoing assessment and care planning process. To address the needs that cannot be managed by the treating team, the Recovery and Reintegration CNC and psychiatrist must make referrals to the appropriate Justice Health NSW services, CSNSW support services, and community-based services as listed below.

2.3.9 The treating team can refer the patient to the following Justice Health NSW health services by completing a PAS waitlist service, the treating team is also encouraged to discuss health needs with relevant health staff:

- Primary Care nurses
- General Practitioner (GP)
- Oral Health
- Optometry
- Dermatology
- Physiotherapy
- Drug and Alcohol
- Population health
- Radiology

2.3.10 Patients who would benefit from a non-pharmacological treatment and support, the treating team can refer the patient by completing the [Referral Between CSNSW and Justice Health](#) form to:

- CSNSW Psychology
- Services and Programs Officer (SAPO)
- Aboriginal SAPO
- Chaplaincy services

2.3.11 There are a number of external services that could be considered for patients, these in the (please see further information in relation to these services in the 4. Definitions section):

- Transcultural Mental Health Centre (TMHC) (NSW Health)
- Transcultural Mental Health Line 1800 648 911 (NSW Health)
- Clinical Consultation and Assessment Service 9912 3851 (NSW Health)

### **Psychiatrist Reviews**

2.3.12 The treating psychiatrist must engage with the forensic patient at least every 3 months or more frequently as needed to complete a mental health and risk assessment. The Recovery and Reintegration CNC coordinates the psychiatrist reviews through PAS.

### **Family and Carer Engagement**

2.3.13 The Recovery and Reintegration CNC and treating psychiatrist must engage with the designated carer and other relevant family and carers on a regular basis as determined by them and the patient. This engagement could include:

- Providing an update of the patient's care, treatment, and referrals;
- Ensuring that the patient and his/her family and/or designated carer(s)/principal care provider are involved in ongoing treatment and transfer planning;
- Informing of transfer of care;
- Informing and educating of Tribunal orders made for the patient at Hearings; and
- Coordinating family and carer conferences with the treating team and patient as required.

2.3.14 The Recovery and Reintegration CNC must ensure the nominated Designated Carer(s) and Principal Care provider are discussed with the patient at least annually and the relevant forms completed outlining current advice and nominations. The forms must be uploaded to JHeHS under 4.0 *Legal Correspondence*.

### **Attendance and Advocacy at Forensic Patient Related Committee's**

2.3.15 The Recovery and Reintegration CNC participates in a number of forensic patient related Committees to advocate for the patient and discuss their clinical, discharge planning and legal needs. These committees are:

- Custodial Mental Health (CMH) Forensic Patients and Forensic Community Treatment orders (FCTO) Case Management and NSW Forensic Patient Flow Committee monthly meetings.

- NSW Forensic Patient Flow Committee monthly meeting.
- Forensic Patient Primary Agency Case Conference as required.
- MHRT-Statewide Disability Services (SDS) lead interagency meeting every 6 weeks.

### **Disability Support Pension**

2.3.16 Forensic patients who have been found the Act Proven but Not Criminally Responsible by the court are eligible for the Disability Support Pension (DSP) if they are an Australian Citizen or have an eligible visa. The Recovery and Reintegration CNC must liaise with the Services and Programs Officer (SAPO) to ensure an application has been submitted to Services NSW.

2.3.17 To assist the SAPO in the DSP application the Recovery and Reintegration CNC must:

- Organise for the treating psychiatrist to complete a letter of support providing medical evidence which includes:
  - diagnosed disability or medical conditions.
  - past, current, and planned treatment; and
  - how the condition impacts the patient day to day.
- Complete the [Customer in psychiatric confinement \(SA379\)](#) form.

### **National Disability Insurance Scheme (NDIS)**

2.3.18 For patients experiencing a psychosocial disability, the Recovery and Reintegration CNC must discuss with the treating team the patient's eligibility to the NDIS Scheme.

2.3.19 Where a patient has been determined to be eligible the Recovery and Reintegration CNC must:

- Check to see if patient is a NDIS participant, refer to [Flowchart How to check if a patient is a NDIS participant](#).
- Provide education on NDIS and complete with the patient the [JUS020.050 National Disability Insurance Scheme \(NDIS\) Consent Form](#).
- Complete the NDIS application and approval process, refer to [NDIS Application Process for Custodial Mental Health staff](#).
- Follow the guidance outlined in Procedure [6.140 Custodial Mental Health Assertive Care NDIS Procedure](#) to make an application and the process for approval.

### **Forensic Community Treatment Order**

2.3.20 Where a forensic patient has been assessed as requiring a FCTO, the Recovery and Reintegration CNC and treating psychiatrist must follow the guidance through procedure 6.013 [Forensic Community Treatment Order](#).

2.3.21 In respect of forensic patients, the Tribunal may make a FCTO for:

- Forensic patient who is to be transferred to a correctional centre or other place
- Forensic patient ordered to be conditionally or unconditionally released.

2.3.22 The Recovery and Reintegration CNC assumes the role of Case Manager and coordinates the forensic patients care as per the Treatment Plan actions and strategies.

### **MHRT Coordination**

#### **Prior to a Hearing**

2.3.23 The Recovery and Reintegration CNC coordinates all MHRT requirements for forensic patients - generally held every six months or as required for the individual patient.

2.3.24 Prior to the hearing the Recovery and Reintegration CNC and treating psychiatrist must discuss relevant clinical and risk information and determine the intended plan in consultation with the patient.

2.3.25 The Recovery and Reintegration CNC must complete a [Notice of Intent](#) (NOI) form and forward via email to the Tribunal Senior Forensic Officer [REDACTED] at least **6 weeks** before the hearing date.

2.3.26 The treating team can make the following applications on the Notice of Intent, which include:

- Transfer of a forensic patient from one place of detention to another or remain in a particular correction centre;
- Transfer of a forensic patient to the Forensic Hospital (FH) or a medium secure unit (MSU);
- Escorted day leave; and
- Conditional or Unconditional release.

2.3.27 Where the treating team intends to apply for a variation to a forensic patient's current order (including applications for leave and conditional or unconditional release) the treating team must complete a validated risk assessment and management process and include in the Tribunal Report.

2.3.28 In the case of an applications for release, an independent forensic psychiatrist risk assessment is mandated in addition to the treating teams risk assessment and report. The Recovery and Reintegration CNC must refer the forensic patient to the NSW Community Forensic Mental Health Service (CFMHS) via the Intake Officer on 9700 2223 to request and to provide an independent assessment and report.

2.3.29 Where the person is unfit to stand trial, the treating psychiatrist must assess and make a recommendation to the person's fitness to determine if the person is likely, on the balance of probabilities, to become fit to be tried for the offence within 12 months of the date of the court order. Therefore, in addition to the usual report requirements, the Tribunal Report also needs to address the following items:

- Whether the person currently meets the criteria in [R v Presser \[1958\] VR 45](#) and [Kesavarajah v The Queen \(1994\) 181 CLR 230](#) for fitness, having regard to the offence with which the person has been charged, and the likely nature of a trial for that offence;
- Available treatment options.
- Whether the implementation of those options are likely, on the balance of probabilities lead to the person becoming fit to stand trial within 12 months of the date of the court order; and
- Whether the person is suffering from a mental condition for which treatment is available in a mental health facility. If yes to the above, the report should include whether the person objects to being detained in a mental health facility.
- For more information see [Procedures for fitness to be tried \(including special hearings\)](#).

2.3.30 The Recovery and Reintegration CNC and treating psychiatrist must complete and submit a Tribunal Report at least 2 weeks before the scheduled Hearing. The Tribunal Reports should include, at a minimum, the following information:

- A summary of the patient's history:
  - general background
  - diagnosis
  - life, activities, work prior to the index offence
  - past forensic and offending history
  - past psychiatric history
  - any drug and alcohol history
  - Index offence
- Progress since the last Hearing, if relevant
- Current presentation
- Current medication and compliance
- Current risk assessment
- Future plans and recommendations by treating team.

2.3.31 The relevant Tribunal Hearing documentation must be forwarded to the Tribunal within the outlined timeframes via [REDACTED] and FMHSM [REDACTED]

2.3.32 In an event, Patient is confirmed as CSNSW primary agency, Mental Health Treating team is not obliged to complete the report. If a report is requested for the tribunal in regards to their physical health, CSNSW staff must approach the primary health team.

### Hearing Arrangements

2.3.33 The Recovery and Reintegration CNC must ensure the Hearing arrangements have been made, this includes:

- Ensuring all relevant documentation has been forwarded to [REDACTED]
- Discussing the upcoming Hearing with the patient including the reason for the Hearing, the role of each member, and explain that legal aid representation is available under Mental Health Advocacy Service (MHAS) or they can arrange their own legal representation.
- Participating in any treating team meetings with the patient regarding their upcoming Hearing.
- Ensuring that hearing notification is sent by the Tribunal to CSNSW staff and the outreach team of relevant centre.
- Informing the NUM and outreach team about the upcoming hearing and discussing about booking a telehealth room to facilitate the hearing if patient is in remote centers.
- Informing the Tribunal via email that the patient agrees or declines legal representation at the hearing by the free MHAS or has organised their own private legal counsel.
- Ensuring the forensic patient is provided with a copy of the patient letter from the Tribunal regarding the upcoming hearing. This may need to be completed by the local team where the forensic patient is housed.
- Informing the patient's Designated Carer or Principal Care Provider, relatives and other key people of the Hearing and encouraging them to attend, unless the patient objects.
- Confirming the attendance of the Designated Carer or Principal Care Provider, relatives and other key people at the Hearing and notifying the Tribunal.
- Booking the Hearing room with the administration officer (AO) at the correctional centre or assertive care area where the Hearing is in person.
- Ensuring that where a forensic patient or Designated Carer or Principal Care Provider requires an interpreter for the Hearing, this is arranged as per Policy [1.230 Health Care Interpreter Services](#).
- Ensuring that where the Hearing is being held virtually the dial-in details are provided to relevant stakeholders, including the Designated Carer or Principal Care Provider, relatives and other key people via a calendar invite.
- Ensuring the Administration Officer completes a Visitor Notification Form for all people attending a face to face Tribunal Hearing.
- Ensuring a movement order has been completed for forensic patients housed across the Long Bay Correctional Complex or other Correction centre by requesting a movement order to be completed by the patient's Nurse Unit Manager (NUM). This will ensure the forensic patient is transferred to the Long Bay Hospital conference rooms.

### Hearing Day

2.3.34 On the day of the hearing, the Recovery and Reintegration CNC must ensure the following arrangements have been made, this includes:

- Setting up the Hearing room where the Hearing is face to face;

- Ensuring the Tribunal members and family and carers are collected from the gate and escorted to the Hearing Room. The Administration Officer can assist with this.
- Ensuring all relevant stakeholders are aware of Hearing times and location, this may include facilitating communication between all parties where there is delays or changes.
- Attending the hearing in person or via videoconferencing.
- Ensuring that the patient and/or visitors are offered a short debrief by the treating team.

2.3.35 On the day of the hearing, the treating psychiatrist must:

- Ensure they attend the Hearing and provide any relevant clinical information as requested.

2.3.36 On the day of the hearing the Recovery and Reintegration CNC, NUM or delegate may:

- Liaise with the relevant CSNSW Functional Manager to arrange that the patient attends the hearing.
- Where the hearing is occurring on-site, collect the Tribunal members from the gate and escort them to the relevant room.
- Ensure that the patient be allowed to speak privately with their legal representative prior to and after attending the hearing.
- Ensure that the patient and/or visitors should be offered a short debrief by the treating team.
- Document the outcome and discussions of the hearing in the patients JHeHS health record if the Recovery and Reintegration CNC is unable to attend the hearing.

### **Post Hearing**

2.3.37 The Tribunal will provide a copy of the outcome order to [REDACTED] and other delegates. The FMHSM will upload the order and determination to JHeHS 4.1 Mental health legal section. Where the Tribunal does not make any changes to the existing order following a regular review, no new order will be issued.

2.3.38 The Recovery and Reintegration CNC or psychiatrist must provide the patient with a copy of their forensic order and explain and discuss each condition with the patient in terms that the patient can understand.

2.3.39 The Recovery and Reintegration CNC must ensure placement of the forensic patient in accordance with the Tribunal order.

### **2.4 Reintegration**

2.4.1 The Recovery and Reintegration CNC works closely with the treating psychiatrist, patient, Designated Carer/family and external services to facilitate the smooth transition from custody to the most appropriate hospital or community placements under the approval of the Tribunal.

### **Forensic Hospital**

2.4.2 Where the patient is for referral to the Forensic Hospital, the Recovery and Reintegration CNC must be complete the relevant processes as outlined in Policy [1.336 Referral \(Adults and Adolescents\) Forensic Hospital](#).

2.4.3 When a bed becomes available for a forensic patient, the Forensic Hospital NUM informs the treating team and FMHSM via email.

2.4.4 FMHSM advise the treating team, Clinical Director Custodial Mental Health, Custodial Mental Health NUM and Nurse Manager, the Tribunal and CSNSW of the acceptance of referral for transfer by the Forensic Hospital

2.4.5 On receipt of the email the Recovery and Reintegration CNC and psychiatrist provide a comprehensive handover to the Forensic Hospital treating team. The Recovery and

Reintegration CNC must ensure the following documentation is forwarded to the treating team:

- Mental Health Discharge/Transfer Summary Document
- Current medication charts
- Most recent Tribunal reports
- A copy of the signed transfer order
- Court documents
- A copy of Nomination of Designated Carer form
- A verbal handover including the patient's current mental state, attitude towards transfer, requirement for an interpreter etc.

2.4.6 The Recovery and Reintegration CNC must notify the Designated Carer/Principal care provider of the pending transfer of the patient to the Forensic Hospital.

2.4.7 The FMHSM contacts CSNSW to arrange transfer of the patient by completing a Notice of Transfer of Forensic Patient as per [JH&FMHN Policy 1.407 Transport of Forensic Patients from Long Bay Hospital, Metropolitan Remand and Reception Centre and Silverwater Women's Correctional Centre](#).

2.4.8 Transport and transfer of the forensic patient between the Correctional Centre and Forensic Hospital is the responsibility of CSNSW. FMHSM notify the Tribunal via MHRT-Forensic [REDACTED] once CSNSW has agreed the arrangement to facilitate the transfer.

#### Medium or Low Secure Unit

2.4.9 Where it is determined that a forensic patient is suitable for referral to a medium or low secure unit, the Recovery and Reintegration CNC must:

- Ensure a Risk assessment (HCR-20) is completed by the treating psychiatrist.
- Email the intent to refer, supporting evidence such as the risk assessment and a recent or last Tribunal report to the Clinical Director Custodial Mental Health for review and approval.
- If supported by the Clinical Director Custodial Mental Health, forward relevant documentation to the NSW Forensic Patient Flow Committee for presenting patient and discussion.

2.4.10 Where the referral of the forensic patient to a medium or low secure unit is approved at the NSW Forensic Patient Flow Committee, the Recovery and Reintegration CNC must collate and email the FMHSM the patients risk assessment, tribunal reports, medication charts, latest progress notes and any other relevant information.

2.4.11 The FMHSM forwards the relevant documentation to the [REDACTED]

2.4.12 On receipt of the referral a medium secure unit panel (external to Justice Health NSW) is convened, and a date is set to assess the forensic patient. This information is provided to the FMHSM, who in turn informs the treating team.

2.4.13 FMHSM organise the telehealth meeting between MSU and CMH treating team.

2.4.14 Once the assessment process has been completed the outcome or request for additional information will be coordinated through the FMHSM.

2.4.15 FMHSM advise the Tribunal of the acceptance of referral for transfer by the MSU.

2.4.16 The Recovery and Reintegration CNC must complete a Notice of Intent (NOI) form and forward via email to the Tribunal on [REDACTED] and FMHSM [REDACTED]

2.4.17 Where the forensic patient has been accepted to a medium or low secure unit, the Recovery and Reintegration CNC and psychiatrist provide a comprehensive handover to the MSU treating team. The Recovery and Reintegration CNC must ensure the following documentation is forwarded to the treating team:

- Mental Health Discharge/Transfer Summary Document
- Current medication charts
- Most recent Tribunal reports
- A copy of the signed transfer order
- Court documents

- A copy of Nomination of Designated Carer form

2.4.18 A verbal handover including the patient's current mental state, attitude towards transfer, requirement for an interpreter etc.

2.4.19 The transport and transfer of the forensic patient is the responsibility of Justice Health NSW, the Recovery and Reintegration CNC must complete this as per [JH&FMHN Policy 1.407 Transport of Forensic Patients from Long Bay Hospital, Metropolitan Remand and Reception Centre and Silverwater Women's Correctional Centre.](#)

### Conditional Release

2.4.20 Where it is determined that a forensic patient is suitable for consideration for conditional release, the Recovery and Reintegration CNC must:

- Confirm through MDT mental health assessments and risk assessments of the forensic patient's willingness to participate with the local Community Mental Health Team (CMHT).
- Check that the patient has an address in the community including if it under NDIS, Department of Housing; renting or with family/carers.
- Refer the patient via the NSW Mental Health Line on 1800 011 511 to the CMHT.
- Organise the initial case conference between the patient's treating team and CMHT to agree to accept the patient's care. Receive the contact details of the CMHT case manager/community psychiatrist allocated to the forensic patient.
- Refer patient to the Community Forensic Mental Health Service (CFMHS) for an independent risk assessment report through the Intake Line on [REDACTED]
- Complete a Notice of Intent and schedule a Tribunal Hearing to decide on this matter.
- Prepare a Tribunal report that includes a response to the recommendations made by the CFMHS.
- Initiate referrals to the community as identified by the treating team or as recommended in the CFMHS report for example, drug and alcohol service.
- Attend the Tribunal Hearing with the treating psychiatrist and any other MDT member to answer questions from the Tribunal regarding the conditional release order request, and community-based plans.
- If approval is not granted, address any issues identified during the hearing.

2.4.21 Forensic patients who are granted conditional or unconditional release from custody by the Tribunal, the release date will be clearly outlined in the relevant documentation.

2.4.22 Where conditional or unconditional leave has been granted by the Tribunal, the Recovery and Reintegration CNC must:

- Develop with the treating team a Mental Health Discharge Plan in JHeHS for continued care in the community.
- Liaise with community supports for example NDIS or family and carers to arrange pick up from custody to their community address.
- Contact the allocated case manager to refer the patient to the Community Mental Health Team (CMHT).
  - Document the release and the handover in the patient's JHeHS Progress Notes.
  - Inform CFMHS of release from custody if the patient is under CFMHS.
  - Inform the Tribunal of the release date and details of the CMHT if under Conditional Release.

### Unplanned Release from Custody

2.4.23 Forensic Patients that are attending court may have an unexpected release from custody such as a patient found unfit who is released on bail, found Not Guilty at court or has their charges dismissed.

2.4.24 The Recovery and Reintegration CNC should contact the Mental Health Line (1800 011 511) in order to refer the patient to the local community mental health team for

follow-up. The Mental Health Line is a 24/7 state-wide phone service which links people with NSW Health mental health service.

2.4.25 The Recovery and Reintegration CNC must email/fax the Mental Health Line with comprehensive documentation which should include the following information:

- Completed Mental Health Transfer/Discharge Summary Form downloaded from JHeHS.
- Copy of patient's JHEHS progress notes (one week's worth).
- Recent MHRT report
- Completed Application for Variation or Revocation of a Forensic Community Treatment Order (if subject to Forensic Community Treatment Order) as per [6.013 Forensic Community Treatment Order](#).
- Occupational Therapy Functional Assessment (if clinically warranted).
- Police documentation (if available: record of interview at time of arrest, police fact sheets, criminal record history).
- Court documentation (if available: court reports, psychiatric reports, pre-sentence reports, judge's comments).

2.4.26 The handover must be documented in the JHeHS progress notes.

## 2.5 Documentation

2.5.1 All interactions with patients, assessments, interventions, communication of clinical issues/transfer of care via phone or email must be documented in the JHeHS progress notes.

2.5.2 Forms completed as referenced throughout the procedure are stored as per that document's requirements.

## 3. Definitions

### Act Proven but Not Criminally Responsible

A person with a mental illness can initially be found to be unfit and later found to be Act Proven but Not Criminally Responsible (hereafter APNCR). Persons with a mental illness and co-occurring intellectual or developmental disability may be found unfit to be tried and later found APNCR.

A person is found to be APNCR if it is proven that, at the time of the offence, the person was 'labouring under such a defect of reason, from disease of the mind', so as not to know:

- the nature and quality of the act he was doing; and/or,
- that the act was wrong

[\(M'Naghten's case \[1843\] UKHL J16 \(19 June 1843\)\)](#)

### Clinical Consultation and Assessment Service 9912 3851 (NSW Health)

When the patient would benefit from an in-depth cultural assessment to inform treatment and release planning then the Recovery and Reintegration CNC or treating team can consult the Clinical Consultation and Assessment Service on (02) 9912 3851, Monday to Friday between 8:30 am - 5:00 pm.

The appointment occurs virtually between the Transcultural clinician and patient for the purpose of a report for the treating team. To facilitate this appointment, the Recovery and Reintegration CNC must:

- Book an appointment for the patient with the assigned Transcultural clinician from the Clinical Consultation and Assessment Service.
- Book the hearing room with the administration officer (AO) at the correctional centre or assertive care area.
- Email the dial-in details to the Transcultural Clinician for the booked appointment.

- Ensure that the appointment is coordinated on the day by the Recovery and Reintegration CNC or delegate which includes organising for CSNSW to escort to the room and preparing the telehealth facility to receive a call from the Transcultural clinician.

### **Fitness to be Tried**

The legal standards for 'fitness to be tried' are different to the requirements to be found APNCR. Fitness relates to the person's current condition and capacity, which can change.

To be fit to be tried, a person must be able to:

- understand what s/he is charged with
- plead to the charge and to exercise his/her right of challenge to jurors
- understand generally the nature of the proceedings
- follow what is going on in court in a general sense (though not necessarily the purpose of court formalities) and to understand the substantial effect of any evidence given against him/her, and
- decide what defence s/he will rely upon, and make this and his/her version of facts known to the court and his/her counsel. The accused need not, however, understand court procedure and need not have the mental capacity to make an able defence.

(Presser criteria in *R v Presser* [1958] VR 45 at 48).

### **Forensic Patients**

Forensic patients detained in correctional centres are people who are mentally ill and/or have some other form of mental impairment or cognitive impairment and who:

- a) Have been found unfit to be tried for an offence and ordered to be detained in a mental health facility, correctional centre, youth justice centre or other place. A person is not a forensic patient if the person has been found unfit to be tried and has been released on bail.
- b) Is subject to a limiting term and ordered to be detained in a mental health facility, correctional centre, youth justice centre or other place.
- c) Is subject to a special verdict of act proven but not criminally responsible (APNCR) and ordered to be detained in a mental health facility, correctional centre, youth justice centre or other place. Term APNCR formally known as Not Guilty due to Mental Illness (NGMI).

### **Limiting Term**

A 'limiting term' is the best estimate of the sentence of imprisonment the Court would have considered appropriate if a normal trial returned a guilty verdict. A limiting term orders a person who has been found unfit and unlikely to become fit to be detained in a correctional centre, mental health facility or other place for a determined 'term'.

### **Must**

Indicates a mandatory action to be complied with.

### **Should**

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

### **Transcultural Mental Health Centre (TMHC) (NSW Health)**

The Transcultural Mental Health Centre (TMHC) is a state-wide service who work with people from culturally and linguistically diverse communities, health professionals and partner organisations across NSW to support good mental health. These services complement public Mental Health Services (hospital and community) and enhance pathways to care for culturally and linguistically diverse communities.

### **Transcultural Mental Health Line 1800 648 911 (NSW Health)**

When the CNC-FP and treating team require information or support for a mental health concern for a patient of a CALD background, then the Recovery and Reintegration CNC or treating team should consult the Transcultural Mental Health Line on 1800 648 911 from Monday to Friday between 9:00 am and 4:30 pm.

## 4. Related documents

Legislations	<a href="#">Mental Health Act 2007 (NSW)</a> <a href="#">Mental Health and Cognitive Impairment Forensic Provisions Act 2020 (NSW)</a> <a href="#">Mental Health and Cognitive Impairment Forensic Provisions Regulation 2021 (NSW)</a>
Justice Health NSW Policies, Guidelines and Procedures	<a href="#">1.192 Primary Agency for Forensic Patients in Custody (Adults)</a> <a href="#">1.231 Health Problem Notification Form (Adults)</a> <a href="#">1.263 Medical Holds</a> <a href="#">1.336 Referral (Adults and Adolescents) Forensic Hospital</a> <a href="#">1.340 Accommodation – Clinical Recommendations (Adults)</a> <a href="#">1.380 Clinical Care of People Who May Be Suicidal</a> <a href="#">1.395 Transfer and Transport of Patients</a> <a href="#">1.434 Working with family and carers</a> <a href="#">1.439 Community Forensic Mental Health Service Remit of Services</a> <a href="#">4.040 Requesting and Disclosing Health Information</a> <a href="#">6.013 Forensic Community Treatment Orders</a>
Justice Health NSW Forms	<a href="#">JUS005.001 Health Problem Notification Form</a> <a href="#">JUS020.015 Consent to Release Health Information</a> <a href="#">JUS020.083A Consent to Obtain Health Information for Continuation of Care</a> <a href="#">JUS025.136 Profile Form Mental Health And Cognitive Impairment Forensic Provisions Act 2020</a> <a href="#">JUS025.135 Schedule 1 Medical certificate as to examination of inmate</a> <a href="#">Nomination of Designated Carer(s)</a> <a href="#">Referral Between CSNSW and Justice Health</a>
NSW Health Policy Directives and Guidelines	<a href="#">PD2012 050 Forensic Mental Health Services</a> <a href="#">PD2017 033 Physical Health Care within Mental Health Services</a> <a href="#">PD2019 020 Clinical Handover</a> <a href="#">PD2021 039 Mental Health Clinical Documentation</a>

[GL2014\\_002 Mental Health Clinical Documentation Guidelines](#)

Other documents and resources	<u><a href="#">Guideline: The role of MHRT in relation to treatment</a></u> <u><a href="#">Information Sheet: Forensic Patients and the Tribunal</a></u> <u><a href="#">Kesavarajah v The Queen (1994) 181 CLR 230</a></u> <u><a href="#">Legal Aid NSW: Mental health Advocacy Service</a></u> <u><a href="#">MHRT Website</a></u> <u><a href="#">MHRT Forensic Community Treatment Orders</a></u> <u><a href="#">MHRT Forensic Procedures</a></u> <u><a href="#">MHRT Identification of Principal Care Provider form</a></u> <u><a href="#">MHRT Notice of Intent form</a></u> <u><a href="#">M'Naghten's case [1843] UKHL J16 (19 June 1843)</a></u> <u><a href="#">Procedures for fitness to be tried (including special hearings)</a></u> Criminal Trial Courts Bench Book <u><a href="#">R v Presser [1958] VR 45</a></u>
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