

Justice Health NSW Procedure

**Transfers from correctional/detention
centres to mental health facilities under
the *Mental Health and Cognitive
Impairment Forensic Provisions Act
2020***

Issue Date: 29 August 2025

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Transfers from correctional/detention centres to mental health facilities under the MHCIFPA

Procedure Number 6.212

Procedure Function Continuum of Care

Issue Date 29 August 2025

Next Review Date 29 August 2028

Risk Rating High

Summary This procedure outlines the responsibilities of Justice Health and Forensic Mental Health Network (Justice Health NSW) to operate mental health legal orders under the *Mental Health and Cognitive Impairment Forensic Provisions Act 2020* (MHCIFPA).

Responsible Officer Forensic Mental Health Systems Manager

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: This procedure only applies to mental health staff within adult correctional centres, youth justice centres and the Forensic Hospital.

CM Reference PROJH/6.212

Change summary New procedure

Authorised by General Manager Forensic Mental Health

Revision History

#	Issue Date	Number and Name	Change Summary
1	August 2025	6.212 Transfers from correctional/detention centres to mental health facilities under the <i>Mental Health and Cognitive Impairment Forensic Provisions Act 2020</i>	New Procedure

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1. Preface

This procedure outlines the clinical, legal and reporting requirements treating teams are required to undertake when transferring patients in custody to a mental health facility and back under the *Mental Health and Cognitive Impairment Forensic Provisions Act 2020* (MHCIFPA).

2. Procedure Content

2.1 Introduction

An order under section 86(1) of the MHCIFPA enables the person specified in the order to be transferred from a correctional or detention centre to any declared mental health facility in NSW. A section 86 order can be made by the Secretary of NSW Health (or delegate) on the basis of two independent assessments by medical practitioners, one of whom must be a psychiatrist, providing a rationale about the need for admission to a mental health facility under the Act.

Adult males within NSW correctional centres are usually transferred to the Long Bay Hospital or the Forensic Hospital. Adult females and young people are accommodated in the Forensic Hospital.

A person transferred from a correctional or youth detention centre to a mental health facility under this section becomes a 'correctional patient' (the legal term used to distinguish this cohort of patient) on admission to the mental health facility.

2.2 Prior to transfer to a Mental Health Facility – s86 Transfer Orders

- 2.2.1 Two medical practitioners, typically a psychiatry registrar and psychiatrist will assess the person, to establish whether they are a mentally ill person, or suffering from a mental health condition requiring treatment in a mental health facility. These assessments must be completed independently and separately from one another.
- 2.2.2 The Nursing Unit Manager (NUM) will complete the Profile Form and collate all required documents. A complete section 86(1) application must consist of:
 - Profile Form ([JUS025.136](#)).
 - 2 x Schedule 1 Medical Certificate as to Examination of Patient ([JUS025.135](#)) – one completed by a medical practitioner (often a psychiatry registrar) and one completed by a psychiatrist.
 - A typed report for the delegate providing rationale about the need for admission to a mental health facility under the Act ([Section 86 Report Template for the Delegate](#)) must also be completed and accompany the Profile Form and two schedules.
- 2.2.3 The NUM must email the application to the Forensic Mental Health Systems Manager (FMHSM) via the Mental Health Orders email [REDACTED] who will follow the required procedures for delegate review and approval.
- 2.2.4 If the section 86(1) request is approved, the FMHSM must refer the person via the NSW Health Patient Flow Portal (PFP) to the relevant units, dependent on the patient's age and gender, as listed below. All patients with approved section 86(1) orders are added to these waitlists irrespective of whether alternative beds are identified as suitable.
 - Adult Men: Forensic Hospital (FH) Freshwater Unit (FWU) and Long Bay Hospital Mental Health Unit.
 - Adult Women: FH Austinmer Women
 - Adolescents: FH Austinmer Adolescents
- 2.2.5 The FMHSM will concurrently circulate the required legal documentation, including risk documentation for patients flagged for FWU and Austinmer Women's.
- 2.2.6 The relevant treating team (Custodial Mental Health for adults, Adolescent Forensic Mental Health for adolescents) will continually review and update the prioritisation of the patients waitlisted for admission to the FH via the weekly Custodial Mental Health

Patient Flow Committee (adults) and at the FH Leave and Admissions meeting (adults and adolescents).

2.2.7 For urgent admission to the FH, the relevant Clinical Director (Clinical Director Custodial Mental Health (CDCMH) for adults and Clinical Director Adolescent Forensic Mental Health (CDAFMH) for adolescents) must consult with the Clinical Director Forensic Hospital (CDFH) to discuss feasibility/strategies for an admission to occur due to risks within the custodial/youth justice environment.

2.3 Delay in transfer to a Mental Health Facility – s89 Limited Reviews

2.3.1 A person subject to an order for transfer under section 86(1), who has not been transferred to a mental health facility, must be reviewed by the Mental Health Review Tribunal (MHRT) for a limited review under section 89 of the MHCIFPA within 14 days of the order being issued and on a monthly basis until the person is transferred or the order is revoked. See [MHRT Practice Direction - Review of Correctional Patients](#) for further information.

2.3.2 Where there is a delay in transfer, the relevant Clinical Director must provide a report on behalf of the Secretary NSW Health (or delegate). The relevant Clinical Director is as follows:

- Adults: CDCMH or Deputy CDCMH
- Adolescents: CDAFMH

2.3.3 The relevant Clinical Director must complete the section 89 notification, consisting of:

- A typed report for the delegate outlining the person's current mental state, whether there is an ongoing need for transfer to a mental health facility under the Act, the reasons for delay in transfer, and consideration of transfer to a Local Health District hospital for more urgent treatment under section 24 of the *Crimes (Administration of Sentences) Act 1999* (CAS Act) ([Section 89 Report Template for the Delegate](#)).

2.3.4 The completion of the section 89 reports is the responsibility of the CDCMH and/or Deputy CDCMH (adults) or CDAFMH (adolescents), with input from treating psychiatrists as to a person's mental state and ongoing treatment needs.

2.3.5 The relevant Clinical Director must email the application to the FMHSM via the Mental Health Orders email [REDACTED] who will follow the required procedures for delegate review and approval.

2.3.6 The FMHSM must report the delay in transfer (i.e. more than 14 days) via the Incident Management System (IMS+), adhering to the approved timelines and harm score ratings for reporting (see [Appendix 5.1](#)). The FMHSM will be responsible for the IMS+ process, with input from the CDCMH/Deputy CDCMH (adults) or CDAFMH (adolescents) as identified, with oversight of the IMS+ reports and resolution provided by the General Manager Forensic Mental Health.

2.4 Following transfer and requiring longer admission in a Mental Health Facility – s87(2) Notices to Remain in a Mental Health Facility

2.4.1 A person must be transferred back to a correctional centre or detention centre within 7 days following admission to a mental health facility (note: the 7 day period includes weekends and public holidays) unless the Justice Health NSW delegate considers that the person is/remains mentally ill or has a mental health impairment or other condition for which treatment is available in a mental health facility and that other care of an appropriate kind would not be reasonably available to the person in a correctional or detention centre.

2.4.2 The treating team must review the patient and identify whether an admission longer than 7 days is required to treat the patient's acute mental health needs. Once identified, a section 87(2) application must be completed no later than midday of the 7th day following admission. Please note, the Justice Health NSW delegate will not accept a section 87(2) notice which has been completed on the first day of the person's admission to a mental health facility.

2.4.3 The treating psychiatrist/psychiatric registrar must complete the section 87(2)

notification, consisting of:

- Section 87 Notification form ([JUS025.130](#)).
- A typed report for the delegate outlining the person's presentation and the need for continued care and treatment in a mental health facility as the least restrictive alternative.

2.4.4 The treating psychiatrist/psychiatry registrar must email the application to the FMHSM via the Mental Health Orders email [REDACTED] who will follow the required procedures for delegate review and approval.

2.5 Transfers between Mental Health Facilities – s115 and s117

2.5.1 A transfer between mental health facilities involves a discharge from one facility and an admission to the other facility which, by necessity, almost invariably involves a handover of responsibility for care from one team to another. Using a transfer order allows the patient to retain their correctional patient status under the MHCIFPA.

2.5.2 For correctional patients, the most common transfer pathway is between the FH and Long Bay Hospital and vice versa. Correctional patients may be transferred between mental health facilities for clinical, operational or security reasons.

2.5.3 The treating psychiatrist/psychiatry registrar or NUM of the discharging unit must complete the sections 115 and 117 notification, consisting of:

- A copy of the progress note confirming discharge arrangements between the two mental health services, including the proposed date of discharge.

2.5.4 The treating psychiatrist/psychiatry registrar or NUM of the discharging unit must email the application to the FMHSM via the Mental Health Orders email [REDACTED] [REDACTED] who will follow the required procedures for delegate review and approval.

2.6 Discharge from Mental Health Facility – s87(3) transfer from a Mental Health Facility to a correctional or detention centre

2.6.1 A person may be transferred back to a correctional or detention centre at any time if the delegate is satisfied that the person has ceased to be mentally ill or to be suffering from mental health impairment or condition or where treatment of an appropriate kind would be reasonably available to the person in a correctional or detention centre.

2.6.2 An application under this section is only required when the delegate has approved the patient to remain in a mental health facility for longer than the initial 7 days granted (i.e., when a section 87(2) notice has previously been issued).

2.6.3 The treating psychiatrist/psychiatric registrar must complete the section 87(3) notification, consisting of:

- Section 87 Notification form ([JUS025.130](#)).
- A typed report for the delegate outlining the person's presentation and the reasons how appropriate care is available to the person in a correctional or detention centre.

2.6.4 The treating psychiatrist/psychiatry registrar must email the application to the FMHSM via the Mental Health Orders email [REDACTED] [REDACTED] who will follow the required procedures for delegate review and approval.

2.6.5 Note, once the 87(3) is issued, correctional patient status immediately ceases.

2.7 Discharge from Mental Health Facility – Forensic Community Treatment Order

2.7.1 Refer to *Justice Health NSW 6.013 Forensic Community Treatment Order Procedure* for further information.

2.8 Workflow

The workflow for transfers between correctional and detention centres and mental health facilities under the MHCIFPA is in [Appendix 5.2](#).

3. Definitions

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.

Correctional Patient

A person (other than a forensic patient) who has been transferred under the *Mental Health and Cognitive Impairment Forensic Provisions Act 2020* from a correctional or detention centre to a mental health facility while serving a sentence of imprisonment, or while on remand.

Forensic Patient

Has the same meaning as in the *Mental Health and Cognitive Impairment Forensic Provisions Act 2020*, except where the patient solely has a cognitive impairment.

Secretary of NSW Health

The Secretary of NSW Health has a range of overseeing and regulatory responsibilities for the public health system under the *Health Services Act 1997* (NSW), including forensic mental health facilities and mental health services to forensic and/or correctional patients.

Declared Mental Health Facility

An inpatient mental health facility which has been designated as a declared mental health facility under the *Mental Health Act 2007*.

4. Related documents

Legislations	<u>Mental Health and Cognitive Impairment Forensic Provisions Act 2020</u> <u>Mental Health and Cognitive Impairment Forensic Provisions Regulation 2021</u> <u>Mental Health Act 2007</u> <u>Mental Health Regulation 2019</u> <u>Crimes (Administration of Sentences) Act 1999</u> <u>Crimes (Administration of Sentences) Regulation 2014</u>
Justice Health NSW Policies, Guidelines and Procedures	<u>6.013 Forensic Community Treatment Order Procedure</u>
Justice Health NSW Forms	<u>JUS025.135 Schedule 1 - Medical Certificate as to Examination of Inmate</u> <u>JUS025.136 Profile Form</u> <u>JUS025.130 Section 87 Notification</u> <u>Section 86 Report Template</u> <u>Section 89 Report Template</u>

NSW Health Policy
Directives and Guidelines

[PD2012_050_Forensic Mental Health Services](#)

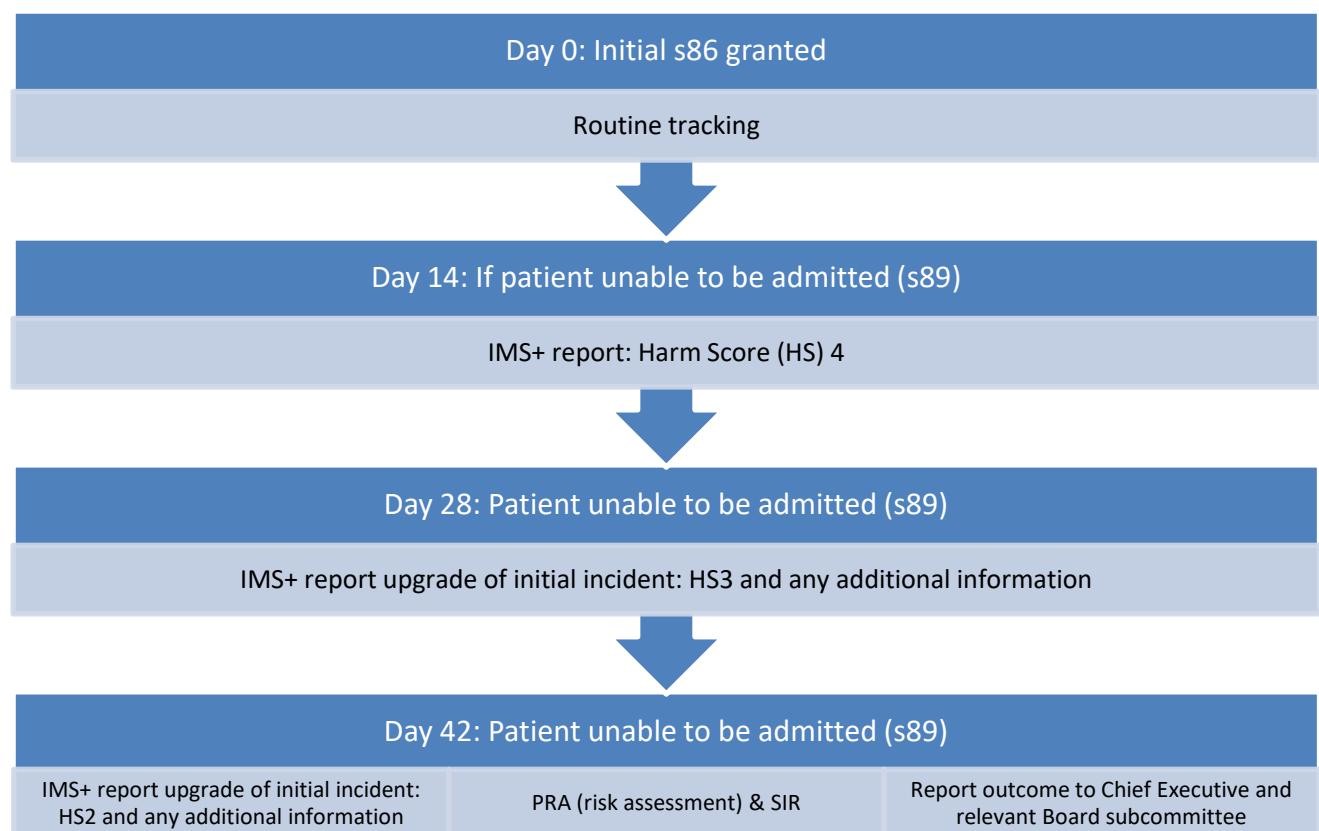
[Public Health Delegations Manual](#)

Other documents and
resources

[MHRT Practice Direction - Review of Correctional Patients](#)
[Security Protocol between NSW Health and CSNSW re FPs and CPs](#)
[Information Sharing Protocol between NSW Health and CSNSW for
FPs and CPs](#)
[Security Protocol between NSW Health and YJNSW \(formerly DHS\)
for FPs and CPs](#)
[Information Sharing Protocol between NSW Health and YJNSW
\(formerly DHS\) for FPs and CPs](#)

5. Appendix

5.1 Section 86 delays in transfer of care IMS+ workflow



5.2 MHCIFPA Transfers Workflow

