



New South Wales

Mental Health (Forensic Provisions) Regulation 2009

under the

Mental Health (Forensic Provisions) Act 1990

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

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Attorney General

Explanatory note

The object of this Regulation is to repeal the *Mental Health (Criminal Procedure) Regulation 2007* and to make a new Regulation as a consequence of the enactment of the *Mental Health Legislation Amendment (Forensic Provisions) Act 2008*.

The new Regulation:

- (a) requires the Mental Health Review Tribunal (the ***Tribunal***) to review the case of a person subject to an order for transfer from a correctional centre to a mental health facility if the person is not transferred after 14 days, and
- (b) requires the Tribunal to be constituted by a President or Deputy President for such a review, and
- (c) prescribes certain psychologists as a class of persons who may provide reports to the Tribunal for the purposes of determining whether to make an order releasing a person, and
- (d) sets out procedures for appeals to the Tribunal against decisions by the Director-General of the Department of Health not to grant a forensic patient or correctional patient leave of absence from a mental health facility, and
- (e) modifies the application of Part 3 of Chapter 3 of the *Mental Health Act 2007* (which relates to community treatment orders) to community treatment orders made in relation to forensic patients, correctional patients, inmates of correctional centres and persons subject to orders for transfer to mental health facilities, and
- (f) prescribes persons who may transport persons to or from places for the purposes of the *Mental Health (Forensic Provisions) Act 1990*, and

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- (g) sets out additional information that may be covered by an information sharing protocol between the Departments of Health, Corrective Services and Juvenile Justice.

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

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

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Clause 1 Mental Health (Forensic Provisions) Regulation 2009

Part 1 Preliminary

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Part 1 Preliminary

1 Name of Regulation

This Regulation is the *Mental Health (Forensic Provisions) Regulation 2009*.

2 Commencement

This Regulation commences on 1 March 2009.

3 Definitions

- (1) In this Regulation:
forensic community treatment order means a community treatment order made under section 67 of the Act.
the Act means the *Mental Health (Forensic Provisions) Act 1990*.
- (2) Words and expressions used in this Regulation have the same meaning as they have in Part 5 of the Act.
- (3) Notes included in this Regulation do not form part of this Regulation.

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Clause 4

Tribunal proceedings

Part 2

Part 2 Tribunal proceedings

4 Limited reviews of person subject to transfer order

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

5 Matters to be considered by Tribunal

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

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

6 Appeals against decisions of Director-General about leave of absence

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

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Part 3 Community treatment orders

Part 3 Community treatment orders

7 Modification of provisions of Mental Health Act 2007

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

8 Applications for forensic community treatment orders

- (1) For the purposes of the application of section 51 of the *Mental Health Act 2007*, an application for a forensic community treatment order may be made by a medical officer authorised by the Chief Executive of Justice Health.
- (2) Subclause (1) is in addition to the persons who may make an application for a community treatment order under that section.
- (3) Sections 52 (3) and 53 (5) of the *Mental Health Act 2007* do not apply to an application for a forensic community treatment order.

9 Treatment plans

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

10 Implementation of forensic community treatment orders

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

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Clause 11

Community treatment orders

Part 3

11 Breaches of forensic community treatment orders

- (1) This clause applies to the following persons who are subject to forensic community treatment orders (the *affected persons*):
 - (a) a forensic patient, correctional patient or other person who is detained in a correctional centre,
 - (b) a person who is subject to an order for transfer from a correctional centre but who has not been transferred.
- (2) Sections 58–64 of the *Mental Health Act 2007* do not apply to an affected person and are replaced by subclauses (3)–(5).
- (3) A medical officer authorised by Justice Health must take the steps set out in subclauses (4) and (5) if an affected person in any way refuses or fails to comply with the forensic community treatment order and the officer is of the opinion that:
 - (a) Justice Health has taken all reasonable steps to implement the order, and
 - (b) there is a significant deterioration in the mental or physical condition of the affected person.
- (4) The officer must cause the affected person to be informed that any further refusal or failure to comply with the order may result in the person being given treatment in accordance with the forensic community treatment order.
- (5) If there is a further refusal or failure to comply with the order:
 - (a) the officer must cause the affected person to be assessed for the purpose of issuing certificates for the purpose of a transfer of the person under section 55 of the Act to a mental health facility, and
 - (b) the officer may cause the affected person to be given treatment in accordance with the forensic community treatment order, if the officer thinks it appropriate for clinical reasons to do so, and must notify the Tribunal within 2 working days after the treatment is given.

12 Variation or revocation of forensic community treatment orders

- (1) For the purposes of the application of section 65 (2) of the *Mental Health Act 2007* to a forensic community treatment order, an application to vary or revoke an order may also be made by a person authorised by Justice Health.
- (2) For the purposes of the application of section 65 (3) of the *Mental Health Act 2007* to a forensic community treatment order, an application to vary or revoke a forensic community treatment order may

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also be made if the person subject to the order is released, or proposed to be released, from a correctional centre.

- (3) For the purposes of the application of section 66 of the *Mental Health Act 2007* to a forensic community treatment order, a medical officer authorised by Justice Health may also revoke an order.
- (4) A medical officer who revokes a forensic community treatment order under subsection (3), or a director of community treatment who revokes such an order under section 66 of the *Mental Health Act 2007*, must notify the Tribunal in writing of the revocation within 7 days of the revocation.

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Clause 13

Miscellaneous

Part 4

Part 4 Miscellaneous

13 Transport of defendants in Local Court proceedings

For the purposes of section 33 of the Act, the following persons are prescribed as persons who may take a defendant to or from a place:

- (a) if the defendant is on remand or serving a sentence of imprisonment (other than a defendant detained in a detention centre)—a correctional officer or other officer employed in the Department of Corrective Services or a police officer,
- (b) if the defendant is a juvenile and is detained in a detention centre—an officer employed in the Department of Juvenile Justice,
- (c) in any other case—a member of staff of the NSW Health Service, a police officer, a correctional officer or other officer employed in the Department of Corrective Services, an officer employed in the Department of Juvenile Justice or a person who provides a transport service approved for that purpose by the Director-General.

14 Exchange of information between Departments of Health, Corrective Services and Juvenile Justice

The following information may be included in an information sharing protocol:

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

15 Repeal of Mental Health (Criminal Procedure) Regulation 2007

The *Mental Health (Criminal Procedure) Regulation 2007* is repealed.