MENTAL HEALTH
(FORENSIC PROVISIONS) ACT 1990
FACT SHEET FOR PATIENTS AND CARERS


THE ACT APPLIES TO FORENSIC PATIENTS, CORRECTIONAL PATIENTS AND PEOPLE ON FORENSIC COMMUNITY TREATMENT ORDERS.

SIGNIFICANT CHANGES HAVE BEEN MADE TO BOTH ACTS AND IT IS IMPORTANT THAT PATIENTS AND CARERS ARE INFORMED OF THESE CHANGES.

WHAT IS THE MENTAL HEALTH (FORENSIC PROVISIONS) ACT?
The Mental Health (Criminal Procedure) Act 1990 has been renamed and revised. It is now known as the Mental Health (Forensic Provisions) Act 1990.

The revised Act deals with the care, treatment, control and release of forensic patients and patients transferred from correctional centres, and with the functions of the Mental Health Review Tribunal.

The main change to the Act is the transfer to the Tribunal of decision making responsibility over forensic patients. The Tribunal will now be able to make orders for the detention, care and treatment of forensic patients, including orders for release.

The revised Act aims to:

- Provide an accountable and transparent system for the care, treatment, detention and release of forensic patients.
- Provide for care and treatment of persons with a mental illness within the prison community, including care in secure mental health facilities and through forensic community treatment orders.
- Provide for the recognition of victims of forensic patients, and provide a formal process for their views to be considered and concerns addressed in relation to leave or release of forensic patients.
- Enhance and support agency cooperation in providing services to persons with a mental illness.

WHY HAS THE MENTAL HEALTH (CRIMINAL PROCEDURE) ACT BEEN AMENDED?
The revised Act results from a review of the NSW Forensic Mental Health Legislation initiated by the NSW Government. This review arose out of a broader review of mental health legislation which commenced in 2004. It was undertaken by the President of the Mental Health Review Tribunal and involved extensive consultations with key stakeholders, victim groups and service providers.

The review found that there was a need to change the decision-making process in forensic patient matters. Under previous legislation, the Tribunal made recommendations about patient care, detention, treatment, leave and release to the Minister for Health or Governor-in-Council. The Government would then decide whether or not to approve the recommendations. The review found this process was out of accord with other systems for care and treatment of forensic patients in Australia and internationally. The review also found that patients, families, carers and victims sought a transparent process to express their views and concerns directly to the decision maker. As a result, the review recommended that decision-making power over forensic patients be transferred to the Mental Health Review Tribunal.

A majority of the recommendations from the review were accepted and have been incorporated into the Mental Health (Forensic Provisions) Act.
**WHAT ARE THE MAIN CHANGES THAT PATIENTS AND CARERS NEED TO KNOW ABOUT?**

**Decision-making powers**
- Decision-making powers over detention and release of forensic patients have been transferred to the Mental Health Review Tribunal. The Tribunal is now able to make orders for the detention, care, treatment and release of forensic patients.
- The Tribunal must consider the protection and safety of both the patient and members of the public when making decisions on forensic patient release, placement and leave.
- The Tribunal can order back to detention conditionally released patients who breach the terms of their release or leave orders.

**Forensic and Correctional patients**
- A forensic patient is a person who detained following a finding that the person is unfit to be tried or detained or released subject to conditions following a finding that the person is not guilty by reason of mental illness.
- The amended Act creates a new category of patients called correctional patients. These patients are inmates serving a sentence in a correctional centre or on remand who are transferred to a mental health facility to treat their mental illness or mental condition.
- Correctional patients were previously referred to as “transferee forensic patients”.
- The Commissioner of Corrective Services may allow a correctional patient to be absent on leave from a mental health facility for a period of time and subject to terms and conditions set by the Commissioner. The Tribunal can recommend the granting of such leave.
- A correctional patient who is detained in a mental health facility may ask the Tribunal to make an order that they be transferred to a correctional centre.

**Forensic Community Treatment Orders**
- The Tribunal may now make community treatment orders (CTOs) in relation to forensic and correctional patients and inmates who are detained in a correctional centre, as well as forensic patients who have been released conditionally.
- Persons detained in correctional centres who breach their CTO conditions may be considered for transfer to a mental health facility under the correctional patient transfer provisions.

**Reviews by Tribunal**
- The Tribunal forensic reviews are conducted by:
  a) The Tribunal President or Deputy President;
  b) A member who is a psychiatrist, a registered psychologist or other suitable expert in relation to a mental condition; and
  c) A member who has other suitable qualifications or experience.
- The Tribunal must review persons who are subject to community treatment orders and who are detained in correctional centres every 3 months.
- The Act still requires the Tribunal to review forensic and correctional patients at least once every 6 months. However, patients or primary carers can apply to the Tribunal to extend the period between reviews to a maximum of 12 months.
- The Tribunal can extend the review period to 12 months if there has been no change to the patient’s condition since the last review and there is no apparent need for any change to the patient’s orders, and where having an earlier review may be detrimental to the patient’s condition.

**Appeals against Tribunal decisions**
- Forensic patients and correctional patients can apply to the Supreme Court (the Court of Appeal in cases involving release) to appeal against decisions of the Tribunal.
- The Minister for Health may also appeal to the Supreme Court or Court of Appeal against Tribunal decisions and the Attorney General may appeal to the Court of Appeal on a question of law in a release matter.
Planning for release and leave
- The authorised medical officer of a mental health facility in which a forensic patient is detained must take all reasonably practicable steps to:
  - Ensure that the patient and any primary carer are consulted in relation to planning the patient’s release and leave and any subsequent treatment;
  - Consult with agencies involved in providing relevant services to the patient, any primary carer and any dependents in relation to a patient’s release;
  - Provide the patient with appropriate information about follow up care while on release or leave.
- Granting a leave of absence for a forensic or correctional patient does not affect any sentence of imprisonment or limiting term.

Victims’ rights
- A victim is defined as a person who is a victim of an act of violence committed by a patient or a member of the immediate family of a victim (see also Victims Support and Rehabilitation Act 1996).
- A victim of a forensic patient may apply to the Tribunal for an order to impose or vary certain conditions on patient release or leave orders that the patient not associate with victims or members of their family or visit certain places.

Other rights
- Registered victims can apply to the Supreme Court to appeal against Tribunal determinations in relation to their applications for non-contact or place restriction conditions.
- The Minister for Health and the Attorney General may appear before, or make submissions at Tribunal forensic patient reviews in relation to release or grant of leave of absence.
- A range of officials, including the Minister for Health, Attorney General, Director-General of Health, and the medical superintendent of a mental health facility can request that the Tribunal review the case of a forensic or correctional patient.

Security Protocol
- A forensic patient who is detained in a correctional centre or a correctional patient who is detained in a mental health facility is subject to security conditions. These conditions are in accordance with relevant legislation and with a protocol agreed between the Director-General of Health and the Commissioner of Corrective Services or the Director-General of the Department of Juvenile Justice (as the case requires).