



# Canberra Health Services

## Procedure

### Care of Persons subject to Forensic Mental Health Orders (FMHOs)

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## Purpose

The *Mental Health Act 2015* establishes a framework to provide treatment, care and support for people (both adults and children) with mental illness who, because of their illness, or disorder, cannot make their own assessment and treatment decisions and refuse treatment, care or support, but who need treatment to prevent harm to their own health or safety or to the safety of others.

The purpose of this procedure is to ensure Canberra Health Services (CHS) staff practise according to their legislated obligations and provide effective clinical treatment, care, and support for persons subject to Forensic Mental Health Order (FMHO), which are a:

- Forensic Psychiatric Treatment Order (FPTO) or
- Forensic Community Care Order (FCCO).

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## Scope

This procedure is mandatory for all staff exercising a power or function under the *Mental Health Act 2015*, including the provision of services to people receiving treatment, care or support under a FMHO.

CHS Network for this procedure include inpatient facilities that are a declared Approved Mental Health Facility (AMHF) and declared Approved Community Care Facility (ACCF). See the approvals found on the ACT Legislation Register for approval stipulations.

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## Alerts

This procedure only covers the requirements of the *Mental Health Act 2015* in relation to FMHOs and does not cover other elements in the Act.

FMHOs can only be applied to a detainee; a person serving a community-based sentence; a person released on parole; a person released on licence under s299 of the *Crimes (Sentence Administration) Act 2005*; a young detainee or a young offender.

Relevant officials for a FMHO are:

- FPTO - Chief Psychiatrist or their delegate.
- FCCO - Care Coordinator or their delegate.

The relevant officials can delegate their authority according to s200 and s207 of the *Mental Health Act 2015*, excluding emergency leave provisions.

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## Section 1 – Application for a FPTO

An application to the ACT Civil and Administrative Tribunal (ACAT) for a FPTO must be completed in writing by the Delegate and include the treatment plan setting out the proposed treatment, care, or support.

**Note:** In making a FPTO the ACAT is not required to consider the person’s decision-making capacity.

### 1.1 Criteria for applying for a FPTO

Under s101(2) of the *Mental Health Act 2015*, the ACAT may make an order for a FPTO if each of the following criteria are met:

- The person has a mental illness, and
- ACAT believes on reasonable grounds that, because of the mental illness, the person:
  - is doing, or is likely to do, serious harm to themselves or someone else, or
  - is suffering, or is likely to suffer, serious mental or physical deterioration, and
- ACAT believes on reasonable grounds that, because of the mental illness, the person has seriously endangered, is seriously endangering, or is likely to seriously endanger, public safety, and
- ACAT is satisfied that psychiatric treatment, care or support is likely to:
  - reduce the harm or deterioration, or endangerment, or the likelihood of the harm or deterioration, or endangerment, or
  - result in an improvement in the person’s psychiatric condition, and
- ACAT is satisfied that in the circumstances a mental health should not be made, and
- ACAT is satisfied that the treatment, care or support to be provided under the FPTO cannot be adequately provided in a way that would involve less restriction of the freedom of choice and movement of the person.

### 1.2 Documentation

The Consultant Psychiatrist or Psychiatric Registrar must complete the:

- Application Form for FPTO form (available on the clinical record system):
  - The application form may be completed by a member of the treating team but must be signed by a Delegate.
  - The application must provide sufficient detail for each of the criteria described above (s94(3)(a), *Mental Health Act 2015*).
  - If anything, to do with the FPTO application process is likely to substantially increase the risk to the person’s health and safety or the risk of serious harm to others, this belief and the basis for the belief must be disclosed in the application form (s95 *Mental Health Act 2015*).
    - A written statement, to waive the notification process, must set out the risks and be signed by a Delegate, and be included with the application. If a presidential member of the ACAT agrees the notification process can be waived, either by dispensing with the requirement to notify one or more people or by shortening



or waiving the period of time before the hearing can be held. The ACAT will give a copy of the applicant’s written statement to the Public Advocate.

- Complete the ACAT Information Sheet for Applications under the *Mental Health Act 2015* (available on the clinical record system).
  - The Information sheet contains the person’s details, the names and contact details for important people (e.g. the person’s guardian, carer, Nominated Person) and whether the person has an AA or ACD.
- Complete the FPTO Treatment Plan and Location Determination (TLPD) form (located in the clinical record system under Care Planning/ Plans) as a proposed treatment plan (s94(3)(b) *Mental Health Act 2015*). The TPLD form should be kept un-dated and un-signed until the ACAT makes the order.

The Tribunal Liaison Officer (TLO) is to be notified of the completed FPTO application via the in basket in the clinical record, and will provide to ACAT via email at

[ACATMentalHealth@act.gov.au](mailto:ACATMentalHealth@act.gov.au)

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## Section 2 – Application for a FCCO

An application to the ACAT for a FCCO must be completed in writing by the Delegate and include the treatment plan setting out the proposed treatment, care, or support.

**Note:** In making a FCCO the ACAT is not required to consider the person’s decision-making capacity.

### 2.1 Criteria for applying for a FCCO

Under s108(2) of the *Mental Health Act 2015*, the ACAT may make an order for a FCCO if each of the following criteria are met:

- The person has a mental disorder, and
- ACAT believes on reasonable grounds that, because of the mental disorder, the person:
  - is doing, or is likely to do, serious harm to themselves or someone else, or
  - is suffering, or is likely to suffer, serious mental or physical deterioration, and
- ACAT believes on reasonable grounds that, because of the mental disorder, the person has seriously endangered, is seriously endangering, or is likely to seriously endanger, public safety, and
- ACAT is satisfied that treatment, care or support is likely to reduce the harm or deterioration, or endangerment, or the likelihood of the harm or deterioration, or endangerment, and
- ACAT is satisfied that in the circumstances a FPTO should not be made, and
- ACAT is satisfied that in the circumstances an MHO should not be made, and
- ACAT is satisfied that the treatment, care or support to be provided under the FCCO cannot be adequately provided in a way that would involve less restriction of the freedom of choice and movement of the person.

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## 2.2 Documentation

The Care Coordinator (CC) or delegate must complete the:

- Application or FCCO form (available on the clinical record system).
  - The application form may be completed by a member of the treating team but must be signed by the CC or Delegate.
  - The application must provide sufficient detail for each of the criteria described above (s94(3)(a), *Mental Health Act 2015*).
  - If anything, to do with the FCCO application process is likely to substantially increase the risk to the person's health and safety or the risk of serious harm to others, this belief and the basis for the belief must be disclosed in the application form (s95 *Mental Health Act 2015*).
    - A written statement, to waive the notification process, must set out the risks and be signed by a Delegate, and be included with the PTO application. If a presidential member of the ACAT agrees the notification process can be waived, either by dispensing with the requirement to notify one or more people or by shortening or waiving the period of time before the hearing can be held. The ACAT will give a copy of the PTO applicant's written statement to the Public Advocate.
- Complete the ACAT Information Sheet for Applications under the *Mental Health Act 2015* (available on the clinical record system).
  - The Information sheet contains the person's details, the names and contact details for important people (e.g. the person's guardian, carer, Nominated Person) and whether the person has an AA or ACD.
- Complete the FCCO Treatment Plan and Location Determination (TLPD) form (located in the clinical record system under Care Planning/ Plans) as a proposed treatment plan (s94(3)(b) *Mental Health Act 2015*). The TPLD form should be kept un-dated and un-signed until the ACAT makes the order.

The Tribunal Liaison Officer (TLO) is to be notified of the completed application via the in basket in the clinical record, and will provide to ACAT via email at

[ACATMentalHealth@act.gov.au](mailto:ACATMentalHealth@act.gov.au)

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## Section 3 – ACAT hearing and outcome

Upon receiving an FMHO application, the ACAT is required to hold a hearing in relation to whether the FMHO should be granted.

### 3.1 Notification of hearing

At least 3 days before the hearing, ACAT must give written notice of the hearing to the person named in the FMHO application and other people involved in the person's life, support and treatment (s188 *Mental Health Act 2015*).

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For people admitted to an inpatient facility, formal notice of hearing will be given to the person by:

- the TLO (inpatient at Canberra Hospital) or
- treating team (an inpatient facility not at Canberra Hospital)

### 3.2 Attendance at hearing

The TLO will liaise with the ACAT to schedule FMHO hearings. Prior arrangement for a teleconference /AVL can be made to the ACAT if in-person attendance is not possible.

Attendance at the hearing is to enable the ACAT and other people appearing at the hearing (e.g. the person’s legal representative and the Public Advocate) to ask questions about:

- the contents of the FMHO application (e.g. to elaborate on the evidence that the person has a mental illness, as defined in s10 of the *Mental Health Act 2015*)
- whether there has been any change in the person’s mental state, treatment, care or support since the application was prepared, especially any information relating to the FMHO criteria described above.

If the FMHO applicant cannot attend the hearing, they must inform the TLO as soon as possible (and the Consultant Psychiatrist, if the applicant is a Psychiatric Registrar). The applicant must, as far as possible, then arrange for another clinician to attend the hearing. This should be someone familiar with the person’s treatment, care, support and history, and contents of the FMHO application.

### 3.3 Outcome of Hearing

ACAT can either make or not make the FMHO.

ACAT will also specify the FMHO duration of the FMHO. Unless sooner revoked, FMHOs remain in force for three (3) months and if consecutive FMHOs have been in force for 1 year or more, (i.e., 4 x 3-month FMHO), then an order for up to a further year can be made. (s117 *Mental Health Act 2015*).

#### 3.3.1 Content of FMHO

The FMHO made by ACAT may state one or more of the following (s102 & 109 of the *Mental Health Act 2015*):

#### FPTO

- the AMHF the person may be taken
- the person must do either or both
  - undergo psychiatric treatment (other than ECT or psychiatric surgery, for which other orders or consents are necessary)
  - undertake a counselling, training, therapeutic or rehabilitation program
- limits may be imposed on communication between the person and other people
- that the person must
  - live (but not be detained) at a stated place, or
  - be detained at a stated AMHF

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**FCCO**

- person is to be given treatment, care or support
- may be given medication for the mental disorder prescribed by a doctor
- undertake a counselling, training, therapeutic or rehabilitation programs
- limits may be imposed on communication between the person and other people
- that the person must
  - live (but not be detained) at a ACCF or another stated place, or
  - be detained at a stated ACCF

**3.4 Treatment Plan and Location Determination Form**

Within five (5) working days of the order being made a TPLD form (under Care Planning/Plan in the clinical record system) must be finalised and completed by the Delegate, documenting the following:

**FPTO**

- Whether the person requires admission to an AMHF, and if so, whether leave from the facility can be granted.
- For a person in the community, the times when and the place where the person is required to attend to receive treatment, care, or support.
- The nature of the treatment, care, or support.

If the person is living in the community requires admission to an AMHF, the Delegate must document in the TPLD:

- the AMHF that the person is to be admitted to,
- the nature of the psychiatric treatment and
- whether the person can be given leave from the facility

**FCCO**

When and the place where the person is required to attend to receive treatment, care, or support, or undertake a counselling, training, therapeutic or rehabilitation program, in accordance with the order.

**3.5 Consultation**

Before making a determination in relation to the person, the Delegate must take all reasonable steps to consult widely and take into account the views of the below people (s106(3)(a) & 110(4)(a) of the *Mental Health Act 2015*):

- the person
- if the person is a child—each person with parental responsibility for the child under the *Children and Young People Act 2008*, division 1.3.2 (Parental responsibility)
- if the person has a guardian under the *Guardianship and Management of Property Act 1991*—the guardian
- if the person has an attorney under the *Powers of Attorney Act 2006*—the attorney
- if the person has a nominated person—the nominated person

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- if a health attorney is involved in the treatment, care, or support of the person—the health attorney
- if the person is a detainee, a person released on parole or licence, or a person serving a community-based sentence—the Corrections Director-General
- if the person is covered by a bail order that includes a condition that the person accept supervision under the *Bail Act 1992*, s25 (4) or s25A—the director general- responsible for the supervision of the person under the *Bail Act 1992* (i.e. director-general of Justice and Community Safety Directorate)
- if the person is a child covered by a bail order that includes a condition that the child accept supervision under the *Bail Act 1992*, s26 (2)—the Children and Young Persons (CYP) Director-General (i.e. director-general responsible for the *Children and Young People Act 2008*), and/or
- if the person is a young detainee or a young offender serving a community-based sentence—the CYP director-general.

The TLO is to be notified, via the in-basket, the TPLD has been signed and will provide to:

- The Public Advocate at [pa@act.gov.au](mailto:pa@act.gov.au)
- The ACAT at [ACATMentalHealth@act.gov.au](mailto:ACATMentalHealth@act.gov.au)
- The relevant people outlined above (s 106 (3)(a) OR s110(4)(a)).

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## Section 4 – Clinical Management

All persons on FPTOs must be contacted by their mental health treating team at least every two (2) weeks via telephone (a summary of the phone call and any identified issues are to be clearly documented in the person’s clinical record by the treating team). It is mandatory for all persons on a FPTO to be seen and reviewed at least every four (4) weeks.

For any person who has had a period of inpatient treatment, good clinical practice dictates that, prior to discharge, the treatment plan must be reviewed and updated to document the ongoing management arrangements. A copy of this treatment plan must be given to the people listed in 3.5 as appropriate. A message must be forwarded to the TLO advising that the FPTO TPLD has been updated. The TLO will forward the updated TPLD to ACAT and the Public Advocate.

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## Section 5 – Limits on communication under FMHOs

If a person is subject to a FMHO stating that a limit can be imposed on communication between the person and other people, the Delegate may impose a limit on communication if it is necessary and reasonable to avoid prejudicing the effectiveness of the person’s treatment, care, or support. (s115(2)(b) of the *Mental Health Act 2015*).

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This limit on communication does not extend to communication by the person with someone authorised under territory law to communicate with the person (i.e. the Public Advocate).

As soon as practicable after imposing the limit, the Delegate must explain the nature of the limit, the period of the limit and the reason for imposing the limit. The limit cannot be longer than a period of seven (7) days but can be re-imposed immediately after a seven (7) day period has expired.

Notwithstanding that a limit on communication has been imposed, the Delegate must ensure that the person retains reasonable access to facilities and opportunity to contact the Public Advocate or the person’s lawyer.

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## Section 6 – Contravention of FMHOs

A person subject to a FMHO is required to comply with all the conditions of the order and the TPLD form completed by the treating team. Non-compliance with any of these conditions is a contravention of the order.

The process of informing people they are in contravention of their FMHO outlined in s124 of the *Mental Health Act 2015*, has changed. The process now allows:

- Mental Health Officers (MHO) or a Delegate to authorise a contravention, and
- all reasonable steps must be taken to contact the person to remedy the contravention, replacing the oral and written warnings.

### 6.1. Reasonable steps

The treating team must take reasonable steps to tell the person that a failure to comply with the FMHO may result in the person being taken to a relevant facility (see definition of terms) for treatment, care or support. This must occur within 7 days of the contravention (s124 *Mental Health Act 2015*). If the contravention continues, the person can be taken to a AMHF /ACCF to ensure compliance with the FMHO.

The following reasonable steps must be taken, where possible, before determining a contravention:

- telling the person that failure to comply with the FMHO may result in being apprehended and taken to an AMHF/ ACCF for treatment,
- if noncompliance continues, the person may be taken to an AMHF/ACCF to ensure treatment under the FMHO.

In addition to the above reasonable steps, before the treating team can determine the person is non contactable, the following must occur:

- call the person
- attend a location where the person is known to attend, such as their home

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- send written correspondence, via letter or SMS to the person's known address or contact phone number
- advise a person identified by the consumer (carer, nominated person, other person the consumer has included in their treatment plan in relation to their preference for contravention).

Only after the above steps have been taken can the contravention be authorised.

## 6.2 Contravention form

The Contravention & Authorisation to Require a Person to be Detained form (available in the clinical records system) must be completed, including all reasonable steps taken and signed by the Delegate or MHO. It is good practice, prior to an MHO signing the contravention form a discussion with the treating psychiatrist, or another delegate occurs.

The TLO is to be notified via their in-basket.

The person can be apprehended by a police officer, authorised ambulance paramedic, MHO or doctor and taken to an AMHF/ ACCF. If assistance is required by another agency, a copy of the signed contravention authorisation is to be provided.

## 6.3 Documentation

The treating team is to document in the person's clinical record and on the Contravention & Authorisation to Require a Person to be Detained form all reasonable steps taken.

The clinical record is to include the:

- reasonable steps to inform the person of the contravention,
- if the person is not contactable, the reasonable steps made to contact the person,
- the reasons requiring the detention and
- authorisation of the apprehension.

### 6.3.1 Detention notification to ACAT and Public Advocate

If the person is required to be detained at an AMHF to ensure compliance with the mental health order, within 12 hours of the detention the ACAT and Public Advocate are to be notified, of the person's name, the reason for detention and which AMHF /ACCF the person is detained in (s77(6) *Mental Health Act 2015*).

This notification is done through a TPLD (see 3.4) which documents the person has been detained at an AMHF/ACCF to ensure compliance with their FMHO. The TLO will be notified of the updated TPLD form, via their in-basket and will distribute to the ACAT and Public Advocate.

## 6.4 Persons absconding from an inpatient setting

A person subject to FMHO with a TPLD which states they are to be detained at an AMHF/ACCF who absconds from the facility is considered to have contravened their mental health order (s125 *Mental Health Act 2015*).

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The person in charge of the facility should follow the CHS Missing Patient Procedure.

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## Section 7 – Review and revocation of FMHO

There are several ways in which a FMHO can be reviewed (s126 *Mental Health Act 2015*), which include:

### 7.1 Reviews initiated by ACAT and routine pre-expiry reviews by ACAT

The ACAT may conduct its own review of a FMHO at any time (s126(1) *Mental Health Act 2015*). The ACAT will routinely conduct a review shortly before a FMHO expires.

- The TLO will advise the team approximately six weeks before a routine review is due
- The team will schedule a review of the person with a Consultant Psychiatrist
- The ACAT Tribunal Review Report (available on the clinical records system) is to be completed and must be signed by a Delegate, and provided to the TLO via the in basket
- The TLO will forward the completed report to the ACAT
- The ACAT will advise the TLO when the review hearing is scheduled
- The TLO will forward the ACAT’s hearing schedule to the teams
- The team must arrange for appropriate representation at the hearing.

### 7.2 FMHO is no longer appropriate or necessary

The Delegate must inform the ACAT if the person no longer meets the criteria for the FMHO (ss 106 & 113 *Mental Health Act 2015*).

Before applying for the revocation for a FMHO, the Delegate must contact the people outlined in 2.3 and advise why the person no longer meets the FMHO criteria, or why it is no longer necessary. The Delegate must:

- ask if they have any information that may indicate that the FMHO is still appropriate
- inform those people of the:
  - plan to make an application to ACAT to revoke the order, subject to the received information
  - inform the Public Advocate about why the application is being made
  - they have the right to provide ACAT with a written statement about their views, and to apply to the ACAT to attend the review hearing.
- Document the content of their communication on the Notification of Revocation for a FMHO form, available on the clinical records system.
- If the Delegate believes that the application for the revocation of the FMHO should still proceed after hearing the views, they must make an application to ACAT to revoke the order.
- The Delegate must sign the complete(d) Notice of Revocation for FMHO form and forward the signed copy to the TLO, who will send to the ACAT.
- The ACAT will then review the FMHO within 10 days. This will usually occur without holding a hearing unless the application for the revocation is opposed by the person’s carer or nominated person (s126(3) *Mental Health Act 2015*).

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### 7.3 Application by the person or their representative for a review

The person subject to the FMHO (or their lawyer, guardian, nominated person, a relative or friend, or person appointed under an enduring power of attorney) can make an application to the ACAT at any time for a review of the FMHO if they believe that the order(s), or a specific requirement in the order(s), is no longer required (s126(2) *Mental Health Act 2015*). ACAT will then schedule a review hearing.

The treating team must provide all reasonable assistance to the person if they express an intention to apply for a review of their FMHO. This may include:

- assisting the person to contact or meet with their nominated person, family member, guardian, Legal Aid ACT or the Public Advocate
- providing the person with a copy of the Application to Review or Extend Consent to Treatment, Care or Support Application to Review or Extend Consent to Treatment, Care or Support form (available on the ACAT web page) required to make the application
- providing the person with a copy of the *Mental Health Act 2015*.

### 7.4 Outcome of a FMHO review application

When ACAT reviews a FMHO it can:

- confirm, amend or revoke the order
- make additional orders (including a new FMHO)
- make mental health order
- an Assessment Order, requiring the person to undergo a mental health assessment for the purposes of determining what further treatment, care and support is needed.

If the ACAT agrees that the person no longer meets the criteria for a FMHO, the ACAT must revoke *all* FMHO which apply to the person (s126(7) *Mental Health Act 2015*).

Once revocation has been approved the clinician must inform the consumer and treating team as soon as possible. Carers should also be advised of a revocation where the person has provided consent.

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## Evaluation

### Outcome

- There is documented evidence in each person’s clinical record of an assessment of criteria to make the FMHO.
- The FMHO application is contained in the person’s clinical record.

### Measures

- Clinical documentation of paperwork associated with a FMHO is reviewed through regular audits.

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## Related Policies, Procedures, Guidelines and Legislation

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**Procedures**

- ACT Civil and Administrative Tribunal (ACAT) Ordered Assessments
- Mental Health Officer
- Advance Agreements, Advance Consent Directions, and Nominated Persons under the *Mental Health Act 2015*
- Emergency Detention in an Approved Mental Health Facility and a person’s right under the *Mental Health Act 2015*

**Legislation**

- *Mental Health Act 2015*
- *Health Records (Privacy and Access) Act 1997*
- *Human Rights Act 2004*
- *Children and Young Peoples Act 2008*
- *Guardianship and Management of Property Act 1991*
- *Power of Attorney Act 2006*
- *Bail Act 1992*
- *ACT Civil and Administrative Tribunal Act 2008*
- *Crimes Act 1900*
- *Carer’s Recognition Act 2021*

**Other**

- Australian Charter for Healthcare Rights

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**Definition of Terms**

Care Coordinator – means the person appointed under section 205 of the *Mental Health Act 2015* and is responsible for coordinating the provision of treatment, care or support for a person to whom a community care order applies.

Delegate of Care Coordinator – means anyone the Care Coordinator has delegated their functions under section 207 of the *Mental Health Act 2015*, excluding granting leave under s122.

Chief Psychiatrist – means the Chief Psychiatrist appointed under section 196 of the *Mental Health Act 2015*.

Delegate of Chief Psychiatrist – means a consultant psychiatrist who the Chief Psychiatrist has delegated their functions under section 200(1) of the *Mental Health Act 2015*, excluding granting of leave under section 122 and making guidelines under section 198A.

Forensic Mental Health Orders (FMHOs) –include both Forensic Psychiatric Treatment Orders (FPTO) and Forensic Community Care Orders (FCCO).

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Mental Health Officer (MHO) is a person appointed by the Chief Psychiatrist under s201 of the *Mental Health Act 2015* to undertake functions under the Act.

Stated person – subject person

Relevant facility – either

- Approved Mental Health Facility (AMHF) – FPTO, or
- Approved Community Care Facility (ACCF) – FCCO.

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## Search Terms

Forensic, mental, health, ACAT, FPTO, FCCO, AMHF, ACCF, order, psychiatric, treatment, FMHO, care coordinator, chief psychiatrist, relevant official, delegate, mental health order.

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*Policy Team ONLY to complete the following:*

<i>Date Amended</i>	<i>Section Amended</i>	<i>Divisional Approval</i>	<i>Final Approval</i>
<i>9 June 2021</i>	<i>Complete Review</i>	<i>Karen Grace, ED, MHJHADS</i>	<i>CHS Policy Committee</i>
<i>21 March 2023</i>	<i>Updated to include changes related to DHR</i>	<i>Katie McKenzie, ED, MHJHADS</i>	<i>CHS Policy Team</i>
<i>19 December 2023</i>	<i>Related Policies, Procedures, Guidelines and Legislation</i>	<i>Policy Team</i>	<i>Policy Team</i>
<i>18/01/2024</i>	<i>Updated Scope to include NCH</i>	<i>CHS Policy Team</i>	<i>CHS Policy Team</i>

*This document supersedes the following:*

<i>Document Number</i>	<i>Document Name</i>
<i>CHHS16/030</i>	<i>Care of Persons subject to Forensic Mental Health Orders (FMHOs)</i>