FORENSIC ORDER (MENTAL ILLNESS) REVIEW

A Forensic Order will be reviewed by the Mental Health Review Tribunal:

- Within 6 months of the Forensic Order being made and then every 6 months (Periodic review);
- By application to the MHRT at any time (Applicant review)
 - On the MHRT's initiative (Tribunal review)
- Because there has been a material change in the patient's mental state requiring a change of category from community to inpatient (under notice) 5 433

Before the hearing

- **Notice of hearing** to be given to parties, at least 14 days before hearing; 5 439
- **Clinical report** to be given to MHRT and patient at least 7 days before the hearing; ^{\$723}
- Other documents to be submitted to MHRT and other parties at least 3 days before the hearing; ^{5 738}

Timeframes can be shortened if parties agree. MHRT Practice Direction 1/2017.

MHRT hearing to review a Forensic Order

The MHRT must decide whether to confirm or revoke the Forensic Order. The Forensic Order must be confirmed if:

• The MHRT considers that the order is necessary, because of the person's mental condition, to protect the safety of the community, including from risk of serious harm to other persons or property ⁵ 442;

OF

 non-revocation period set by the Mental Health Court has not passed ^{5 452}

OR

ullet The client has been found temporarily unfit for trial and the proceedings for the offence have not been discontinued UNLESS the person is stepped down to a TSO . § 453

If the person was charged with a "prescribed offence" (see Schedule 3 for definition), the MHRT must first make an Examination Order under ^{5 721} and consider that report before revoking a Forensic Order. ^{5 454} If applicant review, MHRT must decide whether to make the orders requested.

If tribunal review or under notice, must decide matters stated in hearing notice. ^{5 441}

MHRT decides to:

Confirm Forensic Order.

Person will continue to receive treatment and care and be monitored under the Forensic Order.

Category of Forensic Order

 May only be community category if MHRT is satisfied there is not unacceptable risk to the safety of the community. 5444

If inpatient category, whether the person can have limited community treatment (LCT). ^{5 445} (The doctor cannot approve more LCT than what the MHRT has decided: ^{5 212})

If community category, whether the doctor can change community treatment in the future. S 446

Whether to make, change or remove **conditions** (but cannot make a condition about particular medications or dosages) 5 447

Whether to order **transfer** to another mental health service 5 456

Revoke Treatment Authority.

MHRT must also decide:

Whether to make a Treatment Support Order

 The MHRT can make a Treatment Support Order (TSO) if they consider that a TSO and not a Forensic Order is necessary, because of the person's mental condition, to protect the safety of the community.

OR

Whether to make a Treatment Authority

 The MHRT can only make a Treatment Authority on the recommendation of an authorised psychiatrist who considers that the treatment criteria apply to the person AND there is no less restrictive way to provide a person with treatment and care. ^{5 451}

If no TSO or Treatment Authority made, the person can only receive treatment and care voluntarily, or with the consent of an Advance Health Directive, health guardian or attorney.

www.mhlawqld.com.au

Whether to make other appropriate orders 5 448 After an MHRT hearing • Parties receive notice of decision within 7 days, 5 755 • Person can request statement of reasons from MHRT, 5 756 • Parties can appeal decision to the Mental Health Court within 60 days of receiving written notice of the MHRT's decision, 5 541, 5th 2



FORENSIC ORDER (MENTAL ILLNESS) REVIEW

A Forensic Order may be made by the Mental Health Court for a person with a mental health defence for criminal charges, where an order is necessary to protect the safety of the community.

In Queensland, a person's criminal charges can be dismissed or discontinued if the Court agrees that the person was of unsound mind at the time of the offences or is currently unfit for trial.

This flow chart focuses on the Tribunal process to review a Forensic Order (mental illness).

See flowchart 'Forensic Order (Disability) Review' for reviews of forensic orders where the person has an intellectual or cognitive disability.

Matters the MHRT must have regard to:

- The "relevant circumstances" of the person subject to the order (that is, mental state and psychiatric history, any intellectual disability, social circumstances, response to and willingness to receive treatment and care, and the person's response to previous treatment in the community)
- The nature of the relevant unlawful act and the period of time that has passed since the act happened;
- Any victim impact statement; and
- If the Mental Health Court made a recommendation about intervention programs, the person's willingness to participate in the program if offered

\$432, Sch 3 ("relevant circumstances")

Attendance at Hearing

The patient is encouraged to, but does not have to attend the hearing.

- If 17 years old or under, the patient will be appointed a free legal representative, unless already represented or patient waives right to representation, 5 740.
- If the Attorney-General elects to send a representative, the
 patient will be appointed a free legal representative, unless
 already represented or patient waives right to representation,
 5740.
- Patient can bring a support person, \$ 739
- One or more members of the patient's treating team must attend the hearing.
- Hearings can be attended in person, by phone or, if available, by videoconferencing.

Evidence Considered by MHRT

- Documents
 - Clinical report
 - Most recent decision from the MHRT
 - Hearing notice
 - Dossier prepared by MHRT (Mental Health Court order, and other relevant documents including the decision or transcript from the Mental Health Court and any reports)
 - If applicant review— application form
 - Any other documents submitted by doctor applicant or patient (including patient self-report)
- Oral information given by people attending the hearing.

Treatment Criteria

The person has a mental illness;

- The person does not have capacity to consent to be treated for the illness (capacity must be stable, \$ 421(2))
- Because of the illness, absence of involuntary treatment is likely to result in:
 - Imminent serious harm to the person or others; or
 - The person suffering serious mental or physical deterioration

The MHRT must not conduct a review of the Forensic Order if there is a current appeal to the Mental Health Court about the Forensic Order and the MHRT's decision has been stayed **5** 436

Parties to Review

- · The patient,
- The person who applied for the review (if there is one),
- The administrator of the authorised mental health service and Chief Psychiatrist
- The Attorney-General s 736, 439

Treatment Support Order

If a TSO is made, then a person is required to be under the supervision, and be provided treatment and care by, an authorised psychiatrist. However, if a TSO is made:

- Reviews by a psychiatrist may become less frequent
- The Attorney-General is no longer party to the proceedings
- The TSO must be community category unless the MHRT considers the person's treatment and care needs; safety and welfare, or safety of others cannot be reasonably met if a community patient s 475

Unless otherwise specified, references to sections(s) are from the Mental Health Act 2016 (Qld)