

Protocol for the supervision and treatment of people subject to non-custodial supervision orders between Forensicare and area mental health services

Program management circular

Key message

Area mental health services have primary responsibility for providing treatment and case management to people who live in their area and are subject to non-custodial supervision orders that have been made on the grounds of mental illness.

Forensicare has primary responsibility for supervising people on non-custodial supervision orders that have been made on the grounds of mental illness.

Purpose and scope

This protocol defines the respective roles and responsibilities of the authorised psychiatrists and other clinicians of the Victorian Institute of Forensic Mental Health ('Forensicare') and area mental health services concerning the treatment and management of people subject to non-custodial supervision orders (NCSO) made on the grounds of mental illness.

This protocol only applies to people on NCSOs that have been made on the basis of mental illness. It does not apply to clients of disability services or other service sectors who may be made subject to NCSOs.

Background

Public mental health services in Victoria are provided through area mental health services (AMHS). AMHS have primary responsibility for the management of persons who meet eligibility criteria who reside in their area. This includes persons on NCSOs under the *Crimes (Mental Impairment and Unfitness to be Tried) Act 1997* ('the CMIA').

Non-custodial supervision orders

A NCSO is a supervision order made by a court that allows the person to live in the community while receiving treatment or services for their mental disorder. The person is required to receive that treatment subject to the conditions of the order.

There are two ways that a person can be made subject to a NCSO:

- A court may make a NCSO if a person is found to be unfit to stand trial or not guilty of an offence because of mental impairment.
- A court may vary a person's custodial supervision order (CSO) to a NCSO.

Most people being considered for a NCSO will already be receiving mental health services from an AMHS. It is expected that the relevant AMHS will continue to provide services when the person is placed on a NCSO. Where a person is not currently registered with an AMHS, the relevant AMHS will be determined by reference to the person's usual or most recent place of residence.

There will be occasions where a person being considered for a NCSO will be receiving treatment from a private psychiatrist or general practitioner. This arrangement may continue after a NCSO has been made. A person being treated by a private practitioner may also be case managed by an AMHS

where clinically indicated. Any reference in this protocol to a function or obligation of the authorised psychiatrist of a treating AMHS concerning a person on a NCSO will also apply to a private practitioner where the practitioner has primary responsibility for providing treatment and care to a person on a NCSO.

Individual service agreements

Forensicare, AMHS service providers and private practitioners are required to enter into individual service agreements concerning the supervision, treatment and management of individual people subject to NCSOs.

- Individual service agreements must be negotiated as soon as practicable following the making of a NCSO. An agreement must be explicit about the roles and responsibilities of all service providers who are partners in the supervision, treatment and management of people subject to a NCSO.
- These agreements will incorporate the requirements of this protocol and the publication *Non-custodial supervision order – policy and procedure manual* (Department of Human Services, March 2007).
- They will also include specific provisions tailored to meet the needs of the person. These will have regard to the person's treatment plan, any conditions imposed by the court (see below), the person's medical and psychiatric history, their family and social circumstances, any special needs, risk assessments and available services.
- Individual service agreements must include provisions for periodic review, revision as required and dispute resolution.

Terms and conditions of orders

The terms and conditions of NCSOs are set by the court and vary from case to case. The NCSO will indicate:

- The supervisor of the NCSO. Each person on a NCSO must be subject to supervision. The courts generally appoint the authorised psychiatrist of Forensicare as the supervisor of NCSOs made on the grounds of mental illness.
- Requirements for treatment and management. NCSOs typically refer to treatment being carried out by the nominee of the authorised psychiatrist of Forensicare (as the supervisor). The authorised psychiatrist of the relevant AMHS will be nominated to provide treatment subject to the order.

- A direction to comply with the lawful directions of the supervisor, the nominee and the case manager.
- The place of residence and any requirements if the person wishes to change their place of residence.
- Additional conditions to meet the needs of the individual person, for example, that the person abstain from illicit drug use and to submit to drug screening as and when required by the nominee of the supervisor (that is, the authorised psychiatrist of the AMHS) or the person's case manager.
- A requirement that the person does not leave the State of Victoria without the permission of the supervisor of the NCSO.

Treatment planning and management

Report to court when a person is first declared liable to supervision

Section 41(1) of the CMIA requires that when a person is first declared liable to be on a NCSO, a clinical report including a suggested treatment or other plan for managing the person's condition must be provided to the court within 30 days of the declaration.

- The authorised psychiatrist of Forensicare is responsible for preparing the clinical report within the required timelines in consultation with the authorised psychiatrist of the treating AMHS.
- The authorised psychiatrist of Forensicare will usually require a clinician from Forensicare to personally examine the person.
- The authorised psychiatrist of Forensicare is responsible for lodging the report with the court.

Treatment planning

Once a NCSO is made, the initial treatment plan that was outlined in the report to the court must be further developed into a comprehensive treatment and management plan.

- The authorised psychiatrist of the relevant AMHS will prepare, review on a regular basis and revise as required a treatment and management plan in consultation with the authorised psychiatrist of Forensicare. The plan will include arrangements in the event of a relapse or crisis.

Supervision

Each person on a NCSO must be subject to supervision. This is an active role that will always include monitoring the treatment a person receives. The authorised psychiatrist of Forensicare is nominated as the supervisor of mental health NCSOs in all but exceptional circumstances.

- The authorised psychiatrist of Forensicare is responsible for monitoring the treatment and management of the person subject to the NCSO.
- The authorised psychiatrist of the AMHS is responsible to provide quarterly clinical reports to the authorised psychiatrist of Forensicare concerning the treatment, management (including risk management) and progress of a person on a NCSO in support of the supervision role. The authorised psychiatrist of Forensicare may vary the frequency of the report at his or her discretion.
- The authorised psychiatrist of the AMHS is responsible to notify the authorised psychiatrist of Forensicare about any issues of concern relating to the person without delay in support of the supervision role.
- The authorised psychiatrist of Forensicare may, in consultation with the authorised psychiatrist of the AMHS and the Chief Psychiatrist, vary the nominee or take over treatment and case management.
- Where there is a dispute regarding responsibility for treatment and case management, either the authorised psychiatrist of Forensicare or the AMHS may refer the matter to the Chief Psychiatrist. The Chief Psychiatrist will seek to facilitate a resolution of the dispute.

Ongoing treatment

The AMHS will provide treatment and case management in accordance with the treatment and management plan and relevant policies and protocols.

- The authorised psychiatrist of the AMHS is responsible for providing treatment and case management in accordance with the person's treatment and management plan (as periodically revised) and relevant policies and protocols. This role will include conducting regular reviews, managing compliance with the conditions of the NCSO and identifying and managing any risks factors.

Inpatient admission

A person subject to a NCSO may be admitted as an inpatient on a voluntary basis or as an involuntary patient under the *Mental Health Act 1986* without affecting their status on the NCSO. Admission will, in all but exceptional circumstances, be to the inpatient unit of the AMHS.

- The authorised psychiatrist of the AMHS must notify the authorised psychiatrist of Forensicare as soon as practicable regarding an admission.
- Following discharge, the authorised psychiatrist of the AMHS must provide a report to the authorised psychiatrist of Forensicare outlining the patient's progress during the admission and any relevant discharge planning.

Involuntary treatment

A person on a NCSO can be recommended and placed on an involuntary treatment order (ITO) under the Mental Health Act without affecting their status on the NCSO. A person on a NCSO can also be placed on a community treatment order (CTO). In these circumstances the NCSO and the ITO or CTO will operate concurrently.

- The authorised psychiatrist of the AMHS must notify the authorised psychiatrist of Forensicare as soon as practicable whenever a person on a NCSO is made an involuntary patient.

Annual report

A clinical report about the person's progress must be sent to the court each year. It must include an updated plan for managing the person's illness or condition.

- The authorised psychiatrist of Forensicare is responsible for preparing and lodging the annual report within required timelines. This will be based on an examination conducted by a delegate of the authorised psychiatrist of Forensicare and the quarterly clinical reports provided by the authorised psychiatrist of the AMHS (see above).

Non-compliance with a NCSO

Person who has breached conditions of NCSO and is a serious risk

The CMIA has specific provisions for the apprehension and admission of a person on a NCSO where the person has breached the conditions of their order and poses a risk of serious danger to themselves or others. Admission will usually be to the inpatient unit of the AMHS. Admission to the Thomas Embling Hospital campus of Forensicare will only occur where a person cannot be managed safely or appropriately in the AMHS's in-patient unit.

Following apprehension, an application must be made to the court within 48 hours to vary the NCSO to a custodial supervision order.

- The authorised psychiatrist of the AMHS is responsible for ensuring the authorised psychiatrist of Forensicare and the Chief Psychiatrist are notified about a person breaching the conditions of their NCSO or where the person may pose a serious danger to themselves or others, without delay.
- The authorised psychiatrists of Forensicare and the AMHS, in consultation with the Chief Psychiatrist, will determine how to manage the situation. This will include decisions about how and when the person will be apprehended under the CMIA and the most appropriate inpatient service for the admission.
- If a person poses an imminent serious danger and the authorised psychiatrist of Forensicare or the Chief Psychiatrist cannot be contacted within a reasonable period, the authorised psychiatrist of the AMHS should arrange for the person to be apprehended as a matter of urgency. The authorised psychiatrist of Forensicare and the Chief Psychiatrist should be consulted as soon as practicable.
- The authorised psychiatrist of Forensicare will liaise with the Department of Human Services to make an application to the appropriate court.

Person who has breached conditions of NCSO

The CMIA has provisions for a court to review the case of a person who has not complied with the conditions of their NCSO, but is not posing a serious danger to themselves or others.

- The authorised psychiatrists of Forensicare and the AMHS will together determine how to manage the situation.
- The authorised psychiatrist of Forensicare will liaise with the Department of Human Services to make an application to the appropriate court.

Reports

In addition to the reports described above, reports are required whenever a person is to return to court for a review, variation or revocation hearing concerning their NCSO.

- The authorised psychiatrist of the AMHS is responsible for preparing a report on the treatment and progress of the person for each court hearing in consultation with the authorised psychiatrist of Forensicare. He or she will also be required to be available to give evidence at any hearing.
- The case manager from the AMHS will also be required to provide a report and be available to give evidence.
- The Department of Human Services or Forensicare will notify the authorised psychiatrist of the AMHS when reports are required.
- The authorised psychiatrist of Forensicare will provide advice and assistance with these responsibilities.
- The authorised psychiatrist of Forensicare may prepare a separate report for the court.
- The authorised psychiatrist of Forensicare will liaise with the authorised psychiatrist of the AMHS and the Department of Human Services to provide this evidence to the appropriate court.

Local policies and procedures

Mental health service management should ensure that procedures are developed and implemented to enable staff to appropriately manage the clinical and legal issues associated with people who are subject to NCSOs.

- Procedures must be consistent with this protocol, the publication *Non-custodial supervision order – policy and procedure manual* (Department of Human Services, March 2007) and the requirements of the Crimes (Mental Impairment and Unfitness to be Tried) Act and the Mental Health Act.

About program management circulars

The information in this program management circular is intended as general information and not as legal advice. Staff should develop a working knowledge of the relevant provisions in the CMIA and the Mental Health Act. If staff have queries about their obligations under these acts, they should seek independent legal advice.

Role of the Chief Psychiatrist

The Chief Psychiatrist has a broad monitoring role in relation to all forensic patients as well as a number of specific functions under the CMIA.

- The authorised psychiatrists of Forensicare and the AMHS are responsible to support the Chief Psychiatrist to carry out these roles. This includes informing the Chief Psychiatrist of issues of concern relating to the treatment and management of people on NCSOs.

Further information

Further information can be obtained from the Chief Psychiatrist on 9096 7571 or 1300 767 299 (toll free).

The publication *Non-custodial supervision order – policy and procedure manual* (Department of Human Services, March 2007) is available at www.health.vic.gov.au/mentalhealth.

Electronic copies of the CMIA and the Mental Health Act can be viewed or downloaded from the legislation and parliamentary documents website at www.dms.dpc.vic.gov.au.

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