

Civil Hearing Kit: Community Treatment Order



Applying for a Community Treatment Order

Information to help you apply and prepare for a Tribunal hearing

Background Information

Note: Sections in brackets refer to the *Mental Health Act 2007*.

What is a Community Treatment Order (CTO)?

A CTO is a legal order made by the Mental Health Review Tribunal. It sets out the terms under which a person must accept medication and therapy, counselling, management, rehabilitation and other services while living in the community. It is implemented by a mental health facility that has developed an appropriate treatment plan for the individual person.

A CTO authorises compulsory care for a person living in the community. If a person breaches a CTO, by not complying with the conditions of the order, the person may be taken to a mental health facility and given appropriate treatment, including medication.

CTOs can be made for any period of time up to 12 months. It is possible for a person to have more than one consecutive CTO.

When may the Tribunal make a CTO?

The Tribunal may make a CTO:

- for a person who is detained in or a patient in a mental health facility, or
- for a person who is not in a mental health facility.

A CTO may be made in the following circumstances and may replace an existing order (s51(5)):

- by the Tribunal following a mental health inquiry;
- on a review of a patient by the Tribunal;
- on an application to the Tribunal (including at a s44 appeal hearing).

Who can apply for a CTO?

The following persons may apply for a CTO (s51(2)):

- the Authorised Medical Officer of a mental health facility in which a person is detained or is a patient;
- a Medical Practitioner who is familiar with the clinical condition of the person;

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- a Director of community treatment of a mental health facility who is familiar with the clinical condition of the person; or
- a designated carer or principal care provider of the person.

How does the Tribunal decide about a CTO application?

The Tribunal must be satisfied that:

- the person would benefit from the CTO as the least restrictive alternative consistent with safe and effective care; and
- the mental health facility has an appropriate treatment plan and is capable of implementing it; and
- if the person has been previously diagnosed as suffering from a mental illness, there must be a history of refusal to accept appropriate treatment, unless the person has been the subject of a community treatment order in the last 12 months, in which case the Tribunal must be satisfied that the person is likely to continue in or relapse into an active phase of mental illness if the order is not granted.

A person has a previous history of refusing to accept appropriate treatment if:

- the person has previously refused to accept appropriate treatment; and
- there was a relapse into an active phase of mental illness when treatment was refused; and
- the relapse was followed by mental or physical deterioration justifying involuntary hospital admission (whether or not there has been such an admission); and
- care or treatment in hospital resulted in, or could have resulted in, an improvement in or recovery from the symptoms of the mental illness.

When does a CTO come to an end?

A CTO can be made for a period of up to 12 months and ends on the date stated on the order, or if no date is specified, 12 months after the order was made. If you are applying for a further CTO, a hearing should be held before the current order ends to ensure continuity of care. However, an application can be made for a new order if a previous CTO has expired.

A CTO will also end if:

- the Director of the mental health facility revokes the CTO;
- the person successfully appeals to the Supreme Court;
- the Tribunal revokes the CTO; or
- the Tribunal orders that it has no effect.

A CTO has no effect while an affected person is detained in a mental health facility or is a voluntary patient, or has been admitted after a breach of a CTO (s56(3)).

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How to apply to the Tribunal

As soon as you are aware that you need to apply to the Tribunal for a CTO you should start making the necessary arrangements.

Notice

Written notice of the application and a copy of the treatment plan must be provided to the subject person. If the subject person is not subject to a current CTO or detained in a mental health facility, the application may only be heard 14 days after the notice is given unless the Tribunal determines at the hearing it is in the best interests of the person to hear the application sooner (see the Tribunal's Practice Direction: [Abridgement of CTO Notice Requirements](#)). The 14 day notice provision does not apply to persons who were subject to a CTO at the time the notices were given. In these and all other cases reasonable notice should be given with sufficient time to allow the subject person to adequately prepare for the hearing and to seek legal or other assistance if they wish.

The relevant mental health facility that is to implement the order in the community should be involved in the preparation of the treatment plan and be available to give evidence at the Tribunal hearing. If the person is already on a CTO, information about the efficacy of the current CTO should be provided.

Service

The Act provides for personal service, service by facsimile and service by post. Wherever possible the written notice and a copy of the proposed treatment plan should be provided directly to the subject person. This does not mean leaving it in a letter box or slipping it under a door. The documents **MUST** be handed to the person personally for notice to be effected. However, if this is not possible or practicable service by post might be necessary but you need to be aware that this will significantly extend the Act's notice period beyond 14 days because the law requires four working days to be allowed for delivery by post. The expression "working days" excludes weekends and public holidays.

The following are examples of how service by post can affect the length of time before a hearing can be held:

- If the application is posted on Monday 3 December 2007, service would not be taken to be effected (subject to evidence to the contrary) until Friday 7 December and the 14 day period would then run from 8 December. This means the hearing could not be held until 22 December. But as 22 December 2007 is a Saturday then the earliest the hearing could occur would be on Monday 24 December.

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- If the application is posted on Tuesday 4 December 2007, service would not be taken to have been effected (subject to evidence to the contrary) until Monday 10 December (which takes into account the weekend). The 14 day period would then commence to run from 11 December and 14 clear days from that date would mean that the hearing could not commence until 25 December 2007. So unless the Tribunal sat on a public holiday the earliest date would be 27 December 2007.

Involvement of mental health facility

Some of the larger mental health facilities have a Tribunal Clerk, or someone who is responsible for organising applications to the Tribunal. If this is the case you should contact them directly and they will apply to the Tribunal on your behalf.

Contacting the Tribunal

If there is no Tribunal clerk at your site, you will need to contact the Tribunal directly. To book a hearing for an individual patient/person you will need to fax an application form to the Tribunal (fax number 9817 4543). Application forms are available on the MHRT website (www.mhrt.nsw.gov.au) or by phoning 9816 5955.

The Tribunal has a roster for when panels visit mental health facilities in the Sydney, Illawarra, Central Coast and Newcastle regions. For example, the Tribunal might send a panel to your venue on the second and fourth Tuesday of every month. Should you need to have a hearing before the next panel is due to visit please contact the Tribunal so that alternative arrangements can be made.

Applications for a second or subsequent CTO should be faxed to the Tribunal **at least three weeks before** the requested date for the hearing. This allows notice of the application and hearing details to be given to the affected person. It also increases the likelihood that your preferred hearing date and time will be available.

The Tribunal will fax to the applicant a notice of hearing to be served on the affected person (with a copy of the proposed treatment plan) and a 'Confirmation of Notice of Hearing' form to be completed and returned to the Tribunal prior to the hearing.

If your application is urgent you should phone the Tribunal after faxing the application form and ask to speak to a Senior Registry Officer to confirm receipt of the fax.

Adjournment of a Community Treatment Order

Although the Tribunal has power to adjourn proceedings, it does not have power to extend the operation of community treatment orders beyond their expiry date by granting an adjournment. Unless a new order is made before the expiry of the existing order, the person will no longer be subject to the order. Therefore, to ensure continuity of care, agencies

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should apply to the Tribunal early enough and with sufficient information to ensure that a hearing is held by the Tribunal to allow for an order to be made within time. Any adjournment will only have effect during the term of the existing order.

What to do before the hearing

Preparation for the hearing

The applicant or delegate should:

- Provide written notice of the application and the treatment plan to the person and discuss the reasons for it (see Notice on page 4.2).
- Organise and prepare reports and necessary documentation (see below).
- Ensure that a treatment plan addressing the person's individual needs has been prepared in consultation with the proposed case manager.
- If the CTO is for a person leaving hospital, details as to the transition of care arrangements having regard to NSW Health Policy Directive: PD2012_060 - Transfer of Care from Mental Health Inpatient Services, including details of proposed appointments with the community treating team and other mental health professionals made prior to discharge. These appointments should be documented. The proposed case manager must meet with the person prior to discharge to be able to draw up an appropriate personalised treatment plan and should also be available to participate in the hearing
- Make arrangements for the proposed case manager to attend the hearing.
- Explain the hearing process to the affected person and inform of the hearing date and time.
- Encourage the subject person to come to the hearing.
- If the person is unable to attend, encourage his or her participation by video conference or by telephone.
- Inform the person's designated carer(s), principal care provider, relatives and friends of the hearing and encourage them to attend, unless the person objects. Facilitate alternative means for them to participate in the hearing if necessary, e.g. by telephone.
- Organise an interpreter for the person, the designated carer(s), principal care providers or his or her family where necessary.
- Ensure that an appropriate level of security is arranged, if necessary.
- Where the person is detained in a mental health facility, arrange for the person to meet with his or her case manager prior to the hearing.

Reports and documents required

The Tribunal needs to see the following reports and documents before the hearing:

- Completed application form.
- Confirmation of Service of Notice.

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- Documents establishing the Tribunal's jurisdiction e.g. the Involuntary Patient Order made by the Magistrate or the Tribunal or the current CTO (where appropriate).
- Individualised treatment plan (**see Attachment 2 — Treatment Plan Guidelines**).
- Report from treating psychiatrist/doctor — see below.
- A report on the efficacy of the current or any previous CTO.
- Reports from other involved professionals e.g. primary nurse, social worker, occupational therapist.
- Report from the psychiatric case manager.
- Written submissions (if any) from the person, their designated carer(s), principal care provider, family or friends where available.
- Background documentation, e.g. discharge summaries where available.
- Copies of recent clinical entries in hospital/community file.

If the hearing is not being held in person at the mental health facility, all reports should be faxed or scanned and emailed to the Tribunal **at least three working days before** the hearing date.

The Tribunal will refer to the reports during the hearing. For this reason, the authors of reports should be available to come to the hearing to answer any questions arising from the reports. Sometimes the Tribunal arranges for the authors of reports to talk with Tribunal members by telephone or via a video link.

The Tribunal may make reports available to the person and his or her legal representative. See note below.

Medical records

The law allows patients and their representatives to inspect or have access to the patient's medical records (s156). However, it is possible to ask the Tribunal to order that medical records not be disclosed for some good cause. This might happen, for example, if the treating medical practitioner believes that disclosure of the information may be harmful.

If you consider that there is a need for a preliminary hearing to discuss the disclosure of medical records, you should phone the Tribunal to arrange this well before the scheduled hearing.

Report style

Reports should:

- Be written in plain and simple English and avoid where possible the use of medical or technical jargon.

- Provide, as appropriate, a full and frank description of the person's circumstances.
- Avoid comments that could be interpreted as judgmental.
- Address the specific issues that the *Mental Health Act 2007* requires the Tribunal to consider (**see How does the Tribunal decide about a CTO application on page 4.2**).
- Identify clearly the sources of the author's information. These sources may be direct personal observations of the author of the report or may be information obtained from file notes or other professionals involved in the person's care.

What should the reports contain?

The following provides guidance as to the content of the report and who should provide reports. You should write the reports with the specific application in mind, and address the legal issues required for the making of a CTO.

Psychiatrist Report (or treating doctor)

- Person's legal status and length of involuntary patient order (where the order is requested for a patient in a mental health facility).
- Brief background of the person's history and events leading to the current hospitalisation or the current CTO, including co-morbid conditions, for example substance abuse, intellectual disability and other relevant conditions.
- History of treatment generally and treatment under previous community treatment orders.
- The subject person's response to treatment and willingness to continue with treatment.
- Details of efforts made to obtain the person's informed consent to their treatment and recovery plan; the ongoing monitoring of their capacity to consent and efforts to support them to understand those plans if they lack capacity.
- Opinion as to current diagnosis and how the CTO will benefit the subject person as the least restrictive form of care.
- Psycho social issues, including family and community supports.
- Current medication and any changes during the period of the order.
- Plans for engaging the person's ongoing recovery, care and future treatment and management.
- Length of order proposed.
- The person's attitude towards the application.
- Views of designated carer(s), principal care provider, relatives and friends concerning the CTO.
- Confirmation that contents of the report has been discussed with the subject person, where appropriate.

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Case Manager's Report

The Tribunal requires a report from the case manager implementing the order, addressing the following issues:

- Brief background of the person's history and case manager's contact with the person.
- A report on the efficacy of any current or previous CTO.
- An opinion as to how the community treatment order will benefit the person as the least restrictive alternative consistent with safe and effective care.
- Details of the treatment plan, including conditions placed on the person and health care facility in respect of delivering appropriate care (see Attachment 3).
- Conditions of the treatment plan that the mental health facility is prepared to enforce.
- Other interventions required to address issues of substance abuse.
- Psycho social issues including family and community supports.
- Plans for the person's ongoing recovery, care and future treatment including support to pursue the person's recovery by referrals for vocational training.
- Observations in relation to subject person's symptoms.
- Confirmation that contents of the report have been discussed with the subject person.

Other reports

Additional reports can be provided by health care professionals involved in the care of the person, for example, primary nurses, social worker or occupational therapist.

These reports should include:

- Brief background of the person's history and authors contact with the person.
- An opinion as to how the community treatment order will benefit the person as the least restrictive alternative consistent with safe and effective care.
- Other information as relevant to the health professional's involvement with the person.
- Where appropriate, contents of the report have been discussed with the person and his or her viewpoint obtained.

See Attachment 2 — Treatment Plan Guidelines

Tribunal Proceedings (s151)

Hearings are to be open to the public. However, the Tribunal can decide that a hearing be closed. An application can be made by the person or another person appearing at the proceedings. The Tribunal can make any one or more of the following orders:

- an order that the hearing be conducted wholly or partly in private,
- an order prohibiting or restricting the publication or broadcasting of any report of proceedings before the Tribunal,
- an order prohibiting or restricting the publication of evidence given before the Tribunal, whether in public or in private, or of matters contained in documents lodged with the Tribunal or received in evidence before the Tribunal,
- an order prohibiting or restricting the disclosure to some or all of the parties to the proceedings of evidence given before the Tribunal, or of the contents of a document

Who should come to the hearing?

- The person concerned (wearing street clothes if possible).
- The person's designated carer(s), principal care provider, relatives and friends.
- Everyone who has prepared a written report for the Tribunal.
- The treating psychiatrist/doctor.
- The case manager.
- Other involved professionals, for example the primary nurse, social worker.

Whilst it is preferable for the subject person to be at the hearing the Act provides that the Tribunal may consider the application in the person's absence provided they have been given notice of the application, in accordance with the Act.

If the designated carer(s) or principal care provider are unable to come to the hearing, they may still make their views known by writing to the Tribunal before the hearing. It might also be practicable for the Tribunal to hear their views by telephone or video.

What to do after the hearing

If the Tribunal makes a CTO, you should give a copy of the order and the accompanying treatment plan to the person. A copy should also be kept in the person's mental health facility file. The Tribunal will keep the original order.

Applicants and case managers should be prepared to answer questions from the person and his or her family about the nature and effect of the CTO. You should also explain the person's right to have the order varied or revoked, or to appeal against a decision of the Tribunal.

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You might find it helpful to refer the person to the Mental Health Advocacy Service for further information (phone 9745 4277).

Breaches of Community Treatment Orders (s58)

Mental health facilities have certain powers to enforce CTOs and to deal with breaches by the affected person. A breach occurs when a person fails to comply with one of the obligations in the approved treatment plan. There are a number of steps to the breach process. It can end with the affected person being readmitted to a hospital based mental health facility as a detained person.

A technical breach of a CTO does not automatically result in breach proceedings. The process commences and continues at the discretion of the treating mental health facility.

The steps set out in the Act following a CTO breach are as follows:

1. If the affected person refuses or fails to comply with the order, the mental health facility should take all reasonable steps to implement the order and inform the affected person that he or she is not complying with the conditions of the order, and remind the person of the possible consequences.
2. If the person still does not comply with the order, the Director of the mental health facility needs to decide if there is significant risk of deterioration of the person's mental or physical condition.
3. If the Director considers that there is a significant risk of deterioration of the person, the Director must make a written record of the facts on which that opinion is based and the reasons for forming it, and also include facts and reasons about the affected person's failure to comply, and the steps that have been taken to implement the order.
4. The Director must cause the affected person to be informed that if he or she still refuses to comply with the CTO, the person will be taken to the declared mental health facility or another appropriate mental health facility and treated there.
5. If the affected person still fails to comply, the Director of the mental health facility may organise a written notice (**a breach notice**) to be given to the person requiring him or her to accompany a member of staff of the NSW Health Service for treatment, and warning him or her that the assistance of a police officer may be obtained to ensure the person obeys the notice. If it is not reasonably practicable to hand the notice directly to the person, the notice is to be posted to the person's last known address.
6. If the affected person still fails to comply, the Director may issue an order (**a breach order**) in writing that the person is to be taken to a specified mental health facility. Police assistance can be arranged if required.

A person who is at a mental health facility as a result of a breach notice or a breach order:

- may be given treatment in accordance with the CTO; and

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- may be assessed by a medical practitioner for involuntary admission;
- may be released if treatment is accepted, or may be dealt with at the mental health facility or taken to another mental health facility if treatment is refused.

A person who is at a mental health facility after a breach order is to be reviewed by an authorised medical officer within 12 hours to determine if the affected person is a mentally ill or a mentally disordered person. If either determination is made and if no other care of a less restrictive kind that is consistent with safe and effective care is available the person must be detained in the mental health facility.

The affected person may be detained until one of the following events occurs:

- if mentally ill, the term of the current CTO ends or the person is discharged from the mental health facility;
- if mentally disordered, the maximum period for which he or she can be held as mentally disordered ends, the term of the current CTO ends or the person is discharged from the mental health facility.

NOTE: If the affected person is discharged before the CTO ends, then the CTO continues to have effect.

When will a person admitted under a breach be reviewed? (s63 & s64)

The status of a person admitted under the breach provisions will be that of a detained person.

An authorised medical officer must cause a detained person to be brought before the Tribunal no later than three months after the person was detained and at least every three months while the person is detained. The authorised medical officer is not required to bring the person for review if at the time of the person's detention the CTO has less than three months to run.

At a review the Tribunal must decide if the person is a mentally ill or mentally disordered person for whom no care of a less restrictive kind that is consistent with safe and effective care is appropriate or reasonably available. If such a determination is made the Tribunal must determine whether the person should remain in the mental health facility until the end of the CTO or should be detained in the facility as an involuntary patient.

If the Tribunal does not determine that the person is mentally ill, or if less restrictive care is appropriate and reasonably available it must make an order that the person be discharged from the facility and may make a new CTO. The Tribunal may defer the operation of the order for discharge for up to 14 days.

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If at the end of the CTO the person is still a mentally ill person and there is no less restrictive form of appropriate care available the authorised medical officer may cause the person to continue to be detained in a mental health facility. If this occurs, the person is taken to be detained in the facility under s19 of the Act. The person must then be examined in accordance with s27 of the Act, and if found to be a mentally ill person following 2 (or 3) assessments becomes an 'assessable person' and is to be presented to the Tribunal for a mental health inquiry (see Section 1 of the Tribunal's Civil Hearing Kit).

A person detained under the breach provisions is able to apply to an authorised medical officer for discharge from the mental health facility and if refused or not dealt with in three working days, has a right to appeal to the Tribunal (s44).

Varying or revoking a Community Treatment Order

The Tribunal can vary or revoke a CTO at any time on its own motion or on the basis of an application. However, an application may only be made (s65(3)) if:

- there has been substantial or material change in the circumstances surrounding the making of the order; or
- relevant information not available when the order was made has become available.

An application may only be made:

- by the affected person; or
- by the psychiatric case manager implementing the order; or
- by a person who could have applied for the order.

Variation

Typically a variation is needed when the person has moved into a different area, or there has been a substantial change in the treatment plan. For example, a new medication has been introduced which requires regular blood tests and this is not covered in the original treatment plan.

The mental health facility currently responsible for the CTO is the only facility that can apply for a variation of the order (**see Attachment 4 — Application form for a variation of an order**).

Revocation

The Tribunal may revoke a CTO if the criteria set out above are met.

However, the Director of community treatment of a mental health facility may also revoke a CTO if of the opinion that the subject person is not likely to benefit from a continuation of the order (s66). Before revoking a CTO, the Director must consult the subject person and if

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reasonably practicable to do so, any designated carer or principal care provider. If the Director revokes a CTO there is no need for a Tribunal hearing. However, the Director must notify the Tribunal in writing if a decision is made to revoke a CTO or not to apply for a further order. (s66(3))

See Attachment 6 — Notice to Tribunal of decision to revoke CTO

The Director must take all reasonably practicable steps to notify the designated carer(s) and the principal care provider if:

- an order is varied or revoked by the Tribunal or Director;
- an application is made for a further order; or
- a decision is made not to apply for a further order.

If a person on a CTO wishes to have the order revoked, he or she can be referred to Legal Aid for advice on 9745 4277, or can contact the Tribunal directly for information about the process.

Appealing against a Community Treatment Order

If the order was made by the Tribunal the affected person may appeal to the Supreme Court if:

- the term of the CTO exceeds six months or no term is specified on the order, against the duration of the order; or
- on any question of law or fact arising from the order or its making.

If the order was made by a Magistrate under s33 of the *Mental Health (Forensic Provisions) Act 1990*, the Tribunal may hear the appeal.

People wishing to appeal an order should be referred to the Mental Health Advocacy Service (Legal Aid) for advice on 9745 4277 or refer to the Tribunal if he or she is subject to a Magistrate's order.

Attachments

The following attachments are available by clicking on the following links:

1. [Application for a CTO](#)
2. [Guidelines for CTO applications](#)
3. [Treatment Plan template](#)
4. [Application to vary or revoke a CTO](#)
5. [Flowchart for Breach of a CTO](#)
6. [Notice to Tribunal of decision to revoke or not apply for a further CTO.](#)