



Transcript: Persons Charged with an Offence and Forensic Patients

Name	Dialogue / Actions
Michael	<p>Hi again I'm Michael. In this scenario, I am going to outline some of the provisions under the Mental Health Act 2000 that relate to persons charged with an offence.</p> <p>The first case is Samantha.</p> <p>Samantha is a 25-year-old woman with a 5 year history of schizophrenia who is currently receiving treatment under the community category of an involuntary treatment order. She was recently charged with the offence of 'breach of domestic violence order'. This is regarded as a simple offence as it can be dealt with in the Magistrate's Court.</p> <p>Samantha told her Case Manager that she had been charged with the offence. The Case Manager informed the Administrator Delegate, who completed the <i>involuntary patient charged with an offence</i> form and forwarded it to the Director of Mental Health.</p> <p>After the Director of Mental Health was advised of the charges, the Director of Mental Health's office confirmed the charges for the patient and issued a <i>notice – confirmation of application of Chapter 7 Part 2 form</i>, which was then sent to the Administrator and the Chief Executive for Justice. This suspended Samantha's charges until the legal processes under the Mental Health Act were completed. Samantha was also advised by her Case Manager that she was subject to Chapter 7, Part 2 of the Mental Health Act.</p> <p>The Director of Mental Health also issued a <i>request for patient examination and report</i> to the Administrator. The request was made under Chapter 7, Part 2 of the Mental Health Act and required Samantha's psychiatrist to complete a forensic report in compliance with section 238 of the Mental Health Act within 21 days of the Administrator receiving the Director of Mental Health's request. The section 238 report must address the relationship, if any, between Samantha's mental condition and her offending behaviour and whether she is fit for trial. Samantha's psychiatrist determined that she was not of unsound mind at the time of the offence and was fit for trial.</p> <p>After receiving the section 238 report, the Director of Mental Health referred the matter to the Director of Public Prosecutions with a recommendation that the charges continue according to law. The matter could not be referred to the Mental Health Court as Samantha had not been charged with an indictable offence. Samantha was advised of the referral to the Director of Public Prosecutions by the Authorised Mental Health Service via a <i>notice of reference to Mental Health Court or Director of Public Prosecutions</i> and her treating team was also advised that the charges would be continued.</p> <p>Once the referral was received by the Director of Public Prosecutions a decision about the charges must be made by the Director of Public Prosecutions within 28 days. The Director of Public Prosecution's decision was to continue proceedings, that is, the charges were returned to the usual court process for determination. The Director of Public Prosecutions conveyed this information to Samantha and the Director of Mental Health via a <i>notice of decision in relation to charges</i>.</p> <p>Samantha's charges were heard in the Magistrates Court where she received a fine. In addition she continued to be treated by the Authorised Mental Health Service in the community under an involuntary treatment order.</p>



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Six months later, Samantha was charged with grievous bodily harm following an incident where she was accused of assaulting someone. A charge of grievous bodily harm is an indictable offence. The processes previously outlined in relation to suspending Samantha's charges and commencing the Chapter 7 Part 2 provisions of the Mental Health Act were undertaken. This time however, the psychiatrist's section 238 report stated that at the time of the offence Samantha was of unsound mind. After receiving the section 238 report, the Director of Mental Health referred the matter to the Mental Health Court because the nature of the charge was particularly serious.

Samantha was required to attend a Mental Health Court hearing and was accompanied by her case manager and her legal representative. Samantha's psychiatrist provided an updated report addressing a number of areas. The purpose of this report was to inform the Mental Health Court's decisions regarding her future management.

The Mental Health Court accepted the opinion of Samantha's psychiatrist and decided that at the time of the offence, Samantha was of unsound mind, ordering that the legal proceedings be discontinued. In considering the seriousness of the offence, the risk to the community and Samantha's treatment needs, the Mental Health Court decided to make a forensic order. The making of the forensic order ceased Samantha's involuntary treatment order and required her detention to the Authorised Mental Health Service.

At the time of making the forensic order, the Mental Health Court approved more than overnight limited community treatment to commence immediately. In approving limited community treatment, the Mental Health Court also ordered a number of conditions including that Samantha attend an appointment with a psychiatrist within 7 days of the Mental Health Court's decision. At this appointment, the psychiatrist completed a *treatment plan* and a *limited community treatment plan*. These plans were based on Samantha's clinical needs and clearly stated the conditions of limited community treatment and the actions that would be taken if Samantha was non-compliant with her treatment. In accordance with the *Forensic patient management policy and procedures* issued by the Director of Mental Health, the Administrator Delegate completed the 'Approval/Order Verification' section in the *limited community treatment plan*.

Samantha was provided with an explanation of the forensic provisions of the Mental Health Act and her Allied Person was notified that she had been placed on a *forensic order*. While Samantha remained a forensic patient, an *involuntary patient summary* containing current information pertinent to risk assessment and risk management was completed every 3 months. A photograph was also taken of Samantha at her first appointment and kept on her file. This photo will be updated at least annually or as changes in her appearance are noted.

Samantha's forensic order was reviewed by the Mental Health Review Tribunal 6 months after being made. The Tribunal confirmed the forensic order and approved limited community treatment. The Tribunal will continue to review Samantha's forensic order every 6 months.

Some other information that you need to be aware of.

The Mental Health Court may make a number of decisions as an outcome of a reference, including that the person:



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- was of unsound mind when the alleged offence was committed
- was not of unsound mind when the alleged offence was committed
- is permanently unfit for trial
- is temporarily unfit for trial, or
- is fit for trial.

If the person is of unsound mind or is permanently unfit for trial, the Mental Health Court may make a forensic order. However, if a person is found to be temporarily unfit for trial, that is the unfitness is not of a permanent nature, the Mental Health Court must make a *forensic order*.

When a forensic order is made after the Mental Health Court finds the person is temporarily unfit for trial, the Tribunal reviews the person's fitness for trial every 3 months for the first 12 months from the Mental Health Court decision and thereafter every 6 months. If the patient is found fit for trial on the Tribunal review, the proceedings are continued and the patient must be returned to Court within 7 days.

If the person remains unfit for trial for 12 months or longer, the Tribunal must also decide if the person is likely to be fit for trial in a reasonable time. The Attorney-General must order the proceedings be discontinued or order the Tribunal to continue to carry out fitness for trial reviews. For offences carrying a maximum penalty of life imprisonment, proceedings for patients found to be temporarily unfit for trial are automatically discontinued if the patient remains unfit for trial after 7 years. For any other offence, proceedings are discontinued if the patient remains unfit after 3 years. In these cases, the patient remains a forensic patient until the Tribunal revokes the *forensic order*.

The final topic to be addressed in this scenario relates to the care and treatment of disability forensic patients. A person who the Mental Health Court finds unfit for trial or of unsound mind as a consequence of an intellectual or cognitive disability may be placed on a *forensic order (Mental Health Court–Disability)*. A *forensic order (Mental Health Court–Disability)* authorises a person's detention to the forensic disability service or an Authorised Mental Health Service for care. This is an important distinction from the *forensic order (Mental Health Court)* which authorises involuntary treatment or care. Care is defined in the Mental Health Act to include 'the provision of rehabilitation, habilitation, support and other services'. Care provided to the disability forensic patients should be aimed at improving and maximising their quality of life. As with all involuntary patients a treatment plan must be developed, however, for disability forensic patients, the treatment plan must focus on responding to the patient's care needs.