

Appendices

Additional resources available on the Public Defender' Website

State - Mental Health and Cognitive Impairment Forensic Provisions Act 2020

- *Summary of Significant Changes - March 2021*
- *Unfitness to be Tried Procedural Flow Chart - State*
- *Defence of Mental Health or Cognitive Impairment Procedural Flow Chart - State*

Commonwealth - Crimes Act 1914

- *Unfitness to be Tried Procedural Flow Chart - Commonwealth*
- *Defence of Mental Impairment Procedural Flow Chart - Commonwealth*

Services and programs for people with mental health and cognitive impairments

Justice Health Court Liaison Service

Most criminal lawyers would be aware of the Mental Health Court Liaison Service run by Justice Health. It operates in a number of Local and Children's Courts across NSW.

Those of you who have access to this service may know how helpful they can be in performing assessments (with additional input from psychiatrists if necessary), making referrals and assisting to formulate treatment/case plans for section 12 applications.

Unfortunately, the service is still not available at all Local and Children's Courts, and is generally not equipped to assess cognitive impairments.

See <https://www.justicehealth.nsw.gov.au/about-us/health-care-locations/courts> for Network court locations.

Justice Advocacy Service (JAS)

The Justice Advocacy Service (JAS) is run by the Intellectual Disability Rights Service (IDRS).

The service commenced on 1 July 2019, and is similar to the Criminal Justice Support Network (CJSN) which it replaced.

The JAS provides support for victims, witnesses, suspects and defendants in the NSW criminal justice system who may have a cognitive impairment.

Referrals may be made by calling 1300 665 908.

Further information is available at <https://idrs.org.au/jas/>, including eligibility and program factsheets.

Example of conditions used by Tribunal when granting conditional release/ sample bail conditions

Conditional Release Order

Case manager

1. PATIENT accept NAME, of the COMMUNITY MENTAL HEALTH SERVICE as his/her case manager. *He/she* shall be managed by the case manager in accordance with the NSW Ministry of Health *Guidelines for Forensic and Correctional Patient Ground Access, Leave, Handover, Transfer, and Release* (PD2012_50).
2. PATIENT shall meet with *his/her* case manager, either at *his/her* home or at the COMMUNITY MENTAL HEALTH SERVICE. The case manager will decide how often these meetings will take place, and where they are to take place.
3. PATIENT is to participate in any education, training, rehabilitation, recreational, therapeutic, or other programmes which *his/her* case manager asks *him/her* to attend.
4. *[OPTIONAL]* In particular, PATIENT is to attend *[insert specific programs and time frames for attendance]*.
5. PATIENT must attend a mental health facility if directed to do so by his/her case manager or psychiatrist.

NB A forensic patient may also be scheduled and taken to a mental health facility under the Mental Health Act 2007.

6. The case manager may nominate a delegate to act as case manager in his or her place from time to time.

Psychiatrist

7. PATIENT accept *NAME* (doctor), of the COMMUNITY MENTAL HEALTH SERVICE as his/her treating psychiatrist. *He/she* shall be managed by the treating psychiatrist in accordance with the NSW Ministry of Health *Guidelines for Forensic and Correctional Patient Ground Access, Leave, Handover, Transfer, and Release* (PD2012_50).
8. PATIENT shall meet the treating psychiatrist at the COMMUNITY MENTAL HEALTH SERVICE. The treating psychiatrist can nominate an alternative venue for the meetings to occur. The treating psychiatrist will decide how often the meetings will take place.
9. PATIENT is to accept the medication and other treatment prescribed by *his/her* treating psychiatrist. *He/she* shall take the medication in the way prescribed by the treating psychiatrist.

10. If the psychiatrist is concerned about PATIENT's mental state, the psychiatrist may direct *him/her* to attend a mental health facility and seek admission to that facility as a voluntary patient. PATIENT must immediately comply with that direction.

NB A forensic patient may also be scheduled and taken to a mental health facility under the Mental Health Act 2007.

11. The treating psychiatrist may nominate a delegate to act as treating psychiatrist from time to time.

General Practitioner

12. *PATIENT* accept *NAME* (doctor), or his/her or her delegate (Name and address of the practice) as his/her general practitioner. The general practitioner is not to change medication without consultation with *PATIENT'S (name)* treating psychiatrist.

Drugs and Alcohol

13. The only mind or mood altering drugs that PATIENT is to consume are those prescribed by the treating psychiatrist or regular registered medical practitioner.
14. PATIENT must not take any illegal drugs or substances (or legal synthetic versions of illegal drugs).
15. PATIENT is only to consume alcohol in accordance with such directions and approval as may be given from time to time by his/her case manager. **OR** PATIENT must not consume any alcohol.
16. PATIENT must promptly submit to any test for the detection of the use of drugs and substances including alcohol as shall be requested from time to time by PATIENT's case manager. These tests may be administered randomly, at the discretion of the case manager. *[Specify particular tests and frequency if appropriate]*

Accommodation

17. PATIENT is to live at LOCATION. If *she/he* wishes to live at another address, *his/her* case manager must first agree that the alternative accommodation is appropriate **OR** PATIENT must first obtain approval from the Tribunal at a review hearing.
18. PATIENT must notify *his/her* case manager of *his/her* current residential address and telephone number.
19. If PATIENT changes accommodation or telephone number, the case manager will notify the Tribunal of the change to residential address.
20. PATIENT is entitled to be absent overnight *[OR for 2 or 3 nights as appropriate]* from *his/her* agreed accommodation, but must first obtain the approval of *his/her* case manager.
21. PATIENT must not travel interstate or overseas without the Tribunal's approval. This approval can be granted in writing by the President or a Deputy President of the Tribunal.

Conduct

22. PATIENT must not engage in unlawful conduct or conduct that could give rise to a reasonable apprehension that the safety of *himself or herself* or of any member of the public is, or could be, seriously endangered.

Other conditions

23. PATIENT to provide *his/her* case manager with a recent (head and shoulders) photograph of a quality acceptable to the case manager. Alternatively *she/he* must co-operate while

the case manager or delegate takes a photograph of *him/her*. The case manager is to provide a copy of the photograph to the Tribunal.

24. PATIENT must attend Mental Health Review Tribunal reviews according to arrangements as notified in advance to *him/her, his/her* case manager, and *his/her* solicitor, in writing by the Tribunal.
25. PATIENT shall attend any reviews which are requested by the Community Forensic Mental Health Service.
26. PATIENT shall allow the sharing of information about his/her treatment, progress and management between *associated teams*, his/her treating psychiatrist and any other person or persons providing health care, management and support services.

Optional Non-association with victims

27. That PATIENT shall not initiate any communication, or attempt to initiate any communication, in any way, or through any medium, with VICTIM.
28. That PATIENT is to remain away from the following places (at the following times): *list as appropriate to the patient's particular case and circumstances*.

