

Restricted involuntary treatment orders and restricted community treatment orders

Chief Psychiatrist's Guideline

Key message

If a person with mental illness is found guilty of an offence, the court has the option to make a restricted involuntary treatment order instead of giving the person a sentence. The person is then taken to an approved mental health service as an involuntary patient and must be given treatment for their mental illness. The restricted involuntary treatment order operates as a complete diversion from the criminal justice system.

A person on a restricted involuntary treatment order can be placed on a restricted community treatment order. These orders permit people on restricted involuntary treatment orders to live in the community while receiving the treatment they need for their mental illness.

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Purpose and scope

To provide information about the legal and policy requirements governing people on restricted involuntary treatment orders and restricted community treatment orders.

Many of the clinical practice standards that apply to making and administering community treatment orders apply equally to restricted community treatment orders. These standards are discussed in detail in the Chief Psychiatrist's guideline *Community treatment orders*.¹ These standards have not been repeated in this guideline. Instead, clinicians and service managers should read the community treatment order guideline in conjunction with this guideline in order to have a full understanding of the policy and practice requirements for making and administering restricted community treatment orders.

In this guideline, the term 'authorised psychiatrist' means both the authorised psychiatrist and any delegated authorised psychiatrist.

Restricted involuntary treatment orders

Restricted involuntary treatment orders (RITOs) are made by the courts under s. 93 of the Sentencing Act. If a person with mental illness is found guilty of an offence (but not a 'serious offence'²), a court may make a RITO instead of giving the person a sentence. In deciding whether or not to make a RITO, the court must consider the person's current mental condition, their medical, psychiatric and forensic history and their social circumstances. A factor in the decision is whether the court believes the person's mental illness played a significant role in the offending behaviour.³

¹ Chief Psychiatrist's guideline *Community treatment orders* (Department of Human Services, November 2005) www.health.vic.gov.au/mentalhealth/cpg/index

² A 'serious offence' is defined in s.3 of the *Sentencing Act 1991*.

³ In *R v Tsiaras* [1996] 1 VR 398, the Victorian Court of Appeal suggested there are five ways in which serious mental illness (not amounting to the legal test for insanity at the time) is relevant to sentencing. The Tsiaras principles give some insight into the factors that guide a decision by a court to either make a RITO or not and, in particular, the way courts balance a person's need for treatment against community expectations that a person who commits a crime should be punished. The Tsiaras decision is summarised in the discussion paper *Treatment and care of mentally ill offenders pursuant to Part 5 of the Sentencing Act 1991 and Parts 3-4 of the Mental Health Act 1986*, Department of Human Services, December 2003, pp. 7-8, www.health.vic.gov.au/mentalhealth/legislation/discpap.pdf.

After a court makes a RITO, the person must be taken to an approved mental health service. The court cannot apply any conditions to the order and the person is not required to return to court again. In this way, the RITO operates as a complete diversion from the criminal justice system.

Under the Mental Health Act, a person on a RITO is an involuntary patient and must be given treatment for their mental illness.

Criteria for making a RITO

Before making a RITO, the court must receive a *Certificate of psychiatrist for restricted involuntary treatment order* (Form 4B)⁴ from a psychiatrist and be satisfied that all the following criteria in s. 93 of the Sentencing Act ('the s. 93 criteria') apply to the person:

- (a) the person appears to be mentally ill; and
- (b) the person's mental illness requires treatment and that treatment can be obtained by the person being subject to a restricted involuntary treatment order; and
- (c) because of the person's mental illness, involuntary treatment of the person is necessary for his or her health or safety (whether to prevent a deterioration in the person's physical or mental condition or otherwise) or for the protection of members of the public.

In practice, the *Certificate of psychiatrist for restricted involuntary treatment order* (Form 4B) and other clinical reports will usually be prepared by specialist forensic clinicians or private practitioners as part of the judicial process.

Role of the authorised psychiatrist

Before making a RITO, the court must also request and receive a report from the authorised psychiatrist of the relevant approved mental health service (see 'Deciding the relevant approved mental health service' below). The purpose of the authorised psychiatrist's report is to inform the court whether there are facilities or services available to treat the person's illness and whether the authorised psychiatrist recommends that the RITO be made. The court should send a copy of the *Certificate of psychiatrist for restricted involuntary treatment order* (Form 4B) with its request.

The authorised psychiatrist can ask for any other available information from the court about the person and the offence, and can request to personally examine the person before making a decision. A factor in the decision is whether the authorised psychiatrist agrees that the person's mental illness played a significant role in the offending behaviour and whether treatment is likely to improve the person's mental condition and, therefore, lessen the risk of re-offending. The authorised psychiatrist must also make a judgement as to whether the approved mental health service has the necessary facilities or services available to treat the person's illness.

The authorised psychiatrist should complete the *Report of authorised psychiatrist for restricted involuntary treatment order* (Form 5B)⁵ if he or she agrees that the RITO should be made and facilities or services are available at the approved mental health service.

4 Form 4B is contained in the schedule to the Sentencing Regulations 2002. A copy of the form can be downloaded from the mental health website at www.health.vic.gov.au/mentalhealth/mh-act/forms.

5 Form 5B is contained in the schedule to the Sentencing Regulations 2002. A copy of the form can be downloaded from the mental health website at www.health.vic.gov.au/mentalhealth/mh-act/forms.

Deciding the relevant approved mental health service

In order to make a RITO, the court must decide which approved mental health service will provide treatment and services to the person. As a general principle, area mental health services (AMHS) have primary responsibility for the management of people who meet eligibility criteria and who reside in their area. It is likely that most people being proposed for a RITO will already be receiving mental health services from an AMHS. It is expected that the relevant AMHS will continue to provide services to a person subject to the RITO.

As discussed above, RITOs cannot be made in relation to ‘serious offences’. It is therefore expected that most people being considered for a RITO will be able to be managed safely and appropriately by their AMHS. Referral to Forensicare⁶ should only be considered where treatment or case management cannot be safely provided.

Where a person is not currently registered with a public mental health service, the relevant AMHS will be determined by reference to the person’s usual or most recent place of residence.

Making the RITO

The court will make a RITO if it has received a *Report of authorised psychiatrist for restricted involuntary treatment order* (Form 5B) from the authorised psychiatrist recommending the RITO (see above) and if it is satisfied, having regard to all the circumstances of the case, that a RITO should be made. The court will complete a *Restricted involuntary treatment order* (Form 6).⁷

Duration of the RITO

The court will specify the duration of the order, which must not exceed two years.

The Chief Psychiatrist or the Mental Health Review Board (at an appeal or review) can discharge a person from a RITO at any time, if the s. 93 criteria no longer apply to the person (ss. 36B, 36D and 37A Mental Health Act).

Procedure after a RITO is made

Once the court makes a RITO, the person will be taken to the relevant approved mental health service. The authorised psychiatrist should examine the person as soon as practicable, or in any case within 24 hours, and complete the *Examination of security/involuntary/forensic patient by authorised psychiatrist* (MHA3) form. The authorised psychiatrist must decide whether to:

- admit the person as an involuntary inpatient (a RITO is sufficient authority to detain the person at the service (s. 93(4) Sentencing Act))

or

- make a restricted community treatment order without admitting the person to the service as an inpatient (see ‘Restricted community treatment orders’ below). In practice, the authorised psychiatrist would only make a restricted community treatment order without admitting the person if the person is well known by the

⁶ Forensicare is the operating name of the Victorian Institute of Forensic Mental Health. Forensicare operates the Thomas Embling Hospital in Fairfield.

⁷ Form 6 is contained in the schedule to the Sentencing Regulations 2002. The Sentencing Regulations can be viewed or downloaded from the legislation and parliamentary documents website at www.dms.dpc.vic.gov.au.

authorised psychiatrist and the community team. It is this prior knowledge of the person that helps inform the psychiatrist's decision about the appropriateness of treatment in the community and the formulation of a treatment plan. If these things are not known or time is needed to make arrangements for the person's treatment and support in the community, a period of inpatient treatment may be necessary.

Treatment

A person on a RITO is an involuntary patient under the Mental Health Act and must be given treatment for their illness. If an involuntary patient refuses to consent to necessary treatment or is unable to consent to treatment, the authorised psychiatrist may consent to psychiatric treatment on their behalf (s. 12AD Mental Health Act). This decision should be recorded on the *Examination of security/involuntary/forensic patient by authorised psychiatrist* (MHA 3) form.

The authorised psychiatrist must also prepare, review on a regular basis, and revise as required a treatment plan for the person (s. 19A Mental Health Act).⁸

Rights booklet

The person must be given a copy of the patients' rights booklet *Restricted involuntary treatment orders*, and have the information explained to them (s. 18 Mental Health Act).⁹

Leave of absence

Sections 40 and 41 of the Mental Health Act govern leave of absence for all involuntary patients, including people on RITOs.

Under s. 40, the authorised psychiatrist may allow an involuntary patient to be absent from an approved mental health service for such period and subject to any conditions that the authorised psychiatrist considers appropriate.

Under s. 41, the authorised psychiatrist may allow an involuntary patient to be absent from an approved mental health service for the purpose of receiving medical treatment for the period and subject to any conditions that the authorised psychiatrist considers appropriate.

In both cases, the authorised psychiatrist is required to make a judgement about the appropriateness of the leave and the conditions, taking into account the person's clinical state.

Generally leave of absence (other than medical leave) should only be granted for short periods, such as overnight or a weekend. If the person will be living in the community for longer periods, the authorised psychiatrist should make a restricted community treatment order (see 'Restricted community treatment orders' below).

A decision to grant leave of absence should be noted in the person's clinical record and also recorded on the *Leave of absence for an involuntary patient* (MHA 21) form.

⁸ Further guidance about treatment plans is provided in the draft Chief Psychiatrist's guideline, *Treatment plans under the Mental Health Act 1986* (Department of Human Services, October 2004). The guideline is available at www.health.vic.gov.au/mentalhealth/mh-act/treatment-plan.

⁹ The patients' rights booklet can be viewed, downloaded or ordered from the mental health website at www.health.vic.gov.au/mentalhealth/patientrights/index.

Transfer to another approved mental health service

The authorised psychiatrist may transfer a person on a RITO to another approved mental health service if the psychiatrist is satisfied that the transfer will be of benefit to the person or is necessary for the person's treatment (s. 39(1) Mental Health Act). The authorised psychiatrist at the receiving service must approve the transfer.

The Chief Psychiatrist may also transfer a person on a RITO if the transfer will be of benefit to the person or is necessary for their treatment (s. 39(2) Mental Health Act).

The authorised psychiatrist or Chief Psychiatrist should complete the *Transfer of an involuntary patient to another approved mental health service* (MHA 19) form. Copies of all relevant clinical information, including a copy of the person's treatment plan should be forwarded to the receiving service.

A person on a RITO has the right to appeal to the Mental Health Review Board against a proposed transfer at any time (s. 39(5) Mental Health Act).

Discharging a RITO

The Chief Psychiatrist must discharge a person from a RITO if the s. 93 criteria no longer apply to the person (s. 37A Mental Health Act). The Chief Psychiatrist will complete a *Discharge from restricted involuntary treatment order/assessment order/diagnosis, assessment and treatment order* (MHA 17A) form. The authorised psychiatrist cannot discharge a person from a RITO.

The authorised psychiatrist is required to regularly assess whether the s. 93 criteria still apply to the person and, if they do not, to notify the Chief Psychiatrist as soon as practicable. The Chief Psychiatrist must then examine the person as soon as practicable to decide whether or not to discharge the person from their order.

On appeal or review, the Mental Health Review Board must discharge a person subject to a RITO if the s. 93 criteria no longer apply to the person (s. 36B Mental Health Act).

Restricted community treatment orders

A person on a RITO can be placed on a restricted community treatment order (RCTO). RCTOs enable people on RITOs to live in the community while receiving treatment for their mental illness. They are intended to offer a less restrictive setting for the treatment of people subject to RITOs, in much the same way as community treatment orders permit other involuntary patients to live in the community.

Responsibility for making a RCTO

The authorised psychiatrist or the Chief Psychiatrist can make a RCTO (s. 15A Mental Health Act).

It is expected that authorised psychiatrists will make most RCTOs. The authorised psychiatrist is responsible for planning the treatment of a person on a RITO and is, therefore, best placed to make an assessment about the person's needs for continuing treatment and support in the community and the most appropriate way these can be met.

Criteria for making a RCTO

A person on a RITO can be placed on a RCTO if:

- all the legislative criteria in s. 93 of the Sentencing Act ('the s. 93 criteria') apply to the person

and

- the treatment required for the person can be obtained through the making of a RCTO (s.15A(1) Mental Health Act).

Planning for a RCTO

The planning for a RCTO is much the same as the planning for a community treatment order. When considering transition to the community, the principles of good discharge planning apply. Arrangements must be discussed with the person, family members and carers involved in providing ongoing care to the person, and relevant community-based clinicians. This planning is discussed in detail in chapter 4 of the Chief Psychiatrist's guideline *Community treatment orders*.¹⁰

Discharge planning should be based on a current assessment of the person's needs and any identified risk factors. The risk of relapse, the severity of the illness and the relationship between the person's illness and the offending behaviour should be considerations when making arrangements for the person's continuing treatment and support in the community. Social, accommodation, family and personal issues must also be considered.

Making a RCTO

The authorised psychiatrist or the Chief Psychiatrist (as the case may be) should complete a *Restricted Community Treatment Order* (MHA 11A) form.

The relevant psychiatrist must tell the person the order has been made, give the person a copy and explain the reasons for making the order (s. 15A(5) Mental Health Act).

Copies must be sent to the monitoring psychiatrist, the supervising medical practitioner and the case manager.¹¹ A copy should also be given to any family member or carer who will be involved in providing ongoing care to the person in the community (subject to the confidentiality requirements in s. 120A of the Mental Health Act).

If the authorised psychiatrist makes the RCTO, a copy must be sent to the Chief Psychiatrist.

Duration of a RCTO

Unlike a community treatment order, the psychiatrist making a RCTO does not decide the length of the order. The Mental Health Act specifies that a RCTO will continue for as long as the person remains on a RITO (until it expires or is discharged) or until the RCTO is revoked or discharged (s. 15A(3) Mental Health Act). This means a RCTO never needs to be extended.

¹⁰ Refer to the Chief Psychiatrist's guideline, *Community treatment orders* (Department of Human Services, November 2005) for further information. The guideline is available at www.health.vic.gov.au/mentalhealth/cpg/index

¹¹ The monitoring psychiatrist, supervising medical practitioner and case manager are specified in the person's treatment plan.

Conditions of a RCTO

The authorised psychiatrist or the Chief Psychiatrist (as the case may be) can apply any conditions to the RCTO that are appropriate (s. 15A(4) Mental Health Act). These should be tailored to meet the individual needs of the person. For example, where illicit drug use is having an adverse impact on a person's illness, a RCTO might include a requirement that the person abstain from illicit drug use and submit to drug screening as and when required. Attention should be given to the context of the person's offending behaviour and whether the application of relevant conditions might assist the individual in reducing their vulnerability to re-offending.

Treatment plan

The authorised psychiatrist should revise the person's treatment plan when the RCTO is made. The plan should include sufficient information to enable the person to engage with the relevant community-based mental health service and specify the following matters:

- (a) An outline of the treatment the patient is to receive.
- (b) The name of the monitoring psychiatrist.
- (c) The name of the supervising medical practitioner.
- (d) The name of the patient's case manager.
- (e) The place at which the patient is to receive treatment.
- (f) The times at which the patient is required to attend to receive treatment.
- (g) The intervals at which the supervising medical practitioner must submit a written report concerning the patient's treatment to the monitoring psychiatrist.
- (h) Any other information the authorised psychiatrist believes is appropriate (s. 19A Mental Health Act).

Copies of the revised treatment plan must be sent to the monitoring psychiatrist, the supervising medical practitioner and the case manager.

The authorised psychiatrist must ensure a copy of the treatment plan is given to the person and the information discussed (s. 19A(6) Mental Health Act). A copy should also be given to any family member or carer who will be involved in providing ongoing care to the person in the community (subject to the confidentiality requirements in s. 120A of the Mental Health Act).

Responsibilities of the treating team

The responsibilities of the treating team to a person on a RCTO are not dissimilar to those for a person on a community treatment order. These roles are outlined in detail in chapter 7 of the Chief Psychiatrist's guideline *Community treatment orders*.¹²

In addition, the role of the monitoring psychiatrist will include:

- active involvement in the treatment of the person's illness
- managing compliance with the conditions of the RCTO
- having knowledge of the type of activities in which the person is involved, their residential address and their living and other social circumstances
- identifying, monitoring and managing risks posed by the person
- conducting regular reviews, at least three-monthly, or as otherwise indicated
- regularly assessing whether the s. 93 criteria still apply to the person. If the psychiatrist does not believe that the criteria still apply, he or she must notify the Chief Psychiatrist as soon as practicable.

Monitoring the RCTO

The supervising medical practitioner must submit written reports concerning the person's treatment to the monitoring psychiatrist (s. 19A(4)(g) Mental Health Act). The frequency of reporting should be negotiated between the monitoring psychiatrist and the supervising medical practitioner, depending on clinical circumstances, and must be specified in the person's treatment plan. In any case, the monitoring psychiatrist must ensure they are sufficiently informed as to the person's condition to allow them to fulfil their functions under the Mental Health Act. The reports should be sufficiently detailed and comprehensive to enable the monitoring psychiatrist to adequately monitor the progress of the person on the RCTO, any risks posed by the person, the appropriateness of the person's treatment and the ongoing need for a RCTO. The supervising medical practitioner should use the *Progress report on restricted community treatment order* (MHA 12A) form to make these reports.

The monitoring psychiatrist is required to regularly assess whether the s. 93 criteria still apply to the person and, if they do not, to notify the Chief Psychiatrist as soon as practicable. The Chief Psychiatrist must then examine the person as soon as practicable to decide whether or not to discharge the person from their order (see 'Discharging a RCTO' below) (s. 15AB Mental Health Act).

Treatment in an inpatient setting

In certain circumstances, a person on a RCTO might be required to receive treatment in an approved mental health service as part of their treatment plan. An example is electroconvulsive therapy as a day procedure. Although commonly referred to as outpatient electroconvulsive therapy, a person receiving electroconvulsive therapy while residing in the community on a RCTO must be admitted as a same-day inpatient for this procedure.

¹² Refer to the Chief Psychiatrist's guideline, *Community treatment orders* (Department of Human Services, November 2005) for further information. The guideline is available at www.health.vic.gov.au/mentalhealth/cpg/index.

This need to sometimes provide treatment in an approved mental health service raises a question about whether the RCTO should be revoked. The decision to revoke or to not revoke a RCTO should take into account the definition for a RCTO in the Mental Health Act, which is ‘an order requiring the person to obtain treatment for their mental illness **while not detained** in an approved mental health service’ (emphasis added) (s. 15A(2) Mental Health Act).

If a person on a RCTO receives the treatment in an approved mental health service as part of their treatment plan, and does not need to be forcibly taken to the approved mental health service or **detained** in the service, then it is not necessary to revoke their RCTO. However, if the person does need to be forcibly taken to the approved mental health service or is detained at the service for the treatment to be given, then the RCTO should be revoked.

The Chief Psychiatrist recommends that any admission of a person on a RCTO should not exceed 24 hours, although this could include an overnight admission (for example, to observe the fasting requirements necessary for the general anaesthetic given with electroconvulsive therapy). If a longer period of admission is necessary, even where the patient agrees to the admission, the RCTO should be revoked. This is necessary because, in these circumstances, the treatment the person requires cannot be obtained in the community.

Medical treatment in hospital

As most major public hospitals are currently gazetted as approved mental health services, a person on a RCTO who is admitted to a gazetted public hospital for medical treatment (the primary purpose of which is not the treatment of any mental illness) is, therefore, technically admitted to an approved mental health service. As described above, the person’s RCTO does not need to be revoked, provided the person is not **detained** in the hospital in order to receive the medical treatment.

During any medical admission, the person may continue to receive their psychiatric treatment as though they were in the community.

The 24-hour time limit described above does not apply to a person receiving medical treatment in a gazetted public hospital. The period of a medical admission will be determined by the person’s medical needs. However, if the person becomes unsuitable for treatment on a RCTO, the order may be revoked. For example, if the person is refusing concurrent psychiatric treatment and the other requirements for revoking the RCTO are met, the RCTO will need to be revoked. This will not necessarily require the person to be physically transferred to the psychiatric inpatient unit; the person should be treated at the location within the hospital most suitable to their medical and mental health needs.

If a person on a RCTO requires medical treatment (which is called ‘non-psychiatric treatment’ in the Mental Health Act) for which they are incapable of giving informed consent, then the processes for obtaining substitute consent in s. 85 of the Mental Health Act should be followed.

Varying a RCTO

The authorised psychiatrist or the Chief Psychiatrist (as the case requires) can vary a RCTO at any time (s. 15C Mental Health Act). The relevant psychiatrist should complete the *Variation of restricted community treatment order* (MHA 13A) form. The psychiatrist is required to tell the person that their RCTO has been varied and the reasons for the variation and give the person a copy of the MHA 13A form. Only the conditions of the RCTO or the details of the treating service can be varied, not the duration of the RCTO, which is set by the term of the RITO.

The Mental Health Review Board (at an appeal or review) may also vary a RCTO (s. 36D(3) Mental Health Act). The board must inform the person that their RCTO has been varied and the reasons for the variation and give the person written details of the variation. If the board varies a RCTO, the authorised psychiatrist must complete the *Variation of restricted community treatment order* (MHA 13A) form with the details of the variation and give a copy to the person (s. 36D(7) Mental Health Act).

Transfer to another approved mental health service

If a person on a RCTO changes residence into an area covered by a different approved mental health service, the authorised psychiatrist should transfer the person's treatment to the new service.

Before making the transfer, the authorised psychiatrist must be satisfied that the transfer will be of benefit to the person or is necessary for their treatment.

The psychiatrist must discuss the proposed transfer with the authorised psychiatrist at the receiving service, who must approve the transfer (s. 39(1) Mental Health Act).

The Chief Psychiatrist may also transfer a person on a RCTO to another service if the transfer will be of benefit to the person or is necessary for their treatment (s. 39(2) Mental Health Act).

The authorised psychiatrist or Chief Psychiatrist should complete the *Transfer of an involuntary patient to another approved mental health service* (MHA 19) form.

A person on a RCTO has the right to appeal to the Mental Health Review Board against a proposed transfer at any time (s. 39(5) Mental Health Act).

Revoking a RCTO

The authorised psychiatrist, the Chief Psychiatrist or the Mental Health Review Board (at an appeal or review) can revoke a RCTO if:

- the s. 93 criteria still apply to the person, but the treatment the person requires cannot be obtained in the community under a RCTO

or

- the person has failed to comply with the RCTO or the person's treatment plan. Reasonable steps must have first been taken, but without success, to obtain compliance with the RCTO or treatment plan. The authorised psychiatrist, the Chief Psychiatrist or the Mental Health Review Board must also be satisfied on reasonable grounds that there is a significant risk of deterioration in the person's mental or physical condition because of the non-compliance (ss. 15D and 36D Mental Health Act).

The authorised psychiatrist or Chief Psychiatrist should complete the *Revocation of restricted community treatment order* (MHA 15A) form. If the Mental Health Review Board revokes a RCTO, it will record its decision in writing and give a copy to the patient and the service. This determination has the same effect as a MHA 15A form.

The authorised psychiatrist, the Chief Psychiatrist or the Mental Health Review Board (as the case requires) must make reasonable efforts to tell the person that the order has been revoked and that the person must return to the approved mental health service.

Returning the person to the approved mental health service

A person on a revoked RCTO is deemed to be ‘absent without leave’ until they return to the approved mental health service (ss. 15D(2) and 36D(5) Mental Health Act). As such, the person can be apprehended at any time by a ‘prescribed person’, the authorised psychiatrist, a person authorised by the authorised psychiatrist or an officer of the Department of Human Services authorised by the Chief Psychiatrist (s. 43(1) Mental Health Act). A ‘prescribed person’ is:

- a member of the police force
- an ambulance officer
- a member of the following categories of health professionals:
 - registered medical practitioners
 - registered nurses
 - psychologists registered under the *Health Professions Registration Act 2005*
 - social workers
 - occupational therapists–
 - employed, appointed or engaged to provide care and treatment to persons with a mental disorder in an approved mental health service, a child and adolescent psychiatry service, a premises licensed under s. 75 of the Mental Health Act, a hospital admitting or caring for persons with a mental disorder, a mental health service of a community health centre, a psychiatric outpatient clinic or a community mental health service (s. 7 Mental Health Act and regulation 5(2) of the Mental Health Regulations 2008).

Discharging a RCTO

Only the Chief Psychiatrist or the Mental Health Review Board (at an appeal or review) can discharge a person from a RCTO (ss. 36D and 37A Mental Health Act).

The monitoring psychiatrist must be mindful of their responsibility to regularly review the need for the RCTO and RITO, and must inform the Chief Psychiatrist if the s. 93 criteria no longer apply to the person (s. 15AB Mental Health Act). The Chief Psychiatrist must then personally examine the person and complete a *Discharge from restricted involuntary treatment order/assessment order/diagnosis, assessment and treatment order* (MHA 17A) form if satisfied the s. 93 criteria do not apply. The MHA 17A form does not need to be completed if the Mental Health Review Board discharges the person, as a copy of the board’s determination will be kept on the person’s clinical record and will be evidence of discharge.

If a person is discharged from their RCTO, they are also discharged from their RITO and are no longer an involuntary patient (ss. 36D(8) and 37A(4) Mental Health Act).

Status of RCTO if person is detained in police custody or prison

A RCTO goes into abeyance if the person is detained in police custody or a prison. It will revive upon the person's release, unless the RITO has expired in the meantime (s. 15E Mental Health Act).

If a person subject to a RCTO is detained in police custody or a prison and then transferred to an approved mental health service under s. 16 of the Mental Health Act, the RCTO automatically ends but the RITO survives (although it has no effect while the person is in hospital under s. 16). This is in contrast to community treatment orders, where a person's involuntary treatment order and community treatment order are both discharged on the making of a s. 16 order.

Reviews by the Mental Health Review Board

The Mental Health Review Board is required to review all people on RITOs within eight weeks of the RITO being made and then at intervals not exceeding 12 months (s. 30 Mental Health Act).

The board does not review the making of a RCTO, but must review a RCTO 12 months after it is made, if the person has remained continuously on the order for 12 months (s. 30(5) Mental Health Act).

A person on a RITO or a RCTO can appeal to the board at any time against the order (s. 29 Mental Health Act) or against a proposed transfer to another approved mental health service (s. 39(5) Mental Health Act). The person may complete an *Appeal to the Mental Health Review Board* (MHA 5) form.

Powers of the Mental Health Review Board

At an appeal or review, the Mental Health Review Board can:

- confirm or discharge a RITO (s. 36B Mental Health Act)
- confirm, vary, revoke or discharge a RCTO (s. 36D Mental Health Act)
- order the authorised psychiatrist to make a RCTO (s. 36B(4) Mental Health Act).

Power to review the person's treatment plan

The Mental Health Review Board is required to review a person's treatment plan at each appeal or review (s. 35A Mental Health Act).

If the board forms the view that the authorised psychiatrist did not comply with s. 19A of the Mental Health Act in making or revising the plan, or believes the plan is not capable of being implemented, the board can order the authorised psychiatrist to revise the treatment plan.

Power to direct the authorised psychiatrist to make a RCTO

When a Mental Health Review Board hearing relates to a person on a RITO who is detained in an approved mental health service, the board has the power to order the authorised psychiatrist to make a RCTO for the person (s. 36B(4) Mental Health Act).

The board might make this order if it has confirmed the person's RITO, but decides that the treatment the person needs can be obtained in the community under a RCTO.

The board will specify a reasonable period of time in which the authorised psychiatrist is required to make the RCTO. The authorised psychiatrist should use this period of time to make the necessary discharge arrangements.

The authorised psychiatrist may apply to the board during this period to reconsider its decision to order the making of a RCTO (s. 36B(5) Mental Health Act). In practice, this would only be appropriate if the person's mental condition deteriorated or there was some other material change in the person's circumstances. The patient will remain as an inpatient until the board hears the application.

Matters the Mental Health Review Board must consider

At an appeal or review, the Mental Health Review Board will consider whether the s. 93 criteria apply to the person or not (ss. 36B and 36D Mental Health Act).

The board must have primary regard to the patient's current mental condition and will consider the person's medical, psychiatric and forensic history and their social circumstances in making its decision (s. 22(2) and (3) Mental Health Act).

Record management

A copy of the RITO and other relevant documents must be placed in the person's clinical record and the person registered on the Client Management Interface (CMI)¹³ of the treating approved mental health service. Particular attention should be given to registering the correct legal status of the person in the CMI and any changes to that legal status, for example, if a RCTO is made.

The CMI record for each person on a RITO should include a 'sentence completion date'. The CMI will not automatically discharge the person from their RITO on their sentence completion date; this must be done manually. A 'legal status expiry' report is available through the CMI after 1 October 2006 to assist service providers to monitor sentence completion dates that are due to expire.

¹³ The Client Management Interface (CMI) is the local client information management system used by public mental health services.

About Chief Psychiatrist's Guidelines

The information provided in this guideline is intended as general information and not as legal advice.

Mental health service management should ensure that policies and procedures for the management of RITOs and RCTOs are developed and implemented to guide staff and promote best clinical practice, consistent with this guideline and the Mental Health Act.

If mental health staff have queries about individual cases or their obligations under the Mental Health Act, service providers should obtain independent legal advice.

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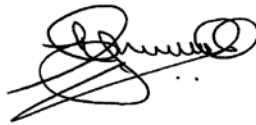
Further information

For further information about RITOs or RCTOs, contact the Chief Psychiatrist on 9096 7571 or 1300 767 299 (toll free).

Information is also available on the Department of Human Service's website at www.health.vic.gov.au/mentalhealth/cpg.

Copies of all forms can be downloaded from the mental health website at www.health.vic.gov.au/mentalhealth/mh-act/forms.

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



Professor Kuruvilla George
Chief Psychiatrist

Appendix: Restricted Involuntary Treatment Order

Criteria for making a RITO

s.93(1) Sentencing Act 1991:

- (a) the court is satisfied, by the production of a certificate in the prescribed form of a psychiatrist and any other evidence it may require, that—
- (i) the person appears to be mentally ill; and
 - (ii) the person's mental illness requires treatment and that treatment can be obtained by the person being subject to a restricted involuntary treatment order; and
 - (iii) because of the person's mental illness, involuntary treatment of the person is necessary for his or her health or safety (whether to prevent a deterioration in the person's physical or mental condition or otherwise) or for the protection of members of the public; and
- (b) the court has received a report in the prescribed form from the authorised psychiatrist of the approved mental health service at which the person is proposed to be treated –
- (i) recommending the making of the order; and
 - (ii) stating that there are facilities or services available at that service for the treatment of the person.

s.93(2) Sentencing Act 1991:

In determining whether or not to make a restricted involuntary treatment order for a person, the court must consider the person's current mental condition, his or her medical, psychiatric and forensic history and his or her social circumstances.

Abbreviations

- AMHS approved mental health service
- MHRB Mental Health Review Board
- MHA *Mental Health Act 1986*
- RITO Restricted Involuntary Treatment Order
- RCTO Restricted Community Treatment Order
- SA *Sentencing Act 1991*

Key

- Approved mental health service
- Community
- Court
- No longer an involuntary patient

Making a restricted involuntary treatment order

Court finds person guilty of an offence (other than a serious offence as defined in the SA).

Instead of passing sentence, the court may make a RITO (s.93(1) SA) if:

- it has received a certificate from a psychiatrist and it is satisfied that the criteria in s.93(1)(a) SA apply; and
- the authorised psychiatrist of the AMHS has recommended that the RITO be made and stated that facilities or services are available to treat the person's mental illness (s.93(1)(b) SA).

In making a RITO, the court must take into account the matters in s.93(2) SA and must specify a duration for the RITO, which must not exceed two years (s.93(3) SA).

