

Forensic Mental Health Services

Summary The purpose of this policy is to ensure that there are appropriate standards and governance arrangements for, and coordinated between, forensic mental health services and general mental health services that are responsible for forensic patients.

Document type Policy Directive

Document number PD2012_050

Publication date 04 September 2012

Author branch Mental Health

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Review date 31 May 2023

Policy manual Patient Matters

File number 08/1304-7

Previous reference N/A

Status Review

Functional group Clinical/Patient Services - Mental Health, Governance and Service Delivery

Applies to Local Health Districts, Specialty Network Governed Statutory Health Corporations, Public Hospitals

Distributed to Public Health System, NSW Ambulance Service, Ministry of Health, Private Hospitals and Day Procedure Centres

Audience Mental Health;Governance

FORENSIC MENTAL HEALTH SERVICES

PURPOSE

Forensic mental health services provide assessment, care, treatment, and other services to people with mental illness who are, or have been, in contact with the criminal justice system. The provision of health care services for forensic and correctional patients, and for civil patients who are a high risk of harm to others, requires the coordination of specialist and general mental health services.

The purpose of this policy is to ensure that there are appropriate standards for forensic mental health services and general mental health services that provide care and treatment to forensic patients.

Forensic mental health services are underpinned by the same principles that underpin general mental health services with the addition of specific principles, legislation and processes that are applicable to forensic and correctional patients, including the [Mental Health \(Forensic Provisions\) Act 1990](#). The general principles include those such as the [Charter for Mental Health Services in NSW](#). Forensic mental health services in NSW aim to adhere to the National Statement of Principles for Forensic Mental Health.¹

As with the broader NSW mental health system, an effective and efficient forensic mental health system involves a strong collaborative approach between service providers.

MANDATORY REQUIREMENTS

This policy applies to all Public Health Organisations which provide services to correctional patients, or forensic patients detained in mental health facilities or other places, or conditionally released in the community, and to high risk civil patients that come into, or who are referred to, the forensic mental health system.

IMPLEMENTATION

Local Health District Chief Executives, Health Service Executives, Managers:

- Assign responsibility, personnel and resources to implement this policy.
- Provide line managers with support to mandate this policy in their areas.
- Ensure that local protocols are in place in each facility to support implementation.
- Work together with the Justice and Forensic Mental Health Network (JFMHN) to ensure that Local Health District (LHD) policies, procedures and standards are consistent with statewide policies, procedures and standards set out for the forensic system.
- Report compliance with this policy to the NSW Ministry of Health as required.

Chief Executive and Managers, Justice and Forensic Mental Health Network

- Ensure that the *Guidelines for Forensic and Correctional Patient Ground Access, Leave, Handover, Transfer, and Release* are reviewed and updated at intervals of no greater than three years.
- Work together with LHDs, and provide leadership and expertise in relation to the development of system wide policies, procedures and standards for forensic mental health services.

NSW Health Service staff and visiting practitioners providing relevant services:

- Comply with this policy.

¹ Australian Health Ministers' Advisory Council, Mental Health Standing Committee (2006) *National Statement of Principles for Forensic Mental Health*.

REVISION HISTORY

Version	Approved by	Amendment notes
September 2012 (PD2012_050)	Director-General	New Policy

ATTACHMENTS

1. Forensic Mental Health System Protocol

Forensic Mental Health Services



Issue date: September 2012

PD2012_050

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FORENSIC MENTAL HEALTH SERVICES

The Justice and Forensic Mental Health Network (JFMHN) is the principal service provider and coordinating agency for forensic mental health services in NSW. JFMHN is a specialty network governed health corporation that provides a range of services to forensic, correctional, and high risk civil patients, and other persons in custody. The services provided include: The Forensic Hospital, Malabar; Mental Health Unit, Long Bay Hospital; State-wide Community and Court Liaison Service; Adolescent Community and Court Team; Community Integration Team; Community Forensic Mental Health Service; Mental Health Screening Unit, Metropolitan Remand and Reception Centre and Silverwater Women's Correctional Centre; and ambulatory mental health services within correctional and detention centres.

Local Health Districts (LHDs) operate three medium secure forensic mental health facilities, those being: Bunya Unit, Cumberland Hospital; Kestrel Unit, Morisset Hospital; and Macquarie Unit, Bloomfield Hospital.

LHDs operate general and low secure mental health facilities that accommodate forensic patients and community mental health services that care for forensic patients conditionally released in the community. The Guidelines on Forensic and Correctional Patient Ground Access, Leave, Handover, Transfer, and Release are attached to, and underpinned by, this Policy Directive.

GOVERNANCE OF FORENSIC MENTAL HEALTH SERVICES

Mental Health (Forensic Provisions) Act 1990

This Act provides the legislative framework for the forensic mental health system and specifies the care, treatment and control of forensic and correctional patients.

Mental Health Review Tribunal

The Tribunal has legislated responsibilities for reviewing and making orders in respect of the care, treatment, detention, transfer, leave and release of forensic patients.

Local Health Districts

Local Health Districts are responsible for all legal, clinical and management accountability in relation to providing services to forensic patients in their care. Local Health Districts are responsible for recruitment, performance, credentialing, and supervision of clinicians who provide care, treatment, or other services to correctional or forensic patients

Justice & Forensic Mental Health Network

The JFMHN is a Statutory Health Corporation established under the Health Services Act 1997.

The JFMHN provides health care in a complex environment to people in the adult correctional environment, to those in courts and police cells, to juvenile detainees and to those within the NSW forensic mental health system and in the community.

The JFMHN has a leadership role within the NSW public health system, working closely with government agencies and other organisations, including Corrective Services NSW, Juvenile Justice (DJJ), Local Health Districts, Community Controlled Aboriginal Health Organisations, NSW Police Force, Attorney General's Department, Universities, community groups and advocacy groups, in relation to the provision of mental health services to forensic and/or correctional patients.

NSW Ministry of Health

The Director-General of the NSW Ministry of Health has a range of overseeing and regulatory responsibilities for the public health system under the Health Services Act 1997, including forensic mental health facilities and mental health services to forensic and/or correctional patients.

COORDINATION OF PATIENT CARE

A forensic or correctional patient must have a named consultant psychiatrist, employed by a Public Health Organisation who is responsible for the provision of psychiatric services for the person.

A forensic or correctional patient must have a named clinician who is responsible for the coordination of any care, treatment, and other services provided for the person.

A forensic or correctional patient must have a current risk assessment and risk management plan developed by the mental health service that is responsible for the provision of psychiatric services to the person.

A Memorandum of Understanding is to be entered into between relevant LHDs and the JFMHN, establishing a co-ordinated approach to patient transfers across forensic mental health services and the clinical governance of forensic facilities and mental health services that provide care and treatment to forensic and/or correctional patients.

TRAINING AND EDUCATION OF STAFF

Clinicians who provide care, treatment, or other services to forensic or correctional patients must have appropriate training in the prevention and management of violence and aggression. Advice on workforce competency standards and education and training requirements can be provided by the JFMHN.

Clinicians who provide care, treatment, or other services to forensic or correctional patients should have access to clinical supervision from a specialist forensic mental health clinician from an appropriate discipline.

The JFMHN is available to support LHD staff in relation to these requirements.

SECURITY STANDARDS

The purpose of security is to enable the safe delivery of therapy to patients and in doing so, protect the safety of patients, visitors, staff and wider community. Staff working in secure forensic mental health facilities must have training in the application and maintenance of appropriate relational security.

Each secure forensic mental health facility must have a procedural security document (PSD) that defines the physical security including the perimeter creating the secure area, which is annually reviewed. The PSD must include procedures for preventing the entry of dangerous items into the facility, the searching of patients, their belongings and rooms, the searching of staff on entry to and exit from the facility, and the inspection of postal items entering or leaving the facility.

The security arrangements of each secure forensic facility must be inspected and audited by an independent agency on a regular basis but at intervals not greater than every two years.

The JFMHN and LHDs must ensure that each secure forensic facility complies with relevant NSW Health policies related to the security of NSW Health facilities.

LIST OF ATTACHMENTS

1. Guidelines for Forensic and Correctional Patient Ground Access, Leave, Handover, Transfer, and Release

Guidelines for forensic & correctional patient ground access, leave, handover, transfer, & release

Version 1.0 September 2012



Health
Justice Health &
Forensic Mental Health Network

Version Control

The *Guidelines for forensic & correctional patient ground access, leave, handover, transfer, & release* is a version controlled document.

1. BUILD STATUS:

Version	Date	Reason
1.0 (TRIM: DG28180/11)	5/09/2012	First version for publication.

2. AMENDMENTS IN THIS RELEASE:

Section Title	Section Number	Amendment Summary
Nil		

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Abbreviations

AMO	Authorised Medical Officer
CFMHS	Community Forensic Mental Health Service
CR	Conditional release
CSNSW	Corrective Services New South Wales
CTO	Community Treatment Order
FCTO	Forensic Community Treatment Order
HCR-20	Historical, Clinical, Risk Management violence risk assessment instrument
J&FMHN	Justice and Forensic Mental Health Network
JNSW	Juvenile Justice NSW
LHD	Local Health District
MHA	Mental Health Act 2007
MHF	Mental health facility
MHFP Act	Mental Health (Forensic Provisions) Act 1990
MHRT	Mental Health Review Tribunal
MHSU	Mental Health Screening Unit, Metropolitan Remand and Reception Centre
MRRC	Metropolitan Remand and Reception Centre, Silverwater
NGMI	Not guilty by reason of mental illness
OIMS	Offender Integrated Management System
PCL-R	Hare Psychopathy Checklist Revised
SCCLS	Statewide Community and Court Liaison Service
UCR	Unconditional release
UDS	Urine drug screening

1 Introduction

1.1 Purpose

These guidelines are intended for NSW clinicians and health services responsible for the care, treatment, or detention of forensic patients with a mental illness or mental condition and correctional patients in NSW. Some forensic patients may not be mentally ill but instead have an intellectual or developmental disability only or some may have a dual diagnosis of intellectual disability and mental illness. Forensic patients who do not have a mental illness or mental condition may have no need for ongoing contact with mental health services. While these guidelines are primarily concerned with forensic patients who have a mental disorder, some of the guidance, especially in relation to the legislative requirements, will be applicable to all forensic patients.

This resource aims to assist practitioners in the development of management plans, supervision, and monitoring of patients in relation to:

- > Ground access and ward placement during detention, that is, movement within a mental health facility, correctional centre, or other place
- > Leave – absence from the place of detention for a specific period and subject to conditions
- > Release – with or without conditions
- > Transfer – to another health service or other place as part of rehabilitation
- > Travel – within NSW, interstate, or internationally.

The guidelines provide information about:

- > Mandatory requirements under the *Mental Health Act 2007* and the *Mental Health (Forensic Provisions) Act 1990*
- > Emergency leave (medical emergencies) and leave in special circumstances
- > Graduated progression through forensic mental health rehabilitation
- > Ground access
- > Day leave
- > Overnight leave and travel
- > Ward placement (independent or semiautonomous living)
- > Conditional release
- > Unconditional release
- > Management of breaches of conditions
- > Preparation for review hearings
- > The process required by the Mental Health Review Tribunal when an order or a variation to an order is required through a Notice of Intent
- > Terms used in the forensic system.

1.2 Guidance on usage

This publication provides guidance on mandatory, discretionary and recommended elements of the management of forensic and correctional patients. In this document the term:

- > 'must' indicates a mandatory action that must be complied with
- > 'should' indicates a recommended action that should be followed unless there are sound reasons for taking a different course of action, and
- > 'may' indicates an action that is discretionary or involves a choice between various options.

Generally, in the guidelines, a mandatory action is one that is required by legislation or a NSW Health policy directive whereas a recommended action is one that is in accord with generally accepted good clinical practice in forensic mental health or other guidelines.

All references in these guidelines to legislation are to the *Mental Health (Forensic Provisions) Act 1990* unless otherwise stated.

At the time of writing, the legislation makes certain references to the Department of Health. Due to departmental changes, any reference to the Department of Health should be construed to mean the Ministry of Health.

1.3 Legislation

The *Mental Health Act 2007* and the *Mental Health (Forensic Provisions) Act 1990* (hereafter, the MHFP Act) (the latter previously known as the *Mental Health (Criminal Procedure) Act 1990*) provide for the detention, care and treatment of forensic patients and correctional patients. The MHFP Act creates the categories of forensic and correctional patients. The descriptions of those categories are set out below in sections 1.4 and 1.5.

The MHFP Act contains a series of principles and objects pertinent to the care of forensic and correctional patients, for example:

- > to protect the safety of members of the public
- > to provide for the care, treatment and control of persons subject to criminal proceedings who are suffering from a mental illness or mental condition
- > to give an opportunity for those persons to have access to appropriate care
- > to facilitate the provision of care to those who require involuntary treatment in a mental health facility or in the community (including within correctional centres) through community treatment orders
- > to provide that people with a mental illness or mental condition should receive care in accordance with professionally accepted standards.

The principles for care and treatment of people with a mental illness or mental disorder set out in section 68 of the *Mental Health Act 2007* also apply to forensic and correctional patients subject to the provisions in the MHFP Act or other laws.

The major changes to the forensic mental health legislation that came into force on 1 March 2009 included statutory recognition, for the first time, of the role of victims in the forensic mental health system. The changes provided an avenue for victims to make submissions regarding non-association and place restriction orders for consideration of the Tribunal in relation to forensic patient leave and release.

1.4 Who are forensic patients?

A forensic patient includes a person who has:

- > been found unfit to be tried for an offence and ordered to be detained in a correctional centre, mental health facility or other place or released into the community subject to conditions, OR
- > been found not guilty by reason of mental illness and ordered to be detained in a correctional centre, mental health facility or other place or released into the community subject to conditions (Appendix 1), OR
- > been found unfit to be tried and subsequently found to be guilty on the limited evidence available at a Special Hearing¹ and ordered to be detained in a correctional centre, mental health facility or other place for a 'Limiting Term'.

A 'Limiting Term' is the best estimate of the sentence of imprisonment the Court would have considered appropriate if the Special Hearing had been a normal trial of criminal proceedings against a person who was fit to be tried for that offence and the person had been found guilty of that offence.²

Persons with an intellectual or developmental disability may be unfit to be tried and can be found 'not guilty by reason of mental illness' (NGMI). The use of the term 'mental illness' is somewhat misleading here, as the term is being used in a legal sense rather than its more usual clinical sense. A person can be found NGMI if it is proven that the person was 'labouring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing; or, if he did know it, that he did not know he was doing what was wrong.'³

The legal standards for 'fitness to be tried' are different to the requirements to be found NGMI. To be fit to be tried a person must be able to:

- > understand what s/he is charged with,
- > plead to the charge and to exercise his/her right of challenge to jurors,
- > understand generally the nature of the proceedings,
- > follow what is going on in court in a general sense (though not necessarily the purpose of court formalities) and to understand the substantial effect of any evidence given against him/her, and
- > decide what defence s/he will rely upon, and make this and his/her version of facts known to the court and his/her counsel. (The accused need not, however, understand court procedure and need not have the mental capacity to make an able defence.)⁴

Clearly, a person with a sufficiently severe intellectual impairment may be unfit to be tried and, if he or she did not know what they were doing or did not know that it was wrong, can be found NGMI.

Forensic patients with an intellectual disability and without a mental illness who are in custody in a correctional or detention centre are the responsibility of Corrective Services NSW (CSNSW) in the case of adults, and Juvenile Justice (JJNSW) in the case of adolescents. Statewide Disability Services within CSNSW provides services to this group.

¹ A 'Special Hearing' is a hearing similar to a normal criminal trial where a person who has been found unfit to be tried is taken to have pleaded not guilty and is acquitted unless it is proved beyond a reasonable doubt that the person committed the offence charged or an alternative offence.

² MHFP Act s23(1)(b).

³ M'Naghten's case [1843] UKHL J16 (19 June 1843).

⁴ *R v Presser* [1958] VR 45 at 48.

1.5 Who are correctional patients?

A correctional patient is a person (other than a forensic patient) who has been transferred from a correctional or detention centre to a mental health facility while serving a sentence of imprisonment, or while on remand, and who has not been classified by the Tribunal as an involuntary patient.

Section 55 of the MHFP Act gives the Director-General of the Department of Health⁵ the power to transfer a mentally ill person or a person with a mental condition from a correctional or detention centre to a mental health facility (see Appendices 3 & 4).

The Director-General's s55 power is delegated to the following positions:

- > Deputy Director-General Strategic Development
- > Director Mental Health and Drug and Alcohol Programs
- > Associate Director Mental Health Clinical Policy
- > Chief Psychiatrist
- > Chief Executive (Justice & Forensic Mental Health Network)
- > Statewide Clinical Director Forensic Mental Health (Justice & Forensic Mental Health Network)
- > Executive Director Forensic Mental Health and Youth Health Services (Justice & Forensic Mental Health Network)
- > Service Director Mental Health (Justice & Forensic Mental Health Network)
- > Chief Executive Forensic Mental Health Network

In practice, the latter three delegates are responsible for approving the majority of transfers of correctional patients under section 55.

1.6 The role of the Medical Superintendent

The role of the Medical Superintendent is an important one in relation to forensic and correctional patients as the Medical Superintendent has responsibility for, and control of, a declared mental health facility and the patients within it.

The position of 'Medical Superintendent' is created by section 111 of the *Mental Health Act 2007*, which requires that every mental health facility must have a Medical Superintendent appointed to it. The Director-General has the power to appoint Medical Superintendents although, in practice, the appointment is usually made by a delegate.⁶ A mental health facility may also have a Deputy Medical Superintendent although it is not mandatory to have one. The Deputy Medical Superintendent has the all the functions of the Medical Superintendent during the absence of the Medical Superintendent or during a vacancy in the office of Medical Superintendent.

While a mental health facility must have a medical practitioner appointed to the position of Medical Superintendent nothing precludes that person from having other roles or another title. For example, currently, the Medical Superintendent of the Forensic Hospital is the Clinical Director, Forensic and Long Bay Hospitals. Only where a Clinical Director is also a Medical Superintendent or Deputy Medical Superintendent can that person carry out the functions of the Medical Superintendent. The

⁵ As set out in section 1.2 *Guidance on usage*, all references to the Department of Health should be construed to mean the Ministry of Health.

⁶ The delegations of powers in the mental health legislation are set out in the [Delegations Manual Public Health](http://www.health.nsw.gov.au/resources/policies/manuals/pubhealth_delegations_pdf.asp) <http://www.health.nsw.gov.au/resources/policies/manuals/pubhealth_delegations_pdf.asp>. Within Justice & Forensic Mental Health Network, the Chief Executive and the Executive Director Forensic Mental Health and Youth Health Services have the delegated power to appoint medical superintendents and deputy medical superintendents.

Medical Superintendent may nominate a person as an 'Authorised Medical Officer' to carry out certain functions of the Medical Superintendent (see below).

The Medical Superintendent has certain duties and powers conferred by the mental health legislation but also has many other functions that arise from a number of sources including:

- > 'custom and practice,'
- > the person's job or position description,
- > local and NSW Health policies and procedures,
- > local and NSW Health delegations manuals, and
- > other legislation, for example, the *Work Health and Safety Act 2011*.

A Medical Superintendent can nominate a medical officer (an authorised medical officer) to carry out certain statutory functions under the mental health legislation.

An example of a statutory duty or responsibility of an Authorised Medical Officer is contained in section 76G of the MHFP Act, which requires that, if a forensic or correctional patient is to be released or granted leave, the Authorised Medical Officer must:

take all reasonably practicable steps to ensure that the person and any primary carer of the person are consulted in relation to planning the person's release and leave and any subsequent treatment or other action considered in relation to the person.⁷

Powers conferred on other positions can be delegated to the Medical Superintendent. An example of a delegated statutory power is the Director-General's section 50 and 63 power to grant leave 'in circumstances constituting an emergency or in other special circumstances' which is delegated to the Medical Superintendent but in a medical emergency only.

The fact that the legislation creates the position of Medical Superintendent indicates that Parliament intended a mental health facility to have a controller. The non-statutory functions of the role have evolved through custom and practice over many years. For example, it would be generally accepted that the Medical Superintendent has the final authority to determine in which ward or unit of a mental health facility a patient is placed and to allocate patients to a particular medical practitioner or team. Practice will vary between different units but for the purposes of these guidelines the Medical Superintendent is presumed to be the controller of a mental health facility in which a forensic or correctional patient is detained.

1.7 Relationship with the Forensic Hospital Security Manual

The Chief Executive of Justice & Forensic Mental Health Network issued the Forensic Hospital Management of Clinical Security and Emergency Response Manual (the Security Manual) on 10 October 2008 under her delegated power from section 69 of the then *Mental Health (Criminal Procedure) Act 1990*.⁸ The instructions in the Security Manual continue in force under section 76D of the MHFP Act.

The instructions and directions in the Security Manual and must be followed by staff with respect to patients in the Forensic Hospital. If there is a conflict between these guidelines and the instructions in the Security Manual, then the Security Manual takes precedence over these guidelines.

⁷ MHFP Act s76G(1).

⁸ The *Mental Health (Criminal Procedure) Act 1990* was amended to become the *Mental Health (Forensic Provisions) Act 1990* which commenced on 1 March 2008.

1.8 Principles for the management of forensic and correctional patients in NSW

- > A forensic patient with a mental illness or a mental condition should be under the care of a senior psychiatrist employed in the NSW public health system by a Local Health District or Justice & Forensic Mental Health Network.
- > The treating psychiatrist, in conjunction with the treating team, is responsible for:
 - the development and implementation of risk management plans
 - monitoring compliance with conditions specified in the forensic patient's forensic order
 - taking appropriate action in cases of non-compliance, and
 - reporting progress to the Mental Health Review Tribunal (hereafter, the Tribunal).
- > A private psychiatrist may be involved in the care and treatment of a forensic patient if:
 - the forensic patient consents in writing to the full and open communication between clinicians authorised under the forensic order to be involved in the forensic patient's care and treatment, and
 - the private psychiatrist agrees to provide any reports and oral evidence requested by the Tribunal.
- > A case manager for a forensic patient should hold an appropriate professional qualification and be approved by the relevant Medical Superintendent, Local Health District Director of Mental Health or the Statewide Clinical Director, Forensic Mental Health, Justice & Forensic Mental Health Network.
- > A forensic patient should be provided with a copy of his or her forensic order and the case manager should explain and discuss each condition with the person in terms that the person can understand.
- > Multidisciplinary clinical teams should have mutually agreed arrangements with relevant parties prior to making a recommendation to the Tribunal.
- > If a forensic patient is detained in a correctional centre, the Justice & Forensic Mental Health Network case manager/clinicians should liaise with the nominated representative of the correctional centre in relation to the appropriate security classification for the patient, and have an agreed joint management plan prior to making any application for leave to the Tribunal.
- > A treating team that intends to apply for a variation to a forensic patient's current order (including applications for leave and conditional or unconditional release) should ensure that a full risk assessment and management plan has been prepared. If a forensic psychiatrist is not part of the treating team then an independent forensic opinion, such as that provided by the Community Forensic Mental Health Service, should be sought in relation to the risk assessment and proposed management plan. In the case of applications for release, an independent forensic psychiatrist opinion is always required in addition to the treating team's own risk assessment (s74(d)).
- > Forensic patients are generally required to accept assessments and monitoring by the Community Forensic Mental Health Service as part of any conditions for release.
- > Treatment and management plans for forensic patients living in the community or when conditional release to the community is being considered should include making the patient aware of the need to advise other persons that the person is a forensic patient and of the conditions of the forensic order.

2 Mental Health Review Tribunal

The Mental Health Review Tribunal is a quasi-judicial body established under the *Mental Health Act 2007*. It has a wide range of powers that enables it to make and review orders, and to hear some appeals, about the treatment and care of people with a mental illness. The Tribunal has two divisions; the Civil and the Forensic Divisions and conducts review hearings for civil, correctional and forensic patients. The Forensic Division of the Tribunal reviews:

- > forensic patients
- > correctional patients
- > persons found unfit to be tried, then released by the Court,
- > persons awaiting transfer from a correctional centre to a mental health facility, and
- > persons subject to forensic community treatment orders in correctional centres.

Forensic patients are generally reviewed every six months but the review period can be extended up to 12 months if:

- > there are reasonable grounds, or
- > there has been no change in the patient's condition since the last review, there is no apparent need for change, and an earlier review may be detrimental to the patient's condition.

The Tribunal has developed processes and procedures by which the Tribunal administers its responsibilities under the mental health legislation. Guidance to these processes and procedures and related material can be found on the Tribunal's website at www.mhrt.nsw.gov.au, or by telephone on **02 9816 5955**.

3 Forensic mental health services in NSW

3.1 Overview

NSW Health provides a range of mental health services for forensic patients, correctional patients and persons in contact with the criminal justice system. Justice & Forensic Mental Health Network is the primary provider of services for persons within the correctional system and of high secure inpatient services. Local Health Districts operate three medium secure units at Morisset, Cumberland and Bloomfield Hospitals.

3.2 Justice & Forensic Mental Health Network

Justice & Forensic Mental Health Network is a statutory health corporation constituted under the *Health Services Act 1997*. Justice & Forensic Mental Health Network provides and coordinates a comprehensive range of health care services for people in contact with the criminal justice system in NSW. Major clinical programs include primary health, mental health, drug and alcohol, women's health, aboriginal health, population health and adolescent health.

The Forensic Mental Health Directorate is responsible for leading the development and management of an integrated forensic mental health service across NSW. Justice & Forensic Mental Health Network operates the following forensic mental health services:

- > The Forensic Hospital, Malabar – a high secure, 135 bed, mental health facility for male, female, adult and adolescent forensic and correctional patients and a limited number of high risk civil patients.
- > Long Bay Hospital – an 85 bed health facility inside Long Bay Correctional Centre, which contains a 40 bed Mental Health Unit for adult correctional patients.
- > Statewide Community and Court Liaison Service – which operates in 21 Local Courts across metropolitan and regional NSW.
- > Adolescent Community and Court Team – which operates in the Children's Court.
- > Community Integration Team (CIT) – which provides assessment, referral, support, and treatment services to young people in the community.
- > Community Forensic Mental Health Service – for adult forensic patients in the community.
- > Mental Health Screening Units (40 beds for males and 10 beds for females) at Silverwater Correctional Complex in Sydney.
- > Ambulatory mental health services within correctional and detention centres.

More information can be found at www.justicehealth.nsw.gov.au

3.2.1 Community Forensic Mental Health Service

Justice & Forensic Mental Health Network operates the Community Forensic Mental Health Service (CFMHS). The CFMHS provides specialist forensic assessments and advice, primarily to clinicians in Local Health Districts, in relation to persons within the forensic system, complex civil matters, and specific cases of persons involved in the criminal justice system.

The CFMHS provides training in risk assessment and management to clinicians across the State. Copies of the *Clinical Risk Assessment and Management – A Practical Manual for Mental Health Clinicians* can be downloaded from the Justice & Forensic Mental Health Network website.

For information about referrals and training, the CFMHS can be contacted on:

Telephone: **(02) 8838 6290** Facsimile: **(02) 9683 7315**

3.3 Medium Secure Units

3.3.1 Bunya Unit, Cumberland Hospital

The 24 bed Bunya Unit was the first purpose built medium secure unit in NSW. The Unit is within the grounds of Cumberland Hospital and offers a state-wide service for male and female forensic patients requiring inpatient management of their major mental illness with a focus on rehabilitation.

3.3.2 Kestrel Unit, Morisset Hospital

The Kestrel Unit is a 30-bed medium secure unit for male forensic and civil patients who require care in a medium secure environment and are suitable for rehabilitation. The Unit has a state-wide catchment area. It works in conjunction with Justice & Forensic Mental Health Network to provide inpatient services for patients who require care in a medium secure setting. The clinical emphasis is on rehabilitation and the restoration of function for this group of disadvantaged clients.

3.3.3 Macquarie Unit, Bloomfield Hospital

The Macquarie Unit is a 20-bed medium secure unit at Bloomfield Hospital. It caters for male and female forensic patients.

4 Leave

4.1 Common requirements for all types of leave

4.1.1 Definition

Outside leave is access to a place or places outside the declared boundaries of the facility in which the patient is detained and may be required for a number of purposes, including:

- > court appearances or other hearings
- > medical emergencies
- > routine medical investigations or treatment in another hospital
- > rehabilitative activities, or
- > other events, for example, funerals.

4.1.2 Leave types

- > Escorted day leave
- > Supervised day leave
- > Unsupervised day leave
- > Supervised overnight leave
- > Unsupervised overnight leave
- > Emergency absence from a mental health facility

4.1.3 General guidelines regarding leave

The Director-General (or delegate) has the power under sections 50 and 63 of the MHFP Act, for forensic and correctional patients respectively, to grant leave in circumstances constituting an emergency or in other special circumstances.

Special circumstances include such things as:

- > court appearances or other hearings
- > routine medical investigations or treatment in another hospital.

The Tribunal has the power under section 49 of the MHFP Act to grant leave to forensic patients for rehabilitative and other purposes. Applications for everyday, on-going, leave for forensic patients should generally be made to the Tribunal unless there is an emergency or other special circumstances.

In the case of correctional patients, the Commissioner of Corrective Services has the power under section 62 of the MHFP Act to grant leave to correctional patients.

In the case of an adolescent correctional patient, the Director-General of the Department of Attorney General and Justice has the power under section 62 to grant leave.

4.1.4 Mandatory requirements

Forensic patients

- > An order from the Tribunal, or

- > In circumstances constituting an emergency or other special circumstances – an order by the Director-General (or delegate), or
- > In the case of a medical emergency only – an order from the Director-General (delegated to the Medical Superintendent).

Correctional patients

- > Generally leave for correctional patients will have to be granted by the Commissioner of Corrective Services (or the Director-General of the Department of Attorney General and Justice in the case of juvenile correctional patients).
- > The Tribunal may make recommendations regarding leave from a mental health facility for a correctional patient which must be considered by the Commissioner of Corrective Services (or Director-General of the Department of Attorney General and Justice), or
- > In circumstances constituting an emergency or other special circumstances – an order by the Director-General (or delegate), or
- > In the case of a medical emergency only – an order from the Director-General (delegated to the Medical Superintendent).⁹

4.1.5 Authority to grant leave

Rehabilitative leave – forensic patients

The Tribunal has the power under section 49 of the MHFP Act to grant leave to forensic patients detained in mental health facilities, correctional centres or other places. While the Tribunal may grant any type of leave, the usual leave types granted by the Tribunal during progression through the graduated rehabilitation process are escorted, supervised, unsupervised day leave and overnight leave. The Tribunal must not make an order allowing a forensic patient leave unless it is satisfied that the safety of the patient or any member of the public will not be seriously endangered if the leave of absence is granted [s49(3)]. Section 49(4) stipulates that the section does not prevent leave of absence being granted to a forensic patient detained in a correctional centre under any other Act or law. Section 49(5) provides that the section has effect despite the *Crimes (Administration of Sentences) Act 1999*.

Rehabilitative leave – correctional patients

The Commissioner of CSNSW and the Director-General of the Department of Attorney General and Justice have powers under section 62 of the MHFP Act to grant leave from a mental health facility to adult and juvenile correctional patients, respectively. The Tribunal may make recommendations to the Commissioner or Director-General regarding the granting of leave to a correctional patient in a mental health facility. The Commission or Director-General must have regard to any recommendations as to the granting of leave made by the Tribunal but is not bound by them.

Leave in special and emergency circumstances – forensic and correctional patients

The Director-General of the Department of Health has the power to grant leave from a mental health facility under section 50 for forensic patients and section 63 for correctional patients in circumstances constituting an emergency or in other special circumstances. In this context, special circumstances could include such things such as:

- > appointments in other hospitals for medical treatment or investigations, and
- > court or other tribunal appearances, for example, Parole Board hearings.

⁹ NSW Department of Health, *Delegations Manual: Public Health (Amendment 18) Delegation: (PH233) (2009)*, <http://www.health.nsw.gov.au/resources/policies/manuals/pubhealth_delegations.asp> at 5 August 2009.

The Director-General's power under sections 50 and 63 is delegated to the following positions:

- > Deputy Director-General Strategic Development
- > Director Mental Health and Drug and Alcohol Programs
- > Associate Director Mental Health Clinical Policy
- > Chief Psychiatrist
- > Chief Executive (Justice & Forensic Mental Health Network)
- > Statewide Clinical Director Forensic Mental Health (Justice & Forensic Mental Health Network)
- > Executive Director Forensic Mental Health and Youth Health Services (Justice & Forensic Mental Health Network)
- > Service Director Mental Health (Justice & Forensic Mental Health Network)
- > *Medical Superintendents of Declared Mental Health Facilities
- > Chief Executive Forensic Mental Health Network

*Note: In the case of a medical emergency only, the sections 50 and 63 power is delegated to the Medical Superintendent of the declared mental health facility in which the patient is detained.

Except in a medical emergency, the Director-General (or delegate) must not grant leave to a forensic patient or correctional patient:

- > unless, on the evidence available, the safety of the patient or any member of the public will not be seriously endangered if the leave is granted, and
- > if the Tribunal (in respect of forensic patients) or Commissioner of CSNSW or Director-General of the Department of Attorney General and Justice (in respect of correctional patients) has previously, in the same or similar circumstances, refused to make an order allowing the patient to be absent [s50(2), s50(3), 63(2), 63(3)].

4.1.6 Mandatory requirements

The Tribunal must not make an order allowing a forensic patient to be absent from a mental health facility, correctional centre, or other place unless it is satisfied, on the evidence available to it, that:

- > The safety of the patient or any member of the public will not be seriously endangered if the leave of absence is granted

(MHFP Act s49)

4.1.7 Matters for consideration by the Mental Health Review Tribunal (s74)

The Tribunal must have regard to the following matters when determining what order to make about a forensic patient:

- > whether the patient is suffering from a mental illness or other mental condition
- > whether there are reasonable grounds for believing that care, treatment or control of the patient is necessary for their own protection from serious harm or the protection of others from serious harm
- > the continuing condition of the person, including likely deterioration in condition, and the likely effects of deterioration.

The Tribunal is responsible for notifying registered forensic patient victims of significant events relating to forensic patients.

4.1.8 Conditions that may be imposed by the Tribunal on release or leave of absence (s75)

The Tribunal may impose conditions including as to the following matters on orders for release or granting leave of absence made by it in relation to a forensic patient under the MHFP Act Part 5:

- > the appointment of a case manager, psychiatrist or other health care professional to assist in the care and treatment of the patient
- > the care, treatment and review of the patient by a case manager, psychiatrist or other health care professional, including home visits to the patient
- > medication
- > accommodation and living conditions
- > enrolment and participation in educational, training, rehabilitation, recreational, therapeutic or other programs
- > the use or non-use of alcohol and other drugs
- > drug testing and other medical tests
- > agreements as to conduct
- > association or non-association with victims or members of victim's families (non-association conditions)
- > prohibitions or restrictions on frequenting or visiting places (place restriction conditions)
- > overseas or interstate travel.

The Tribunal may amend or impose place restriction or non-association conditions on release or leave orders on application of victims (s76).

In relation to release or leave proposed for a forensic patient a victim of the forensic patient may apply to the Tribunal for an order to:

- > impose or vary a non-association condition
- > impose or vary a place restriction condition.

4.1.9 Treating clinician considerations when planning for leave (s76G)

An authorised medical officer of a mental health facility must take all reasonably practical steps to:

- > ensure that the person concerned and any primary carer of the person are consulted in relation to planning the person's leave and any subsequent treatment or other action considered in relation to the person
- > consult with agencies involved in providing relevant services to the person, any primary carer of the person, and any dependent children or other dependants of the person, and
- > provide a person given leave of absence, with appropriate information as to follow-up care.

For all types of leave or ground access, the treating team should discuss the arrangements for the leave or ground access with the patient and satisfy themselves that the patient understands the arrangements and any conditions placed on the leave or ground access. The consultations and discussion should be documented in the patient's health record. The discussion should be undertaken in the presence of the patient, and it is preferable for information about the patient to be disclosed by the patient with the support of the treating team.

4.1.10 Information sharing with other agencies

- > For all types of leave but particularly for supervised or unsupervised leave, treating teams should consider developing formal information sharing arrangements with agencies or persons who provide services to, or are attended by, forensic patients on leave. Such agencies include education providers such as Institutes of Technical and Further Education (TAFE).
- > Any such arrangements should make provisions for:
 - the sharing of relevant information between the health service and the other party regarding salient aspects of the patient’s history, health condition, and any risks that the patient may pose while on leave
 - the reporting by the other party back to the health service of the attendance of the patient, and the behaviour of the patient while in attendance, including any incidents of concern.
- > Any such arrangements should comply with the requirements of the NSW Health Privacy Manual Version 2¹⁰ as updated from time to time.
- > Where there is a requirement that the health information of a patient must not be disclosed to another party without the consent of the patient and the patient refuses to consent to the disclosure, consideration should be given to suspending any leave arrangements until such time as the patient consents to the disclosure.

4.1.11 Belongings of patients

- > The health service should pay particular attention to any belongings of the patient that the patient takes or attempts to take on leave. Generally, the patient should take with him or her only those things that are necessary for the period of leave.
- > Where appropriate, the health service should consider:
 - limiting the amount of money that the patient may carry
 - preventing a patient from taking credit or debits with him or her, or
 - Preventing a patient from taking identification documents such as a driver licence, passport, or birth certificate while on leave.
- > Where health staff suspect that a patient may be attempting to take a thing or things with him or her while on leave that may aid the escape or abscondence of the patient, health staff may search a patient in accord with NSW Health policies, the MHA, or any security conditions in force under section 76D of the MHFP Act. Where a patient refuses such a search, the treating team should consider placing the patient under constant observation and suspending any leave until such time as the patient consents to the search.

4.1.12 Descriptions and photographs of patients

- > The health record of a forensic patient should contain a colour photograph and a description of the physical characteristics of the patient. The photograph should be updated at least every six months or whenever the patient significantly alters his or her appearance.
- > A description of the clothes the patient is wearing should be recorded in the patient’s health record at each time the patient takes leave from the ward or unit.

¹⁰ NSW Department of Health, *PD2005_593 NSW Health Privacy Manual Version 2* (2005).

4.1.13 On Return from Leave

- > On return from leave there should be a handover between the escorting staff or supervisor and the facility staff, which would usually be the Care Coordinator, NUM or Nurse in Charge. The purpose of the handover is to inform the Care Coordinator, NUM or Nurse in Charge, or other relevant person of the patient's behaviour during the leave and of any untoward events that may have occurred.

NOTE: The following sections 4.2 to 4.6 do not apply to leave in circumstances constituting an emergency or in other special circumstances.

4.2 Escorted day leave

4.2.1 Definition

Escorted day leave is leave granting access to a place or places outside a mental health facility, correctional centre or other place under close supervision and escorted by at least one member of staff of the facility. As part of a graduated program of rehabilitation, an order for a minimum of escorted day leave is required to enable a forensic patient to access the grounds of a mental health facility. The Forensic Hospital is excluded from this requirement as the grounds are a part of the declared mental health facility.

When making an application for escorted ground leave to be exercised only within the grounds of the facility, staff should use their discretion as not all of the requirements set out here may apply.

4.2.2 Escort requirements

- > Escorts should be clinical staff trained in the prevention and management of violence and aggression.
- > The ratio of escorts to patients depends on the assessed level of risk and should be graduated from two or more escorts per patient ($\geq 2:1$) to a minimum of one staff member per three patients (1:3).
- > Gender and age of the escorting staff and the patient should be considered.
- > The escorting staff should be aware of the diagnosis, risks, and behaviours of the patient and action to be taken in the case of untoward events.
- > There should be a plan in place to enable the escorting staff to receive assistance in an emergency. Escorts should carry a mobile telephone with appropriate numbers in the 'phone book' or two-way radio.
- > NSW Health Policy *Guidelines for the Transport of Psychiatric Patients*¹¹ recommends that as a general principle, a driver plus two (2) escorts should be considered the minimum appropriate staffing level for the transport of a forensic patient.

4.2.3 Preparation for escorted day leave

- > The treating team should develop a leave plan that incorporates a risk management plan. Child protection and victim issues must be considered in the development of the plan. The leave plan should be approved by the patient's treating psychiatrist and the Medical Superintendent before it is submitted to the approving authority.

¹¹ NSW Department of Health, *Policy Directive PD2005_044: Psychiatric Patients - Guidelines for the Transport of* (2005) at 5.

- > The Medical Superintendent may ask the approving authority to attach conditions to a grant of leave, for example, call-in times, geographic limits, away from location of victims, schools, playgrounds etc. as indicated by the patient's history and index event.
- > A Notice of Intent should be submitted to the Tribunal at least four weeks prior to the review date. Reports and the leave plan should be sent to the Tribunal as soon as possible and no later than two weeks prior to the date of the hearing.
- > A program of incrementally extended ground access should be completed successfully prior to leave from the mental health facility environment.
- > The Tribunal will advise the treating team regarding any forensic patient victim issues if relevant.
- > Other than in a medical emergency, when considering whether a patient is suitable for escorted day leave the treating team should consider such factors as whether the patient:
 - has the capacity for socially appropriate behaviour
 - is assessed as being a low risk of absconding or escaping
 - is compliant with medication and directions, and
 - if in a correctional or detention centre, has the appropriate security classification before leave is requested of the Tribunal, Commissioner of CSNSW or Director-General of the Department of Attorney General and Justice. Liaison between the health service and CSNSW or JJNSW is essential.
- > Local policy should identify a clinician who has responsibility for conducting a risk assessment immediately before the patient leaves the facility. The leave may be deferred if the patient presents with a significant increase in risk.
- > The treating team should discuss the arrangements for the leave with the patient and satisfy themselves that the patient understands the arrangements and any conditions placed on the leave. The discussion should be documented in the patient's health record.

4.2.4 During escorted day leave:

- > Duration of leave – increased incrementally on successful outcomes.
- > Safe environment (avoid unsafe or risk-prone environments).
- > The patient should be escorted by at least one member of staff.
- > The escort staff should be make contact with the Unit at intervals during the leave.

4.2.5 After escorted day leave

- > On return from leave there should be a handover between the escorting staff or supervisor and the facility staff, which would usually be the Care Coordinator, NUM or Nurse in Charge. The purpose of handover is to inform the Care Coordinator, NUM or Nurse in Charge, or other relevant person of the patient's behaviour during the leave and of any untoward events that may have occurred.
- > A description of the leave event should be recorded in the patient's health record.
- > De-briefing with case manager or care coordinator.
- > The patient should be aware that risk of detection of substance use is high.
- > Any incident during leave should be reported to the Tribunal, investigated and addressed.

- > A departure from conditions of leave may indicate a review or cessation of the approval for the leave.

4.3 Supervised day leave

4.3.1 Definition

Supervised day leave means leave to a place outside a mental health facility, correctional centre, or other place, under the close supervision of at least one responsible adult (who is not a member of staff of the facility). Other than in a medical emergency or other special circumstances, a patient should generally have successfully completed a program of leave within the hospital grounds and escorted day leave before an application for supervised day leave is made by the Medical Superintendent or Treating Team.

4.3.2 Supervisor requirements

- > Supervisors should be formally approved by the Medical Superintendent or delegate. A sample 'Supervisor Risk Assessment' is given at Appendix 5.
- > A patient should be supervised by at least one supervisor.
- > A supervisor should be a competent, responsible adult.
- > Proof of identity, address, and contact details of the supervisor should be checked and recorded.
- > The criminal, forensic, drug or alcohol history of a prospective supervisor may restrict his or her eligibility.
- > Formal security screening may be considered. See 'Supervisor Risk Assessment'.
- > A supervisor should be aware of the diagnosis, history, risks, and behaviours of the patient and action to be taken in the case of untoward events.
- > Supervision directions and responsibilities should be discussed with the supervisor and given to the supervisor in writing.
- > The Medical Superintendent or delegate should discuss the arrangements for the leave with the potential supervisor and be satisfied that the supervisor understands his or her responsibilities, including the requirement for keeping the patient in a continuous direct line of sight. The discussion should be documented in the patient's health record.
- > A supervisor should be aware of the time and geographic limits of the leave.
- > A supervisor should be able to meet the potential challenges of the task.
- > A supervisor should have a pro-social attitude and not be an illicit drug user.
- > A previous victim should not be a supervisor for leave but may accompany a supervisor and forensic patient.
- > The gender and age of the supervisor and patient should be considered.
- > Supervisors should carry a mobile telephone with appropriate numbers in the 'phone book' or two-way radio.
- > A supervisor's approval may be withdrawn where there has been a failure of the patient to comply with the leave conditions under the supervisor's care, or failure by the supervisor to supervise the patient adequately, for example, encouraging drug or alcohol use, or going outside the geographical or time restrictions of the leave.

- > Supervisors should agree to report any incidents occurring during leave.

4.3.3 Preparation for supervised day leave

- > The treating team should develop a leave plan that incorporates a risk management plan. Child protection and victim issues must be considered in the development of the plan. The leave plan should be approved by the patient's treating psychiatrist and the Medical Superintendent before it is submitted to the Tribunal.
- > The Medical Superintendent may ask the Tribunal to attach conditions to a grant of leave, for example, curfew hours, call-in times, geographic limits, away from location of victims, schools, playgrounds etc. as indicated by the patient's history and index event.
- > A Notice of Intent should be submitted to the Tribunal at least 4 weeks prior to the review date. Reports and the leave plan should be sent to the Tribunal as soon as possible and no later than 2 weeks prior to the date of the hearing.
- > The Tribunal will advise the treating team regarding any forensic patient victim issues, if relevant.
- > The patient should be supervised by at least one responsible adult who has been approved by the Medical Superintendent.
- > The treating team should discuss the arrangements for the leave with the patient and satisfy themselves that the patient understands the arrangements and any conditions placed on the leave. The discussion should be documented in the patient's health record.
- > The treating team should develop a risk management plan for the leave.
- > Other than in a medical emergency, when considering whether a patient is suitable for supervised day leave the treating team should consider such factors as whether the patient:
 - has successfully completed periods of escorted day leave
 - has demonstrated socially appropriate behaviour over an appropriate period of time
 - is assessed as being a low risk of absconding or escaping
 - is compliant with medication and directions
 - is abstinent from illicit substances and alcohol, and
 - if in a correctional or detention centre, has the appropriate security classification before leave is requested of the Tribunal, Commissioner of CSNSW or Director-General of the Department of Attorney General and Justice.
- > Local policy should identify a clinician who has responsibility for conducting a risk assessment immediately before the patient leaves the facility. The leave may be deferred if the patient presents with a significant increase in risk.
- > A discussion with the supervisor and disclosure about the patient's diagnosis, risks, management, and boundaries to be observed should be undertaken in the presence of the patient or, alternatively, the discussion could be led by the patient with the support of the treating team. The discussion should be documented in the patient's health record.

4.3.4 During supervised day leave

- > Subject to the Tribunal order, the Medical Superintendent may gradually increase the duration of the leave.
- > Safe environment (avoid unsafe or risk-prone environments).

4.3.5 After supervised day leave

- > On return from leave there should be a handover between the escorting staff or supervisor and the facility staff, which would usually be the Care Coordinator, NUM or Nurse in Charge. The purpose of handover is to inform the Care Coordinator, NUM or Nurse in Charge, or other relevant person of the patient's behaviour during the leave and of any untoward events that may have occurred.
- > Drug and alcohol screens on return or frequent random testing if not on return.
- > The patient should be aware that risk of detection of substance use is high.
- > A description of the leave event should be recorded in the patient's health record.
- > Any incident during supervised leave should be reported to the Tribunal, investigated and addressed.
- > A departure from supervised leave may indicate a review or cessation of the approval of the supervisor and of the leave.

4.4 Unsupervised day leave

4.4.1 Definition

Unsupervised day leave is leave from a mental health facility, correctional centre, or other place without being accompanied by a supervisor or an escort. By its nature, unsupervised leave is a higher risk event than escorted or supervised leave hence, generally, a patient should have successfully completed a program of incremental leave within the hospital grounds, escorted and supervised leave before an application to the Tribunal for unsupervised day leave is made by the Medical Superintendent or Treating Team.

4.4.2 Preparation for unsupervised day leave

- > The treating team should develop a leave plan that incorporates a risk management plan. Child protection and victim issues must be considered in the development of the plan. The leave plan should be approved by the patient's treating psychiatrist and the Medical Superintendent before it is submitted to the Tribunal.
- > The Medical Superintendent may ask the Tribunal to attach any conditions to the leave, for example, curfew hours, call-in times, geographic limits, away from location of victims, schools, playgrounds etc. as indicated by the patient's history and index event.
- > Where appropriate, the leave plan should include arrangements by which the treating team can monitor the location of the patient while on unsupervised leave and the actions that must be taken where the patient does not comply with those arrangements. For example, a leave plan may include requirements that a nominated person at the destination of the patient contact the ward or unit by telephone:
 - to confirm the patient's arrival at the destination
 - at specified or random time or times during the period of leave, and/or
 - on the patient's departure from the place of leave.
- > A Notice of Intent should be submitted to the Tribunal at least 4 weeks prior to the review date. Reports and the leave plan should be sent to the Tribunal as soon as possible and no later than 2 weeks prior to the date of the hearing.
- > The Tribunal will advise the treating team regarding any forensic patient victim issues, if relevant.

- > When considering whether a patient is suitable for unsupervised day leave the treating team should consider such factors as whether the patient:
 - has successfully completed periods of supervised day leave
 - has demonstrated socially appropriate behaviour in high stimulus environments
 - is assessed as being a very low risk of absconding or escaping
 - is compliant with medication and has been compliant with the conditions of previous ground access and leave
 - is abstinent from illicit substances and alcohol and has a high level of ‘refusal skills’ regarding illicit drugs or non-compliance, and
 - if in a correctional or detention centre, has the appropriate security classification before leave is requested of the Tribunal, Commissioner of CSNSW or Director-General of the Department of Attorney General and Justice. Liaison between the health service and CSNSW or JJNSW is essential.
- > Child protection requirements must be implemented where applicable.
- > Local policy should identify a clinician who has responsibility for conducting a risk assessment immediately before the patient leaves the facility. The leave may be deferred if the patient presents with a significant increase in risk.
- > The treating team should discuss the arrangements for the leave with the patient and satisfy themselves that the patient understands the arrangements and any conditions placed on the leave. The discussion should be documented in the patient’s health record.

4.4.3 During unsupervised day leave

- > Duration of leave – graduated incrementally.
- > Safe environment (counselled to avoid unsafe or risk-prone environments).
- > Geographic restrictions, for example, unsafe areas and suburb or town of victims.
- > Abstinence from illicit substances and alcohol.

4.4.4 After unsupervised day leave

- > Random urinary drug and breath screens on return on a random basis, initially at high frequency.
- > De-briefing and counselling of the patient and any primary carer as appropriate.
- > The patient should be aware that risk of detection on substance use is high.
- > A description of the leave event should be recorded in the patient’s health record.
- > Any incident during unsupervised leave should be reported to the Tribunal, investigated and addressed.
- > A departure from conditions of unsupervised leave may indicate a review or cessation of the approval.

4.5 Supervised overnight leave

4.5.1 Definition

Supervised overnight leave enables a forensic patient to be absent from a mental health facility, correctional centre, or other place, for periods of up to 24 hours per day, while under the close

supervision of at least one responsible adult. Overnight leave is an important step in the transition from detention to conditional release. Once the leave has been gradually introduced, overnight leave may build up to 5 or 6 nights per week, with joint management by the local community mental health service. During this time, the patient continues to be detained at the mental health facility. The treating team of the mental health facility retains primary responsibility for the forensic patient's care, treatment, and management under the supervision and direction of the Medical Superintendent.

4.5.2 Supervisor requirements

- > As for section 4.3.2 above.

4.5.3 Preparation for supervised overnight leave

- > The case manager and another appropriate professional should conduct a home assessment with the patient and family or persons who will reside with the patient during the leave and be satisfied with the arrangements prior to the implementation of leave.
- > The treating team should develop a leave plan that incorporates a risk management plan. Child protection and victim issues must be considered in the development of the plan. The leave plan should be approved by the patient's treating psychiatrist and the Medical Superintendent before it is submitted to the Tribunal.
- > The Medical Superintendent may ask the Tribunal to attach any conditions to the leave, for example, curfew hours, call-in times, geographic limits, away from location of victims, schools, playgrounds etc. as indicated by the patient's history and index event.
- > Contact should be made with the local mental health service in the area in which supervised leave is being utilised to ensure that appropriate support services are available to the forensic patient while on leave, particularly if leave is to be utilised for extended periods of time, for example, 5 to 6 nights per week.
- > A Notice of Intent should be submitted to the Tribunal at least 4 weeks prior to the review date. Reports and the leave plan should be sent to the Tribunal as soon as possible and no later than 2 weeks prior to the date of the hearing.
- > The Tribunal will advise the treating team regarding any forensic patient victim issues, if relevant.
- > The patient should be supervised by at least one responsible adult who has been approved by the Medical Superintendent.
- > When considering whether a patient is suitable for supervised overnight leave the treating team should consider such factors as whether the patient:
 - has successfully completed periods of supervised or unsupervised day leave
 - has consistently demonstrated socially appropriate behaviour over a substantial period of time
 - is assessed as being a very low risk of absconding or escaping
 - is compliant with medication and directions
 - is abstinent from illicit substances and alcohol, and
 - if in a correctional or detention centre, has the appropriate security classification before leave is requested of the Tribunal, Commissioner of CSNSW or Director-General of the Department of Attorney General and Justice.

- > Local policy should identify a clinician who has responsibility for conducting a risk assessment immediately before the patient leaves the facility. The leave may be deferred if the patient presents with a significant increase in risk.
- > The treating team should discuss the arrangements for the leave with the patient and satisfy themselves that the patient understands the arrangements and any conditions placed on the leave. The discussion should be documented in the patient's health record.
- > A discussion with the supervisor and disclosure about the patient's diagnosis, risks, management, and boundaries to be observed should be undertaken in the presence of the patient or, alternatively, the discussion could be led by the patient with the support of the treating team. The discussion should be documented in the patient's health record.

4.5.4 During supervised overnight leave

- > The gender and age of supervisor and patient should be considered.
- > The duration of leave may be gradually incremented.
- > Safe environment (avoid unsafe or risk-prone environments).
- > Abstinence from illicit substances and, subject to the Tribunal order, alcohol.

4.5.5 After supervised overnight leave

- > On return from leave there should be a handover between the escorting staff or supervisor and the facility staff, which would usually be the Care Coordinator, NUM or Nurse in Charge. The purpose of handover is to inform the Care Coordinator, NUM or Nurse in Charge, or other relevant person of the patient's behaviour during the leave and of any untoward events that may have occurred.
- > Where clinically indicated, drug and alcohol screens on return on random basis, initially at high frequency.
- > De-briefing with case manager or senior staff member on duty.
- > Forensic patient should be aware that risk of detection on substance use is high.
- > A description of the leave event should be recorded in the patient's health record.
- > Any incident during supervised leave should be reported to the Tribunal, investigated and addressed.
- > A departure from conditions of supervised leave may indicate a review or cessation of the approval.

4.6 Unsupervised overnight leave

4.6.1 Definition

Unsupervised overnight leave is leave enabling a patient to be absent from a mental health facility, correctional centre, or other place, for periods of up to 24 hours per day, while not being subject to supervision or accompanied by an escort. Overnight leave is an important step in the transition from detention to conditional release. Subject to the Tribunal order, once the leave has been gradually introduced, overnight leave may be increased to longer periods, with joint management by the local community mental health team. However, the patient continues to be detained at the mental health facility, which retains primary responsibility for the forensic patient's care, treatment, and

management administered by treating team of the mental health facility under the supervision and direction of the Medical Superintendent.

4.6.2 Preparation for unsupervised overnight leave

- > The case manager and another appropriate professional should conduct a home assessment with the patient and family or persons who will reside with the patient during the leave and be satisfied with the arrangements prior to the implementation of leave.
- > The treating team should develop a leave plan that incorporates a risk management plan. Child protection and victim issues must be considered in the development of the plan. The leave plan should be approved by the patient's treating psychiatrist and the Medical Superintendent before it is submitted to the Tribunal.
- > Where appropriate, the leave plan should include arrangements by which the treating team can monitor the location of the patient while on unsupervised leave and the actions that must be taken where the patient does not comply with those arrangements. For example, a leave plan may include requirements that a nominated person at the destination of the forensic patient contact the ward or unit by telephone:
 - to confirm the patient's arrival at the destination
 - at specified or random times during the period of leave, and/or
 - on the patient's departure from the place of leave.
- > The Medical Superintendent may ask the Tribunal to attach conditions to the leave, for example, curfew hours, call-in times, geographic limits, away from location of victims, schools, playgrounds etc. as indicated by the patient's history and index event.
- > Contact should be made with the local mental health service in any area in which supervised leave is being utilised to ensure that appropriate support services are available to the forensic patient while on leave, particularly if leave is to be utilised for extended periods of time.
- > A Notice of Intent should be submitted to the Tribunal at least 4 weeks prior to the review date. Reports and the leave plan should be sent to the Tribunal as soon as possible and no later than 2 weeks prior to the date of the hearing.
- > The Tribunal will advise the treating team regarding forensic patient victim issues if relevant.
- > When considering whether a patient is suitable for unsupervised overnight leave the treating team should consider such factors as whether the patient:
 - has successfully completed periods of supervised overnight leave
 - has consistently demonstrated socially appropriate behaviour over a substantial period of time
 - is assessed as being a low risk of absconding or escaping
 - is compliant with medication and directions
 - is abstinent from illicit substances and alcohol, and
 - if in a correctional or detention centre, has the appropriate security classification before leave is requested of the Tribunal, Commissioner of CSNSW or Director-General of the Department of Attorney General and Justice.
- > Local policy should identify a clinician who has responsibility for conducting a risk assessment immediately before the patient leaves the facility. The leave may be deferred if the patient presents with a significant increase in risk.

- > The treating team should discuss the arrangements for the leave with the patient and satisfy themselves that the patient understands the arrangements and any conditions placed on the leave. The discussion should be documented in the patient's health record.

4.6.3 During unsupervised overnight leave

- > Subject to the Tribunal order, the duration of leave may be gradually increased, initially part of one day/night, then a full day/night at a time.
- > Safe environment (avoid unsafe or risk-prone environments).
- > Abstinence from illicit substances and, subject to the Tribunal order, alcohol.

4.6.4 After unsupervised overnight leave

- > Staff should conduct drug and alcohol screens on return on random basis, initially at high frequency.
- > The patient should be fully reviewed at intervals of at least weekly.
- > A description of the leave event should be recorded in the patient's health record.
- > Any incident during unsupervised leave should be reported to the Tribunal, investigated and addressed.
- > A departure from conditions of unsupervised leave may indicate a review or cessation of the approval.

4.7 Emergency or Special Circumstances absence from a mental health facility

4.7.1 Definition

The absence from a declared mental health facility of a forensic or correctional patient, in circumstances constituting an emergency, such as a medical emergency, or special circumstances, such as attendance at a hospital for medical investigations or treatment.

4.7.2 Authority to grant emergency or special circumstances leave

- > Director-General (delegates are as for section 4.1.4 above).
- > Director-General as delegated to the Medical Superintendent of a mental health facility in a medical emergency only.
- > See also section 4.1.5 above.

4.7.3 Escort requirements

- > If an escort is required, as for section 4.2.2 above.

4.7.4 Preparation for emergency or special circumstances leave

- > An order from the Director-General or delegate is required.
- > Except in a medical emergency, a briefing note is required to inform the Director-General or delegate of the special circumstances, the risk assessment and management plan for the leave.
- > Facilities should have local protocols in place for notifying and seeking leave from the Medical Superintendent in the case of medical emergencies both during and outside office hours.
- > The treating team should have a pre-arranged risk management plan in place, which specifies the level of escort the patient will require in the event of emergency leave.

4.7.5 During emergency leave

- > Duration of leave depends on the type of emergency and must be kept under frequent review.
- > If required, escort staff should be pre-approved by the Medical Superintendent or delegate.

4.7.6 Escorts

- > Escorting staff should be aware of the diagnosis, risks, and behaviours of the patient and action to be taken in the case of untoward events.
- > Escorts should be trained in the prevention and management of violence and aggression.
- > There should be a plan in place to enable the escorting staff to request assistance in an emergency. Escorts should carry a fully charged mobile telephone or two-way radio.
- > The Medical Superintendent should closely monitor the leave and take appropriate action in relation to security and clinical requirements.
- > The gender and age of the patient and escorts should be considered.

4.7.7 After emergency or special circumstances leave

- > On return from leave there should be a handover between the escorting staff or supervisor and the facility staff, which would usually be the Care Coordinator, NUM or Nurse in Charge. The purpose of handover is to inform the Care Coordinator, NUM or Nurse in Charge, or other relevant person of the patient's behaviour during the leave and of any untoward events that may have occurred.
- > Staff should conduct drug and alcohol screens on return, where appropriate.
- > De-briefing with case manager.
- > A description of the leave event should be recorded in the patient's health record.
- > Any incident during leave should be reported to the Tribunal immediately and investigated by the appropriate officer.

5 Ground Access

5.1 Common requirements for all ground access

5.1.1 Definition

Ground access is when a patient is granted permission to enter the grounds of the facility at which the patient is detained. During the ground access, the patient may be escorted, supervised, or unsupervised. The grounds of a declared mental health facility are defined as only those grounds that are explicitly set out in the declaration¹² of the facility.

5.1.2 Applicability

Where the ground access is entirely within the gazetted boundaries of a mental health facility in which a patient is detained then formal leave under Part 5 of the MHFP Act is not required, unless the Court or Tribunal order for the patient specifically prohibits such ground access or the Director-General (or delegate)¹³ has imposed security conditions (under 76D of the MHFP Act) prohibiting ground access by the patient.

As at 10 December 2010, the granting of ground access only applies to patients detained in the Forensic Hospital. This is because the Forensic Hospital is the only mental health facility in NSW where the grounds are part of the declared mental health facility. For all other declared mental health facilities, an order for leave under the MHFP Act is required as, by entering the grounds, the patient leaves the boundaries of the declared mental health facility.

While the Director-General (or delegate) can impose security conditions on a patient, unless and until the Director-General imposes such conditions under s76D, the usual movements of patients within a mental health facility (and any grounds included in the gazettal) will not be affected unless there are clear clinical or management reasons for doing so.

5.1.3 Authority to grant ground access

The Forensic Hospital

Justice & Forensic Mental Health Network has developed a system¹⁴ whereby the Medical Superintendent of the Forensic Hospital has the authority to grant ground access to patients in the Hospital except where the Director-General or delegate has imposed security conditions on a patient under s76D.

Staff in the Forensic Hospital should follow the policy and procedures set out in J&FMHN Policy 1.249 *Leave, Ground Access, and SCALE – The Forensic Hospital* and the Security Manual for the management of ground access for patients in the Forensic Hospital.

Other Mental Health Facilities

See Section 4 above.

¹² Section 109 of the Mental Health Act 2007 enables the Director-General to declare premises to be a mental health facility. The 'declaration' is published in the NSW Government Gazette by the Department of Commerce at <http://www.advertising.nsw.commerce.nsw.gov.au/Gazette/Gazette.htm>

¹³ NSW Department of Health, *Delegations Manual: Public Health (Amendment 24) Delegation: (PH502)* (2010), <http://www.health.nsw.gov.au/resources/policies/manuals/pubhealth_delegations.asp> at 15 December 2010.

¹⁴ The system for ground access is set out in Justice & Forensic Mental Health Network Policy 1.249 *Leave, Ground Access, and SCALE – The Forensic Hospital*.

As the grounds of other mental health facilities in NSW have not been declared as part of the facility, a patient must have a grant of leave from the Tribunal in order access outside the boundaries of the facility, which will usually mean outside the building or perimeter fence. Such a leave order may allow leave from the mental health facility premises but within the grounds. The leave order may specify the geographic limits within which the patient must remain during the leave period if such a restriction to the use of leave is warranted in the particular case.

If the Tribunal has granted leave, each instance of leave is at the discretion of the Medical Superintendent of the facility. In implementing any level of leave, Medical Superintendents should generally implement the leave gradually so that it is initially within the local area of the facility, before the leave is used more widely. The Medical Superintendent may introduce graduated leave periods as part of preparation for wider leave.

5.1.4 Mandatory requirements

- > Compliance with the patient's forensic order.
- > In the case of the Forensic Hospital, approval from the Medical Superintendent
or
- > In all other mental health facilities (except where the hospital grounds are a part of the mental health facility), an order for leave
or
- > In the case of correctional patients detained in a correctional or detention centre, an order from the Commissioner of CSNSW or Director-General of the Department of Attorney General and Justice.

5.1.5 Risk management

Leave granted by the Tribunal may be subject to restrictions and conditions imposed by the Medical Superintendent for the management of risk. A risk management plan should be developed by the treating team and approved by the Medical Superintendent. Before each period of ground access, a risk assessment should be conducted and the access may be deferred if the patient presents with a significant increase in risk.

5.1.6 Ground access types

The following levels of ground access (which, as at August 2012, may be provided only in the Forensic Hospital) are covered in the subsequent sections of this guide:

- > Escorted ground access
- > Supervised ground access
- > Unsupervised ground access.

For the management and levels of leave in other mental health facilities see Section 4 *Leave* above.

The level of ground access or leave that a patient may have, or that may be recommended for a patient, depends on an individualised assessment of risk and consideration of all the relevant circumstances for the particular patient. While it is not intended that patients must progress through the various levels of ground access and leave set out in these guidelines in a strictly linear order, it is, nevertheless, good clinical practice to introduce ground access or outside leave in a graduated fashion. For example, it is not necessary for a patient to have successfully completed periods of escorted and supervised ground access in order to obtain unsupervised ground access. However, a Medical Superintendent may wish to introduce periods of supervised ground access before allowing

the patient to have unsupervised ground access. If there are sound clinical or security reasons for doing so the Medical Superintendent may place restrictions on leave granted by the Tribunal provided such restrictions are not inconsistent with the Tribunal order.

5.2 Escorted ground access

5.2.1 Definition

Escorted ground access means ground access (see above) by a patient closely escorted by one or more members of staff and may occur within a defined area of the grounds of a mental health facility, correctional centre or other place.

5.2.2 Escort requirements

- > Escorts should be clinical staff trained in the prevention and management of violence and aggression.
- > The ratio of escorts to patients depends on the assessed level of risk and should be graduated from two or more escorts per patient ($\geq 2:1$) to a minimum of one staff member per three patients (1:3).
- > Gender and age of the escorting staff and the patient should be considered.
- > Escorting staff should be aware of the diagnosis, risks, and behaviours of the patient and action to be taken in the case of untoward events.
- > There should be a plan in place to enable the escort staff to receive assistance in an emergency. Escorts should carry a mobile telephone with appropriate numbers in the 'phone book' or two-way radio.

5.2.3 Preparation for escorted ground access

- > The treating team should develop a ground access plan that incorporates a risk management plan. The plan should include a mechanism to enable the escort staff to receive assistance in the event of an emergency, for example, a two-way radio. The plan should be approved by the patient's treating psychiatrist before it is submitted to the Medical Superintendent for approval.
- > The Medical Superintendent may attach any conditions to the ground access, for example, curfew hours, call-in times, geographic limits, etc, as indicated by the patient's history and index event.
- > When considering whether a patient is suitable for ground access the treating team should consider such factors as whether the patient:
 - has the capacity for socially appropriate behaviour
 - is assessed as low risk of absconding/escaping
 - has the capacity to follow directions
 - is compliant with medication and directions
 - is abstinent from illicit substances and alcohol, and
 - if in a correctional/detention centre, has the appropriate security classification before ground access by a forensic patient is requested of the Tribunal. Liaison between the health service and CSNSW or JJNSW is essential.

- > The locations to which the patient may have access may be specified in the leave order from the Tribunal and the treating team should be satisfied that the patient understands the limits of the ground access before leaving the facility.
- > Local policy should identify a clinician who has responsibility for conducting a risk assessment immediately before the patient leaves the facility. The ground access or leave may be deferred if the patient presents with a significant increase in risk.
- > The treating team should discuss the arrangements for the leave with the patient and satisfy themselves that the patient understands the arrangements and any conditions placed on the leave. The discussion should be documented in the patient's health record.

5.2.4 During escorted ground access

- > The Medical Superintendent should specify the duration of the ground access and may increase the period of access incrementally.
- > Escorts should carry a mobile telephone with the appropriate numbers stored in the 'Phone book' or a two-way radio.

5.2.5 After escorted ground access

- > Drug and alcohol screens should be conducted on return only where indicated.
- > Any incident during ground access should be investigated and addressed.
- > Any departure from conditions of ground access may indicate the need for a review or cessation of the approval.
- > Any incidents during ground access must be included in reports to the Tribunal.

5.3 Supervised ground access

5.3.1 Definition

Supervised ground access means access to the grounds of the facility where the patient is under the supervision of a responsible adult at all times.

5.3.2 Supervision

- > Supervisors should be formally approved by the Medical Superintendent or delegate. A sample 'Supervisor Risk Assessment' is given at Appendix 5.
- > A patient should be supervised by at least one supervisor.
- > A supervisor should be a competent, responsible adult.
- > Proof of identity, address, and contact details should be checked and recorded.
- > The criminal and forensic history of a prospective supervisor may restrict his or her eligibility.
- > A supervisor should be aware of the diagnosis, history, risks, and behaviours of the patient and action to be taken in the case of untoward events.
- > Supervision directions and responsibilities should be discussed with the supervisor and should be given in writing.
- > The Medical Superintendent or delegate should be satisfied that a supervisor understands his or her responsibilities, including the requirement for keeping the patient in a continuous direct line of sight.

- > Supervisors should be aware of the limits of the access, that is, restricted areas, times, and boundaries of the hospital.
- > Supervisor should be able to meet the potential challenges of the task.
- > A Supervisor should have a pro-social attitude and not be an illicit drug user.
- > A previous victim should not be a supervisor for ground access or leave, but may accompany a supervisor and forensic patient.
- > The gender and age of the supervisor and patient should be considered.
- > Supervisors should carry a mobile telephone with appropriate numbers in the 'phone book' or two-way radio.

5.3.3 Preparation for supervised ground access

- > All the requirements in 'Preparation for Escorted Ground Access' in section 5.2.3 above and
- > A discussion with the supervisor and disclosure about the patient's diagnosis, risks, management, and boundaries to be observed should be undertaken in the presence of the patient or, alternatively, the discussion could be led by the patient with the support of the treating team. The discussion should be documented in the patient's health record.

5.3.4 During supervised ground access

- > The Medical Superintendent should specify the duration of the ground access and may increase the period of access incrementally.
- > The locations to which the patient may have access may be specified by the Medical Superintendent and must be agreed with the patient and supervisor beforehand.
- > The supervisor should have an emergency plan for receiving assistance, such as, a two-way radio or mobile telephone with appropriate numbers stored in the telephone.

5.3.5 After supervised ground access

- > Drug and alcohol screens on return on a random basis or as indicated.
- > Any incident during ground access should be reported, investigated and addressed.
- > A departure from the conditions of ground access may indicate the need for a review or cessation of the approval of the leave and/or the supervisor.
- > Any incidents during ground access must be included in reports to the Tribunal.

5.4 Unsupervised ground access

5.4.1 Definition

Unsupervised ground access means access to specified parts of the grounds of the facility by a patient who is not escorted, supervised or monitored point to point. 'Point to point' monitoring means where a patient is moving between locations within the facility or grounds, for example, between a café and a ward, and staff at the starting and destination locations contact each other to confirm the patient's departure and arrival.

5.4.2 Preparation for unsupervised ground access

- > The treating team should develop a ground access plan that incorporates a risk management plan. Child protection and victim issues must be considered in the development of the plan. The plan should be endorsed by the patient's treating psychiatrist before it is submitted to the Medical Superintendent for approval.
- > Where appropriate, the ground access plan should include arrangements by which the treating team can monitor the location of the patient while on unsupervised ground access and the actions that must be taken where the patient does not comply with those arrangements. For example, the plan may include a requirement for point to point monitoring whereby a staff member from the facility notifies staff at the destination that the patient has left the unit and a nominated person contacts the unit by telephone to confirm the patient's arrival at the destination. The nominated person at the destination may be required to notify the staff of the unit of the patient's location at specified or random times during the period of leave, and/or on the patient's departure from the place of leave.
- > The Medical Superintendent may attach any conditions to the ground access, for example, curfew hours, call-in times, geographic limits, as indicated by the patient's history and index event.
- > If in a correctional or detention centre, the forensic patient should have the appropriate security classification for the leave. Liaison between the health service and CSNSW or JJNSW is essential.
- > Any risks associated with victim issues should be addressed in the risk management plan.
- > When considering whether a patient is suitable for unsupervised ground access the treating team should consider such factors as whether the patient:
 - has successfully completed periods of supervised ground access
 - has the capacity for socially appropriate behaviour in high stimulus environments
 - has recently displayed any aggressive, intimidating or threatening behaviour
 - is assessed as having a low risk of absconding or escaping
 - has a high level of 'refusal skills' regarding illicit drugs and alcohol
 - is compliant with medication and has demonstrated the ability to follow directions, and
 - is abstinent from illicit substances and alcohol.
- > Consideration should be given to any on-site restrictions, for example, unsafe areas, building and facility access, and activities.
- > Local policy should identify a clinician who has responsibility for conducting a risk assessment immediately before the patient leaves the facility. The ground access or leave may be deferred if the patient presents with a significant increase in risk.
- > The treating team should discuss the arrangements for the leave with the patient and satisfy themselves that the patient understands the arrangements and any conditions placed on the leave. The discussion should be documented in the patient's health record.

5.4.3 During unsupervised ground access

- > Compliance with conditions of the ground access.
- > The patient should be aware of how to contact clinical staff, if required.

5.4.4 After unsupervised ground access

- > De-briefing with case manager or senior staff member on duty.
- > Drug and alcohol screens on return or frequent random testing, if not on return.
- > Forensic patient should be aware that risk of detection of substance abuse is high.
- > Any incident during ground access should be investigated and addressed.
- > A departure from the conditions of ground access may indicate the need for a review or cessation of the approval.
- > Any incidents during ground access must be included in reports to the Tribunal.

6 Independent accommodation within a mental health facility

6.1 Definition

Forensic patients detained in low or medium secure mental health facilities are usually initially placed within a secure unit, such as the Bunya or Kestrel Units. However, forensic patients may also be placed in independent or semi-independent accommodation that, while physically removed from the secure unit, is still part of the facility. Examples of such accommodation include the cottages included in the declaration of the mental health facility at Cumberland Hospital.

6.2 Authority to allow ward placement

The general management and accommodation within the declared boundaries of a mental health facility is at the discretion of the Medical Superintendent and according to any conditions and requirements set by the Superintendent.

In the same way as for ground access, where the grounds of a declared mental health facility are not formally part of the facility, it may not be feasible for a forensic patient to be transferred to independent accommodation if the patient does not have leave to enter the grounds. The treating team may apply to the Tribunal for leave from a mental health facility to facilitate the placement of a forensic patient in independent accommodation within a mental health facility.

6.3 Mandatory requirements

- > Compliance with forensic order.

6.4 Preparation for independent placement

- > The forensic patient should generally:
 - have achieved unsupervised leave as a minimum requirement for independent placement, and
 - be assessed as a low risk of absconding or escaping.
- > If the current order does not permit this level of leave, then a Notice of Intent should be given to the Tribunal at least 4 weeks prior to the review, and reports must be sent to the Tribunal at least 2 weeks prior to the date of the review hearing.
- > Trial periods in the independent accommodation may be indicated.
- > Consideration of security issues and compliance of the forensic patient should be undertaken prior to implementation of ward placement.
- > Continued independent placement requires that the patient have an adequate level of skills of daily living.
- > Medical, nursing, and allied health staff responsible for care in low security wards should have forensic training and experience, and ideally, be the staff who managed the forensic patient in the low or medium secure facility prior to independent placement.¹⁵

¹⁵ Statewide Clinical Risk Assessment and Management Training Program.

- > The treating team should discuss the arrangements for the leave with the patient and satisfy themselves that the patient understands the arrangements and any conditions placed on the leave. The discussion should be documented in the patient's health record.

6.5 During independent placement

Frequency of case review and management by the treating team should be high during the initial period after independent placement in view of the increased risk of relapse, behavioural problems, drug and alcohol use and absconding.

7 Release

7.1 Requirements for the release of forensic patients

Below are the legislative requirements for the release of forensic patients, followed by specific guidance on:

- > Conditional Release, and
- > Unconditional Release.

7.1.1 Authority to release forensic patients

- > The District and Supreme Courts may order the release, with or without conditions, of a person who has been found not guilty by reason of mental illness, or following a special hearing. Note: a person who is released subject to conditions becomes a forensic patient (s42).
- > The Mental Health Review Tribunal has the authority to release forensic patients with or without conditions.

7.1.2 Mandatory requirements

- > A Court may not make an order for the release of a person who has been found not guilty by reason of mental illness unless it is satisfied, on the balance of probabilities, that the safety of the person or any member of the public will not be seriously endangered by the person's release (MHFP Act s39).
- > The Tribunal must not make an order for the release of a forensic patient unless it is satisfied, on the evidence available to it, that:
 - the safety of the patient or any member of the public will not be seriously endangered by the patient's release, and
 - other care of a less restrictive kind, that is consistent with safe and effective care, is appropriate and reasonably available to the patient or that the patient does not require care (MHFP Act s43).

7.1.3 Matters that must be taken into consideration by the Tribunal

Section 74 of the MHFP Act requires the Tribunal to have regard to the following matters when determining what order to make about a person:

- > whether the person is suffering from a mental illness or other mental condition,
- > whether there are reasonable grounds for believing that care, treatment or control of the person is necessary for the person's own protection from serious harm or the protection of others from serious harm
- > the continuing condition of the person, including any likely deterioration in the person's condition, and the likely effects of any such deterioration
- > in the case of a proposed release, a report by a forensic psychiatrist or other person of a class prescribed by the regulations¹⁶, who is not currently involved in treating the person, as to the

¹⁶ Presently, the *Mental Health (Forensic Provisions) Regulation 2009* permits reports from registered psychologists who have, in the opinion of the Tribunal, appropriate experience or training in forensic psychology or neuropsychology and then only in regard to the condition of a person who is not suffering from a mental illness.

condition of the person and whether the safety of the person or any member of the public will be seriously endangered by the person's release, and

- > in the case of the proposed release of a forensic patient subject to a limiting term, whether or not the patient has spent sufficient time in custody.

The above list (except for the report by the forensic psychiatrist which is required only in release matters) applies to all the types of orders that may be considered by the Tribunal, including leave, conditional release and unconditional release.

7.1.4 Conditions that may be imposed by the Tribunal on release (s75)

The Tribunal may impose conditions including as to the following matters on orders for release:

- > the appointment of a case manager, psychiatrist or other health care professional to assist in the care and treatment of the patient
- > the care, treatment and review of the patient by a case manager, psychiatrist or other health care professional, including home visits to the patient
- > medication
- > accommodation and living conditions
- > enrolment and participation in educational, training, rehabilitation, recreational, therapeutic or other programs
- > the use or non-use of alcohol and other drugs
- > drug testing and other medical tests
- > agreements as to conduct
- > association or non-association with victims or members of victim's families
- > prohibitions or restrictions on frequenting or visiting places
- > overseas or interstate travel.

A victim of the patient may apply to the Tribunal for an order:

- > varying or imposing a non-association condition, or
- > varying or imposing a place restriction condition.

7.1.5 Planning for release and leave

Section 76G requires the authorised medical officer of a mental health facility in which a forensic patient is detained to take all reasonably practical steps to:

- > ensure that the patient and any primary carer of the patient are consulted in relation to planning the patient's release and leave and any subsequent treatment or other action considered in relation to the patient,
- > consult with agencies involved in providing relevant services to the patient, the patient's primary carer, and any dependent children or other dependants of the person,
- > provide a patient released, or given leave of absence, with appropriate information as to follow-up care.

7.2 Conditional Release

7.2.1 Definition

Conditional release is release from detention in a correctional or detention centre, mental health facility or other place subject to conditions required by a Court or the Tribunal.

7.2.2 Authority to grant conditional release

- > District or Supreme Court
- > Mental Health Review Tribunal

7.2.3 Preparation for conditional release

See Section 8.1 above for the mandatory requirements and considerations for release. For application of conditional release that will be considered by the Tribunal:

- > Before making an application to the Tribunal for conditional release, the Treating Team should consider whether the patient is likely to meet the requirements for conditional release, being that:
 - the safety of the patient or any member of the public will not be seriously endangered by the patient's release, and
 - other care of a less restrictive kind, that is consistent with safe and effective care, is appropriate and reasonably available to the patient or that the patient does not require care.
- > While each case will need to be decided on its own facts and what is considered appropriate in the individual circumstances, in considering whether the patient is likely to meet the requirements for conditional release, the Treating Team should consider factors such as whether the patient:
 - has been compliant with his or her forensic order, including, where appropriate, having had successful periods of ground access and leave without any significant incidents
 - has consistently demonstrated socially appropriate behaviour over a substantial period of time
 - is assessed as being a low risk in the context of the proposed conditions of release
 - has been compliant with medication and directions, and
 - has been abstinent from illicit substances, evidenced by at least two negative samples in the preceding 6 months.¹⁷
- > When conditional release is being considered, there must be a report by an independent forensic psychiatrist providing the opinion as to risk required under section 74(d). The treating team may consult the CFMHS and request an assessment or advice. The treating team should consider the safety of the patient and the public in conjunction with the issue of least restrictive care consistent with safe and effective care (ss43 and 74).
- > If the treating team is planning to seek conditional release, the treating team should inform the Tribunal at the review hearing preceding the hearing at which the release application will be made.

¹⁷ Any exemption to this requirement should be approved by the Tribunal.

- > The treating team should discuss the arrangements for the conditional release with the patient and satisfy themselves that the patient understands the arrangements and any conditions placed on the person. The discussion should be documented in the patient's health record.
- > If the patient has a mental illness, the forensic patient should be assessed and accepted by a community mental health team before an application for conditional release to the Tribunal is made by the Treating Team.
- > The treating team must develop a plan for the conditional release, which should include a risk management plan. In developing the plan, the team should consider:
 - any child protection or victim issues
 - whether any recommendations should be made to the Tribunal for geographical limitations (place restrictions) on the patient as a condition of release, and
 - whether any recommendations should be made to the Tribunal regarding restriction of the use of drugs or alcohol by the patient, including the testing for use, such as by urine drug screens, blood screens, or breath tests.
- > The risk assessment and management plan should include the following information:
 - a summary of the patient's progress in hospital
 - an opinion as to whether the patient's mental disorder is such that it is no longer necessary to continue to detain the patient in a mental health facility in order to protect the public from serious harm
 - a copy of the minutes of the multidisciplinary team meeting convened prior to conditional release. This should include details of who will be responsible for the patient's mental health and social work supervision in the community, if required, including, if appropriate, details of community mental health service involvement
 - frequency and nature of supervision if required
 - details of how the patient will occupy his or her time on conditional release
 - details of the patient's current treatment and which symptoms, if any, of their mental illness remain
 - details of the patient's attitude to and compliance with treatment and relationship with therapists
 - details of the patient's current attitude to the index event, other dangerous behaviour and any previous victims
 - whether the victim or victim's family is living in the locality in which it is proposed to transfer the patient and, if so, what is known about the victim or victim's family
 - the patient's response to any leave of absence outside the facility
 - details of the support the patient obtains from his family/friends
 - whether alcohol or illicit drugs have affected the patient in the past and contributed to the offending behaviour and, if so, the patient's current attitude to drugs and alcohol. Details of any interventions for the management of substance abuse. The results of any drug or alcohol testing and details of any proposed alcohol or drug testing
 - what issues, if any, still need to be addressed, and

- whether it is considered appropriate to ask for additional conditions to be added to the conditional release order, for example, no unsupervised contact with children, regular drug testing?
- > For patients with mental impairment, the following additional information should be included:
 - how has the patient benefited from treatment/training?
 - is their behaviour more acceptable?
 - is the patient's behaviour explosive or impulsive, and
 - does the patient now learn from experience and take account of the consequences of their action?
- > The treating team should contact the prospective receiving health service or agency and seek their agreement for the proposed arrangements.
- > A home/accommodation assessment should be conducted by the appropriate staff. The assessment should include discussions with carers, family or persons who will reside with the forensic patient to facilitate satisfactory arrangements.
- > The nominated case manager of the receiving service should meet with the forensic patient and referring team prior to giving formal Notice of Intent to the Tribunal. The treating team should consult with the proposed receiving team to ensure that the referral is appropriate before proceeding to send a comprehensive written referral. The receiving team should confirm in writing that they will accept the patient and that confirmation should be submitted to the Tribunal.
- > The referring team should provide support and briefings to the nominated case manager in the receiving service.
- > A Notice of Intent should be submitted to the Tribunal at least 4 weeks prior to the review date. Reports should be sent to the Tribunal as soon as possible and no later than 2 weeks prior to the date of the hearing.
- > The Tribunal will advise the treating team regarding any forensic patient victim issues, if relevant.
- > A psychiatrist from a Local Health District should be responsible for management of the forensic patient and implementation of the conditions of the release order.
- > Where there is a history of substance misuse or substance misuse was an element of the index event, the Treating Team should consider asking the Tribunal for an order requiring the patient to undergo drug testing (urine drug and alcohol screens) and indicate the frequency at which such testing should occur, generally weekly initially with the frequency being gradually reduced, dependent on the clinical risk assessment, to a minimum of monthly screens.

7.2.4 During conditional release

Depending on the order for conditional release:

- > Initially weekly contact (or more frequent visits as indicated) by the primary caseworker.
- > Monthly face-to-face reviews by the responsible psychiatrist.
- > Monitor the patient's mental state to ensure timely and early intervention.
- > The frequency of random drug and alcohol screens, if required under the order, should be increased and the sample collection should be unexpected, that is, not coinciding with visits.

- > Discuss any non-compliance with the Tribunal and the CFMHS. Record and report any incidents of non-compliance to the treating psychiatrist.
- > The Tribunal should be notified of any:
 - significant issues
 - proposed changes in the treating team (depending on the Tribunal order)
 - proposed changes in living arrangements (depending on the Tribunal order), or
 - alleged non-compliance or breaches of conditions.

7.3 Unconditional Release

7.3.1 Definition

A forensic patient, who is subject to an order for unconditional release, ceases to be a forensic patient and must be released from detention in a correctional facility, a mental health facility or other place. Unconditional release usually, but is not required to, follows a period of release subject to conditions.

7.3.2 Authority to grant unconditional release

- > District or Supreme Court
- > Mental Health Review Tribunal.

7.3.3 Preparation for unconditional release

See Section 8.1 above for the mandatory requirements and considerations for release. For application for unconditional release to be considered by the Tribunal:

- > Before making an application to the Tribunal for unconditional release, the Treating Team should consider whether the patient is likely to meet the requirements for unconditional release, being that:
 - the safety of the patient or any member of the public will not be seriously endangered by the patient's release, and
 - other care of a less restrictive kind, that is consistent with safe and effective care, is appropriate and reasonably available to the patient or that the patient does not require care.
- > In considering whether consider whether the patient is likely to meet the requirements for unconditional release, the Treating Team should consider factors such as whether the patient:
 - has been compliant with his or her forensic order, including, if considered reasonably necessary, having had a successful period of conditional release without any significant incidents
 - has consistently demonstrated socially appropriate behaviour over a substantial period of time
 - has been assessed as a low risk
 - has been compliant with medication and directions

- has been abstinent from illicit substances, evidenced by at least two negative samples in the preceding 6 months.¹⁸
- > It is useful to raise the possibility of an application for unconditional release with the Tribunal at an earlier review. The Tribunal can then assist in identifying the necessary preparation to support the application.
- > As soon as a release application is planned, contact should be made with the CFMHS or independent forensic psychiatrist for a risk assessment and management report.
- > The Case Manager should conduct a home assessment of the family or persons who will reside with the person and be satisfied with the arrangements.
- > The treating team must develop a plan for the patient's unconditional release, which should include a risk management plan. In developing the plan, the team should consider any child protection or victim issues. The Tribunal can advise the regarding any victim issues, if required.
- > Where the unconditional release would involve a transfer between health services, agreement should be reached between the referring and receiving health services and the CFMHS prior to the notice to the Tribunal regarding an intention to seek unconditional release.
- > When the Tribunal confirms the review date with the forensic patient's case manager, a Notice of Intent should be made to the Tribunal at least 4 weeks prior to the review, and reports to the Tribunal at as soon as possible and at least 2 weeks prior to the date. Is it essential that the reports from the treating team to the Tribunal present evidence of the patient's compliance with the forensic order.
- > The treating team should discuss the arrangements for the leave with the patient and satisfy themselves that the patient understands the arrangements and any conditions placed on the leave. The discussion should be documented in the patient's health record.

¹⁸ Any exemption to this requirement should be approved by the Tribunal.

8 Travel

8.1.1 Definition

Travel is movement within NSW, outside NSW or outside Australia. This section applies only to those forensic patients who are conditionally released and, in this context, travel refers only to travel that is outside any travel that is permitted by a forensic patient's current forensic order. For inpatients, leave is required to allow a patient to travel outside the facility and clinicians should refer to Section 4 *Leave* above. This section does not apply to correctional patients.

8.1.2 Authority to allow travel

- > Mental Health Review Tribunal

8.1.3 Preparation for travel

- > In general, and depending of the Tribunal order, a patient may travel interstate and overseas if suitable travel arrangements are approved in advance by the case manager. Care should be taken to ensure that appropriate reciprocal arrangements have been made with the local mental health services at the patient's destination. Depending on the Tribunal order, the Tribunal may have to be notified of the travel arrangements and it may choose to hold a review hearing to examine the suitability of the arrangements.
- > If the forensic patient is subject to a conditional release order that permits travel within certain bounds, the authority to allow travel generally rests with the treating clinicians. However, this must be checked as orders vary between individuals. The Tribunal should be notified of proposed interstate or international travel. A Tribunal review may be indicated to consider the conditions of release.
- > To be considered suitable to travel, the forensic patient should:
 - have consistently demonstrated socially appropriate behaviour over a substantial period of time, including in high stimulus environments
 - be assessed as being a low risk of absconding or escaping
 - be compliant with medication and directions
 - be abstinent from illicit substances and alcohol, and
 - if in a correctional or detention centre, have the appropriate security classification before leave is requested of the Tribunal, Commissioner of CSNSW or Director-General of the Department of Attorney General and Justice.
- > The treating team should develop a travel plan that incorporates a risk management plan. Child protection and victim issues should be considered in the plan, if indicated. The travel plan should include a detailed itinerary of destinations, overnight stays and arrangements, contacts and purpose of contacts at the destination as well as emergency contact details relating to health or compliance.
- > The Community Forensic Mental Health Service should be consulted regarding the risk assessment and management plan.

- > The travel plan should be approved by the Medical Superintendent or Director of Community Treatment¹⁹ before it is submitted to the Tribunal.
- > If a Tribunal hearing is required, a Notice of Intent should be submitted to the Tribunal at least 4 weeks prior to the review date. Reports and the travel plan should be sent to the Tribunal as soon as possible and no later than 2 weeks prior to the date of the hearing.
- > The Tribunal will advise the treating team regarding any forensic patient victim issues, if relevant.
- > A nominated member of the treating team should check and record the proof of identity, address, and contact details of the supervisor (if there is one) and persons with whom the forensic patient will stay during the travel.
- > If accompanied by a friend or family, the contact numbers and directions in relation to managing untoward incidents should be in writing, if indicated.
- > The treating team should verify the itinerary, travel arrangements and documentation.
- > The treating team should obtain the written consent of the patient to exchange information with the local service at the destination, as indicated.
- > The treating team should discuss the arrangements for the travel with the patient and satisfy themselves that the patient understands the arrangements and any conditions placed on the person. The discussion should be documented in the patient's health record.
- > A discussion with the supervisor and disclosure about the patient's diagnosis, risks, management, and boundaries to be observed should be undertaken in the presence of the patient or, alternatively, the discussion could be led by the patient with the support of the treating team. The discussion should be documented in the patient's health record.

8.1.4 During travel

- > Abstinence from illicit substances and, depending on the Tribunal order, alcohol.
- > Avoid unsafe or high-risk environments.
- > The patient may require a letter of authority to be in possession of medication and related equipment, for example, syringes and to inform customs or health services if required. Check carefully as the law regarding the possession of medications and drugs varies between countries. Prescription medications that may be lawful to possess in Australia may be illegal in another country.
- > The patient should:
 - know and carry information about how to seek help in the case of an emergency at the destination, and
 - should have a plan for obtaining medication/treatment if deterioration or relapse occurs at the destination.

8.1.5 On return

- > Drug and (depending on the order) alcohol screens on return.
- > Any incident occurring while the forensic patient is travelling should be reported to the Tribunal and investigated by the appropriate officer.

¹⁹ The Director of Community Treatment is the person appointed under section 113 of the *Mental Health Act 2007* to be the Director of Community Treatment of a mental health facility.

9 Transfer and Handover

9.1 Common requirements

9.1.1 Definition

Transfer

Transfer, in this context, refers to the movement of a patient from one facility to another or from a facility to the community. Unless the patient is staying with the same treating team, a transfer usually involves the handover of care for the patient from one team to another.

This section contains guidance on transfers in the following circumstances:

- > From a correctional centre to a mental health facility
- > From one mental health facility to another
- > Between case managers within an Local Health District in NSW
- > Interstate or internationally.

Handover

Handover is the transfer of professional responsibility and accountability for some or all aspects of care for a patient to another person or professional group on a temporary or permanent basis²⁰. The systematic transfer of information from one treating clinician or team to another is vital for ensuring continuity in the care and management of forensic patients.

9.1.2 Authority to transfer

There are five transfer possibilities in the forensic system:

- > in the case of the transfer of a person from a correctional or detention centre to a mental health facility, an order from the Director-General (or delegate) under section 55 of the MHFP Act
- > in the case of the transfer of a forensic patient or correctional patient detained in a mental health facility to another mental health facility, an order of the Director-General under section 76E of the MHFP Act
- > in the case of the transfer of a forensic patient to a mental health facility, correctional or detention centre or other place, an order of the Tribunal under section 48 of the MHFP Act
- > in the case of an adult forensic or correctional patient detained in a correctional centre, an order under section 24 of the *Crimes (Administration of Sentences) Act 1999* for the transfer of the person from a correctional centre to a hospital for medical treatment
- > in the case of an adolescent forensic or correctional patient detained in a detention centre, an order under section 25 of the *Children (Detention Centres) Act 1987* for the transfer of the person from a detention centre to a hospital for medical treatment.

²⁰ Australian Commission on Safety and Quality in Health Care (2009) *The OSSIE Guide to Clinical Handover Improvement* Sydney, ACSQHC at 4.

9.2 Transfer from a Correctional or Detention Centre to a Mental Health Facility

9.2.1 Admission to a mental health facility

An order under section 55 of the MHFP Act enables the person specified in the order to be transferred from a correctional centre to any declared mental health facility in NSW. However, in practice, adults are usually transferred to a high secure facility such as Long Bay Hospital or The Forensic Hospital. Juveniles are accommodated in The Forensic Hospital although for short admissions, juveniles may be treated in regional mental health units and Westmead Children's Hospital.

A section 55 order can be made by the Director-General (or delegate) on the basis of two Schedule 2 medical certificates completed by two medical practitioners, one of whom must be a psychiatrist. The transfer order can be made without the person's consent if the person is a mentally ill person²¹ or with the person's consent if the person is suffering from a mental condition for which treatment is available in a mental health facility. A person transferred from a correctional centre to a mental health facility under section 55 becomes a 'correctional patient' on admission to the facility. A correctional patient may be an adult inmate from a correctional centre or an adolescent from a detention centre.

9.2.2 Authority to transfer for admission

- > Director-General (or delegate)
- > Mental Health Review Tribunal

Note: Under the MHFP Act section 35, a Magistrate may make an order directing the relevant authorities to assess a person awaiting committal for trial for a transfer under section 55.

9.2.3 Mandatory requirements

- > Order of the Director-General of Health or delegate under section 55, or
- > Order of the Mental Health Review Tribunal under section 47(1) or 48 of the MHFP Act, or
- > In the case of an adult inmate, an order under section 24 *Crimes (Administration of Sentences) Act 1999* must be obtained from the Commissioner of CSNSW, or
- > In the case of a juvenile detainee, an order under section 25 of the *Children (Detention Centres) Act 1987* must be obtained from the Director-General of the Department of Attorney General and Justice.

9.2.4 Preparation for transfer from a correctional centre with a mental health service to a mental health screening unit or mental health facility

- > At a correctional centre with a mental health service, when a health staff member becomes aware that an inmate may be mentally unwell, the local team will conduct a mental health assessment and may consult the Nursing Unit Manager, Mental Health Screening Unit (MHSU) (Justice & Forensic Mental Health Network) or the Clinical Director Community Correctional Mental Health.
- > If there is not a mental health service in the correctional centre, contact must be made with the MHSU (see Appendix 7, Process for the transfer of an inmate to the Mental Health Screening Unit, MRRRC Flowchart).

²¹ The term 'mentally ill person' has the same meaning as in the *Mental Health Act 2007* s14.

- > A recommendation may be made at that point for further assessment locally or to arrange inter-correctional centre transfer for further assessment at the Metropolitan Remand and Reception Centre, Silverwater (MRRC). It may be appropriate to stabilise the person and then transfer them²² to the MHSU.
- > Two medical practitioners (one of whom must be a psychiatrist) should assess the person to establish whether the person has a mental illness or mental condition requiring treatment in a mental health facility.

9.2.5 Obtaining an order under section 55 of the MHFP Act

- > Arrange to have Schedule 2 certificates completed – one by a medical practitioner (typically, a psychiatry registrar) and one by a psychiatrist.
- > Arrange for an Inmate Profile to be printed from the CSNSW OIMS database.²³
- > Where the person has a mental condition, obtain the written consent of the person for the admission pursuant to section 55(4) of the MHFP Act.
- > Where the person is being admitted to the Mental Health Unit, Long Bay Hospital or The Forensic Hospital, notify the Nursing Unit Manager, Mental Health Screening Unit, MRRC on (02) 9289 5568 who will ensure the patient's name is forwarded to the Justice & Forensic Mental Health Network Bed Demand Committee²⁴.
- > Send the required documents (2 x Schedule 2, with consent form if applicable, and Inmate Profile) to the Forensic Mental Health virtual facsimile number on (02) 9700 3631.
- > If the inmate (or detained juvenile) is to be admitted to a regional or metropolitan hospital, notify the Director of the applicable Local Health District.
- > Consult with the clinical staff at receiving centre. Information regarding the index event, the legal status (remand or sentenced), release or parole date, and dates of any upcoming Court attendances must be provided to the receiving mental health facility.
- > Notify the appropriate CSNSW or JJNSW Officer and complete the necessary documents to arrange transport and transfer with CSNSW or JJNSW officers. CSNSW or JJNSW Officers will be required to remain with the transferred inmate while they are admitted unless the security requirements of CSNSW or JJNSW are met.
- > The appropriate documentation for transfer and transport such as Justice & Forensic Mental Health Network and Joint Patient Records, together with the appropriate CSNSW or JJNSW order must accompany the inmate during the transfer.
- > Notify the family and carers, as appropriate. Generally, within the correctional system, for security reasons, family and carers are not told beforehand of the exact date or time of any transfer to a hospital.
- > Pursuant to section 55(6) the Director-General or delegate must notify the Tribunal if the Director-General makes or revokes an order under section 55. The Tribunal must also be notified of the time of admission.

²² Female inmates may be transferred to the Mental Health Screening Unit at Silverwater Women's Correctional Centre, the Bunya Unit at Cumberland Hospital, or directly to the Long Bay Hospital.

²³ Offender Integrated Management system, a Corrective Services database.

²⁴ Security Conditions Protocol (Section 76D of the Mental Health (Forensic Provisions) Act 1990) between Director-General, NSW Department of Health and Commissioner of Corrective Services in Relation to Forensic Patients and Correctional Patients at <http://www.health.nsw.gov.au/resources/aboutus/legal/security_protocol_csnsw_pdf.asp>

9.2.6 If transfer does not occur within 14 days

- > A person subject to an order for transfer under section 55 MHFP Act, who has not been transferred to a mental health facility, must be reviewed by the Tribunal within 14 days of the order being issued and on a monthly basis until transferred or the order is revoked.
- > The treating team must provide the Tribunal with a report by the Director-General and the Commissioner of CSNSW (or Director-General of Attorney General and Justice) as to the person's condition and the reason for the delay in transfer.

9.2.7 After transfer

- > Pursuant to section 56, a person must be transferred back to a correctional centre within 7 days unless the Director-General or delegate considers that the person is a mentally ill person or is suffering from a mental condition for which treatment is available in a mental facility and that other care of an appropriate kind would not reasonably be available in a correctional centre.
- > The Director-General may order that the person be transferred back to a correctional centre at any time, if the Director-General is satisfied that the person has ceased to be a mentally ill person or to be suffering from a mental condition or where treatment of an appropriate kind would be reasonably available in a correctional or detention centre.
- > The treating team must give notice to the Director-General in relation to the transfer of a correctional patient under s56, which must include a report on the management plan for release and/or transfer of care.
- > The Director-General (or delegate) must notify the Tribunal if the transfer order is revoked.

9.2.8 Review of Correctional Patients

- > A correctional patient must be reviewed by the Tribunal as soon as practicable after transfer (section 59) and on such a review the Tribunal may order the person's continued detention, care or treatment in a mental health facility or correctional centre.

Section 57 provides that:

- > A correctional patient who is detained in a mental health facility may, at any time, request the Tribunal to make an order to be transferred to a correctional centre.
- > The Tribunal may make or refuse to make the order requested by the patient but it must make the order if it is satisfied that the person is not a mentally ill person.

9.3 Transfer between Mental Health Facilities within NSW

9.3.1 Transfer

Forensic and correctional patients may be transferred between mental health facilities for clinical, operational or security reasons.

9.3.2 Mandatory requirements

There are two transfer possibilities in the forensic system:

- > An order of the Mental Health Review Tribunal under section 48 of the MHFP Act (forensic patients only)
- > An order from the Director-General (or delegate) under section 76E of the MHFP Act.

The following officers have the delegated power of the Director-General under s76E:

- > Deputy Director-General Strategic Development
- > Director Mental Health And Drug And Alcohol Programs
- > Associate Director Mental Health Clinical Policy
- > Chief Psychiatrist
- > Chief Executive Justice & Forensic Mental Health Network
- > Statewide Clinical Director Forensic Mental Health (Justice & Forensic Mental Health Network)
- > Executive Director Forensic Mental Health & Youth Health Services (Justice & Forensic Mental Health Network)
- > Service Director Forensic Mental Health (Justice & Forensic Mental Health Network)
- > Chief Executive Forensic Mental Health Network

9.3.3 Security requirements

The security requirements for correctional patients transferred between mental health facilities should be in accord with the Security Conditions Protocol between the Director-General and the Commissioner of CSNSW (or Director-General JJNSW)²³ and any relevant legislation.

9.3.4 Other requirements

A transfer between mental health facilities involves a discharge from one facility and an admission to the other facility which, by necessity, almost invariably involves a handover of responsibility for care from one team to another. The requirements for the discharge of a patient are set out in NSW Health Policy PD2008_005 *Discharge Planning for Adult Mental Health Inpatient Services*, which sets out the standards for discharge planning in mental health facilities. PD2008_005 forms the basis for discharge, throughcare and aftercare arrangements and specifies individual and agency responsibilities. Those standards must be followed but they are the minimum required and additional measures are required in the forensic mental health setting. The handover of responsibility should be in accord with Section 11 of these Guidelines.

In the case of a forensic patient, at a minimum, the following documents should be sent to the receiving service:

- > A full discharge/transfer summary
- > Copies of previous discharge summaries
- > A full current risk assessment
- > Copies of previous risk assessments
- > Copies of Tribunal reports or other expert reports
- > A copy of the current medication chart
- > Where applicable, a copy of the court judgment concerning the index event
- > A copy of the current Tribunal order and reasons.

The discharging facility should notify the Tribunal of the transfer as soon as practicable.

9.3.5 Effect of transfer on leave

If a forensic patient has previously been granted leave by the Tribunal to be exercised at the mental health facility in which they are detained, generally this leave is also available to be utilised after the

forensic patient is transferred to another mental health facility although the Tribunal order should be always be checked to ensure that leave can continue to be exercised.

If a forensic patient had not previously been granted leave, then the patient must have a new order for leave from the Tribunal in order to exercise leave following a transfer between mental health facilities. This may particularly be an issue for forensic patients moving from high secure mental health facilities to medium or low secure mental health facilities by order of the Director-General's delegate. If leave is required in conjunction with the transfer, then an application should be made to the Mental Health Review Tribunal for transfer and leave. For the requirements of such an application see section 7).

9.4 Transfer between Case Managers within a Local Health District in NSW

In accordance with Section 9.5 below except that approval from the Tribunal is not required to transfer responsibility for care between case managers. The Tribunal should be notified of the change of case manager.

9.5 Handover between Mental Health Services

9.5.1 Mandatory requirements

An order from the Tribunal and/or DG (or delegate) is required in relation to transfer between health services within the same District, between different Local Health Districts, interstate or internationally.

9.5.2 Preparation for handover:

- > Contact the receiving clinician or health service and discuss the proposed transfer and management plan.
- > Obtain relevant details of health service and contacts.
- > Contact the Community Forensic Mental Health Service to arrange joint assessment if required (transfer to another LHD, state or country).
- > Assess the risks in relation to the transfer.
- > Contact the Tribunal to identify any victim issues that should be considered.
- > Give the Tribunal a Notice of Intent.
- > Check accommodation arrangements and consider any child protection requirements.
- > Involve carers and/or relatives in planning for the transfer as appropriate.
- > Prepare copies of documents for transfer. At a minimum, the following documents should be sent to the receiving service:
 - A full discharge/transfer summary
 - Copies of previous discharge summaries
 - A full current risk assessment
 - Copies of previous risk assessments
 - Copies of Tribunal reports or other expert reports
 - A copy of the current medication chart
 - Where applicable, a copy of the court judgment concerning the index event

- A copy of the current Tribunal order.
- > Patient consent is not required for the transfer between services within the NSW public health system of the documents listed above as such disclosure is covered by the ‘primary purpose’ provisions of the privacy legislation and policy²⁵.
- > The responsibility for care should be handed over formally at a care review meeting attended by representatives of both the discharging and receiving services.

9.5.3 Change of primary case worker or clinician

- > Whenever a primary caseworker for a forensic patient is on leave, a health care worker from the same mental health service should be allocated to take over the care of the forensic patient and information regarding the change should be provided to the forensic patient in writing.
- > A full face to face clinical handover from the primary caseworker to the relieving caseworker should take place.
- > A notice of the changes should be given to the relevant staff via an appropriate medium, for example, a memorandum or notice on the LHD intranet.
- > Generally (depending on the order), notice of the change should be provided to the Tribunal.

9.6 Interstate Transfer

As at October 2011, no interstate or international agreement between authorities is in place concerning the transfer of responsibility for forensic patients. A limited number of interstate agreements exist only in relation to the apprehension and detention of forensic patients who abscond and, in such circumstance, the forensic patient may be apprehended and detained in order to be retrieved by the primary State. The agreements between New South Wales and Queensland and Victoria are currently under review.

Suggested steps to prepare for possible Interstate transfer:

- > A transfer to another jurisdiction would require a leave or release order. Notify the Tribunal of the intent of the forensic patient to transfer to another State in Australia. It is preferable to raise the possible transfer at a review hearing to establish the feasibility of any transfer and the preparation required.

9.7 International Transfer

Currently, there are no international agreements in place for the transfer of forensic patients between countries. However, forensic patients who are not citizens or permanent residents of Australia may be removed from Australia by the Department of Immigration and Citizenship (DIAC). In such cases, DIAC will liaise with the Tribunal and with the relevant officers of the mental health service or correctional centre. To enable the forensic patient to be transferred into the custody of DIAC officers, the forensic patient will usually have been granted release by the Tribunal. The release may include conditions relating to the transfer of custody and deportation. In each case, contact between the treating team in Australia and the receiving mental health service is essential for planning the transfer and establishing that mental health care that is adequate for the needs of the patient is available in the proposed destination.

If DIAC is not involved, that is, it is not a forced transfer, then consideration should be given as to:

²⁵ NSW Department of Health, *PD2005_593 NSW Health Privacy Manual Version 2* (2005) at 27.

- > whether it is appropriate to seek an order taking the patient out of Australia's jurisdiction
- > what happens if the patient refuses treatment in the proposed destination country,
- > services available in the destination country.

If it was not a forced DIAC deportation order, there would need to be strong grounds to make an application requesting release to an international jurisdiction.

The Case Manager must give the Tribunal a Notice of Intent to apply for the release of the forensic patient to an international location. The Tribunal will confirm receipt of the Notice in writing and will advise as to what preparations should be included for the Tribunal's consideration. Consideration should be given to seeking a release order to accompany the transfer.

- > The matter must be listed before the Tribunal at least six weeks prior to the proposed departure date.
- > Contact must be made with a psychiatrist in the receiving country willing to accept the care of the forensic patient.
- > Family and carers of the forensic patient in the receiving country should be made aware of the circumstances of the forensic patient.
- > Family and carers should be provided with details of the forensic patient's Australian treating team in the event consultation regarding treatment is required.
- > A risk assessment should be conducted by the treating team.
- > A report by an independent forensic psychiatrist, including a risk assessment of the proposed release plan.
- > A report addressing whether or not care of a less restrictive kind, that is consistent with safe and effective care is appropriate and reasonably available to the patient in the proposed receiving country.
- > When preparations have been made, a Notice of Intent should be given to the Tribunal at least six weeks prior to the predicted review date.

10 Non-Compliance or Breach

10.1.1 Definition

Non-compliance is when a forensic patient resists or refuses to abide by the terms and conditions of policy or procedure required within a facility, or a reasonable request or direction from the treating team.

Breach is when a forensic patient does not comply with a condition of leave or release and may be of varying degrees of significance. Although short term, one-off, and/or minor breaches may not warrant reduction or curtailing any liberty or activities of the forensic patient, breaches or non-compliance do warrant immediate and appropriate action.

Minor breaches, (usually singular events) such as one-off substance or alcohol use, failing to attend an appointment, or refusal to follow a direction regarding treatment, should be managed proactively and immediately by the treating team. Consideration should be given to reporting the breach to the Tribunal.

Major breaches (ongoing refusal to attend appointments, a serious singular event, or an increase in risk such that the forensic patient is a danger to themselves or the community) require immediate intervention, and should be reported to the Tribunal so that it may consider issuing a warrant for apprehension for the person to be taken to and detained in a mental health facility, correctional centre, or other place.

10.1.2 Authority for notification of non-compliance

The aim of notification is to enable the appropriate authority to assess the significance and reasons for non-compliance, take appropriate action, and thereby hopefully avoiding escalation of the situation into a formal breach.

If in a mental health facility or other place

Within a mental health facility (or other place), the treating team should immediately be made aware of any non-compliance and the Medical Superintendent (or Manager) should be notified. Depending on the severity of the non-compliance, it may be appropriate to notify the Tribunal and the Community Forensic Mental Health Service.

If subject to a CTO or conditional release order in the community

Within the community, the case manager should notify:

- > the treating psychiatrist and Director of the Area Mental Health Service
- > Mental Health Review Tribunal
- > Community Forensic Mental Health Service

10.1.3 Mandatory requirements

- > Compliance with the current order under the MHFP Act.

10.1.4 Management of non-compliance

- > Non-compliance must be addressed in a manner that ensures the safety of the forensic patient and others.
- > There should be a low tolerance for non-compliance and a high expectation of timely and appropriate risk assessment and intervention to resolve the underlying cause.

- > Examine the cause of the non-compliance and aim for an appropriate resolution and follow-up.
- > Keep key people informed, including any primary carer and dependents if appropriate.
- > Maintain a record of the episode and any action taken. Where the criteria for notification are met, the incident should be reported in the Incident Information Management System (IIMS) in accordance with NSW Health Policy Directive PD2007_61 *Incident Management Policy*.
- > Closely monitor (frequent contact, visits, urinalysis and breathalyser if indicated, and psychiatric and case reviews).
- > Admit the forensic patient into a mental health facility for assessment and stabilisation, if required.
- > Consider limitations or liberties under the terms of the order as appropriate.
- > Discuss the episode with the treating team and take appropriate action to minimise the risk of repetition of the incident.
- > Provide support and feedback to the forensic patient and involve the forensic patient in a learning outcome analysis of the episode as appropriate.
- > Repeated episodes of non-compliance, such as a pattern of lateness or non-attendance for appointments, repeated positive drug or alcohol screens if breach of an order, repeated failure to comply with conditions of the forensic order, or a failure to be of good behaviour, should be reported to the to the Tribunal.
- > An early review by the Tribunal should be sought through an application by the Medical Superintendent of a mental health facility or the Director-General (or delegate).

10.1.5 Authority to issue an order for apprehension

- > Mental Health Review Tribunal

Note: The Tribunal can only issue an order for apprehension for a breach of a leave or release order. The Tribunal can also issue an order for apprehension where the person has been granted conditional release or leave of absence and has suffered a deterioration of mental conditions and is at risk of causing serious harm to himself or herself or to any member of the public because of his or her mental condition (MHFP Act s68).

10.1.6 Persons responsible for notification of suspected breach

The following persons should notify the Tribunal of breaches of a forensic order:

- > The Consultant Psychiatrist or the Case Manager of the treating team
- > Where the Community Forensic Mental Health Service is involved in the case management of a patient, then the Consultant Forensic Psychiatrist may notify
- > Statewide Clinical Director Forensic Mental Health (Justice & Forensic Mental Health Network).

The aim of the notification is to:

- > Protect the safety of the public
- > Facilitate the appropriate care of the forensic patient.

10.1.7 Mandatory requirements

- > Compliance with the current order under the MHFP Act.
- > Compliance with sections 68 and 69 MHFP Act (see Appendix 10).

Note: Section 68 also allows an order for apprehension to be issued if the patient suffers a deterioration of mental condition causing risk to patient or others.

10.1.8 Principles for action

- > Non-compliance and breach of conditions must be managed in a manner that ensures least risk to the forensic patient and others.
- > There should be a low tolerance for non-compliance and a high expectation of timely and appropriate risk assessment and intervention to resolve the underlying cause/s.
- > Any action should be taken in consultation with the Area Director of Mental Health.
- > The Tribunal should be notified at the earliest opportunity
- > The CFMHS should be consulted at the earliest opportunity.
- > It is preferable for the forensic patient to be admitted into a mental health facility in order that the non-compliance can be investigated fully and a risk assessment conducted.
- > Primary carers, family and dependents who are affected, require information and support.
- > Notwithstanding the need to ensure the safety of the forensic patient and others, it is important to minimise the disruption to any accommodation and employment arrangements, wherever possible.

10.1.9 Management of breach of conditions of release or leave

- > Manage and, where possible, remove the risk.
- > Notify the Medical Superintendent or the Area Mental Health Service Director.
- > Notify the Tribunal by telephone or facsimile and send the preliminary report as soon as possible to the Tribunal.
- > The Tribunal may issue an order for the apprehension of a forensic patient under section 68 of the MHFP Act. The order will contain information about where the forensic patient should be detained.
- > An apprehension order will nominate the place to which the patient must be transported, which may be a mental health facility, correctional centre, or other place.
- > Contact the nominated mental health facility, correctional centre, or other place and forward a copy of the order and documentation as appropriate.
- > Assistance may be sought from officers prescribed by the Act and Regulations. However, if force or entry into a premise is required, Police assistance must be requested as only the Police can apprehend a person who is the subject of an apprehension order and take the person to the mental health facility or correctional centre or other place named in the order. Persons listed in section 81 of the MHFP Act (other than the Police) can not.
- > Section 68(3) of the MHFP Act provides that a police officer receiving the order must:
 - Apprehend and take or assist in taking the forensic patient to a mental health facility, correctional centre, or other place, or
 - Make arrangements for another police officer to assist
 - May enter premises to apprehend without a warrant
 - May transport a forensic patient to the place nominated in the order.

- > Transport of the forensic patient may be undertaken by persons prescribed under section 81 of the MHA and Regulations where no apprehension order has been issued.
 - A member of staff of the NSW Health Service
 - An ambulance officer
 - A police officer
 - A person prescribed by the regulations.
- > If no order for apprehension is issued, the forensic patient may be admitted into a mental health facility under section 19 of the MHA (if the patient meets the criteria for detention under the MHA), and/or there should be increased contact and monitoring of relevant behaviour.
- > Notify the CFMHS (if in the community or if consultation is desired).
- > Obtain evidence of the facts of the breach and prepare a preliminary report.
- > Obtain a copy of the forensic patient's current order and any order for apprehension and clarify with the Tribunal any aspect of the order that may not be clear or requires amendment due to developing circumstances.
- > Ensure the preliminary report contains details of:
 - the breach and any history of associated non-compliance
 - the action taken
 - the proposed management plan
 - recommendations for the management of the breach.
- > The Tribunal must review a person apprehended under s68. Seek an early review date from the Tribunal.
- > Keep key people informed, including any primary carer and dependents if appropriate.
- > Closely monitor (frequent contact, visits, urinalysis and breathalyser if indicated, and psychiatric reviews).
- > Maintain a record of the episode and action taken. Where the criteria for notification are met, the incident should be reported in IIMS.
- > Notify the Mental Health Advocacy Service or the patient's legal representative that the forensic patient has been apprehended and provide the location of the detention and contact details.
- > A forensic patient must be informed that the Tribunal may be requested by the patient to review the evidence on which the apprehension order was made and that additional evidence may be submitted.
- > On reconsideration of the evidence, the Tribunal may make such orders as thinks fit concerning the detention or release of the forensic patient.

11 Abscond or escape from a mental health facility

11.1.1 Definition

A forensic patient or correctional patient must not be absent from the facility in which they are detained unless the appropriate authority has granted a leave of absence. A patient who has escaped is one who has left the facility in which they were detained without authorised leave or one who has escaped from custody while under escorted leave. A patient who has absconded is one who while on unescorted leave, fails to return to the facility at the time specified in the leave authorisation.

11.1.2 Legislation

MHFP Act sections 68 and 70 to 72.

Where a person breaches a detention order or absconds, which is a breach of a condition of leave, the Tribunal can issue an order for apprehension under s68(1)(c).

11.1.3 Authority to apprehend an escaped forensic patient or correctional patient (s70)

A forensic patient or correctional patient who escapes from a mental health facility or other place may be apprehended at any time by any of the following persons:

- > the Medical Superintendent of the mental health facility or any other suitably qualified person employed in the mental health facility who is authorised to do so by the Medical Superintendent
- > a police officer
- > a person authorised by the Director-General or the Medical Superintendent, or
- > a person assisting any of the above.

11.1.4 Penalty for aiding or permitting escape (s71)

- > A person must not release or attempt to release a person who is being conveyed to, or detained in a mental health facility or other place without the appropriate authority and order.
- > A Medical Superintendent or any other person employed in a mental health facility must not:
 - either intentionally or through deliberate neglect, allow any person detained under the MHFP Act to escape, or
 - encourage or help a patient to escape.

The penalty on conviction on indictment is imprisonment for 3 years, or, on summary conviction, imprisonment for 1 year or 10 penalty points or both.

11.1.5 Apprehension of a forensic patient or correctional patient outside NSW (s72)

A member of the treating team or other credible person can apply to a Magistrate for a warrant to apprehend a patient where the patient has escaped or absconded, and the patient is either outside NSW or the Tribunal has made an order under section 68 for the person's apprehension.

12 Termination of Forensic Status

Where the date for the termination of a person's forensic patient status is known in advance, it is essential that the release or transfer of the person is planned. The approach must be holistic and, if appropriate, should include arrangements for ongoing contact with mental health services.

Section 51 MHFP Act provides that a person ceases to be a forensic patient if:

- > he or she is released unconditionally in accordance with an order by the Tribunal or a court
- > the person has been released subject to conditions and the time specified in the conditions expires.

Section 52 MHFP Act provides that forensic patient status ceases if, at a special hearing of a person found unfit to be tried:

- > the person is found, on the limited evidence available to be not guilty of the offence,
- > the person is found, on the limited evidence available, to have committed the offence and a limiting term has not been imposed, and
- > if the person has been detained in a mental health facility, correctional centre or other place following a special hearing, the forensic patient status ceases:
 - when the limiting term ceases (where the term is less than life)
 - if the person is classified as an involuntary patient [s52(2)].

A person ceases to be a forensic patient if:

- > subsequent to a person being found by the court to be unfit to be tried for an offence, the Tribunal notifies the Court (and the Director of Public Prosecutions) of its opinion that the person has become fit to be tried for an offence, and at a further inquiry by the Court, the Court finds the person fit to be tried for an offence [s52(3)],
- > the relevant charges against the person are dismissed, or
- > the Director of Public Prosecutions notifies the court that the person will not be further proceeded against [s52(4)].

Section 54 provides:

- > A person who ceases to be a forensic patient (other than a person classified as an involuntary patient under section 53) must be discharged from the mental health facility in which the person is detained.

Nevertheless, section 76H permits a person who ceases to be forensic patient or correctional patient to either:

- > be detained involuntarily under Chapter 3 of the *Mental Health Act 2007* (provided the patient meets the criteria for involuntary detention), or
- > remain in a mental health facility as a voluntary patient.

13 Glossary

Term or Phrase	Meaning	Reference
Abscond or escape	A forensic patient or correctional patient must not be absent from the facility in which they are detained unless the appropriate authority has granted a leave of absence. A patient who has escaped is one who has left the facility in which they were detained without authorised leave or one who has escaped from custody while under escorted leave. A patient who has absconded is one who while on unescorted leave, fails to return to the facility at the time specified in the leave authorisation.	MHFP Act sections 68 to 72
Actuarial approach to risk assessment	An approach to risk assessment involving the use of statistical models to estimate the likelihood of a risk event such as suicide or risk to others.	Clinical Risk Assessment and Management – A Practical Manual for Mental Health Clinicians
Assessment	The process of gathering information via personal interviews, psychological/medical testing, review of case records and contact with collateral informants for use in decision making.	Clinical Risk Assessment and Management – A Practical Manual for Mental Health Clinicians
Breach	Where a forensic patient has failed to comply with a condition or term of a forensic or Court order. Breaches must be notified to the Tribunal. A forensic patient who has breached a condition of leave or release may, on order of the Tribunal, be apprehended and taken to a mental health facility, a correctional facility, or other place, and there to be detained.	
Breathalyser	A device used to detect and measure the presence of alcohol on exhaled breath. Forensic patients should be breathalysed on a random basis and more frequent random tests conducted for persons with a history of alcohol abuse.	

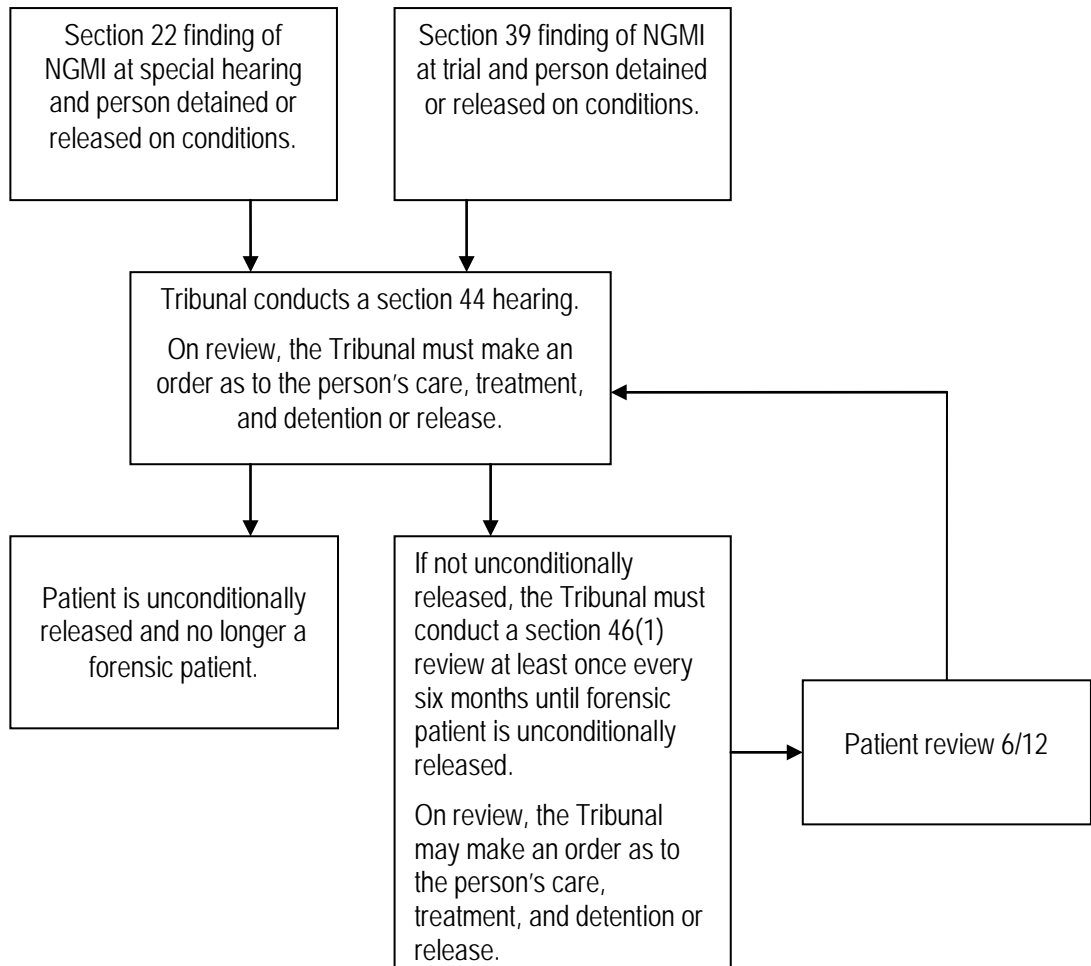
Case Manager	The MHFP Act provides that the Tribunal may impose conditions relating to the appointment of a ‘case manager’. It is recommended that in appointing a case manager for a forensic patient, consideration should be given to ensuring the appropriate level of qualifications and experience. Continuity of case manager is a desired requisite in the management of forensic patients.	
Child protection	In cases where a forensic patient has committed a serious offence against a child, child protection legislation may be applicable. Check with the Director of Mental Health Services for directions.	Child Protection (Offender Registration) Act 2000
Closed ward	Part of a mental health facility where entry and exit is restricted or prohibited for patients and limited to authorised persons.	
Conditional release	Where a requirement for the deprivation of the freedom of movement within and outside a place of detention has been removed and where the Tribunal has defined the terms on which the freedom will be continued.	
Correctional patient	An inmate (adult) or detainee (juvenile) who has been admitted into a mental health facility after being transferred from a correctional or detention centre.	Section 41 MHFP Act
Escort	<p>When a person is accompanied by at least one staff member of the facility in which the forensic patient is detained.</p> <p>The ratio per patient depends on the risks and is generally initially two or more escorts to one forensic patient. The minimum ratio is one escort to three (suitably low risk) patients.</p>	
Forensic patient	A term for a person who has a verdict from a Court of not guilty by reason of mental illness, a person who has been found to have committed, on the basis of limited evidence, an offence and been given a ‘Limiting Term’ and who has been ordered to be detained or released subject to conditions, or has been found unfit to be tried and has been ordered to be detained.	Section 41 MHFP Act
Ground access	See Chapter 5 of this guide.	

High risk	A term used to describe the presence of a risk of committing an act that is either planned or spontaneous, and is very likely to cause serious harm. There are few, if any, protective factors to mitigate or reduce that risk. The person requires long-term risk management, including planned supervision and close monitoring, and, when the person has the capacity to respond, intensive and organised treatment.	Clinical Risk Assessment and Management – A Practical Manual for Mental Health Clinicians
Index event	The offence, or alleged offence, giving rise to the patient’s current detention or conditional release.	
Leave	Where a forensic patient has an order from the appropriate authority that allows a period of absence from a place of detention.	
Limiting term	A Court’s best estimate, following a special hearing for unfit patients, of the sentence the Court would have considered appropriate if the special hearing had been a normal trial and the person had been found guilty of an offence.	Section 21 to 25 MHFP Act
Long Bay Hospital	A hospital operated by Justice & Forensic Mental Health Network within the Long Bay Correctional Centre where patients are inmates and subject to the security arrangements of Corrective Services, NSW. The 40 bedded Mental Health Unit of the Long Bay Hospital is a declared mental health facility.	
Low risk	<p>A term used where a person may have caused, attempted or threatened serious harm in the past but a repeat of such behaviour is not thought likely between now and the next scheduled risk assessment.</p> <p>The person is likely to cooperate well and contribute helpfully to risk management planning and they may respond to treatment.</p> <p>In all potential future scenarios in which risk might become an issue, a sufficient number of protective factors can be identified, for example, rule adherence, good response to treatment, trusting relationships with staff to support ongoing desistance from harmful behaviour.</p>	Clinical Risk Assessment and Management – A Practical Manual for Mental Health Clinicians

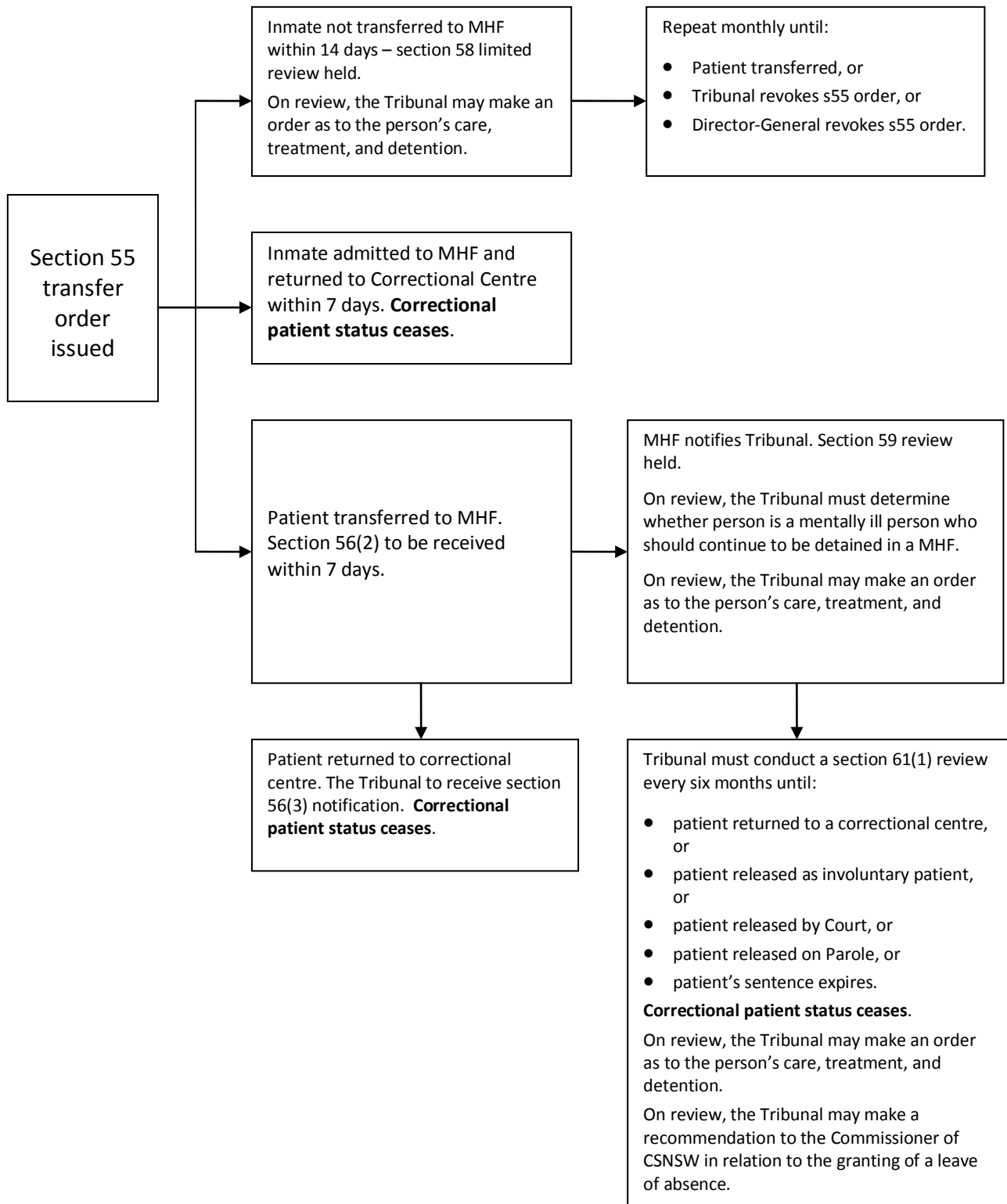
Medium risk	<p>A term used where a person is capable of causing serious harm but, in the most probable future scenarios, there are sufficient protective factors to moderate that risk.</p> <p>The person demonstrates the capacity to engage with, and occasionally contribute to, planned risk management strategies and may respond to treatment.</p> <p>The person may become high risk in the absence of protective factors introduced by an appropriate forensic risk management plan.</p>	Clinical Risk Assessment and Management – A Practical Manual for Mental Health Clinicians
Notice of Intent	<p>A form giving notice to the Mental Health Review Tribunal that a hearing is required so that appropriate preparations can be made for the review of a patient.</p>	Appendix 4
Random	<p>The term random used in the context of forensic patient drug screening means that the forensic patient cannot predict when the drug screenings will take place and once requested, the sample must be produced at that time. For example, drug screening should not be requested only when appointments have been made.</p>	
Remand	<p>Remand refers to the detention of a defendant, whether as a committal to custody or as a bailment of suspects before trial or sentencing.</p>	
Risk	<p>The nature, severity, imminence, frequency and duration, and likelihood of harm to self or others. A hazard that is to be identified, measured, and ultimately prevented.</p>	Clinical Risk Assessment and Management – A Practical Manual for Mental Health Clinicians
Risk management	<p>The actions taken, on the basis of a risk assessment, that are designed to prevent or limit undesirable outcomes.</p> <p>Key risk management activities are: treatment (e.g. psychological interventions, medication); supervision (e.g. help with planning daily activities, setting restrictions on alcohol use or contact with unhelpful others); monitoring (e.g. identifying and looking out for early warning signs or an increase in risk, which would trigger treatment or supervision actions); and, if relevant, victim safety planning (e.g. helping a victim of domestic violence).</p>	Clinical Risk Assessment and Management – A Practical Manual for Mental Health Clinicians

Supervisor	A supervisor of a forensic patient must be a responsible person who has been assessed as a suitable and appropriate escort. It is expected that the supervisor will report any incident and be capable of dealing with situations that may occur.	
Victims	The Mental Health Review Tribunal has the responsibility for maintaining the Forensic Patient Victim Register. Victims are persons directly affected by the criminal offence of the forensic patient, a family member, a partner or a person eligible for registration. Check with the Tribunal for information and in order to include consideration of any registered victim in planning for forensic patient leave or release.	
Violence	Actual, attempted or threatened harm to another person that is deliberate and non-consenting.	Clinical Risk Assessment and Management – A Practical Manual for Mental Health Clinicians

Appendix 1 MHRT Review flowchart for persons found Not Guilty by Reason of Mental Illness

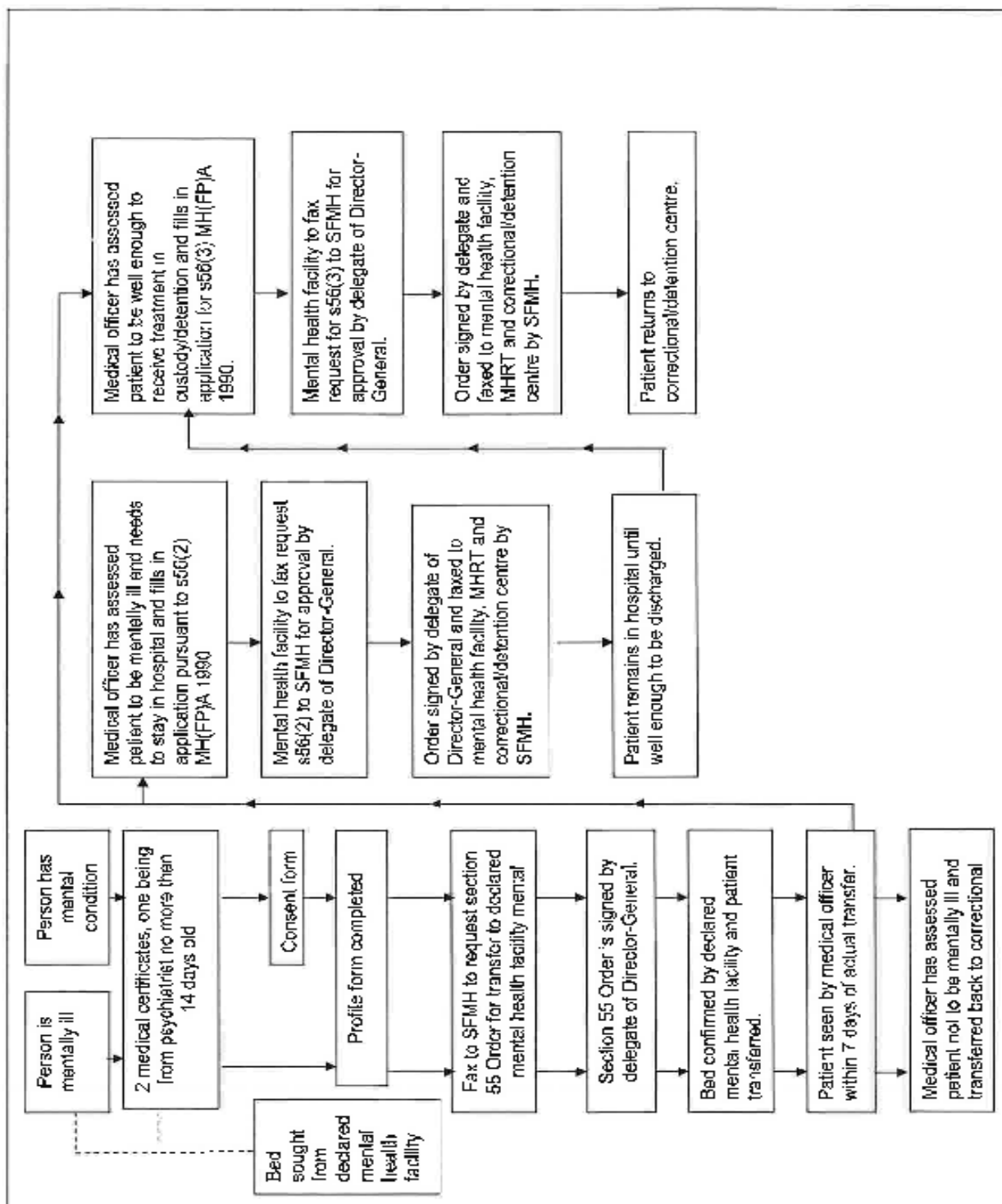


Appendix 2 MHRT Review flowchart for Correctional Patients²⁶



²⁶ For the process for the issuing of a s55 order, see Appendix 3

Appendix 3 Justice & Forensic Mental Health Network process for the transfer of mentally ill inmates²⁷



²⁷ For the related process of reviews by the Mental Health Review Tribunal see Appendix 2

Appendix 4 MHRT Notice of Intent

NOTICE OF INTENT

Purpose of System

- To identify any issues of risk or particular concern needing to be addressed prior to the Tribunal reviews to ensure that it can be dealt with appropriately by the panel at the hearing.
- To facilitate the provision of the necessary reports and information to be available at Tribunal panels.
- To facilitate the listing of matters on appropriate panels, for example, those seeking conditional release (CR) or unconditional release (UCR) on panels chaired by judicial members.

Draft Process

A. If flagged at previous hearing change would be sought, the Senior Forensic Officer (SFO) should liaise closely with the treating team etc to organise material and list for review as soon as practicable after material becomes available.

NB The panel should actively seek at each review what the plan is for the next six months that would include flagging if likely to be seeking change at next review. Tribunal hearings should not simply be retrospective but also prospective.

B. If there was no indication at the previous review, the following process should be followed:

- i **6 wks** prior to proposed hearing for the forensic patient, the Senior Forensic Officer sends notice to the treating team, Community Forensic Mental Health Service, client, solicitor informing of hearing date, and requesting:
- ii Notice of proposed application (no change, leave, CR, UCR)
- iii Tribunal will provide a standard NOI form to the legal representative and treating team to complete and return **4 weeks** prior to the proposed review hearing.

C. When NOI received the Senior Forensic Officer lists the hearing with the appropriate panel on appropriate day:

- i No Change – any forensic panel
- ii Leave – any forensic panel
- iii CR/UCR – judicial panel

D. After NOI received & listing date set by SFO:

- i Confirmation notices sent to treating team, client, Mental Health Advocacy Service.
- ii Letter sent to registered victims informing of them of the review and indicating to the registered victim that the application has been made and will be put to the Tribunal at the hearing.
- iii If seeking a change (leave, CR, UCR), the MHRT will request that all reports and other material are forwarded no later than 2 weeks prior to scheduled review hearing. (The treating team should have received the CFMHS report prior to preparing their report.)
- iv If requesting CR/UCR, the treating team will have to have an independent psychiatric report from CFMHS or elsewhere.

E. Senior Forensic Officer reviews reports and checks all relevant material provided – e.g. UDS covered in reports or screen results provided, risk assessment completed, independent risk assessment provided for CR/UCR.

Senior Forensic Officer to chase any gaps (in consultation with team leader/presiding member/President). Depending on what evidence is available to support application foreshadowed in the NOI, the date of the proposed hearing may need to be moved.

F. Panel members sent papers (and schedule by session) 3-5 days prior to hearing.

FORENSIC PATIENT REVIEW

Notice of Intent

The Tribunal requires notice of the intended application to ensure that the matter can be listed in accordance with the provisions of the *Mental Health (Forensic Provisions) Act 1990*. Please return the form no less than **2 weeks** from the date it was sent.



Mental Health
Review Tribunal

RETURN TO MHRT FAX: 9879 6811

TELEPHONE ENQUIRIES: 9816 5955

Client Name:

Date Sent:

Location:

Date of Birth:

If location of patient has changed, please insert new location and return to MHRT asap.

New location:

CURRENT CASE MANAGER OR CONTACT PERSON:

Name:

Position:

Phone:

Fax:

NO CHANGE

Order for Detention

Order for Conditional Release

LEAVE

Escorted Day

Supervised Day

Supervised Overnight

Unsupervised Day

Unsupervised Overnight

RELEASE

Conditional Release

Unconditional Release

VARIATION

Order for Detention

Order for Conditional Release

Please Specify:

EXTENSION of PERIOD of REVIEW

Please Specify period of review being sought.....

FINANCIAL MANAGEMENT ORDER

Whole Estate

Part of Estate

DETAILS OF PERSON COMPLETING THIS FORM

Name:

Position:

Phone:

Fax:

Signed:

Date:

Appendix 5 Sample supervisor information and assessment

Forensic patient supervision

Patients at the Unit who have approval for Supervised Leave may nominate adults to supervise them if they have been, or are likely to be, granted supervised leave. These potential supervisors are interviewed for their suitability to be supervisors. Supervisors must know about the patient's background, index event, diagnosis, and signs and symptoms of a reoccurrence of the illness. Usually, the patient gives this information to potential supervisors (if they do not already know). A potential supervisor must also be aware of the patient's risk of further violence. This level of knowledge of the patient implies a high degree of trust and the supervisor is required to keep this information confidential. For many patients this level of disclosure is a part of their rehabilitation and demonstrates an ability to trust others.

Generally, supervisors should not have a criminal record themselves. The supervisor must be over the age of 18 years. If the supervisor becomes incapable of completing their duties as the supervisor (for example, due to illness or incapacity), the patient must be returned to the Unit immediately. Generally, only persons approved as supervisors can supervise the patient; the supervisor cannot delegate their duty to unapproved persons.

While the Tribunal order will vary from patient to patient, generally while in the company of their supervisor the patient:

- will not be permitted to consume alcohol or take non-prescribed/illicit drugs
- may not have access to dangerous objects such as knives or other weapons
- should remain in line of sight or in close proximity to the supervisor except when they go to the toilet or when they are asleep (however, when on supervised overnight leave, the patient must only sleep in the approved address/accommodation)
- should observe any specific conditions placed on them by the team, and
- should manage their own medication, if any (take medication/s on time).

The supervisor should closely observe the patient when in the company of children by remaining in the company of the patient and any child at all times.

If the patient were to abscond, (there is generally a low risk of this) the supervisor is not required to restrain the patient but must contact the Unit immediately. Please contact the Unit on 1234 5678 with a description of what the patient was wearing, the time the patient was last seen and where they were heading when they absconded. Staff from the Unit will ring the Police.

If there are any behavioural problems, for example, physical/verbal aggression or psychosis, the supervisor should contact the Unit as soon as possible. There is no expectation that the supervisor should restrain the patient.

In the case of an emergency, the Police or Ambulance should be called on 000.

A supervisor should also be willing to provide feedback to the staff at Unit when requested. If the patient breaks any rules or the supervisor fails in their role then the patient's leave may be cancelled and the supervisor's status withdrawn.

Nursing Unit Manager
Phone (02) 1234 5678

Unit – Any Hospital

Forensic patient supervisor's agreement

I,, (supervisor's name) of
..... (address), Phone: Mobile:
agree to supervise (name of patient) during
.....leave

I am aware of the patient's diagnosis, index event, and signs of relapse.

I do/do not have a criminal record²⁸.

I am aware of the risks associated with taking (name of patient) on supervised leave from the Unit.

In relation to supervision of (name of patient), I agree to:

- obey the following limitations placed on myself and the patient during the supervision period:

- Return him/her to the Unit if he/she becomes unwell or I am unable to discharge my duties as a supervisor if he/she absconds.
- I understand that I am not required to restrain him/her but I must contact the Unit immediately on (02) 1234 5678.
- I will provide a description of what he/she was wearing, the time he/she was last seen and where he/she was heading when he/she absconded. Unit staff will ring the Police.
- I will discourage him/her from the use of alcohol or the consumption of nonprescribed or illicit drugs and will report any incidents to staff.
- I will not allow access to dangerous objects and will report any incidents to staff.
- I/we will remain in line of sight or in close proximity to him/her except when they go to the toilet or when they are asleep and will report any breaches to staff.
- I am aware that the patient will manage their own medication (take the correct medication on time).
- I will provide up to date contact details and keep the Team informed of the patient/patient's whereabouts on leave.

Signed

Print name

²⁸ While a criminal record does not automatically restrict a person from being a supervisor of a forensic patient, the nature of the crime, when it occurred, and the outcome must be discussed with the Clinical Director.

Supervisor Risk Assessment

Date: _____ Forensic Patient/patient's name: _____

Prospective Supervisor's name: _____

Address each of the following:

<input type="checkbox"/>	Relationship to patient?	
<input type="checkbox"/>	Length of the relationship?	
<input type="checkbox"/>	Nature of Relationship?	
<input type="checkbox"/>	Frequency of contact?	
<input type="checkbox"/>	Is the person over 18 years of age?	
<input type="checkbox"/>	What is the person's employment status / profession?	
<input type="checkbox"/>	Does the person have a criminal record?	
<input type="checkbox"/>	Does the person abuse drugs or alcohol?	
<input type="checkbox"/>	Did the person abuse drugs or alcohol with the patient at any time and especially at the time of the index event?	
<input type="checkbox"/>	Has the patient made a disclosure of their current situation?	
<input type="checkbox"/>	Has the patient disclosed their index event?	
<input type="checkbox"/>	What is this person's understanding of the patient/patient's index event?	
<input type="checkbox"/>	What is this person's understanding of the patient/patient's mental illness?	
<input type="checkbox"/>	What is the person's understanding of the patient/patient's signs of relapse / triggers?	
<input type="checkbox"/>	What is this person's understanding of the patient/patient's medical treatment?	
<input type="checkbox"/>	What is this person's understanding of the patient/patient's limitations (e.g.. geographical)?	
<input type="checkbox"/>	What is this person's understanding of the patient/patient's risk of future violence?	
<input type="checkbox"/>	The person's willingness to complete their duties as a supervisor: Level of supervision (ie line of sight at all times and in close proximity except when going to the toilet). Patient must maintain limitations e.g. ground for SGL, geographical limitations on SONL and not to leave the company of the supervisor. Able to deal with difficult situations e.g. patient absconds, takes drugs or alcohol, becomes aggressive or psychotic.	
<input type="checkbox"/>	Person's willingness to engage with treating team	
<input type="checkbox"/>	Other concerns e.g. financial	

Signed: Date:

Name: Designation:

Appendix 6 Sample reports

Sample A Report Format – Nursing (Bunya Unit)

Nursing Report to the Mental Health Review Tribunal

Hearing date:

Name:

DOB:

MRN:

Status:

BACKGROUND

- Diagnosis and when diagnosed
- Prior to index event – life, activities, income, work and interests
- Past forensic and psychiatric history
- Index event
- Previous location & when admitted

CURRENT PRESENTATION

- Mental State Examination

Appearance:

Behaviour:

Speech:

Mood:

Affect:

Thought Form:

Thought Content:

Perceptions:

Cognition:

Insight:

- Rehabilitation Activities
- Activities of Daily Living
- Leave
- Random Urine Drug Screens

Date	Result

Compliance:

- Breath Analysis (if applicable)

Date	Result

Compliance:

OUTCOME MEASURES AND RISK ASSESSMENT

- Outcome Measures
- START Risk Assessment

Conducted on (date):

Strength Scale =	Risk Scale =
------------------	--------------

This represents a risk of violence.

HCR-20

A HCR-20 Risk Assessment was completed by the treating team on (date)

Historical Items Total =

Clinical Items Total =

Risk Management Items Total =

Total =

CURRENT MEDICATIONS

RECOMMENDATION

NAME

KEY WORKER

RN / EEN / EN

Date:

NAME

NURSING UNIT MANAGER

Sample B Report Format – The Forensic Hospital

Date

Mental Health Review Tribunal
PO Box 2019
BORONIA PARK NSW 2111

Fax No: 9879 6811

STRICTLY CONFIDENTIAL MENTAL HEALTH REVIEW TRIBUNAL REPORT

RE:

MRN:

DOB:

Legal Status:

Admitted Since:

Hearing Date:

Last Tribunal Hearing:

MEDICAL REPORT

This report has been prepared at the request of the Mental Health Review Tribunal. This is a multi-disciplinary team report comprising medical, nursing and allied health reports from the Forensic Hospital.

Sources of Information

Demographics

Index event

Psychiatric History

Current Medications

Drug and Alcohol History

Medical History

Developmental History

Family History

Forensic History

PROGRESS OVER LAST SIX MONTHS

CURRENT MENTAL STATE

OPINION

(includes diagnosis, treatment issues and risk management issues)

Sample

Date: _____

Name
Psychiatry Registrar
Supervised by
Name
Consultant Psychiatrist

NURSING REPORT

PRESENTATION SINCE LAST TRIBUNAL REVIEW

PARTICIPATION IN NURSE LED ACTIVITIES

FAMILY AND CARER INVOLVEMENT

URINE DRUG SCREENS

Date Taken	Result

LEVEL OF SELF CARE/ GENERAL HEALTH

CAPABILITY OF MANAGING FINANCIAL AFFAIRS

LEAVE STATUS

OPINION

Name
Designation

Date: _____

ALLIED HEALTH

THERAPIES REPORT

PROGRAM PARTICIPATION

ASSESSMENTS

PROGRAM RECOMMENDATIONS

Name
Designation

Date: _____

Sample

CLINICAL PSYCHOLOGY REPORT

THERAPEUTIC ENGAGEMENT

ASSESSMENTS

THERAPEUTIC RECOMMENDATIONS

Name
Designation

Date: _____

Sample

SOCIAL WORK / WELFARE REPORT

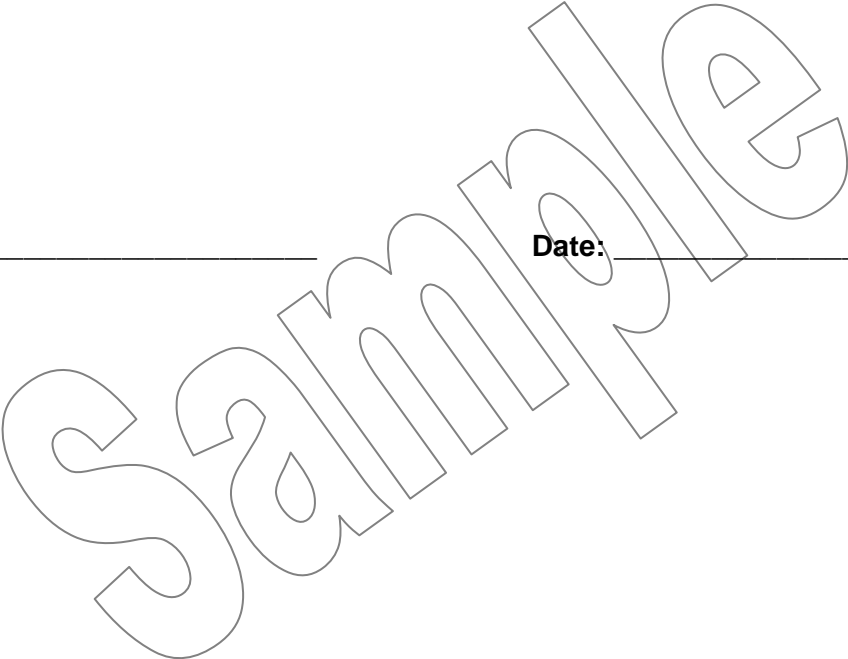
SOURCES OF INFORMATION

COMMUNITY OR AGENCY REFERRALS

OUTCOMES

Name
Designation

Date: _____



MULTI-DISCIPLINARY TEAM SUMMARY & OPINION

Name
Consultant Psychiatrist
Ward

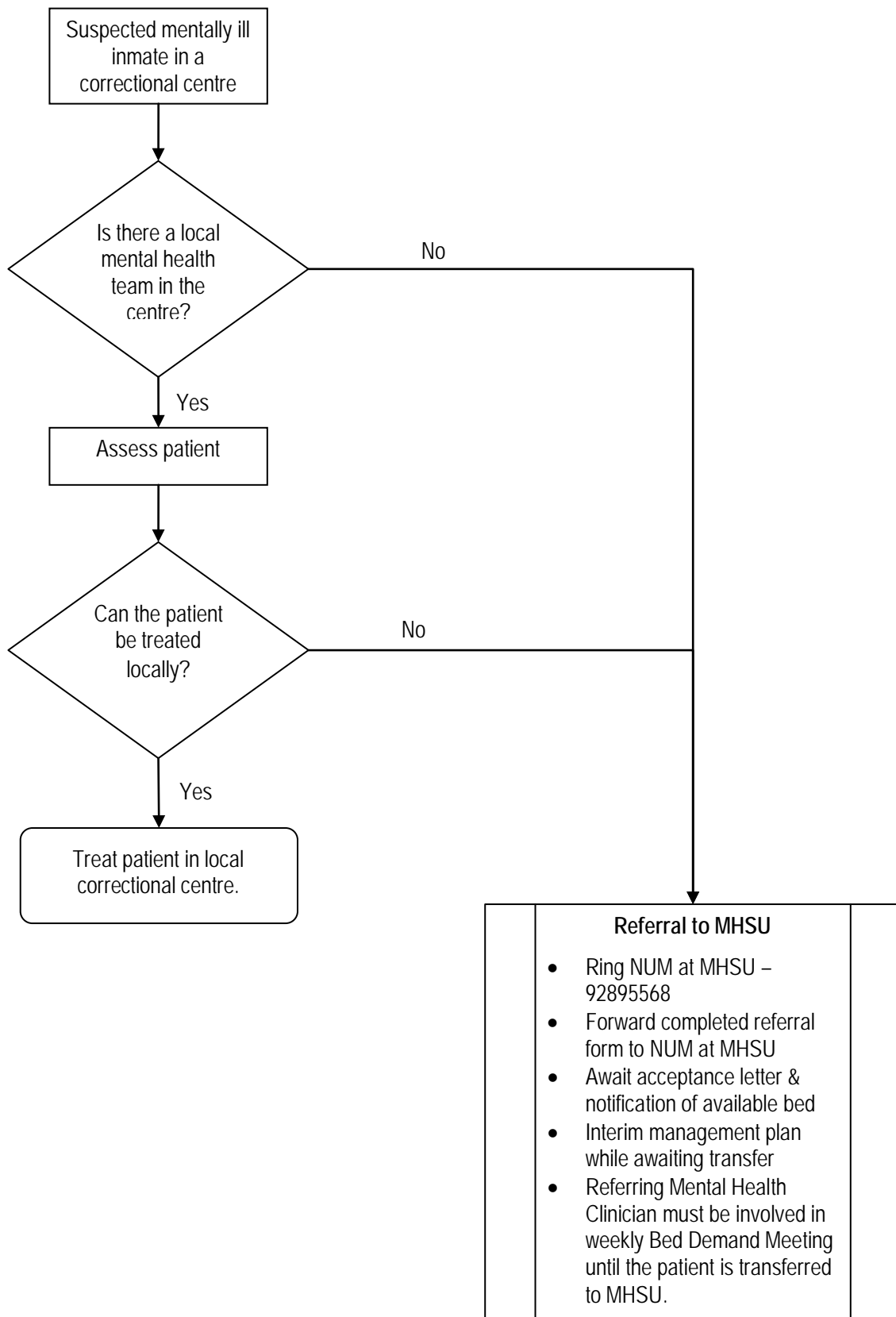
Date: _____

Name
Nursing Unit Manager
Ward

Date: _____

Sample

Appendix 7 Process for the transfer of an inmate to the Mental Health Screening Unit, MRRC



MENTAL HEALTH SCREENING UNIT MRC REFERRAL FORM

Please fill out the following information and Fax to the MHSU on 9289 5103 or 9289 5574 for consideration for placement in the MHSU. Telephone contact to the Nursing Unit Manager on 9289 5568 prior to making referral.

Referral Date: Referring correctional centre:

MIN: SURNAME:..... FIRST NAME:.....

Active RIT: Yes No (Tick one)

Reasons for RIT:

Reason for referral/ Current Mental Health Symptoms: (please include how long the patient has been exhibiting the symptoms)

Current assessment by Mental Health Nurse: Yes No

Current assessed by psychiatrist: Yes No

Current Diagnosis: _____

Current Medications: _____

Compliant with medications Yes No

Risk to others and from others

Protection status: SMAP PRLA PRNA

Classification: A1 A2 E1 E2

SEGRO: Yes No : (please include reasons for placement on segro) _____

Name: _____ Position: _____

Signature: _____ Date: _____

Appendix 8 Mental Health (Forensic Provisions) Act 1990

(Extracts)

Section 49 Tribunal may grant leave

- (1) The Tribunal may make an order allowing a forensic patient to be absent from a mental health facility, correctional centre or other place for such period and subject to such terms and conditions, if any, as the Tribunal thinks fit.
- (2) An order may be made on the application of the patient or on the motion of the Tribunal.
- (3) The Tribunal must not make an order allowing a forensic patient to be absent from a mental health facility, correctional centre or other place unless it is satisfied, on the evidence available to it, that the safety of the patient or any member of the public will not be seriously endangered if the leave of absence is granted.
- (4) This section does not prevent leave of absence being granted to a forensic patient detained in a correctional centre under any other Act or law.
- (5) The section has effect despite the *Crimes (Administration of Sentences) Act 1999*.

Section 50 Other leave of absence

- (1) The Director-General may allow a forensic patient to be absent from a mental health facility for the period, and subject to the conditions (if any) that the Director-General thinks fit, in circumstances constituting an emergency or in other special circumstances as the Director-General thinks fit.
- (2) The Director-General must not allow a forensic patient to be absent from a mental health facility (otherwise than in a medical emergency) under this section unless the Director-General is satisfied, on the evidence available to the Director-General, that the safety of the patient or any member of the public will not be seriously endangered if the leave of absence is granted.
- (3) The Director-General must not allow a forensic patient to be absent from a mental health facility if the Tribunal has previously, in the same or similar circumstances, refused to make an order allowing the patient to be absent from a mental health facility.

Section 68 Breach of orders for release

- (1) The President of the Tribunal may make an order for the apprehension of a person if it appears to the President that:
 - (a) the person has breached a condition of an order for the person's conditional release under this Part, or
 - (b) the person has committed a breach of an order releasing the person from custody under section 39, or
 - (c) the person has breached a condition of leave of absence granted under this Part, or
 - (d) the person has been granted conditional release or leave of absence under this Part and has suffered a deterioration of mental condition and is at risk of causing serious harm to himself or herself or to any member of the public because of his or her mental condition.

- (2) The Tribunal must review the case of a person apprehended under this section and may:
- (a) confirm the person's release or leave, either conditionally or subject to conditions, or
 - (b) order the person's apprehension and detention, care or treatment in a mental health facility, correctional centre or other place, and in the manner, specified in the order.

Note: The Tribunal may also make a community treatment order under Division 5.

- (3) A police officer to whose notice an apprehension order is brought must:
- (a) apprehend and take or assist in taking the person to the mental health facility, correctional centre or other place specified in the order, or
 - (b) cause or make arrangements for some other police officer to do so.
- (4) A police officer may enter premises to apprehend a person under this section, and may apprehend any such person, without a warrant and may exercise any of the powers conferred on a person who is authorised under section 81 of the *Mental Health Act 2007* to take a person to a mental health facility.

Section 69 Apprehended person may seek reconsideration by Tribunal

- (1) A person who is apprehended under section 68 may request the Tribunal to investigate the evidence on which the order for the person's apprehension was made and may adduce other evidence for the consideration of the Tribunal.
- (2) On a reconsideration under this section, the Tribunal may make such orders as it thinks fit concerning the detention or release of the person.

Section 76D Security conditions for patients

- (1) A forensic patient who is detained in a mental health facility or other place (other than a correctional centre) or absent in accordance with this Part is to be subject to any security conditions that the Director-General considers necessary.
- (2) A forensic patient who is detained in a correctional centre or in any part of a correctional centre that is a mental health facility, or a correctional patient who is detained in a mental health facility or other place or absent in accordance with this Part, is to be subject to security conditions in accordance with relevant legislation and with a protocol agreed between the Director-General and the Commissioner of Corrective Services or the Director-General of the Department of Attorney General and Justice (as the case requires).
- (3) To avoid doubt, for the purposes of subsection (2):
- (a) any part of a correctional centre that is a mental health facility is taken to be a correctional centre within the meaning of the *Crimes (Administration of Sentences) Act 1999*, and
 - (b) a forensic patient or correctional patient who is detained in that facility is taken to be an inmate within the meaning of that Act and that Act and the regulations made under that Act, apply to any such patient, subject to any modifications and to the extent specified by the regulations.

