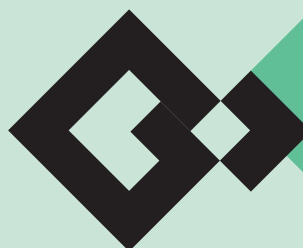


Department of Health

health

Forensic Leave Panel Annual Report 2009



Forensic Leave Panel Annual Report 2009

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September 2010 (1009003)

10 September 2010

The Honourable Rob Hulls MP
Attorney-General
Level 1
55 St Andrews Place
MELBOURNE 3002

Dear Attorney

In accordance with Section 63 of the *Crimes (Mental Impairment and Unfitness to Be Tried) Act 1997* (Vic), I have pleasure in submitting the annual report on the operations of the Forensic Leave Panel for the year ending 31 December 2009 for tabling in Parliament.

A copy of this report has also been provided to the Minister for Mental Health and Community Services, the minister responsible in part for the operation of the Act.

Yours sincerely

A handwritten signature in black ink, appearing to read 'K Williams', with a long horizontal flourish extending to the right.

The Honourable Justice Katharine Williams
President
Forensic Leave Panel

President's report

I have pleasure in presenting my second annual report as the President of the Forensic Leave Panel. This is the panel's eleventh annual report, detailing its operations for the period 1 January to 31 December 2009.

The panel was established under the *Crimes (Mental Impairment and Unfitness to be Tried) Act 1997*, which came into effect on 18 April 1998 and governs the detention, management and release of people found unfit to be tried or not guilty on the grounds of mental impairment. The panel comprises one or more judges of each of the Supreme and the County courts, the chief psychiatrist or their nominee and other members necessary for the proper functioning of the panel. A Supreme Court judge is appointed as the president of the panel.

During 2009, the panel was fortunate to gain several new members. Dr David Huppert joined as a nominee of the chief psychiatrist in February 2009. Dr Barbara Taylor and Dr Teresa Flower were added as psychiatrist members in August 2009 and Ms Patricia Harper and Ms Genevieve Grant are new community members. I welcome them all.

The number of leave applications received by the panel has noticeably increased over the years. In 1998, 71 applications were made to the panel by 20 forensic patients and three forensic residents. However, in 2009, 70 forensic patients and three forensic residents made a total of 179 applications to the panel for 724 different leaves.

The panel's aims were only achievable with the ongoing support and cooperation of many people, and I acknowledge and thank them for their efforts. They include the forensic patients, the forensic residents and the applicants' families and friends. The staff of Thomas Embling Hospital, Plenty Residential Services, Disability Forensic Assessment and Treatment Services, the Department of Health and, in particular, the department's Mental Health, Drugs and Regions Division and the Disability Services Division also play essential roles in the process.

I also recognise the significant contribution made by Ms Carolyn King, the panel's Executive Officer between April 2007 and October of 2009. From that date, Ms Jackie Forai took over and gave the panel great support between October and December of 2009.

The year in review has been another busy and challenging one as the Panel continues to carry out its statutory functions.



The Honourable Justice Katharine Williams
President

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Part 1: Introduction

The *Crimes (Mental Impairment and Unfitness to be Tried) Act 1997* (the Act) provides for the detention, management and release of persons found by a court to be either unfit to stand trial or not guilty of an offence on the grounds of mental impairment.

Supervision orders

If the court finds a person unfit to stand trial or not guilty of an offence because of mental impairment, the court may make one of three different supervision orders:

- a custodial supervision order (CSO) committing a person to custody in an ‘approved mental health service’ under the *Mental Health Act 1986*, or a ‘residential treatment facility’ or ‘residential institution’ under the *Disability Act 2006*
- a CSO committing a person to custody in a prison, but only if the court is satisfied no practicable alternative exists
- a non-custodial supervision order (NCSO) releasing the person on conditions decided by the court and specified in the order.

Forensic patients

The Thomas Embling Hospital campus of the Victorian Institute of Forensic Mental Health (Forensicare) is the only approved mental health service in Victoria that provides custodial services for people subject to a CSO made on the grounds of mental illness. A person detained on a CSO in an approved mental health service is classified as a ‘forensic patient’, and in 2009 was deemed to be in the custody of the secretary to the Department of Human Services.¹

Forensicare provides assessment, care and treatment for people with all levels of mental illness, ranging from patients who are acutely ill to those whose mental state is stable and can participate in intensive rehabilitation programs. Medical assessment and treatment is also provided. Programs are designed to meet patients’ individual needs. For example, treatment programs for acutely ill patients are designed to alleviate psychiatric symptoms, stimulate patient participation and emphasise appropriate socialisation, recreation, creative activity, fitness, health care and psychosocial education and therapy. Programs for patients participating in intensive rehabilitation are designed to encourage autonomy and responsibility, develop or maintain skills and focus on preparing for community life.

Forensic residents

Plenty Residential Services is a residential treatment facility that provides custodial services for people on CSOs made on the grounds of intellectual disability. A person detained in a residential treatment facility or residential institution is classified as a ‘forensic resident’, and is deemed to be in the custody of the secretary to the Department of Human Services.

The department’s Disability Services Division, through the Disability Forensic Assessment and Treatment Service (DFATS), has responsibility for setting policy and program direction. Services are provided through the Long-term Rehabilitation Program, which Plenty Residential Services manages.

¹ The *Crimes (Mental Impairment and Unfitness to be Tried) Act 1997* was amended by the *Health and Human Services Legislation Amendment Act 2010*. Section 26(8) of the *Crimes Act* now provides that a person detained in custody in an approved mental health service under a supervision order is deemed to be in the custody of the Secretary to the Department of Health.

The program offers a highly structured and supervised accommodation environment for those clients who cannot reside in the community, given the assessed risk of their offending behaviours.

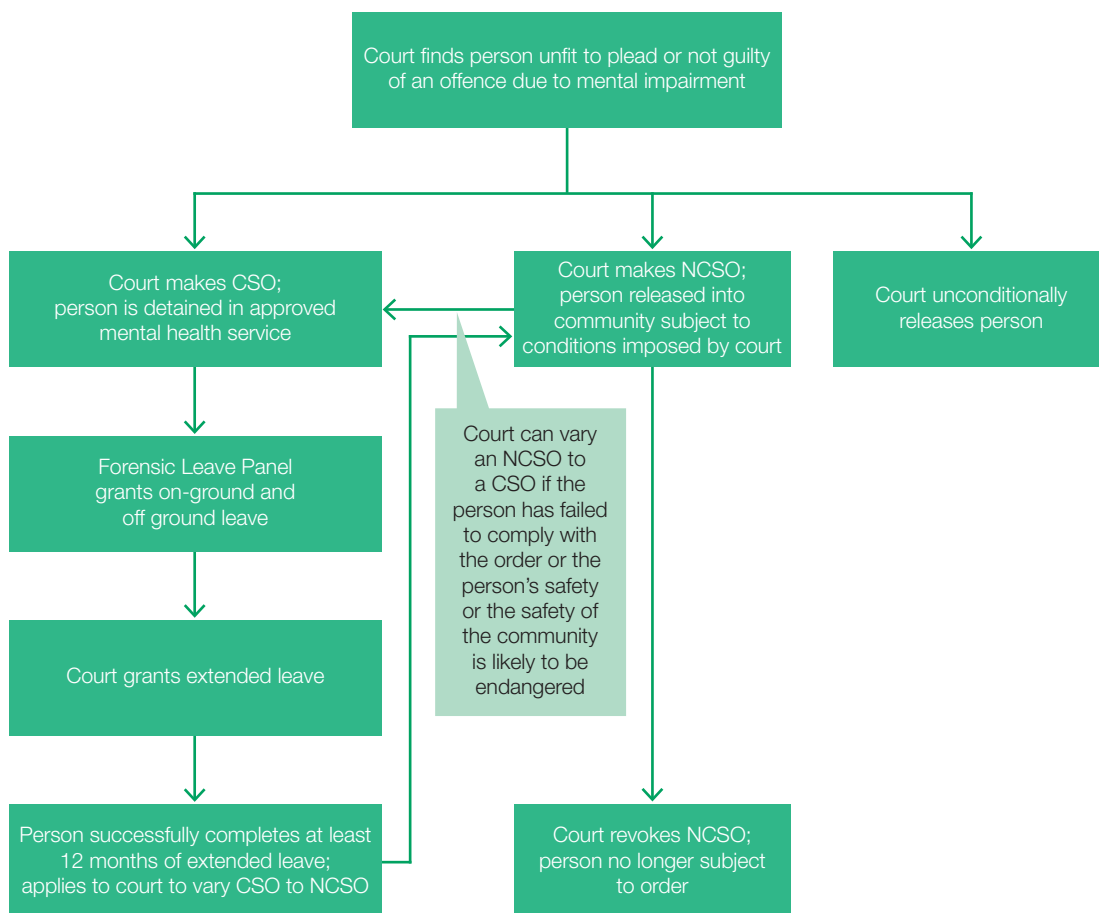
Long-term intervention programs are less intensive than those focused on the short- to medium-term, and are developmental in nature. Therefore, the services for forensic residents aim to assist clients to achieve optimum lifestyles. Developmental programs include:

- behaviour management strategies that follow positive programming principles
- skills development programs that build on clients' individual skills and strengths
- support for clients in maintaining personal and professional links (such as links with family, friends, case managers and specialists) through supervised community access
- supported participation in recreational and social activities.

The legal framework for progression under the Act

Figure 1 details the legal framework for progression under the Act.

Figure 1: Legal framework for progression under the Act



Part 2: The Forensic Leave Panel

The panel

The Forensic Leave Panel is an independent tribunal established under Section 59 of the Act with jurisdiction to consider applications from forensic patients and residents for:

- on-ground or limited off-ground leaves of absence²
- appeals against refusal of special leave³
- appeals in relation to transfers from one mental health facility to another.⁴

Part 3 of this report contains further information about leaves of absence.

The leave of absence regimen established by the Act aims to assist the rehabilitation of patients and residents and facilitate their ultimate reintegration into the community. The Act provides a transparent, accessible and responsive system that supports the application of procedural fairness. The system also provides forensic patients and residents with a right to appear at the hearing of an application. Participants have embraced this as important, particularly those forensic patients and residents subject to the Act.

All leave is granted on the basis that the safety of the forensic patient or resident or members of the public will not be seriously endangered as a result of the person being allowed leave.

Membership of the panel

Section 59 of the Act provides that the panel comprises representatives from the judiciary, the professions of psychiatry and psychology, and the general community. The president of the panel is a Supreme Court judge.

Schedule 1 in the Act provides for the appointment of members to the panel.

In nominating people for appointment to the panel, the minister must consider:

- the matters that the panel has jurisdiction to hear and determine
- the need for the panel to be comprised of both men and women, and those to be so qualified by knowledge and experience that the panel can exercise the jurisdiction and perform the functions conferred on it.⁵

The panel's membership at 31 December 2009 is listed in Table 1.

² Section 54 of the Crimes Act.

³ Section 54 of the Crimes Act.

⁴ Section 53AB(3) of the Mental Health Act 1986.

⁵ Schedule 1, 2(2) of the Crimes Act.

Table 1: Forensic Leave Panel membership at 31 December 2009

Forensic Leave Panel members		
Judicial members	From:	Until:
President		
The Honourable Justice Katherine Williams appointed president	5 September 2006 15 February 2008	20 April 2008 4 September 2011
The Honourable Justice Elizabeth Hollingworth	30 August 2005	29 August 2010
The Honourable Justice Paul Anthony Coghlan	4 March 2008	3 March 2013
The Honourable Justice John Forrest	4 March 2008	3 March 2013
Her Honour Judge Liz Gaynor	3 May 2005	2 May 2010
Her Honour Judge Sandra Davis	5 September 2006	4 September 2011
Her Honour Judge Susan Pullen	20 November 2007	19 November 2012
His Honour Judge Anthony Howard	20 November 2007	19 November 2012
Chief psychiatrist		
Dr Ruth Vine	18 May 2009	Ongoing
Chief psychiatrist nominees		
Dr David Huppert	9 February 2009	Ongoing
Dr Paul Hantz	26 May 2003	Ongoing
Psychiatrists		
Dr Michael William Newington Epstein reappointed reappointed	21 April 1998 10 September 2002 24 October 2006	20 April 2002 9 September 2006 23 October 2010
Dr Barrie Michael Kenny reappointed reappointed	21 April 1998 10 September 2002 24 October 2006	20 April 2002 9 September 2006 23 October 2010
Dr Cristea Anne Mileschkin reappointed	10 September 2002 24 October 2006	9 September 2006 23 October 2010
Dr Barbara Taylor	30 August 2009	29 August 2013
Dr Teresa Flower	30 August 2009	29 August 2013
Psychologists		
Ms Catherine Leigh-Smith reappointed reappointed	21 April 1998 10 September 2002 24 October 2006	20 April 2002 9 September 2006 23 October 2010
Ms Janina Tomasoni reappointed	10 September 2002 24 October 2006	9 September 2006 23 October 2010
Community members		
Ms Kathleen Bragge reappointed	30 August 2005 30 August 2009	29 August 2009 29 August 2013
Mr Paul Dennis Newland reappointed reappointed reappointed	21 April 1998 12 December 2000 30 August 2005 30 August 2009	20 April 2000 11 December 2004 29 August 2009 29 August 2013
Mr Terry Grigg	24 October 2006	23 October 2010
Mr Kyriakos (Jack) Nalpantidis	24 October 2006	23 October 2010
Ms Patricia Harper	30 August 2009	29 August 2013
Ms Genevieve Grant	30 August 2009	29 August 2013

Staff

An executive officer, operating from the office of the Mental Health, Drugs and Regions Division, Department of Health, supports the panel. The Department of Health was established in August 2009, following a machinery-of-government change that saw the Department of Human Services split into two (the Department of Human Services and the Department of Health). Prior to this, the executive officer operated from the Mental Health and Drugs Division, Department of Human Services.

Composition of the panel for hearings

Schedule 2 in the Act sets out the constitution of the panel for hearings. The panel's composition varies, depending on whether an application or appeal is from a forensic patient or forensic resident.

Whether the panel's judicial member (the chairperson) comes from the Supreme Court or County Court depends on which court originally made the order. Determinations may be reached unanimously or by a majority of panel members. If, however, the panel is evenly divided, then the chairperson's opinion determines the matter.

For a forensic patient, the panel comprises:

- a judge of the Supreme Court or County Court
- the chief psychiatrist or their nominee
- a medical practitioner with experience in forensic psychiatry
- a member representing the views and opinions of the community.

For a forensic resident, the panel comprises:

- a judge of the Supreme Court or County Court
- a registered psychologist with forensic experience and experience in the field of intellectual disabilities
- a member representing the views and opinions of the community.

Principles

In hearing any matter, the panel is bound by the rules of natural justice. The panel must act according to the principles of equity and good conscience, without regard to technicalities or legal forms. The panel is not required to conduct proceedings in a formal manner, and may seek evidence in any manner it considers appropriate.

The Act provides corresponding principles for forensic patients and residents, being the right to:

- appear at a hearing
- be represented at a hearing by either a legal advocate or a support person
- view documents that are to be considered by the panel, unless the panel decides the person should not view a document
- be told the reasons for the panel's decisions.

An underlying objective of the Act is to ensure transparency of process and outcome. The panel has adopted a process that is generally informal, but is well defined, so that all participants are aware of the order of proceedings. This process has evolved through consultation with forensic patients and residents, treating staff and panel members.

Specialist assistance

The Act provides that the panel may, if necessary, appoint a legal practitioner, medical practitioner, psychologist or interpreter to assist the conduct of a hearing.

Part 3: Leave of absence

Types of leave

Part 7 of the Act defines the types of leave of absence that may be granted to forensic patients and forensic residents. The four types are:

1. special leave of absence
2. on-ground leave
3. limited off-ground leave
4. extended leave.

Special leave of absence

A special leave of absence allows a forensic patient or resident to leave the place of custody in special circumstances, for example, for a medical appointment or court appearance. The authority to grant special leave rests with either the authorised psychiatrist of the approved mental health service at which the forensic patient resides or, for a forensic resident, the secretary to the Department of Human Services. The criteria for granting special leave include that special circumstances exist and that granting the leave would not seriously endanger members of the public. Special leave of absence cannot exceed 24 hours, or seven days in the case of leave for medical treatment.

Section 50(4) of the Act provides for a right of appeal to the panel if the authorised psychiatrist or the secretary to the Department of Human Services refuses an application for special leave.

In 2009, the panel did not receive any such appeals.

On-ground leave

On-ground leave permits forensic patients and residents to be absent from the place of custody but within a defined area around the place of custody, known as the surrounds. It gives patients and residents an opportunity to spend time outside the inpatient or residential environment. On-ground leave has not been used for forensic patients since April 2000, following the opening of the Thomas Embling Hospital, where patients can undertake activities within the confines of the hospital campus. The forensic residents, who are housed at Plenty Residential Services in Bundoora, make extensive use of on-ground leave for exercise, recreation and education programs.

Part 5 of this report details the number of on-ground leave applications received during 2009.

Limited off-ground leave

Pursuant to Section 54 of the Act, the panel can grant limited off-ground leave to forensic patients and residents to go beyond the surrounds of the place of custody between 6.00 am and 9.00 pm, or outside those hours, on a maximum of three days in any seven-day period.

Limited off-ground leave may be used for different activities, depending on the requirements of the individual forensic patient or resident and their treatment needs. It may be granted on an escorted basis (for activities such as personal grocery shopping or banking) or as accompanied leave, when a specified family member or friend must accompany the patient during the leave. Escorted or accompanied leave may progress to unescorted leave, as considered appropriate.

Part 5 of this report details the number of limited off-ground leave applications received during 2009.

Extended leave and revocation of orders

The Supreme Court or County Court hears applications for extended leave, which allows a forensic patient or resident to live in the community for up to twelve months at a time, subject to conditions specified by the court.

Criteria for granting leave

Section 54(2) of the Act provides that the panel may grant an application for on-ground or limited off-ground leave if satisfied on the available evidence that:

- the proposed leave will contribute to the person's rehabilitation
- the safety of the person or members of the public will not be seriously endangered as a result of the person being allowed leave.

The panel is further guided by Section 54(4), which stipulates that the panel, in determining whether or not to grant an application for leave or variation of leave, must:

- have regard primarily to the person's current mental condition or pattern of behaviour
- consider the person's clinical history and social circumstances
- have regard to the applicant profile provided under Section 54A and the leave plan or statement provided under Section 54B.

The panel may impose any conditions that it considers appropriate on an entire grant of leave or an individual leave type within that grant. Such conditions may include escort arrangements, as required, routine urine drug screens and breathalyser tests; or may prohibit the applicant from visiting particular locations, such as the site of an offence.

Applicants may apply to have their leave of absence varied if their circumstances have changed significantly since their last application to the panel. If an applicant makes a request to vary existing leave, all current leaves for that patient or resident are reconsidered by the panel at the same time. If approved, all leave is granted for a further six-month period.

Purpose of leave

The purpose of leave is to assist the rehabilitation process and provide a gradual progression towards a return to community living that is consistent with the needs of the individual and community safety. Long periods of institutionalisation are perceived as being counterproductive to reintegration into the community. The Act stipulates that leave granted must contribute to the applicant's rehabilitation.

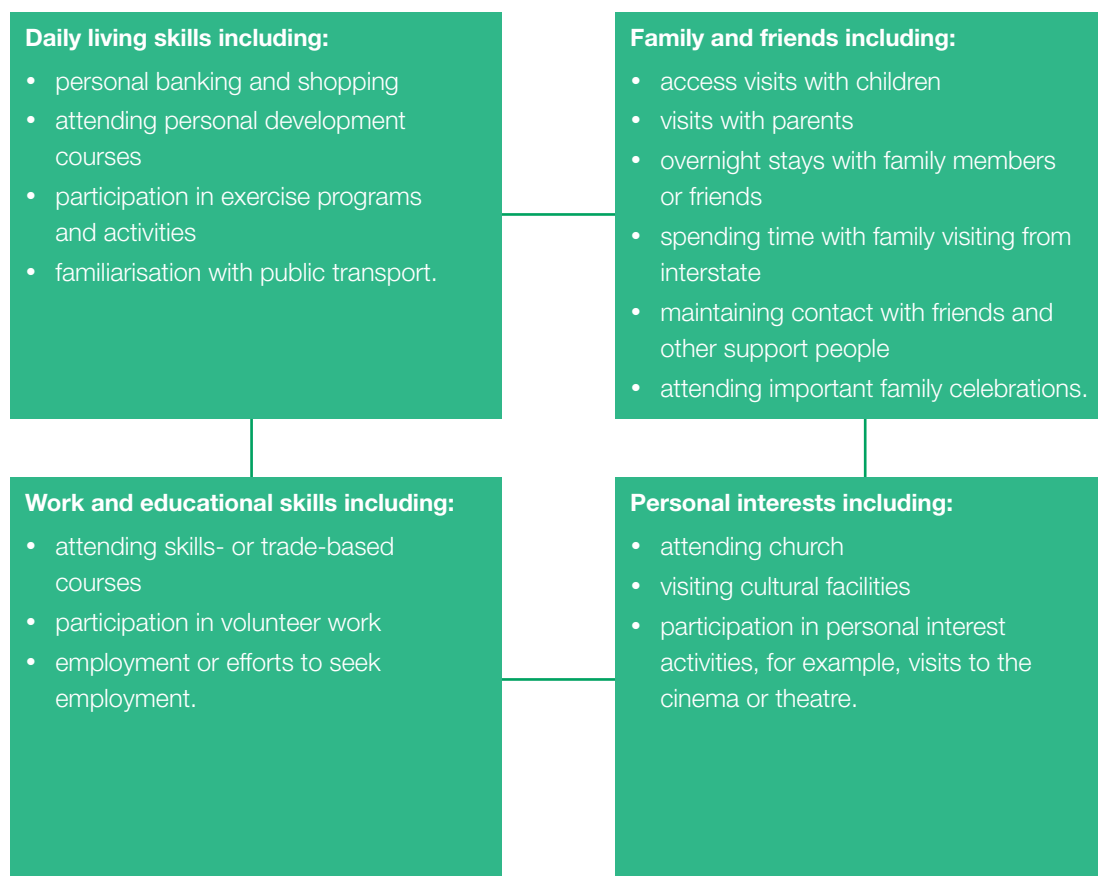
The Act requires a detailed leave plan and applicant profile accompany each application for leave. These documents help inform the panel about the client's rehabilitation goals and the likely risk factors if the person is granted leave in the community.

In granting leave, the panel generally takes a graduated approach. Starting with escorted limited off-ground leave (for example, where the person is escorted by staff to medical, legal and allied health appointments, as required); progressing to accompanied, limited, off-ground leave (for example, accompanied by family, friends or care workers) when the patient is ready; and finally to unescorted limited off-ground leave in appropriate cases. Not all forensic patients and residents will advance through these stages; movement through the various stages is individually paced and depends on the treatment needs of the individual, balanced with the safety of the community.

The treating team continually monitors the progress of forensic patients or residents utilising leave. Before a forensic patient or resident uses any leave, staff undertake a clinical assessment to ensure leave is appropriate on that occasion.

Figure 2 demonstrates a broad categorisation of leave and its use by forensic patients and residents.

Figure 2: General categories (types) of leave



Applications for leave

Forensic patients and residents can apply to the panel for several different leave types within one application for leave. Examples of leave considered by the panel are outlined in the examples below.

Example 1

A forensic patient makes an application for leave to the panel for five different types of limited off-ground leave. The leave grants by the panel allows the patient to attend legal, medical and allied health appointments and maintain relationships with family members. One particular leave granted by the panel allows the patient to stay with their parents overnight in order to rehabilitate and reintegrate back into the community. In approving this leave, the panel considers the advice of the patient's treating team, psychiatrist and the Leave Review Committee, noting that leave undertaken by this patient in the past had been utilised without incident.

Example 2

A forensic patient makes an application to the panel for limited off-ground leave to attend a one-off first aid emergency training course as part of their education and rehabilitation program, and to assist in their reintegration into the community. The panel hears advice from the patient's psychiatrist, treating team and the Leave Review Committee, and determines that the patient does not pose a risk to the community if they undertake this course. The patient's leave is granted for a maximum eight-hour period and the patient completes the course without incident.

Example 3

A forensic patient makes an application to the panel for five different types of leave, ranging from leave to attend legal, medical and allied health appointments to a one-off visit to the Royal Melbourne Show. The panel approves four out of the five leaves, based on the advice of the patient's psychiatrist, treating team and the Leave Review Committee; however, the panel does not approve leave to attend the Royal Melbourne Show. The panel considers that during this leave, continuous monitoring of the patient would not be possible in such an environment, and therefore would place the patient and the community at risk.

Example 4

A forensic resident submits an application for several different leave types, including unescorted on-ground leave to participate in an on-ground walking program. The leave aims to develop independence, and the treating team supports the leave. The panel approves the resident's leave for a maximum of 14 hours per week, following successful shorter periods of unescorted on-ground leave for the same purpose.

Part 4: The hearing process

Application for leave of absence

Forensic patients

A patient and their treating team will usually together prepare an application for leave. The treating team should prepare an applicant profile that details the forensic history and current mental state of the applicant, and a leave plan that outlines the proposed leave and its rehabilitative goals. The applicant completes and signs an application form that should, in most circumstances, align with the content of the leave plan.

An applicant can make an application without the support of the treating team.

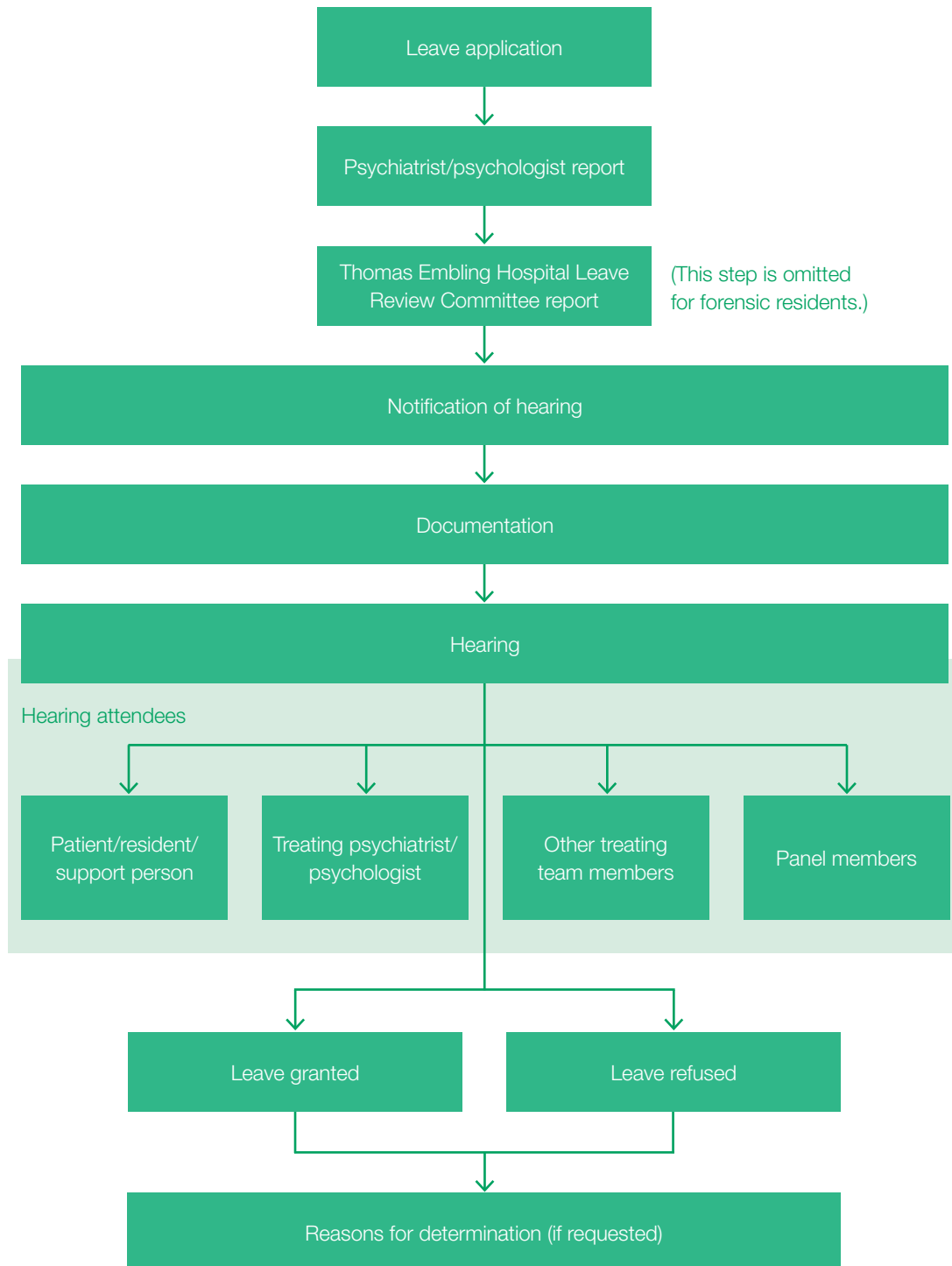
The patient's application, applicant profile, the report of the authorised psychiatrist and leave plan are forwarded to the Thomas Embling Hospital's Leave Review Committee for review and comment. The Leave Review Committee is convened by the clinical director at the hospital, and attended by the hospital's psychiatric consultants, general manager, program manager, inpatient operations manager and a clinical administrator. The chief psychiatrist also attends.

The patient's application, applicant profile, report of the authorised psychiatrist and leave plan are then forwarded to the panel, which considers the view of the Leave Review Committee when making a determination. Sections 54A (applicant profile) and 54B (leave plan) of the Act make it mandatory for a detailed leave plan and applicant profile to accompany each leave application.

Forensic residents

The process for forensic residents involves the same procedures as for forensic patients, but without the intermediate review by a leave review committee.

Figure 3: The Forensic Leave Panel hearing process



Location of hearings

Schedule 2 of the Act stipulates that hearings be conducted at the place where the applicant is detained, unless the president determines otherwise. Hearings for forensic patients are conducted at the Thomas Embling Hospital campus of the Victorian Institute of Forensic Mental Health at Fairfield. Hearings for forensic residents are conducted at Plenty Residential Services in Bundoora or at the DFATS in Fairfield.

Notice of hearings

Section 68 of the Act requires that notice of a hearing be provided to the applicant. The Act further requires that the notice must be provided personally. Case managers or primary nurses undertake this role. They must explain the notice in whichever language, mode of communication or terms that the applicant is likely to understand. Applicants are also advised that they can view all documentation relating to their application, which most applicants do.

Conduct of hearings

Section 65 of the Act provides that the panel is not bound by rules or practice relating to evidence, and that the panel may inform itself on matters as it sees fit. The panel attempts to ensure all relevant information is provided at the application hearing. Consistent with the requirements and intention of the Act, the panel has adopted an informal process for conducting hearings, which aims to create an atmosphere at hearings where all participants have an opportunity to raise all relevant considerations.

The panel may request that additional information is prepared before a hearing, in order to ensure the evidence before the panel is adequate for the matter to proceed on the day. Occasionally, when a matter could not proceed because additional information was required, the panel adjourned the hearing to the next scheduled hearing. In these cases, the panel ensured that the applicant could still access leave if appropriate, pending the outcome of the adjourned application.

In preparing for their application hearing, applicants sometimes undertook to provide the panel with supporting information. During the reporting period of this report (1 January to 31 December 2009), several applicants had support services with whom they were connected provide additional information to the panel.

Hearings are closed to members of the public. However, Section 71(2) of the Act provides for the panel to direct that proceedings, or any part of them, be open to the public if this would be in the best interests of the applicant, or would be in the public interest.

At the hearings, the panel discusses the application—particularly the content of the leave plan and the recommendations of the Leave Review Committee (in the case of forensic patients)—with the treating team. This discussion gives the treating team an opportunity to expand on the content of the leave plan and to answer any questions from the panel. Occasionally, the Leave Review Committee (in the case of forensic patients) does not support an application that the treating team supports, so the hearing offers an additional opportunity for the treating team to clarify any issues surrounding the application.

The panel recognises that attending a hearing for their leave application can present anxieties for forensic patients and residents. The panel is also aware that treating staff must balance maintaining a healthy therapeutic relationship with the patient or resident and the requirement to provide a candid assessment to the panel.

Documentation

The applicant and treating team prepare several documents relating to the leave application. The applicant usually completes the application for leave form (FOR 2) with staff assistance. Relevant members of the treating team prepare the applicant profile form (FOR 3), the psychiatrist's or psychologist's report form (FOR 4) and the leave plan form (FOR 5).

The leave plan outlines a therapeutic framework in response to the request, and is an opportunity to report on previously granted leave. The leave plan must include the following information:

- the purpose of the leave applied for
- how that leave will contribute to the person's rehabilitation
- any proposed conditions of leave
- any other information that the clinical director or authorised psychiatrist of the Victorian Institute of Forensic Mental Health or, in the case of a forensic resident, the secretary to the Department of Human Services considers relevant
- any other information requested by the panel.

If the clinical director or secretary does not support an application, they must provide a written statement to the panel explaining why the application should not be granted. No requirement exists to prepare a leave plan in these circumstances.

The applicant profile, which provides background information on the patient or resident, must include information about:

- the person's impairment, condition or disability
- the relationship between the impairment, condition or disability and the offending conduct
- the person's clinical history and social circumstances
- the person's current mental state or pattern of behaviour
- the offence that led to the supervision order being made
- the date of the supervision order, the order's nominal term and the day from which the nominal term had been declared to run.

The clinical director of the Victorian Institute of Forensic Mental Health (in the case of a forensic patient at Thomas Embling Hospital) or the secretary to the Department of Human Services (in the case of a forensic resident) must provide both the applicant profile and the leave plan to the panel.

The panel's executive officer receives and coordinates the documentation for hearings. The executive officer also prepares a summary of relevant information to assist the panel, including information on the offence, the mental impairment or intellectual disability, treatment, progress, leave requested, prior leave granted or refused, and other significant factors relating to the patient or resident which are relevant for determining an application. Copies of documentation are provided to the applicant, the treating team and the panel members.

The authorised psychiatrist (in the case of a forensic patient) or the secretary to the Department of Human Services (in the case of a forensic resident) may apply to the panel to prevent the applicant from viewing any document provided to the panel. In response, the panel may grant the request, allow a representative of the applicant to view the document in question, or determine that the applicant may view the document. During the reporting period of this report (1 January to 31 December 2009) the panel did not receive any such requests.

Determinations

Format of determinations

At the end of the hearing, the panel discloses to the parties its decision and give verbal reasons. It also provides a written determination. All leave granted to a forensic patient or resident is documented on a single determination. Section 54(7) of the Act states that only one grant of leave can be in force at any one time.

The panel may grant leave for a maximum period of six months.

Reasons for determination

In accordance with Section 66 of the Act, a forensic patient or resident may request that the panel provide written reasons for a determination. During the reporting period of this report (1 January to 31 December 2009), the panel did not receive any requests for written reasons for a determination.

Part 5: The year in review

During 2009, the panel:

- held 22 hearings
- received applications from 70 forensic patients and three forensic residents
- received 179 leave applications, comprising 724 individual types of leave
- received approximately two applications for leave from each of the 73 patients and residents
- granted 93 per cent of leave that was applied for
- refused seven per cent of leave that was applied for
- received applications from 63 male and 10 female patients and residents
- considered leave for 53 patients and one resident, subject to a CSO made by the Supreme Court
- considered leave for 17 patients and two residents subject to a CSO made by the County Court.

Reporting requirements

The panel is required, under Section 63(1) of the Act, to report on:

- the number and type of leave applications:
 - made to the panel during the year
 - granted by the panel during the year
 - refused by the panel during the year
- the number and types of leave granted by the panel that were suspended during the year.

Table 2 provides information on the number and type of leave applications received by the panel during 2009, and encompasses all of the panel's legislative reporting requirements.

Table 2: Statutory reporting

Number and type of leave applications made to the panel (under Section 63(1)(a)(i))	
On-ground leave ⁶ (number)	9
Limited off-ground leave (number)	170 (comprising 724 individual leave types)
Special leave appeal (number)	0
Leave applications granted by the panel (under Section 63(1)(a)(ii))	
On-ground leave (percentage)	100%
Limited off-ground leave (percentage)	93% (of requested leave types)
Special leave appeal	N/A
Leave applications refused by the panel (under Section 63(1)(a)(iii))	
On-ground leave (percentage)	0%
Limited off-ground leave (percentage)	7% (of requested leave types)
Special leave appeal	N/A
Leave granted by the panel that was suspended (under Section 63(1)(b))	
On-ground leave (number)	0
Limited off-ground leave (number)	6 patients
Special leave appeal	N/A

⁶ Forensic residents made the on-ground leave applications as part of an application that also included limited off-ground leave. Forensic patients do not require the panel to grant on-ground leave because the Thomas Embling Hospital has a secure perimeter.

Panel hearings

Since the panel was formed in 1998, a noticeable increase has occurred in the number of forensic patients and residents, but also in the frequency and number of leave applications made to the panel. In order to hear patient and resident leave applications in a timely manner, the panel sat on a more frequent basis than in previous years. During the year (1 January to 31 December 2009) 22 hearings were held, which equates to a 145 per cent increase in the total number of hearings held since 1998 (nine hearings were held in that year).

Despite this increase in the number of hearings per year, the panel recorded a largely constant number of applications heard by the panel during each hearing. The panel's records indicate that during both years, 1998 and 2009, approximately eight applications for leave were heard during each hearing.

The panel also records information on the number and type of leave applied for by patients and residents. The records indicate that, on average, applications for leave by patients and residents during 2009 consisted of approximately four leave types. In order to record accurate data on leave applications before the panel, each leave is counted individually. Counting leave applications in this manner is consistent with the how the panel operates, whereby the panel has authority to grant or refuse all or some of the leaves requested.

Table 3 below provides a breakdown of leave applications made to the panel during 2009.

Table 3: Hearings summary

Type	Number
Hearings	22
Hearing days	18
Times that applicants were legally represented	7
Times that applicants were assisted by interpreters	13
Applications made by each patient or resident (average)	2.5
Leave types requested by each patient or resident (average)	9.9

Number and type of leave applications

Seventy patients and three residents submitted 179 applications for leave. On average, this equates to 2.5 applications per patient or resident made during the year. Of the 179 leave applications made to the panel, 724 different leaves were applied for. This means that a patient or resident seeks approximately four different types of leave per application to the panel.

During the reporting year (1 January to 31 December 2009) the panel granted 93 per cent of all leaves. This figure includes one per cent of leave first modified by the panel before being granted. The remaining seven per cent of leaves requested were refused by the panel.

Extended leave

During the reporting period, ten forensic patients successfully applied for extended leave under Section 57 of the Act.

Four patients who had previously been granted extended leave had their supervision order varied to an NCSO by a court.

During 2009 one patient on extended leave had their leave suspended.

Non-custodial supervision orders (NCSOs)

During 2009 one forensic patient on an NCSO appeared before the panel.

Suspension of on-ground and limited off-ground leave

Under Section 55 of the Act, the chief psychiatrist (in the case of a forensic patient) and the secretary to the Department of Human Services (in the case of a forensic resident) can suspend leave if they are satisfied that the safety of the person or members of the public would be seriously endangered if leave were not suspended.

A flexible approach is taken to ensure that any restrictions on the person are kept to the minimum necessary in the circumstances and consistent with the safety of the community. For example, a forensic patient or resident may have their unescorted leave suspended, but may still have access to escorted leave if appropriate. The suspension must be lifted if the reasons for its enforcement no longer exist. The Act requires that the panel be advised of any suspension or reinstatement of on-ground or limited off-ground leave.

In 2009 six patients had their off-ground leave suspended. Of these, three had all leave types suspended and three had some leave types suspended. Of this total of six, one had part of their leave reinstated during the reporting period.

Applicant information

Fifty-three patients and one resident on orders from the Supreme Court, and 17 patients and two residents on orders from the County Court submitted leave applications to the panel.

During 2009 the number of patients on Supreme Court orders increased by two, and on County Court orders decreased by six, compared to 2008 figures.

Six forensic patients were first-time applicants to the panel; these applicants were beginning their rehabilitation program.

Specialist assistance

The Act provides that the panel may, if necessary, appoint a legal practitioner, medical practitioner, psychologist or interpreter to assist the conduct of a hearing.

During 2009 interpreters assisted seven different clients on 13 occasions. Interpreters in the following languages were used:

- Arabic
- Auslan
- Turkish
- Italian
- Cambodian
- Vietnamese
- Cantonese.

Legal representation was utilised on seven occasions during the reporting period.

Applicant profiles

In 2009, 70 forensic patients and three forensic residents submitted applications for leave to the panel. There were six first-time applicants during 2009: three male and three female.

The panel collects data on the number of forensic patients and residents, and also information on applicants':

- sex
- age
- sentencing court
- length of supervision.

Further information on forensic patients and residents is provided in Figures 4 to 7.

Historical data

Table 4 (see page 24) provides information on the number of patients and residents, the number of hearings, the number and types of leave applied for and other demographic data for the period from June 1998 to December 2009.

Figure 4: Ratio of male-to-female applicants to the panel

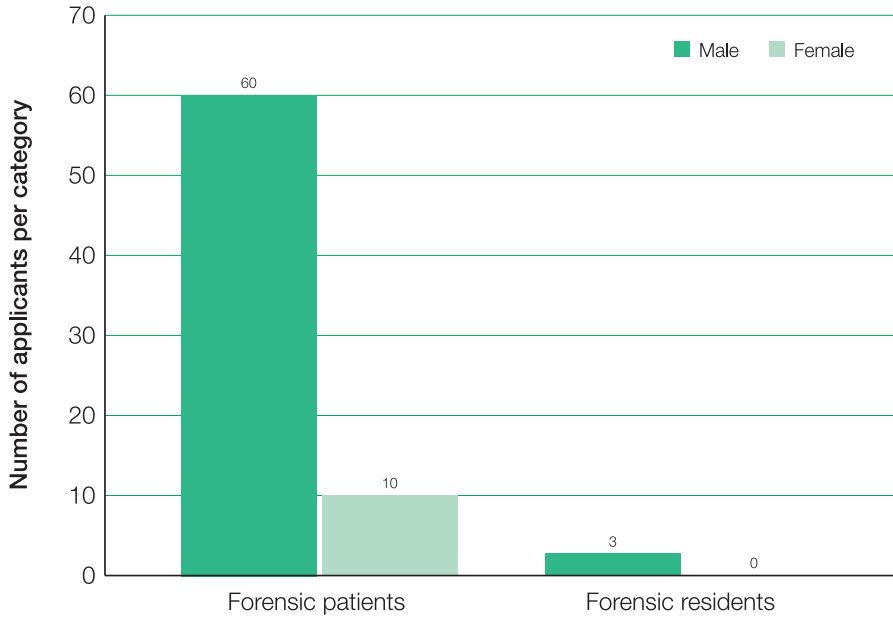


Figure 5: Age profile of applicants to the panel

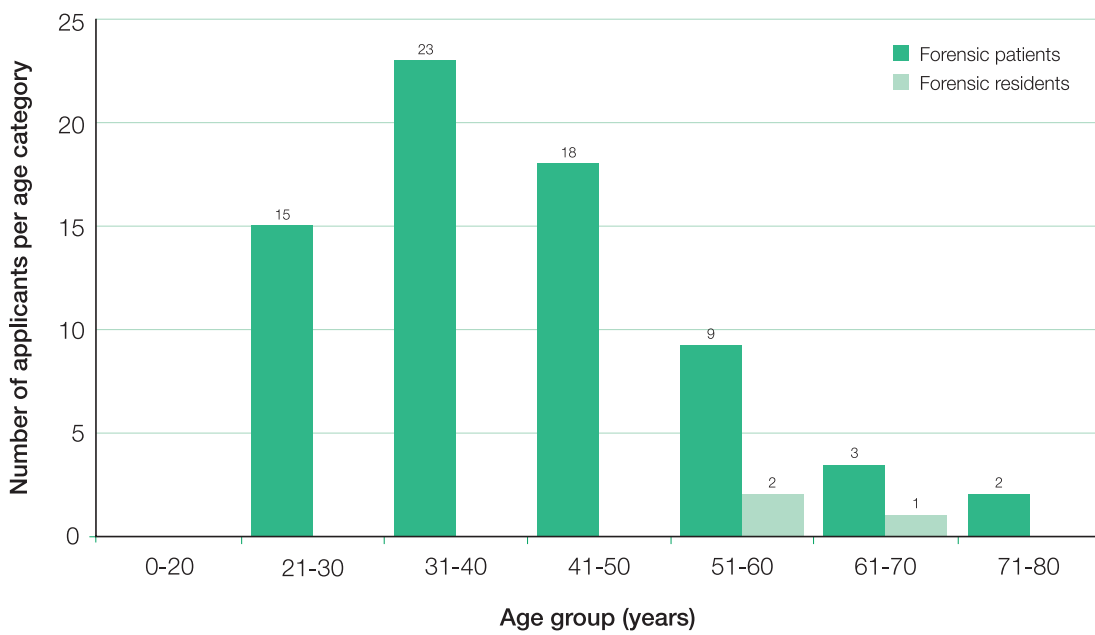


Figure 6: Original court of disposition for applicants to the panel

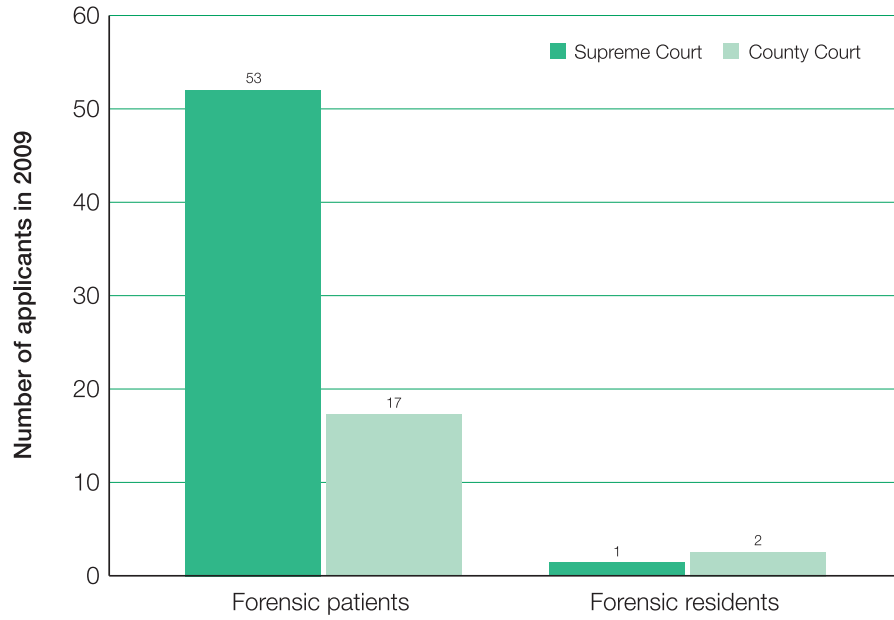


Figure 7: Length of supervision

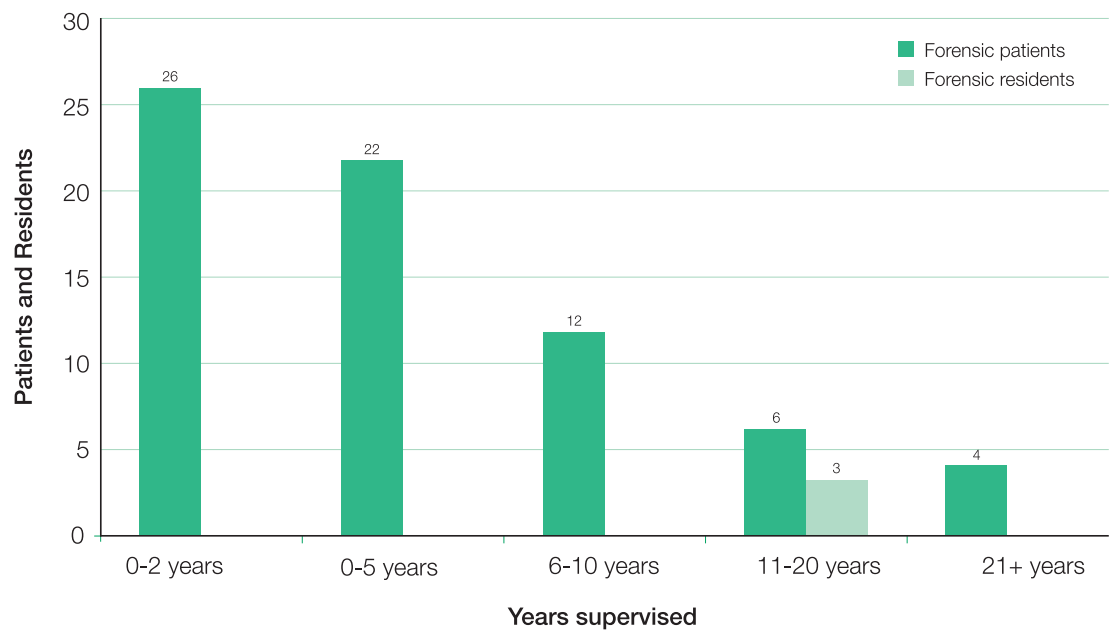


Table 4: Historical data for the period from June 1998 to December 2008

Year	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009
Forensic patients (number)	20	25	27	31	36	47	51	51	54	66	73	70
Forensic residents (number)	3	3	3	3	3	3	3	3	3	3	3	3
Hearings (number)	9	13	14	16	17	17	16	17	15	17	23 ⁷	22
Hearing days (number)	9	13	14	14	15	15	14	15	15	16	20 ⁸	18
Leave applications made to the panel per hearing day (number)	7.9 per hearing	165 12.7 per hearing	144 10.3 per hearing	136 9.7 per hearing	117 7.8 per hearing	126 8.4 per hearing	168 11.2 per hearing	169 11.2 per hearing	169 11.2 per hearing	178 11.1 per hearing	158 7.9 per hearing	179 8.13 per hearing
Average leave applications by each forensic patient or resident (number)	3	6	5	4	3	2.7	3.1	3.1	2.9	2.6	2.08	2.5
Average leave types requested by each patient or resident (number)	NA	NA	NA	9.7 ⁴	10.2	9.6	10.3	12	13.6	11.02	9.02	9.9
Type of leave applications (number):												
• on-ground	12	41	12	13	16	6	6	6	6	6	9	9
• off-ground	44	92	125	123	101	126	168	169	169	172	149	170
• combined on-ground and limited off-ground leave ¹⁰	15	30	7	NA	NA	NA	NA	0	0	0	2	9
Leave types requested (percentage):												
• granted	87%	83%	92%	87%	90%	86.4%	91%	89%	87%	91.3%	94%	91.7%
• modified				4% ¹¹	13%	2.2%	2.9%	1.3%	1%	2.4%	6.1%	1%
• refused	11%	11%	5%	12%	12%	10.8%	5.2%	8.5%	7%	5.6%	6%	7.2%
Times applicants were assisted by interpreters (number)	2	2	1	0	2	9	23	20	13	12	11	13
Times applicants were legally represented (number)	4	5	5	5	9	2	2	0	3	4	8	7
Patients or residents that had leave suspended (number)												
• on-ground	0	1	0	0	1	0	0	0	0	0	0	0
• off-ground	0	2	0	6	2	8	7	12	10	3	11	6

Appendix A

Financial statement

The Mental Health, Drugs and Regions Division of the Department of Health provides all operational support to the panel, manages the panel's budget and maintains accounts and records. The department's audited financial statements include the panel's expenditure and are reported in the department's annual report.

Appendix B

Important contacts for forensic patients and forensic residents

The **Forensic Leave Panel** is an independent panel. Its main function is to hear applications by forensic patients and residents for leave of absence.

50 Lonsdale Street
Melbourne 3000
Toll free: 1800 222 987

Victorian Legal Aid provides free legal advice about a range of issues, legal assistance if a person cannot afford a private solicitor, and possible assistance with legal representation at court or Forensic Leave panel hearings.

350 Queen St
Melbourne 3000
Phone: 9269 0120
Toll free: 1800 677 402

The **Mental Health Legal Centre** is an independent legal service that specialises in mental health legal issues. It may be able to arrange representation at court or Forensic Leave panel hearings, and advises about other legal matters.

9th floor
10–16 Queens Street
Melbourne 3000
Phone: 9629 4422
Toll free: 1800 555 887

Villamanta Disability Rights Legal Service Inc. is an independent, statewide community legal centre that specialises in disability-related legal issues. It provides information about rights and may be able to arrange legal representation at court or Forensic Leave panel hearings.

44 Bellarine Street
Geelong West 3220
Phone: 5229 2925
Toll free: 1800 014 111
TTY 1800 014 333

Community visitors are people who visit services at least once a month to enquire into the adequacy of services and facilities, investigate complaints and report on their enquiries and investigations.

5th floor
436 Lonsdale St
Melbourne 3000
Phone: 9603 9500
Toll free: 1800 136 829

The **Victorian Equal Opportunity and Human Rights Commission** helps people to resolve complaints about discrimination, has specific functions in relation to the *Charter of Human Rights and Responsibilities Act 2006* and can give advice about the Charter. Services include an enquiry line and a confidential, free and impartial complaint resolution service.

Level 3
380 Lonsdale Street
Melbourne 3000
Phone: 1300 891 848
Website: www.humanrightscommission.vic.gov.au

The **Office of the Public Advocate** assists, advises and advocates for people with serious complaints about mental health and disability services and treatment.

5th floor
436 Lonsdale St
Melbourne 3000
Phone: 1300 309 337
Fax: (03) 9603 9501
TTY: (03) 9603 9529
ACE 133 677 (03) 9603 9500

The **Health Services Commissioner** is an independent commissioner who investigates and helps to resolve complaints by health care consumers about health services.

30th floor
570 Bourke St
Melbourne 3000
Phone: 8601 5200
Toll free: 1800 136 066

The **Ombudsman** investigates complaints about government departments.

9th floor
459 Collins St
Melbourne 3000
Phone: 9613 6222
Toll free: 1800 806 314
TTY: 133 677 or 1300 555 727

The **chief psychiatrist** is a senior Department of Health official appointed under the Mental Health Act, with special responsibilities in relation to people receiving mental health services. These responsibilities include the power to investigate complaints and other matters, and to take necessary action.

Level 17
50 Lonsdale Street
Melbourne 3000
Phone: 9096 7571
Toll free: 1300 767 299

