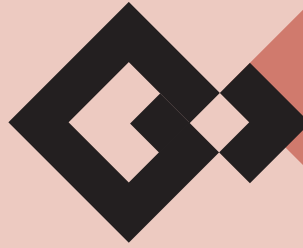


Forensic Leave Panel

Annual Report 2005



**Forensic Leave Panel
annual report 2005**

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May 2006 (060307)

30 May 2006

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

Dear Attorney

In accordance with s. 63 of the *Crimes (Mental Impairment and Unfitness to Be Tried) Act 1997*, I have pleasure in submitting for tabling in the Parliament the annual report on the operations of the Forensic Leave Panel for the year ending 31 December 2005.

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

Yours sincerely

A handwritten signature in black ink, appearing to read "Bernard Teague". The signature is fluid and cursive, with a large loop at the end of the last name.

The Honourable Justice Bernard Teague
President

President's report

I have great pleasure in presenting the seventh Annual Report of the Forensic Leave Panel. The report details the operations of the Panel for the period January to December 2005.

The Forensic Leave Panel is established under the *Crimes (Mental Impairment and Unfitness to be Tried) Act 1997*. The Act came into effect on 18 April 1998 and governs the detention, management and release of persons found unfit to be tried or not guilty on the grounds of mental impairment.

The Panel is an independent statutory body with jurisdiction to consider applications for certain types of leave from forensic patients and residents. The Panel first held hearings in June 1998 and since that time has continued to hear applications for leave on a monthly basis. The Panel has continued to develop upon the solid foundations established since its inception.

The Act has provided a foundation for a coordinated statutory approach for the management of leave. As a consequence, a system is in place that is transparent, responsive and supports the application of procedural fairness. The system provides forensic patients and residents with a right to appear at the hearing of an application. Participants have embraced this as important, particularly the forensic patients and residents subject to the Act.

Since 1998, the Panel's first year of operation, there have been significant increases in the number of patients applying to the Panel for leave, the number of applications per hearing and, particularly the number of leave purposes per application being applied for. In 2005, 51 forensic patients and three forensic residents submitted 169 applications to the Panel requesting a total of 649 leave purposes. This compares to 1998 when 20 forensic patients and three forensic residents submitted 71 applications requesting 110 leave purposes.

During 2005 the Panel reviewed its procedures to ensure that hearings are conducted fairly and efficiently. To help ease the burden on sitting judges, an additional Supreme Court judge and two additional County Court judges were appointed during 2005.

During the year, a number of forensic patients progressed through their rehabilitation programs and were ready to access overnight leave outside the hospital. The Jardine Flats, run by the Victorian Institute of Forensic Mental Health, commenced operation in July 2004 and have provided opportunities for a number of forensic patients to access overnight leave for up to three nights per week.

The terms of a number of members of the Panel expired at the end of 2004 and I would like to thank Ms Lee and Ms Quinton (both of whom opted not to reapply to the Panel) for their work on the Panel over their period of appointment. The appointment process, which occurred in the early half of 2005, resulted in the re-appointment of Dr Glaser, Ms Birgden, Ms Newby and Mr Newland and the appointment of new member, Ms Kathleen Bragge.

I would like to take this opportunity to thank all the members of the Panel for their expertise, enthusiasm and dedication during the past 12 months. The Panel has received invaluable assistance from Dr Kylie Shanahan, Executive Officer and Ms Leisl Oliver, Acting Executive Officer and, on behalf of the Panel members, I would like to thank them for their management of Panel operations during the reporting period.

In particular I would like to note the contribution of Executive Officer Dr Shanahan who, after providing immeasurable support to the Panel since August 2001, left in November 2005 to pursue further career opportunities.

On behalf of the Panel, I would like to thank the forensic patients, forensic residents and staff from Thomas Embling Hospital, Plenty Residential Services and Statewide Forensic Services. I would also like to extend my thanks to the families and friends of applicants who have contributed to, and supported, the hearing process.

Finally, I would like to acknowledge the assistance and support provided to the Panel by the Department of Human Services, in particular, the Mental Health Branch and the Disability Services Division.

A handwritten signature in black ink, appearing to read "Bernard Teague". The signature is fluid and cursive, with a large loop at the end of the last name.

The Honourable Justice Bernard Teague
President

Forensic Leave Panel members

Judicial members	From	Until	
President			
The Hon. Justice Bernard Teague	14 October 1998	20 April 2003	
<i>Reappointed</i>	21 April 2003	20 April 2008	
The Hon. Justice John Coldrey	17 November 1998	16 November 2003	
<i>Reappointed</i>	17 November 2003	16 November 2008	
The Hon. Justice Elizabeth Hollingworth	30 August 2005	29 August 2010	
His Honour Judge John Nixon	9 July 2001	8 July 2006	
His Honour Judge Joe Gullaci	1 May 2005	2 May 2010	
Her Honour Judge Liz Gaynor	1 May 2005	2 May 2010	
Chief psychiatrist			
Associate Professor Amgad Tanaghow			
Chief psychiatrist nominees			
Dr Paul Hantz			
Dr Thomas Peyton			
Associate Professor Bruce Singh			
Dr Ruth Vine			
Medical practitioners			
Professor James Richard Baldwin Ball	10 September 2002	9 September 2006	
Dr Michael William Newington Epstein	21 April 1998	20 April 2002	
<i>Reappointed</i>	10 September 2002	9 September 2006	
Dr William Felix Glaser	21 April 1998	20 April 2000	
<i>Reappointed</i>	12 December 2000	11 December 2004	
<i>Reappointed</i>	30 August 2005	29 August 2009	
Dr Barrie Michael Kenny	21 April 1998	20 April 2002	
<i>Reappointed</i>	10 September 2002	9 September 2006	
Dr Cristea Anne Mileszkin	10 September 2002	9 September 2006	
Dr Lester Allan Walton	10 September 2002	9 September 2006	
Psychologists			
Ms Astrid Birgden	12 December 2000	11 December 2004	
<i>Reappointed</i>	30 August 2005	29 August 2009	
Ms Catherine Leigh-Smith	21 April 1998	20 April 2002	
<i>Reappointed</i>	10 September 2002	9 September 2006	
Ms Janina Tomasoni	10 September 2002	9 September 2006	
Community members			
Ms Kathleen Bragge	20 August 2005	29 August 2009	
Mr Raymond Peter Fritz	10 September 2002	9 September 2006	
Ms Elizabeth Jane McGuire	10 September 2002	9 September 2006	
Ms Helga (Liza) Newby	12 December 2000	11 December 2004	
<i>Reappointed</i>	30 August 2005	29 August 2009	
Mr Paul Dennis Newland	21 April 1998	20 April 2000	
<i>Reappointed</i>	12 December 2000	11 December 2004	
<i>Reappointed</i>	30 August 2005	29 August 2009	
Staff			
Dr Kylie Shanahan	Executive Officer	August 2001	22 November 2005
Ms Leisl Oliver	Acting Executive Officer	23 November 2005	31 December 2005

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Part 1: Introduction

Background

The *Crimes (Mental Impairment and Unfitness to Be Tried) Act 1997* came into effect on 18 April 1998. The Act provides for a statutory defence of mental impairment in place of the common law defence of insanity, and establishes statutory procedures relating to the detention, management and release of people subject to the Act. Previously, people who were found unfit to plead or not guilty of an indictable offence on the grounds of insanity could be detained at the Governor's pleasure, and their continued detention and management was an administrative rather than judicial matter.

The Attorney-General outlined the aims of the legislation in the second reading speech on 18 September 1997, including:

- to vest the judiciary with the responsibility of making decisions regarding the release of detainees
- to provide for a special hearing process to be undertaken for persons who are unfit to be tried, and to enable the evidence of the prosecution to be tested
- to provide notification to, and consultation with, the next of kin of the alleged offender and the victim, where the court is considering releasing the person or substantially reducing the degree of supervision to which the person is subject
- to vest the trial court with the power to make the most appropriate order in the circumstances
- to require regular reporting to the trial court where the court has ordered that a person be subject to a supervision order under the Act
- to require leave decisions to be made by a specially constituted Panel, to be chaired by a judicial member.

Under the Act, the Supreme Court or County Court finds a person to be *not guilty* of an indictable offence on the ground of mental impairment. While an offence has occurred, the accused at the time was suffering from a mental impairment that had the effect that:

- (a) they did not know the nature and quality of the conduct; or
- (b) they did not know that the conduct was wrong.¹

Anyone found to be not guilty on the ground of mental impairment can be released unconditionally or placed on either a non-custodial supervision order or a custodial supervision order. A person placed on a custodial supervision order is referred to as either a forensic patient (if the person has primarily a mental illness) or a forensic resident (if the person has primarily an intellectual disability). Forensic patients and residents are detained in custody once the trial court imposes a custodial supervision order and, consequently, are subject to the provisions of the Act.

¹ Section 20(1), *Crimes (Mental Impairment and Unfitness to Be Tried) Act 1997*.

The Act established the Forensic Leave Panel and provides the Panel with the jurisdiction to consider and make determinations regarding applications from a forensic patient (detained in an approved mental health service) or a forensic resident (detained in an approved residential service) for certain types of leave while the person is subject to a custodial supervision order. The Panel held its first hearing in June 1998. In 2001, the Vincent Review recommended changes to the operation of the Panel. The required legislative amendments came into effect on 1 July 2002 with the commencement of the *Forensic Health Legislation (Amendment) Act 2002*. The amendments require the Panel to be satisfied that any leave granted will contribute to the rehabilitation of the applicant. The requirement that forensic patients and residents have a leave plan emphasises the rehabilitative purpose of leave.

This report relates to the Panel's operation during the period January–December 2005.

Key principles of the Act

Appropriate detention facilities

The past practice of incarcerating, as a prisoner, a person found unfit to plead or not guilty on the ground of insanity, failed to recognise the person's primary need for treatment and rehabilitation.² Accordingly, s. 26(4) of the Act provides that:

...the court must not make a supervision order committing a person to custody in prison unless it is satisfied that there is no practicable alternative in the circumstances.

One person subject to the Act remained incarcerated in prison at December 2005. All others resided at either the Thomas Embling Hospital at Fairfield (forensic patients) or at Plenty Residential Services at Bundoora (forensic residents).

Fitness to stand trial

Prior to the Act's introduction, the evidence against people found unfit to be tried was not required to be tested. After finding a person was unfit to plead, the court was required to order the accused be detained at the Governor's pleasure. The prosecution was not required to prove the person detained had committed the offence. This was considered of particular concern for people with intellectual disabilities who were less likely than people with mental illness to become fit to plead in the future.³

Now, if a person is found unfit to stand trial and considered unlikely to become fit within 12 months, the Act provides for a special hearing to test the evidence against the person. The special hearing is conducted as nearly as possible as if it were a criminal trial, including having a jury make a finding. At the start of the special hearing, the judge explains to the jury the meaning of being unfit to stand trial, that the defendant has been determined unfit to stand trial, the purpose of the special hearing, the findings that are available and the standard of proof required for those findings. The jury may find the defendant not guilty of the offence charged, not guilty of the offence because of mental impairment, or that the defendant committed the offence charged or an offence available as an alternative.

² *Government of Victoria 1995, Victoria Parliament Community Development Committee Inquiry into Persons Detained at the Governor's Pleasure, Melbourne, pp. 48–9.*

³ *Ibid.*, p. 119.

The granting of leave and revoking of an order

The Act provides for the Forensic Leave Panel to consider applications for leave in relation to on-ground and limited off-ground leave for persons on custodial supervision orders, and to hear appeals against refusal of special leave and against transfer to another institution. The court that granted the custodial supervision order—the Supreme Court or County Court—hears applications for extended leave (which allows a person to live in the community under prescribed supervision) or release from that order.

Transparency

The Act is clear in its intent to ensure the decision making process is transparent and accessible to all participants. This approach is a departure from the previous system, under which decisions about leave and release were administrative decisions open to political considerations and, therefore, inconsistent with the principles of natural justice.⁴

⁴ *Ibid.*, p. 98.

Part 2: The Forensic Leave Panel

Jurisdiction

The Forensic Leave Panel was established under part 7 of the Act to hear applications from forensic patients and residents for certain types of leave. The Act provides the Panel with jurisdiction to hear:

- applications for on-ground and limited off-ground leave
- appeals in relation to special leave refused by the authorised psychiatrist or the Secretary, Department of Human Services
- appeals in relation to the transfer of a forensic patient from one mental health facility to another.

Part 3 of this report contains further information on the above matters.

Composition

The Panel's current membership is listed earlier in this report. Schedule 2 of the Act specifies that the Panel comprises representation from the judiciary, the professions of psychiatry and psychology, and the general community. The composition varies, depending on whether an application or appeal is from a forensic patient or a forensic resident.

For a forensic patient, the Panel comprises:

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

For a forensic resident, the Panel comprises:

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

The original court of disposition determines whether the Panel's judicial member (the chairperson) will be from the Supreme Court or County Court. 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.

Schedule 1 of the Act provides that nominations of people to the Panel must have regard for:

- (a) The matters that the Panel has jurisdiction to hear and determine; and
- (b) The need for the Panel to be comprised of both males and females so qualified by knowledge and experience that the Panel is capable of exercising the jurisdiction and performing the functions conferred on it.

Schedule 1 also stipulates that the Governor-in-Council appoints members (other than the chief psychiatrist or his/her nominees) on the nomination of the Attorney-General.

Principles

In hearing any matter, the Panel is bound by the rules of natural justice. It must act according to 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 forensic residents, being:

- a right to appear at a hearing
- a right to be represented at a hearing by either a legal advocate or a support person
- a right to view documents to be considered by the Panel, unless the Panel decides the person should not view a document
- a right to the reasons for any decision made by the Panel.

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 well defined so all participants are aware of the order of proceedings. This process has evolved through consultation with forensic patients, forensic 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. During the reporting period, the Panel appointed an interpreter (Italian, Turkish, Arabic, Cambodian, Macedonian, Serbian and Auslan) on 20 occasions, for eight different clients.

Part 3: Leave of absence

Types of leave

Part 7 of the Act defines the types of leave that the Forensic Leave Panel may grant to forensic patients and residents on a custodial supervision order. The three types are on-ground leave, limited off-ground leave and special leave.

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 provides patients and residents with an opportunity to spend time outside the ward 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 complex. 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.

Table 1 (part 6 of this report) details the number of on-ground leave applications received during 2005.

Limited off-ground leave

Pursuant to s. 53 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
- outside these 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 ward shopping or personal banking and shopping) or as accompanied leave, when a specified friend or family member must accompany the patient during the leave. Escorted or accompanied leave may progress to unescorted leave, as considered appropriate.

Table 1 (part 6 of this report) details the number of limited off-ground leave applications received during 2005.

Special leave

Special leave allows a forensic patient or a forensic resident to leave the place of custody in special circumstances, such as 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 of the Department of Human Services. The criteria for the granting of special leave are that special circumstances exist and that the granting of the leave would not seriously endanger either the forensic patient/resident or members of the public. Special leave of absence cannot exceed 24 hours, or seven days in the case of leave for medical treatment.

The Act provides for a right of appeal to the Forensic Leave Panel if the authorised psychiatrist or the Secretary of the Department of Human Services refuses an application for special leave. In 2005, the Panel did not receive any such applications for appeal.

Criteria for the granting of 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 would contribute to the person's rehabilitation, and
- allowing the leave would not seriously endanger the safety of the person or members of the public.

The Panel is further guided by s. 54(4), which stipulates that the Panel, when determining whether to grant an application for leave or variation of leave, must consider:

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

The Panel may impose any conditions that it considers appropriate on an entire grant of leave or an individual leave purpose within that grant. Such conditions may include routine urine drug screens and breathalyser tests or prohibit the applicant from visiting particular locations, such as the scene of the index offence.

Once the Panel grants leave, applicants can seek to vary the leave conditions if their circumstances have changed significantly since their last application to the Panel. If the Panel grants the variation, then the new conditions supersede the old, but the expiration date for the leave remains the same as for the original grant. If the Panel refuses the leave, then the existing order remains in effect.

The 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.

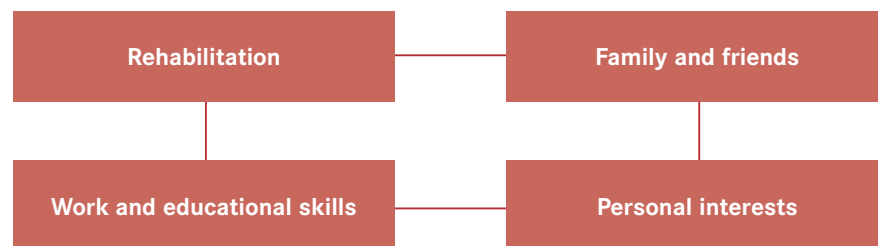
The Act requires a detailed leave plan and applicant profile to accompany each application for leave. These documents help inform the Panel about the client's rehabilitation goals and the likely risk factors if the person were granted leave in the community.

In the granting of leave, the Panel generally takes a gradual approach—usually, escorted limited off-ground leave first, followed by accompanied limited off-ground leave if the patient is ready. This may progress 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 dependent upon the treatment needs of the individual, balanced with the safety of the community.

The treating team continually monitors and assesses the appropriateness and progress of any leave granted to the forensic patient or resident. Further, before a forensic patient or resident uses any leave, staff undertake a clinical assessment to ensure leave is appropriate on that occasion. If there is a deterioration in a patient's mental state, the chief psychiatrist can formally suspend any leave purpose in the patient's grant of leave until they are well enough to recommence using that leave purpose. For example, the treating team may suspend unescorted leave but allow escorted leave to continue.

Figure 1 demonstrates a broad categorisation of leave and its use by forensic patients and residents.

Figure 1: General categories of leave



Leave for **rehabilitation purposes** has included:

- personal banking and shopping
- attendance at courses for personal development, such as art therapy
- attendance at development programs provided by community organisations
- attendance at exercise programs and activities
- familiarisation with public transport.

Leave for **work and educational skills development** has included:

- attendance at skill or trade based courses—for example, hospitality courses
- participation in volunteer work—for example, work with the RSPCA
- employment and/or efforts to seek employment.

Leave to spend time with **family and friends** has included:

- access visits with children
- visits with parents
- overnight stays with family members or friends
- leave to spend time with parents visiting from interstate
- the maintenance and development of contact with friends and support persons
- important family celebrations.

Leave to attend to **personal interests** has included:

- attendance at church
- visits to cultural facilities
- participation in personal interest activities—for example, visits to the cinema or a chess club.

Examples of leave granted by the Panel

Example 1

A forensic patient made an application for leave for prevocational and employment related purposes. The treating team did not fully support the application and recommended granting of a modified leave plan. The Panel refused the forensic patient's application and granted a modified plan, allowing the patient an opportunity to demonstrate appropriate use of the leave. Some months later the patient submitted a further application for additional off-ground leave. The Panel granted the application noting the patient had demonstrated appropriate social interaction and development of community-based activities.

Example 2

A forensic patient applied for a variation to granted leave to increase participation in an employment support program. The treating team supported the application noting the patient had received consistently positive feedback on participation and attendance. The Panel granted the variation to leave subject to approved curfew hours.

Example 3

A forensic resident submitted an application for a three-day (two night) leave as the next step toward extended leave. The leave would provide the resident with an opportunity to participate in community based activities and engage in social interaction. The Panel granted the leave application having reviewed the program plan for managing the resident's overnight stays to ensure that the safety of the resident and the community would not be at risk.

Example 4

A forensic patient applied for a one-off grant of leave outside of regular hours to attend a family member's birthday celebrations. The Panel granted the leave, as participation in family celebrations is beneficial to maintaining family relationships and reinforcing supportive social networks.

Place of custody

A person who is detained on a custodial supervision order must be detained in an appropriate place and is deemed to be in the custody of the Secretary of the Department of Human Services. The Act defines an 'appropriate place' as an approved mental health service (as defined in the *Mental Health Act 1986*) or a residential service (as defined in the *Intellectually Disabled Persons' Services Act 1986*). Section 26(4) states:

The court must not make a supervision order committing a person to custody in a prison unless it is satisfied that there is no practicable alternative in the circumstances.

One forensic patient was detained in prison in 2005.

Forensic patients

Forensic patients on custodial supervision orders are in the custody of the Secretary, Department of Human Services, at the Victorian Institute of Forensic Mental Health, Thomas Embling Hospital, Fairfield.

The institute provides assessment, care and treatment for all levels of mental illness, ranging from patients who are acutely ill to patients whose mental state is stable and who are able to participate in intensive rehabilitation programs. Medical assessment and treatment is also provided. Programs are designed to meet the individual needs of patients. 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, responsibility, the development or maintenance of skills and focus on preparing for community life.⁵

Forensic residents

Forensic residents on custodial supervision orders are in the custody of the Secretary, Department of Human Services at Plenty Residential Services. The department's Disability Services Division, through the Statewide Forensic Service, has responsibility for setting policy and program direction. Services are provided through the Long Term Rehabilitation Program, which Plenty Residential Services manages. The program's role is to provide a highly structured and supervised accommodation environment for those clients who cannot reside in the community given the assessed risk of their offending behaviours. The facility can accommodate a maximum of six clients and, at December 2005, housed three forensic residents, a voluntary client and a client on an undertaking.

Long term intervention is less intensive than short to medium term intervention programs, and is developmental in nature. The services for forensic residents, therefore, 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.

5 Department of Human Services 1998, Certificate of Available Services FOR6, as provided by the Victorian Institute of Forensic Mental Health

Part 4: The hearing process

The granting of leave of absence—an historical overview

Prior to commencement of the Act, the legislative provisions for granting of leave to persons subject to Governor's Pleasure orders were contained in the Mental Health Act if the person had a mental illness and in the Intellectually Disabled Persons' Services Act if the person had an intellectual disability. Decisions regarding leave were administrative decisions. Now, such decisions for both categories of patient must be made in accordance with the process outlined in the Crimes (Mental Impairment and Unfitness to Be Tried) Act.

The granting of leave of absence—the process

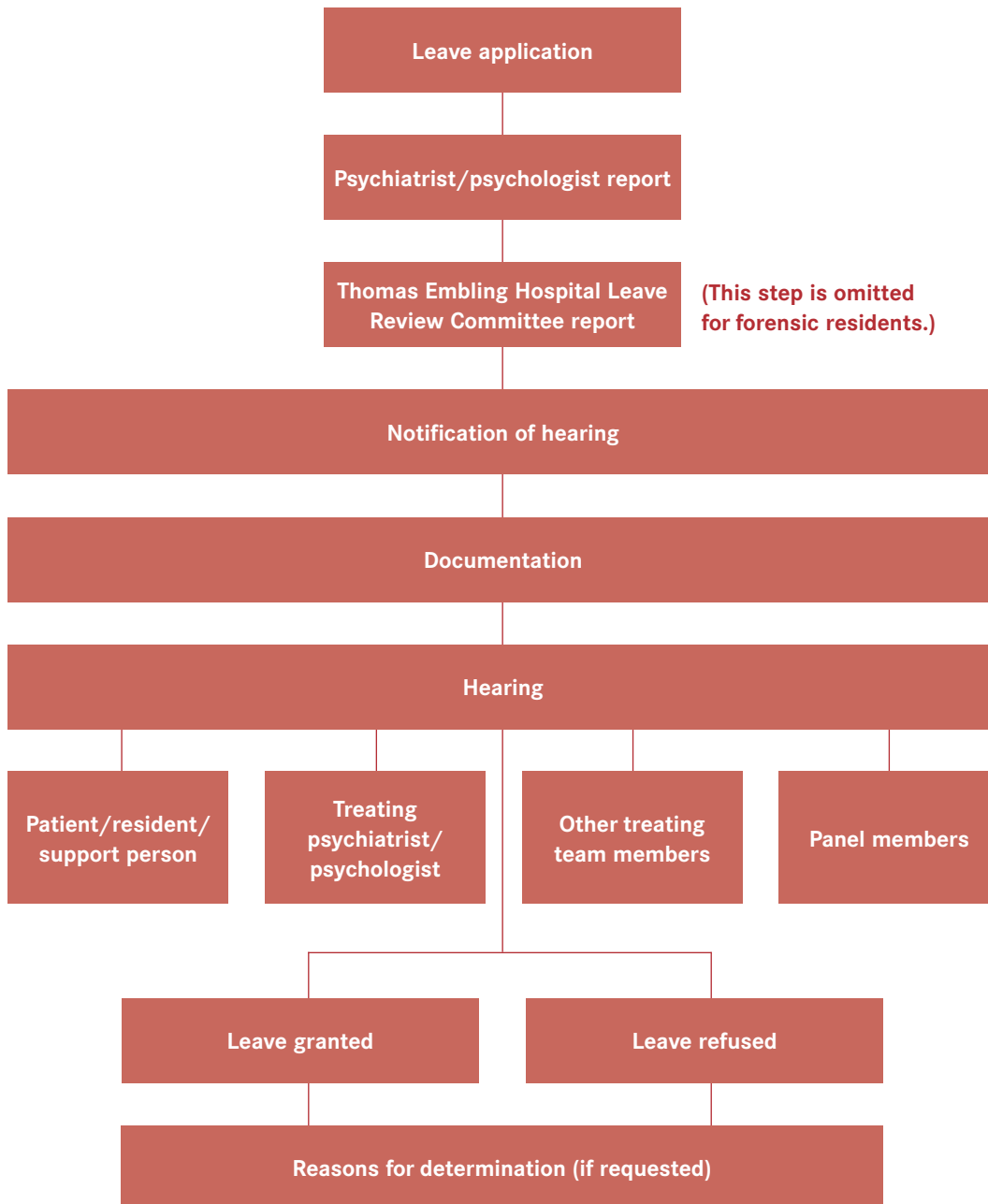
Usually, a patient and their treating team will prepare an application for leave together. The treating team prepares an applicant profile, detailing the forensic history and current mental state of the applicant, and a leave plan outlining the proposed leave and its rehabilitative goals. The applicant completes and signs an application form that will, 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, leave plan and applicant profile are forwarded to the Thomas Embling Hospital 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, the general manager, the program manager, the inpatient operations manager and a clinical administrator. The chief psychiatrist also attends.

The leave plan, applicant profile and application are then forwarded to the Panel, which takes into account the view of the Leave Review Committee when making a determination. The requirement for a detailed leave plan and applicant profile to accompany each leave application is mandatory under ss. 54A (applicant profile) and 54B (leave plan) of the Act.

The process for forensic residents involves the same procedures, but without a leave review committee stage.

Figure 2: Leave application process



Location of hearings

Schedule 2 of the Act provides 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 place of detention—the Thomas Embling Hospital, Victorian Institute of Forensic Mental Health, Fairfield. Hearings for forensic residents are conducted at Plenty Residential Services in Bundoora or at the Statewide Forensic Service in Fairfield.

Scheduling of hearings

Hearings for forensic patients are generally held on a monthly basis; however, special hearings may be held as necessary. In 2005, there were 17 hearings, held on 16 hearing days: four hearings for forensic residents and 13 for forensic patients.

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 whatever language, mode of communication and terms that the applicant is likely to understand. At this time, applicants are 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 but may inform itself in relation to any matter in such manner as it thinks fit. Consistent with the requirements and intent of the Act, it has adopted an informal process for the conduct of hearings. The aim has been to create an atmosphere at hearings in which all participants have an opportunity to raise all relevant considerations.

The Panel may request that additional information is prepared before a hearing, 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 has adjourned the hearing to the following month. In these cases, the Panel has paid attention to ensuring the applicant can still access leave if appropriate, pending the outcome of the adjourned application.

In preparing for the hearing of their application, applicants sometimes undertake to provide the Panel with supporting information. During the reporting period, a number of applicants had support services with whom they were connected provide additional information to the Panel.

Hearings are closed to members of the public. However, s. 71 (2) of the Act provides for the Panel to direct that proceedings, or any part of them, be open to the public if in the best interests of the applicant or in the public interest. During the reporting period, no proceedings were made open to the public.

At the hearings, the Panel discusses the application—particularly the content of the leave plan and the recommendation of the Leave Review Committee—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. The treating team arrives at its decision following an assessment of the individual's current needs and community safety. Occasionally, the Leave Review Committee does not support an application that the treating team supports, so the hearing provides 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 stresses for forensic patients and residents. Further, it is aware that treating staff must find a balance between maintaining a healthy therapeutic relationship with the patient/resident and being required to provide a candid assessment to the Panel.

Documentation

The applicant and treating team prepare a number of documents relating to the application for leave. The applicant usually completes the application for leave (FOR2) with staff assistance. The treating team prepares the psychiatrist's or psychologist's report (FOR3A or FOR3B respectively), the applicant profile and the leave plan.

The leave plan provides a therapeutic framework to the leave being requested and allows for reporting on the use of previously granted leave. It must include the following information:

- the purpose of the leave applied for and how that leave will contribute to the person's rehabilitation
- any proposed conditions of leave
- any other information that the clinical director, authorised psychiatrist or Secretary, Department of Human Services, considers relevant
- any other information requested by the panel

If the clinical director or department Secretary do not support an application, they must provide a written statement to the Panel, explaining why the application should not be granted. There is no need to prepare a leave plan in these circumstances.

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

- 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 Forensicare (for a forensic patient at the Thomas Embling Hospital) or the Secretary of the Department of Human Services (for 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 the hearing of an application. 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/resident that 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 department Secretary (in the case of a forensic resident) may apply to the Panel to prevent the applicant from viewing a 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, the Panel did not receive any such requests.

Reasons for determination

During the reporting period, the Panel did not receive any requests for written reasons for a determination.

Format of determinations

All leave available to a patient is included on a single determination. Section 54(7) of the Act states that only one grant of leave or variation can be in force at any one time for a forensic patient or resident.

If a patient has a valid grant of leave, they can apply to vary the leave conditions within the period of the grant. At the expiration of that grant, the patient can apply for a new grant of up to six months' duration. The Panel can then vary the new grant as appropriate, but the expiration date remains fixed. This approach ensures patients' leave is comprehensively re-assessed at least every six months, when an application for a new grant of leave is made.

Part 5: The year in review

Number and type of applicants

In 2005, 40 patients and one resident on orders from the Supreme Court and 11 patients and two residents on orders from the County Court submitted leave applications to the Forensic Leave Panel. This represents a decrease of two patients on Supreme Court orders, with an increase of two patients on County Court orders compared to figures from 2004. There has been a consistent growth in patients on County Court orders from year to year since the first two patients on orders from the County Court made applications to the Panel in 2002. To assist with the increasing numbers of applications from patients on County Court orders, two additional judges from the County Court were appointed to the Panel in 2005.

Seven of the forensic patients were first-time applicants to the Panel and are beginning their rehabilitation program.

The use of interpreters remains consistent with 2004 figures. As noted in Part 2, in 2005 interpreters assisted eight different clients on 20 separate occasions covering seven different languages.

Despite a consistent level of applications submitted, there was a substantial increase in the leave purposes being considered by the Panel in 2005. There were 554 leave purposes listed in 16 hearings in 2004 providing an average of just over 15 applications per hearing in 2004. In 2005, 649 leave purposes were listed in 17 hearings providing an average of 14 applications per hearing.

It is noted that there was a total of 54 applicants in 2005 whom submitted an average of 3.1 applications for the year or a total of 169 applications. This data is consistent with 2004 figures where the total number of applications was 168.

The increasing workload in leave purposes will continue to be monitored ensuring the appropriate number, and length, of hearings will be conducted throughout 2006 to meet the needs of the applicants within the system.

Progression to extended leave and non-custodial supervision orders

Applications for extended leave are usually made after the applicant has successfully used the maximum amount of leave available to them from the Panel. A forensic patient or resident who has completed at least 12 months' extended leave may apply to the court for a variation of their order to a non-custodial supervision order. A non-custodial supervision order allows the person to reside in the community. In appropriate cases, a person can subsequently seek to have their supervision order revoked by the court.

Granting of extended leave

Extended leave enables forensic patients and residents to reside in the community under supervision. While applicants are on extended leave they are no longer within the jurisdiction of the Panel, but they are still under supervision, usually by Forensicare's community psychiatric service.

During the reporting period, six forensic patients applied under s. 57 of the Act for extended leave. All applicants were successful in obtaining extended leave for 12 months. Two patients who had previously been granted extended leave were granted a non-custodial supervision order.

Revocation of extended leave

During the reporting period, the chief psychiatrist suspended the leave of two forensic patients on extended leave. Within 48 hours after the suspension, the chief psychiatrist or the Secretary, Department of Human Services, must apply to the court that granted the leave for the court to revoke that leave or lift the suspension. Appropriate applications were made and the patient's extended leave was revoked. The patients were readmitted to Thomas Embling Hospital.

In 2005, one patient had their non-custodial supervision order revoked to a custodial supervision order.

Section 30 of the Act provides for a patient to be apprehended if the patient has failed to comply with a non-custodial order or if the safety of the patient or members of the public will be endangered if the patient is not apprehended. Within 48 hours after the apprehension the patient must be released unless an application is made to vary the supervision order. Two patients on non-custodial supervision orders were apprehended and returned to Thomas Embling Hospital pursuant to s.30.

At the end of the reporting period, seven forensic patients were on extended leave.

Suspension of on-ground and limited off-ground leave

Section 55 of the Act provides for on-ground or limited off-ground leave to be suspended if there is concern about the safety of the person on leave or members of the public. The chief psychiatrist (in the case of a forensic patient) and the department Secretary (in the case of a forensic resident) have the power to suspend leave if satisfied that the safety of the person or members of the public would be seriously endangered if leave were not suspended.

The suspension must be lifted if the reasons for it no longer exist. Leave can be wholly or partly suspended, depending on the circumstances. A forensic patient or resident may, for example, have their unescorted leave suspended but still have access to escorted leave if appropriate. The Act requires that the Panel be advised of any suspension or re-instatement of on-ground or limited off-ground leave.

In 2005, seven patients had their off-ground leave suspended as a result of changes in their mental state that the treating team felt affected the patients' capacity to use leave appropriately. All of these patients regained access to some leave during the reporting period, although three did not regain full use of the leave granted to them before the suspension. One patient had leave suspended twice during the reporting period and two patients had their leave suspended three times.

Interpretation of the Act

Non-custodial supervision orders

Section 26 of the Act provides for the court of original disposition to make an order placing a person on a non-custodial supervision order (NCSO). A person on an NCSO lives in the community subject to any conditions that the court may place on the order.

Sections 30(1) and (2) of the Act provide for the apprehension and detention of a person on an NSCO in an emergency situation. Section 30(4) provides that a person must be released within 48 hours unless an application is made under section 29(1) to vary a supervision order. The court may confirm the order, vary the order or vary the conditions of the order. If a person is not released within the initial 48 hours, while awaiting the return of the matter to the relevant court, that person is held in custody.

The Panel determined in 2000 that it had jurisdiction to hear applications from patients who had been apprehended while on NCSOs and who were in custody at the Thomas Embling Hospital, pending the outcome of the court hearing to determine the status of the order. In 2005, no applications from patients on NCSOs who were in custody in the hospital were heard.

‘Significant alteration in circumstances’

Once patients have a grant of leave they can seek to vary that grant. The expiry date of the original grant remains fixed, no matter how many variations to the conditions of leave are sought before the expiration of the leave. Section 54(3) of the Act states that the Panel may grant an application for variation of leave if satisfied on the available evidence that:

- the proposed variation would contribute to the person’s rehabilitation
- the safety of the person or members of the public would not be seriously endangered as a result of the leave being varied
- there has been a significant alteration in the person’s circumstances since leave was last granted or varied.

The Panel has considered what constitutes a ‘significant alteration’ in circumstances. To not disadvantage applicants, the Panel has applied a broad interpretation to this term, to allow patients to make applications for a variation in the conditions of their leave.

Review and development

The Department of Human Services produces a series of patient rights brochures, including a brochure for forensic patients: *Forensic patient – about your rights*.

During 2005 the Department of Human Services commenced preparation of an additional brochure: *Statement of Rights – Forensic Patient (Remand and Interim Disposition Orders)*. This brochure has been prescribed and will be released in 2006.

In the later half of 2005 the executive officer of the Forensic Leave Panel commenced a review of all current forms utilised by patients, residents, treating teams and review committees when making an application before the Panel. The review has identified areas in which the forms can be enhanced and streamlined to assist all parties in the application process. Enhanced forms will be developed and implemented in early 2006 with an opportunity for review in the middle of 2006. It is anticipated that the new forms will increase clarity and ease of use for all parties.

Part 6: Statistical overview

The Panel conducted its first hearing in June 1998 and has since continued to conduct hearings on at least a monthly basis. Under s. 63 of the Act, the Panel is required to report on:

- (a) the number and type of leave applications -
 - (i) made to the Panel during that year
 - (ii) granted by the Panel during that year
 - (iii) refused by the Panel during that year

and

- (b) the number of suspensions during that year of leave granted by the Panel and the type of leave suspended.

The method of collecting and reporting data remains consistent with the methods utilised in the annual report 2004. The Panel reports on the number of applications submitted, granted, refused, adjourned and withdrawn. The Panel also kept records of the number of applications where it granted a modified version of the leave requested.

Where an applicant applies for leave for a number of different purposes on the one application form, each leave purpose is assessed separately. Therefore, if an applicant lodges a form containing four different leave purposes, each leave purpose is considered separately. The rationale is that the Panel has the capacity to grant some of the leave purposes and reject others. An applicant may apply on one application form for leave to visit family, shop for ward cooking and go to the movies, for example. The Panel considers each leave purpose individually, accounting for the leave's contribution to the applicant's rehabilitation and the risk to the client and community; it then grants, refuses, modifies or adjourns each leave purpose as it thinks appropriate.

Each application made in 2005 was counted as a single application. Within each application, all leave purposes were also counted. Counting each leave purpose within an application is the most accurate way in which to account for modifications, withdrawals, refusals and adjournments where the decision does not apply to the entire application. Each leave purpose grant, modification, refusal and adjournment is reported as a percentage of total leave purposes.

Table 1 details the number and types of leave applications that the Panel received, granted and refused in 2005.

Table 1: Statutory reporting, Forensic Leave Panel, January–December 2005

Leave applications				
Received 169	Leave purposes granted 89%	Leave purposes refused 8.5%	Leave purposes adjourned 1.5%	Leave purposes modified by Panel 1.3%

Type of application		
On-ground leave* 6	Limited off-ground leave 169	Special leave appeal 0
Number and type of suspensions		
On-ground leave 0	Limited off-ground leave 12	Special leave appeal 0

* The on-ground leave applications were made by forensic residents as part of an application that also included limited off-ground leave. Forensic patients do not require on-ground leave to be granted by the Panel because the Thomas Embling Hospital has a secure perimeter.

The number of leave purposes that the Panel considered in 2005 was higher than in previous years (649 in 2005, 554 in 2004, and 493 in 2003). This rise can be attributed to patients utilising more leave purposes to enhance and develop overall rehabilitation plans. The number of applicants and average number of applications per applicant remained consistent with the increases that occurred during 2004.

A key principle of the recommendations of the 2001 Vincent Review was that leave should be well planned in advance, with clear therapeutic goals. Consequently, the Act was amended in 2002 so that a grant of leave to a forensic patient or resident (which can encompass a number of purposes) can be varied only if there has been a significant alteration in the person's circumstances since leave was granted or last varied. If varied, the grant of leave will still expire on the same date as the original order that was varied.

This means that an applicant seeking a variation to a grant of leave (such as to add a new purpose) applies only for the variation and does not need to re-apply for leave purposes already granted by the Panel and contained in the order. The only circumstance in which an applicant must apply for all leave purposes is when the order granting leave has expired or will expire before the next Panel hearing.

Table 2: Hearings summary, Forensic Leave Panel, January–December 2005

Number of hearings	17
Number of hearing days	16
Number of times that applicants were legally represented	0
Number of times that applicants were assisted by interpreters	20
Average number of times that each forensic patient/resident applied to the Panel	3.1
Average number of leave purposes applied for per patient/resident	12

Applicant demographics

Table 3 details the number of forensic patients and residents who submitted an application for leave to the Panel in 2005.

Table 3: Number of forensic patients/residents submitting applications to Forensic Leave Panel, January–December 2005

Forensic patients	Forensic residents
51	3

Figure 3 shows six female forensic patients, 45 male forensic patients and three male forensic residents made applications to the Panel in 2005. These figures are consistent with data from 2004. Two women and four men were first-time applicants to the Panel.

Figure 3: Male–female ratio of applicants to the Forensic Leave Panel, January–December 2005

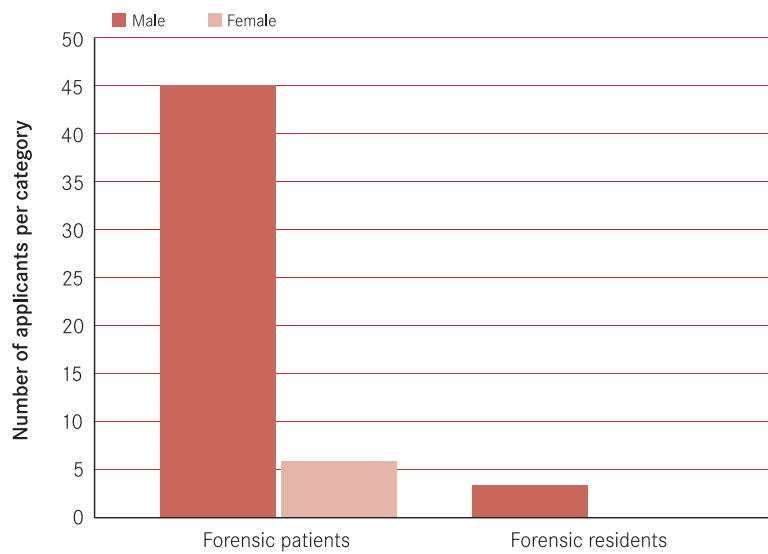


Figure 4 demonstrates the age profile of the forensic patients and residents who made applications to the Panel in 2005. The average age of applicants was 43 years, which has remained consistent over the last three years.

Figure 4: Age profile of applicants to the Forensic Leave Panel, January–December 2005

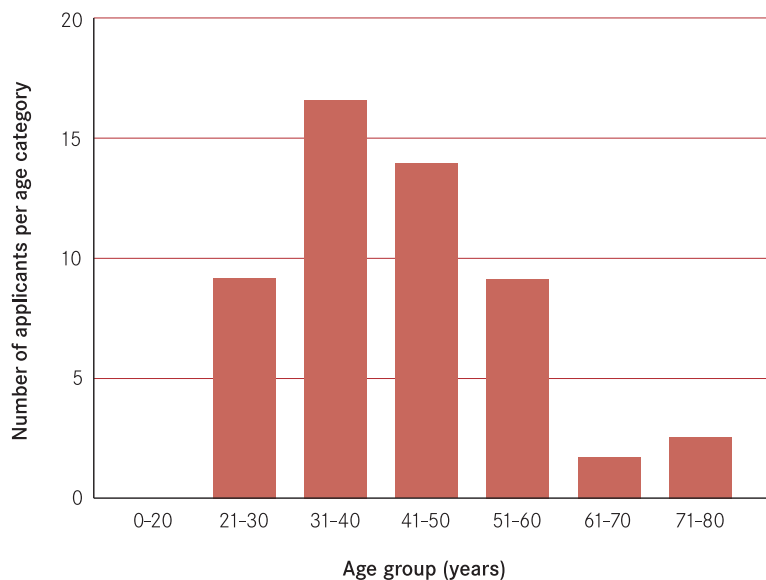
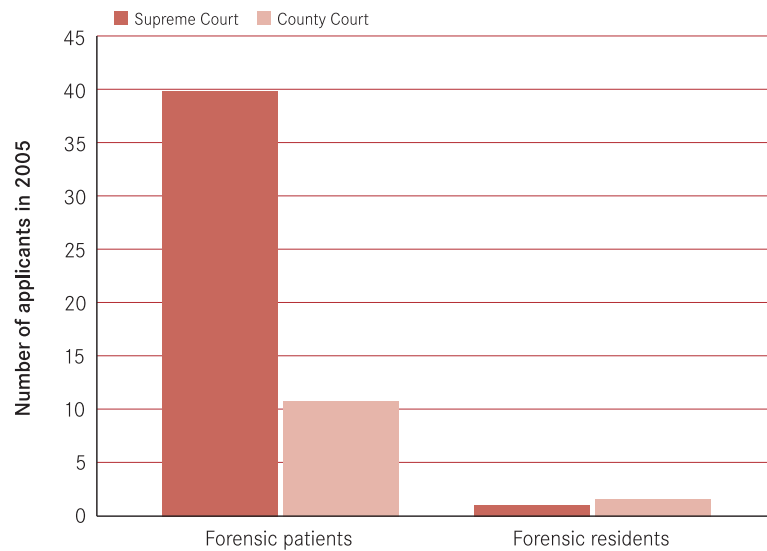


Figure 5 illustrates that the Supreme Court was the sentencing court for 40 forensic patients and one forensic resident who applied to the Panel for leave in 2005. The County Court was the sentencing court for 11 forensic patients and two forensic residents who made applications. This is a slight increase in the number of forensic patients on County Court orders compared to 2004, though this figure remains significant compared to 2002, when only two forensic patients and two forensic residents who applied to the Panel were on custodial supervision orders from the County Court.

Figure 5: Sentencing court that made custodial supervision order for applicants to Forensic Leave Panel, January–December 2005



The average period of custodial supervision for the forensic patient and resident population in 2005 was 7.2 years and the median was five years. The longest period of detention was 32 years. The average period of detention has increased slightly from 7.1 years in 2004.

Part 7: Financial statement

The Metropolitan Health and Aged Care Services Division of the Department of Human Services manages the operations of the Forensic Leave Panel, which means there is no requirement for an annual report for the Panel. Further, the Panel is not required to present audited financial statements, because the department's audited financial statements include the panel's expenditure. The Panel is responsible for managing its budget, which includes member remuneration, staff salaries and administrative expenses. Its internal financial system monitors expenditure and maintains accounts and records.

Part 8: Important contacts for forensic patients and forensic residents

Below are useful contacts for forensic patients and 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. The Panel can be contacted at:

50 Lonsdale Street
Melbourne VIC 3000
Tel: 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. It can be contacted at:

350 Queen St
Melbourne VIC 3000
Tel: (03) 9269 0234
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. The centre can be contacted at:

4th Floor
520 Collins St
Melbourne VIC 3000
Tel: (03) 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. The service can be contacted at:

44 Bellarine Street
Geelong West VIC 3218
Tel: (03) 5229 2925
Toll free: 1800 014 111

Community visitors are people who visit services at least once a month to inquire into the adequacy of services and facilities, investigate complaints and report on their inquiries and investigations. They can be contacted at:

5th Floor
436 Lonsdale St
Melbourne VIC 3000
Tel: 9819 6087

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

5th Floor
436 Lonsdale St
Melbourne VIC 3000
Tel: 9603 9500
Toll free: 1800 136 829

The **Health Services Commissioner** is an independent commissioner who investigates and helps to resolve complaints by health care consumers about health services. The Office of the Commissioner can be contacted at:

30th Floor
570 Bourke St
Melbourne VIC 3000
Tel: (03) 8601 5200
Toll free: 1800 136 066

The **Ombudsman** investigates complaints about government departments. The office of the Ombudsman can be contacted at:

22nd Floor
459 Collins St
Melbourne VIC 3000
Tel: (03) 9613 6222
Toll free: 1800 806 314

The **Chief Psychiatrist** is a senior Department of Human Services 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. The Chief Psychiatrist can be contacted at:

50 Lonsdale Street
Melbourne VIC 3000
Tel: 1300 767 299

