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| Forensic Leave Panel |
| Annual report 2021 |
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| (DH 2208249 – cover and figures) |



20 September 2022

Jaclyn Symes MP  
Attorney-General  
Level 26, 121 Exhibition Street  
Melbourne VIC 3000

Dear Attorney-General

In accordance with section 63 of the *Crimes (Mental Impairment and Unfitness to be Tried) Act 1997* (Vic), I am pleased to submit the annual report on the operations of the Forensic Leave Panel for the year ending 31 December 2021 for tabling in parliament.

A copy of this report has also been provided to the Minister for Mental Health, the Hon. Gabrielle Williams MP, and the Minister for Disability, Ageing and Carers, the Hon. Colin Brooks MP, who are also responsible in part for the operation of the Act.

Yours sincerely



**The Hon Justice Terry Forrest**  
President  
Forensic Leave Panel

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# President’s report

I am pleased to present the annual report of the Forensic Leave Panel for 2021 – my third annual report as president of the panel and my ninth year as a judicial panel member.

## Continued impact of COVID-19

In 2020 the panel moved its operations online due to the COVID-19 pandemic. In 2021 the panel continued to operate online in compliance with pandemic orders and public health recommendations.

We also made ongoing efforts to refine and improve the experience of online hearings for all participants. Forensic patients and residents continued to benefit from the participation of their support people (usually family members), legal representatives and interpreters in online hearings. Where possible, we made arrangements for these hearing participants to be present with forensic patients or residents at their facility during online hearings.

Despite the challenges posed by the COVID-19 pandemic, online hearings have proven to be an effective method to ensure hearings run uninterrupted and are conducted in a safe way for all participants.

## Forensic Leave Panel Reform Project

The final stages of the Forensic Leave Panel Reform Project were completed in 2021. The project has provided a strong foundation for ongoing development of the panel and continuous improvement of panel processes.

The project was initiated in late 2018 in partnership with the Department of Health and the Department of Families, Fairness and Housing (formerly the Department of Health and Human Services) and Forensicare. The project sought to modernise the operations of the panel, improve understanding of the panel’s processes, promote engagement by forensic patients and residents in forensic leave processes and support panel members.

Redesigned leave application forms and accompanying documents were rolled out in 2020. The forms have proven to be much easier to complete and have facilitated forensic patients and residents to be more involved in the application process. A range of resources explaining the forensic leave process were also developed for forensic patients and residents, carers and families, and staff. The resources explain the forensic leave process, the role of the panel and how to seek further information and support, in a clear and understandable format. In 2021 we provided printed copies of these resources to Forensic Residential Services and Forensicare for distribution. The resources are also openly accessible on the Forensic Leave Panel website.

The modernisation of the panel’s operations and improvements to panel processes continues to support consumer-focused rehabilitation and reintegration into the community.

## Royal Commission into Victoria’s Mental Health System

The panel welcomes the government’s investment in forensic mental health services including a major upgrade of Thomas Embling Hospital.

The Victorian Budget 2021–22 will invest $349.6 million to deliver an extra 82 secure mental health beds and supporting infrastructure while also supporting new jobs.

These major works at Thomas Embling Hospital include a new dedicated 34-bed women’s precinct and a 48-bed medium security men’s facility, as well as clinical administration facilities.

This upgrade delivers on a critical recommendation of the Royal Commission into Victoria’s Mental Health System, including to better resource and expand forensic mental health services to enable better support and recovery.

## Statistical data

This annual report shows that during 2021 the panel conducted 36 hearings (nine for forensic residents and 27 for forensic patients).

The number of forensic patients and residents making applications for on-ground and limited off-ground leave remained around the same, with 102 in 2020 and 100 in 2021.

The panel considered 210 applications for on-ground and limited off-ground leave and granted 92.4 per cent of those applications. The proportion of leave granted in 2021 was slightly lower than in 2020 (97 per cent) primarily due to a complex resident with significant health concerns and a patient whose leave was refused due to recent behavioural concerns.  
  
The data contained in this report shows that rates of granting and refusing applications have been fairly consistent since 2012 (refer to Appendix 3: Historical data).

## Acknowledgements

I would like to acknowledge the expertise and skill of the panel members and thank them for their invaluable contribution to its operation. In particular, I would like to thank the three members who finished up with us in 2021: Associate Professor Peter Burnett, Dr Dianne Neill and Ms Patricia Harper AM.

I want to acknowledge the important role of the lawyers from Villamanta Disability Rights Legal Service Inc., Disability Justice Australia Inc. and Victoria Legal Aid in providing legal representation and advice to applicants at panel hearings.

Finally, I wish to express my appreciation of the work and commitment of the staff ofForensic Residential Services, the Thomas Embling Hospital and the Department of Health’s Mental Health and Wellbeing Division.



The Hon Justice Terry Forrest  
President  
Forensic Leave Panel

# Definitions

Throughout this report, unless otherwise specified:

* ‘The Act’ refers to the *Crimes (Mental Impairment and Unfitness to be Tried) Act 1997*.
* ‘The panel’ refers to the Forensic Leave Panel.
* ‘Forensic patient’ or ‘patient’ is a person remanded in or committed to custody in a designated mental health service under the *Mental Health Act 2014*.
* ‘Forensic resident’ or ‘resident’ is a person remanded in or committed to custody in a residential treatment facility or a residential institution under the *Disability Act 2006*.
* ‘Types of leave’ refers to on-ground and limited off-ground leave.
* ‘Purpose of leave’ refers to activities undertaken while a forensic patient or resident is on leave.
* ‘Forensic Residential Services’ or ‘FRS’ is a network of secure and non-secure services and includes two secure residential treatment facilities, the Intensive Residential Treatment Program (IRTP) and the Long-Term Residential Program (LTRP). FRS is a part of the Victorian Department of Families, Fairness and Housing. In this report, FRS refers to the IRTP and LTRP.[[1]](#footnote-2)
* ‘Forensicare’ refers to the Victorian Institute of Forensic Mental Health, which is a statutory body established by the Mental Health Act. Thomas Embling Hospital is a campus of Forensicare.
* ‘CSO’ refers to a custodial supervision order, which commits a person to custody in a designated mental health service under the Mental Health Actor to a residential treatment facility or residential institution under the Disability Act.
* ‘NCSO’ refers to a non-custodial supervision order, which allows the person to live in the community, subject to conditions decided by the court and specified in the order.

# Forensic Leave Panel

## Who we are

The panel is an independent statutory tribunal established under the Act to support the rehabilitation of forensic patients and residents and assist with their reintegration into the community.

The panel comprises members of the judiciary, the Chief Psychiatrist and nominees, psychiatrists, psychologists and members from the community.

## What we do

The main role of the panel is to hear applications for on-ground and limited off-ground leave from patients and residents to enable them to take part in a range of activities in the community to aid their rehabilitation. The panel also hears appeals from patients and residents regarding refusal of special leave and transfers from one designated mental health service to another.

## How we do it

The panel conducts hearings at the Thomas Embling Hospital campus of Forensicare and at Forensic Residential Services (FRS) to consider applications for on-ground and limited off-ground leave from forensic patients and residents.

The panel considers applications from forensic patients and residents over the duration of their custody or detention.

Over time, the panel may grant incremental increases to a person’s leave into the community when it is appropriate to do so. Leave is granted for a maximum of six months at any one time.

In 2020, faced with the unprecedented circumstances created by the global pandemic, panel hearings moved online and were conducted via video link to ensure leave considerations for patients and residents could continue. In 2021 the hearings continued to be held online.

‘Appendix 1: The legal framework’ provides an overview of how a patient or resident may progress under the Act. It also identifies the panel’s responsibilities in the detention, management and release framework.

# Our people

## Membership

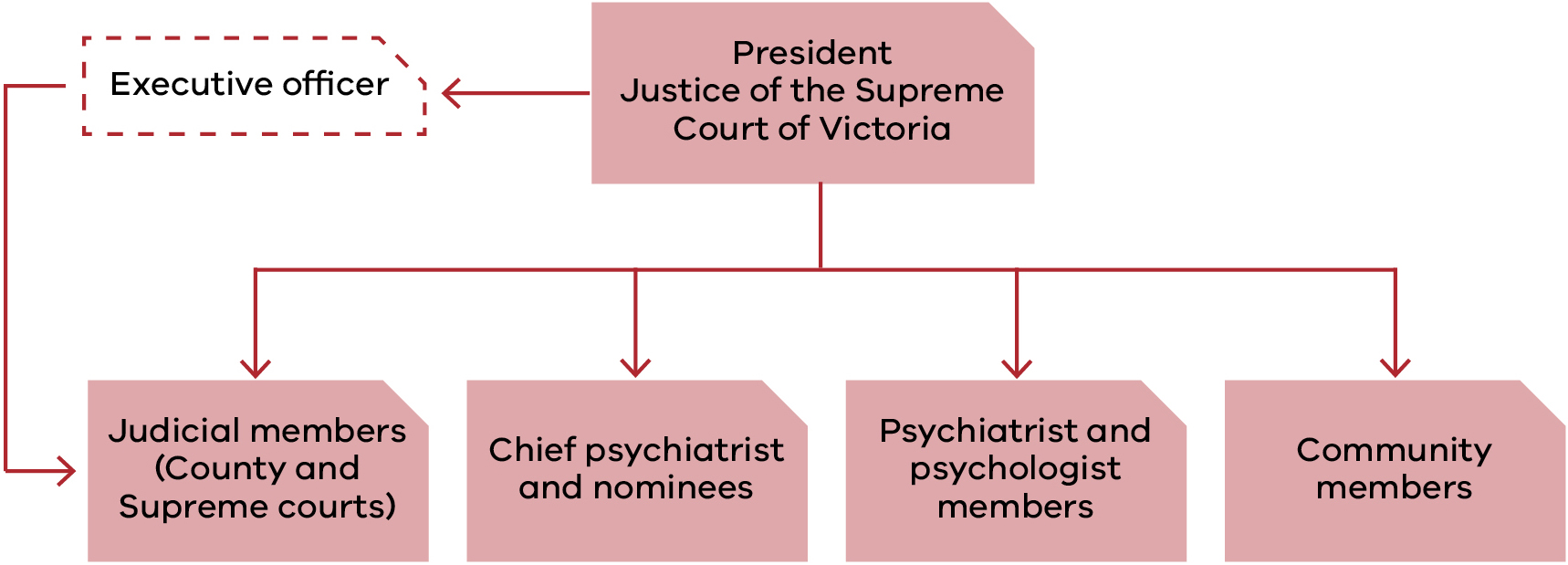
As at 31 December 2021, the panel comprised:

* seven judicial members from the Supreme Court of Victoria
* three judicial members from the County Court of Victoria
* the Chief Psychiatrist
* five nominees of the Chief Psychiatrist
* five registered medical practitioners with experience in forensic psychiatry
* three registered psychologists with experience in intellectual disability and forensic psychology
* six members to represent the views and opinions of the community.

The panel is supported by an executive officer, who works from the Mental Health and Wellbeing Division of the Victorian Department of Health.

The structure of the panel is outlined in   
Figure 1.

Figure 1: Panel membership



‘Appendix 2: Membership as at 31 December 2021’ contains a complete list of members, including their terms of appointment.

## Changes to our membership

### Chief Psychiatrist nominee

* Associate Professor Peter Burnett resigned on 31 August 2021 after serving one term.

### Psychiatrist member

* Dr Dianne Neill resigned on 12 April 2021 after serving three terms.

### Community member

* Ms Patricia Harper resigned on 1 February 2021 after serving three terms.

# The leave framework

## On-ground leave and limited off-ground leave

The panel has jurisdiction under the Act to grant on-ground and limited off-ground leave to forensic patients and forensic residents.

The maximum period for which on-ground and limited off-ground leave can be granted is six months. At the end of this period, a patient or resident may reapply to the panel.

### On-ground leave

On-ground leave allows 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’.

Forensic residents at the Long-Term Residential Program in Bundoora make extensive use of on-ground leave. Forensic patients at the Thomas Embling Hospital campus of Forensicare and forensic residents at the Intensive Residential Treatment Program do not require on-ground leave because there are enough grounds within the secure perimeter. Accordingly, no grounds have been declared under section 52 of the Act in relation to Thomas Embling Hospital or FRS.

### Limited off-ground leave

Limited off-ground leave permits patients and residents to be absent from the place of custody between 6:00 am and 9:00 pm, or outside those hours for a maximum of three days in any seven-day period.

## Criteria for granting leave

The panel may grant on-ground or limited off-ground leave if it is satisfied that both:

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

In determining whether to grant an application for leave or variation of leave, the panel must consider:

* the person’s current mental condition or pattern of behaviour
* the person’s clinical history and social circumstances
* the person’s applicant profile and leave plan or statement, prepared in accordance with the Act.

## Conditions attached to leave

The panel can place any conditions on leave that it considers appropriate. Conditions commonly relate to:

* how many, if any, escorts are required
* the duration and frequency of leave
* where a patient or resident may go (or where they may not go)
* the people a patient or resident can meet while on leave
* how a patient or resident is to travel to their leave destination
* drug and alcohol testing following leave.

# 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 with community safety.

Patients and residents can apply to the panel to take part in a broad range of activities. All leave must form part of an overarching treatment and recovery plan. Common purposes of leave granted include leave to:

* attend medical, legal, dental or allied health appointments
* undertake activities of daily living such as personal shopping, banking and exercise
* build or maintain relationships with family and friends in the community
* participate in therapeutic and rehabilitation groups, activities or programs
* attend educational and vocational activities, groups or courses
* participate in or seek voluntary and/or paid employment.

## Progression of leave

The panel takes a graduated approach to granting leave. Initially, a patient or resident is granted a small amount of leave and is escorted by two or three staff members. This could include leave to attend medical appointments or may allow a patient or resident to attend a nearby facility (such as a park or a café) for one hour a week.

If a patient or resident can successfully participate in leave over a sustained period, the panel may decrease the number of escorts and increase the number of approved locations and purposes, as well as the duration, of further leave. This process allows patients or residents to gradually increase their participation in a wide variety of activities that form part of everyday living to prepare them for release back into the community. This slow approach to leave allows for a steady reintroduction into the community and provides staff with a valuable opportunity to monitor how the person copes and adapts in a community setting.

A patient’s or resident’s progression depends on individual circumstances. The progression outlined above may not be the path followed by all patients and residents, and some may move backwards and forwards between various stages of this process, depending on their progress and response to treatment.

## Suspension of on-ground and limited off-ground leave

Regular monitoring and review of leave take place to ensure the safety of each patient or resident and members of the public are not seriously endangered. Before forensic residents or patients may access leave granted by the panel, they are subject to clinical assessment.

The Act contains provisions that allow the Chief Psychiatrist (in the case of patients) and the Secretary of the Department of Families, Fairness and Housing (in the case of residents) to suspend leave granted by the panel if they are satisfied that the safety of the person or members of the public will be seriously endangered if leave is not suspended. The panel is required to record and report any suspensions of leave.

In 2021 the Secretary did not suspend leave for any residents. There were four instances of leave being partially or wholly suspended by the Chief Psychiatrist during 2021. Due to the continued COVID-19 restrictions and stay-at-home orders in 2021, some specific leave for residents and patients could not be used.

# The hearing process

## Hearings

The panel must conduct its hearings at the place where the patient or resident is detained to enable the person to attend and participate fully in the proceedings, unless the president determines otherwise. Since 2020 hearings have been held online, with the patients and residents attending from their corresponding service.

Patient hearings are generally held at Thomas Embling Hospital and the panel is made up of:

* a judge from the Supreme or County Court (depending on the patient’s original court of disposition)
* the Chief Psychiatrist or nominee
* a registered medical practitioner with experience in forensic psychiatry
* a community member.

Resident hearings are held at FRS and the panel is made up of:

* a judge from the Supreme or County Court (depending on the resident’s original court of disposition)
* a registered psychologist with experience in intellectual disability and forensic psychology
* a community member.

## Applications for leave

A forensic patient or resident may apply to the panel for on-ground and limited off-ground leave. Each type of leave can include one or more purposes of leave.

All applications must specify:

* the type of leave
* the purpose(s) of leave (for example, grocery shopping)
* the duration and frequency of each purpose (for example, two hours, once per week)
* the destination for each purpose (for example, the name of the shopping centre)
* the relationship to the person’s rehabilitation (for example, to build or maintain daily living skills).

## Supporting documentation

Other documentation that must be submitted to the panel includes:

* an applicant profile
* a report from the consultant psychiatrist or psychologist
* a detailed leave plan prepared by the patient’s or resident’s treating team.

These are described below.

### Applicant profile

The profile must contain the following information:

* 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, its nominal term and the day from which the nominal term had been declared to run.

### Report from the consultant psychiatrist or psychologist

This report provides information on the person’s current mental state, medication, a risk assessment and any conditions that the clinician recommends should be placed on the leave. The clinician will also indicate if they support all or some of the purposes of leave being applied for by the patient or resident.

### Detailed leave plan

This plan is intended to show how any previous leaves have progressed and how the present leave applied for may contribute to the person’s rehabilitation goals. The plan also allows the person’s treating team to recommend any leave conditions or to recommend that leave should not be granted.

## Conduct of hearings

Hearings are closed to the public unless the panel directs otherwise on the basis that it is in the best interest of the person or is in the public interest. Open hearings rarely occur, although the panel may occasionally allow an observer to be present for training or professional development purposes. No open hearings were conducted in 2021.

The panel must act according to equity and good conscience and is bound by the rules of natural justice.

The panel is not required to conduct its hearings in a formal manner. It is not bound by rules or practice relating to evidence and may inform itself on matters as it sees fit. This may include requests for extra information or, by way of summons, request that others attend.

During the hearing the panel discusses the leave application with the patient or resident and their treating team. Discussions focus on such things as the person’s current mental state and pattern of behaviour, any notable achievements or incidents since the person’s last panel hearing and how any previous leaves granted by the panel have progressed.

If the patient or resident needs assistance during a hearing, the panel will engage an interpreter or other specialist, as necessary. During the year, the panel engaged an interpreter on 15 occasions,[[2]](#footnote-3) in the following languages:

* Auslan
* Arabic
* Filipino
* Italian
* Mandarin
* Turkish
* Vietnamese.

Applicants have a right to legal representation at hearings. One patient and four residents chose to be legally represented over the course of the year on 11 separate occasions.

## Decisions about leave

At the end of each hearing the panel advises the patient or resident of its decision and gives verbal reasons. A written determination is issued to the patient or resident after the hearing outlining the leave that was granted or refused and any conditions attached to the leave.

A patient or resident has the right to request a written statement of reasons for the decision. In 2021 no requests were made for a written statement of reasons.

# Operational report

## The year in review

### Forensic patients

| Measure | 2021 | 2020 | Change |
| --- | --- | --- | --- |
| Applicants | 91 | 91 | 0 |
| Male applicants | 76 | 75 | +1 |
| Female applicants | 15 | 16 | –1 |
| Applicants on Supreme Court orders | 56 | 56 | – |
| Applicants on County Court orders | 35 | 35 | 0 |
| First-time applicants | 9 | 7 | +2 |
| Hearings | 27 | 20 | +7 |
| Applications received | 191 | 170 | +21 |
| Individual leave purposes requested | 814 | 797 | +17 |
| Applications for on-ground leave | 0 | 0 | – |
| Applications for limited off-ground leave | 191 | 170 | +21 |
| Leave granted without modification | 79% | 80% | –1% |
| Leave granted with modification | 14% | 17% | –3% |
| Total leave granted[[3]](#footnote-4) | 93% | 97% | –4% |
| Leave refused | 7% | 5% | +2% |
| Leave suspensions by the Chief Psychiatrist | 4 | 164[[4]](#footnote-5) | –161 |
| Leave suspensions by the Secretary of the Department of Families, Fairness and Housing | N/A | N/A | N/A |
| Times a patient was assisted by an interpreter | 14[[5]](#footnote-6) | 9 | +6 |
| Languages used | 7 | 5 | +2 |
| Legal representation | 2 | 1 | +1 |
| Appeals against refusal of special leave | 0 | 0 | – |

### Forensic residents

| Measure | 2021 | 2020 | Change |
| --- | --- | --- | --- |
| Applicants | 9 | 11 | –2 |
| Male applicants | 9 | 11 | –2 |
| Female applicants | 0 | 0 | – |
| Applicants on Supreme Court orders | 3 | 4 | –1 |
| Applicants on County Court orders | 6 | 7 | –1 |
| First-time applicants | 1 | 1 | – |
| Hearings | 9 | 9 | – |
| Applications received | 19 | 27 | –8 |
| Individual leave purposes requested | 106 | 152 | –46 |
| Applications for on-ground leave | 9 | 7 | +2 |
| Applications for limited off-ground leave | 19 | 27 | –9 |
| Leave granted without modification | 75% | 89% | –14% |
| Leave granted with modification | 15% | 11% | +4% |
| Total leave granted[[6]](#footnote-7) | 90% | 99% | –9% |
| Leave refused | 10% | 0% | +10% |
| Leave suspensions by the Chief Psychiatrist | N/A | N/A | N/A |
| Leave suspensions by the Secretary of the Department of Families, Fairness and Housing | 0 | 0 | – |
| Times a resident was assisted by an interpreter | 1 | 5 | –4 |
| Languages used | 1 | 1 | – |
| Legal representation | 9 | 21 | –12 |
| Appeals against refusal of special leave | 0 | 0 | – |

The panel’s statistical information has remained relatively constant over recent years. Although variations occur in the number of hearings, applicants and applications, these differences are generally consistent with changes in the forensic patient and resident population.

However, in 2021, despite no change in the population size, forensic patients submitted a higher number of leave applications (an increase of 21), which partially contributed to seven extra hearings being held during 2021 compared with 2020.[[7]](#footnote-8) For forensic residents, the decreased population size did not result in fewer hearings as expected because extra hearings were held, when requested, for situations in which a resident had significant health concerns.

Individual applications for leave increased from 197 in 2020 to 210 in 2021. Overall, requests for distinct leave purposes decreased from 949 in 2020 to 920 in 2021. Resident requests for distinct leave purposes decreased from 152 in 2020 to 106 in 2021, whereas for patients this increased from 797 in 2020 to 814 in 2021. This is consistent with changes in the forensic resident and patient population. The number of leave applications per applicant varied from one to three, with an average of 2.1 leave applications by each forensic patient or resident.[[8]](#footnote-9) Out of the 100 applicants over the calendar year:

* Eleven made one application.
* Sixty-eight made two applications.
* Twenty-one made three applications.

‘Appendix 3: Historical data’ contains more information on the number of patients and residents, hearings, leave applications and other demographic data for the period from 2012 to 2021.

## Our finances

The Department of Health’s Mental Health and Wellbeing Division provided all operational support to the panel, managed the panel’s budget and maintained accounts and records. The department’s audited financial statements include the panel’s expenditure, which is reported in the department’s annual report.

# Appendix 1: The legal framework

The *Crimes (Mental Impairment and Unfitness to be Tried) Act 1997* provides for the management, supervision and release of people found unfit to stand trial or not guilty of an offence because of mental impairment.

Under the Act, a court can impose several different supervision orders if it finds a person unfit to plead or not guilty because of mental impairment:

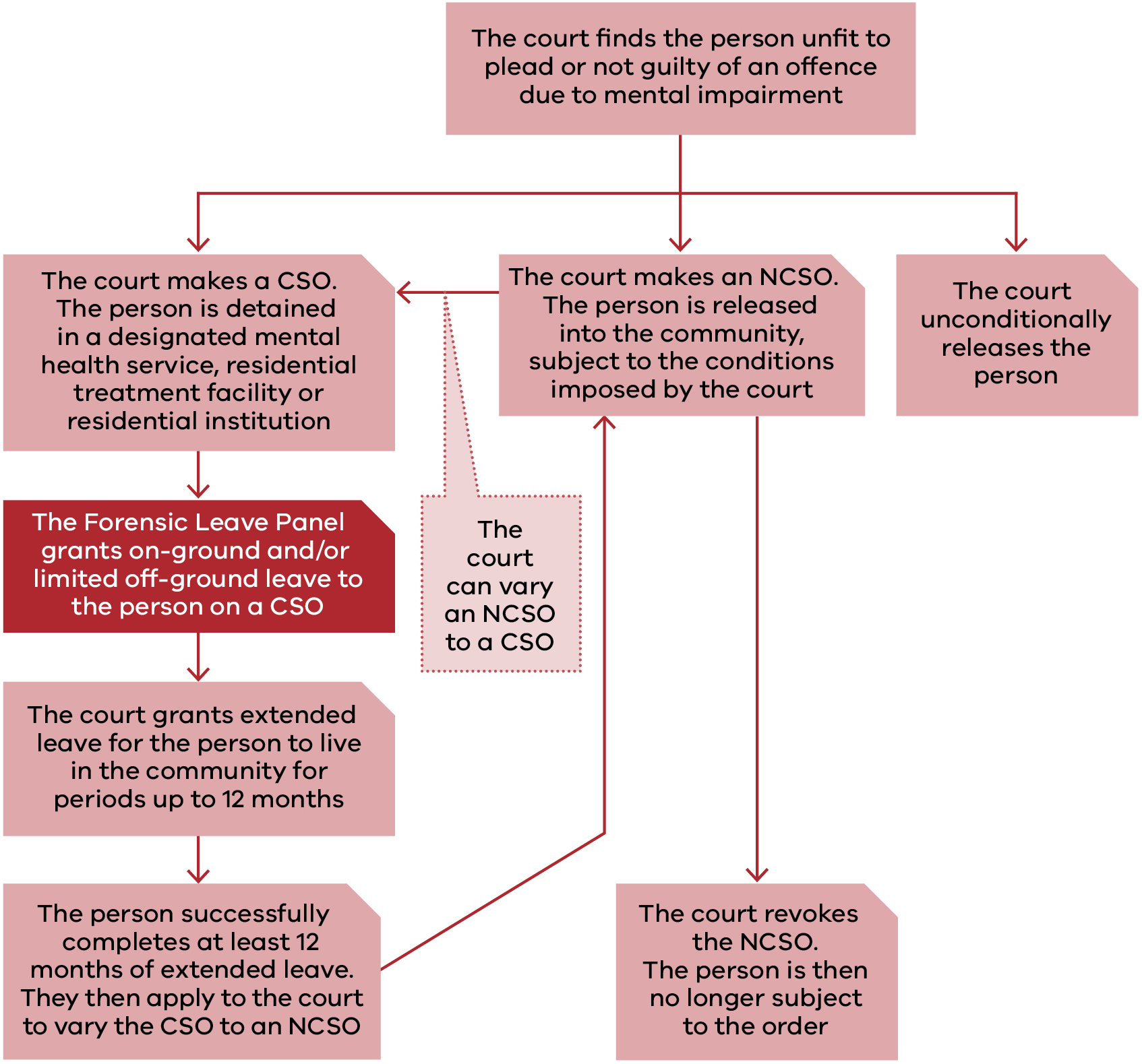
* custodial supervision orders (CSOs), which commit a person to custody in a designated mental health service under the *Mental Health Act 2014* or to a residential treatment facility or residential institution under the *Disability Act 2006*
* CSOs, which commit a person to custody in a prison but only if the court is satisfied that no practicable alternative exists
* non-custodial supervision orders (NCSOs), which allow the person to live in the community, subject to conditions decided by the court and specified in the order.

The court also has the discretion to release a person unconditionally.

Figure 2 presents a brief overview of how a person may progress through the system under the Act and shows where the panel is situated within this framework.

## Legal framework for progression under the Act

Figure 2: Legal framework for progression under the Crimes (Mental Impairment and Unfitness to be Tried) Act



# Appendix 2: Panel membership as at 31 December 2021

## Supreme Court judges

| Panel member | Current appointment | Previous term(s) of appointment |
| --- | --- | --- |
| The Hon Justice Terry Forrest  President of the Forensic Leave Panel from February 2020 | 17 April 2018  to 16 April 2023 | 26 February 2013  to 25 February 2018 |
| The Hon Justice Christopher Beale | 17 February 2020  to 16 February 2025 | 17 February 2015  to 16 February 2020 |
| The Hon Justice Michael Croucher | 17 February 2020  to 16 February 2025 | 17 February 2015  to 16 February 2020 |
| The Hon Justice Andrew Keogh | 25 July 2017  to 24 July 2022 | N/A |
| The Hon Justice Jane Dixon | 25 July 2017  to 24 July 2022 | N/A |
| The Hon Justice Rita Incerti | 28 May 2019  to 27 May 2024 | N/A |
| The Hon Justice Richard Niall | 24 February 2020  to 23 February 2025 | N/A |

## County Court judges

| Panel member | Current appointment | Previous term(s) of appointment |
| --- | --- | --- |
| Her Honour Judge Sandra Davis | 4 October 2016  to 3 October 2021 | 4 October 2011  to 3 October 2016  5 September 2006  to 4 September 2011 |
| His Honour Judge Douglas Trapnell | 31 October 2017  to 30 October 2022 | N/A |
| His Honour Judge James Parrish | 17 April 2018  to 16 April 2023 | N/A |
| Her Honour Judge Rosemary Carlin | 12 May 2020  to 11 May 2025 | N/A |

## Chief Psychiatrist and nominees

| Panel member | From | To |
| --- | --- | --- |
| Dr Neil Coventry (Chief Psychiatrist) | 20 November 2014 | Ongoing |
| Dr Steve Macfarlane | 9 November 2012 | Ongoing |
| Dr Daniel O’Connor | 27 April 2016 | Ongoing |
| Dr Vinay Lakra | 18 July 2016 | Ongoing |
| Dr Jennifer Babb | 11 March 2020 | Ongoing |
| Dr David Huppert | 4 September 2020 | Ongoing |

## Psychiatrist members

| Panel member | Current appointment | Previous term(s) of appointment |
| --- | --- | --- |
| Dr Michael Epstein | 1 July 2018  to 30 June 2022 | 24 October 2014  to 30 June 2018  24 October 2010  to 23 October 2014  24 October 2006  to 23 October 2010  10 September 2002  to 9 September 2006  21 April 1998  to 20 April 2002 |
| Dr Diane Neill | 1 July 2018  to 12 April 2021 | 6 July 2014  to 30 June 2018  6 July 2010  to 30 June 2014 |
| Dr Teresa Flower | 27 March 2018  to 26 March 2022 | 30 August 2013  to 29 August 2017  30 August 2009  to 29 August 2013 |
| Dr Jennifer Torr | 2 June 2019  to 1 June 2023 | 2 June 2015  to 1 June 2019 |
| Dr Leon Turnbull | 27 March 2018  to 26 March 2022 | N/A |
| Dr Ahmed Mashhood | 1 July 2018  to 30 June 2022 | N/A |

## Psychologist members

| Panel member | Current appointment | Previous term(s) of appointment |
| --- | --- | --- |
| Ms Janina Tomasoni | 1 July 2018  to 30 June 2022 | 24 October 2014  to 30 June 2018  24 October 2010  to 23 October 2014  24 October 2006  to 23 October 2010  10 September 2002  to 9 September 2006 |
| Dr Michelle Noon | 1 July 2018  to 30 June 2022 | N/A |
| Dr Marilyn McMahon | 30 August 2019  to 29 August 2023 | 30 August 2017  to 29 August 2019 |

## Community members

| Panel member | Current appointment | Previous term(s) of appointment |
| --- | --- | --- |
| Mr Paul Newland | 30 August 2019  to 29 August 2023 | 30 August 2017  to 29 August 2019  30 August 2013  to 29 August 2017  30 August 2009  to 29 August 2013  30 August 2005  to 29 August 2009  12 December 2000  to 11 December 2004  21 April 1998  to 20 April 2000 |
| Mr Jack (Kyriakos) Nalpantidis | 1 July 2018  to 30 June 2022 | 24 October 2014  to 30 June 2018  24 October 2010  to 23 October 2014  24 October 2006  to 23 October 2010 |
| Ms Patricia Harper AM | 30 August 2019  to 1 February 2021 | 30 August 2017  to 29 August 2019  30 August 2013  to 29 August 2017  30 August 2009  to 29 August 2013 |
| Dr Genevieve Grant | 30 August 2019  to 29 August 2023 | 30 August 2017  to 29 August 2019  30 August 2013  to 29 August 2017  30 August 2009  to 29 August 2013 |
| Mr Jie (George) Jiang | 1 July 2018  to 30 June 2022 | 15 July 2014  to 30 June 2018 |
| Dr Patricia Mehegan | 1 July 2018  to 30 June 2022 | N/A |
| Dr Leslie Cannold | 30 August 2019  to 29 August 2023 | N/A |

# Appendix 3: Historical data

The table below provides information on the number of patients and residents, hearings, leave applications and other demographic data for the period from 2012 to 2021.

## General information

| Application information | 2021 | 2020 | 2019 | 2018 | 2017 | 2016 | 2015 | 2014 | 2013 | 2012 |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| Forensic patients | 91 | 91 | 93 | 85 | 88 | 74 | 74 | 76 | 75 | 69 |
| Forensic residents | 9 | 11 | 10 | 7 | 8 | 6 | 4 | 3 | 3 | 2 |
| Hearings[[9]](#footnote-10) | 36 | 29 | 30 | 27 | 27 | 26 | 26 | 21 | 24 | 18 |
| Hearing days[[10]](#footnote-11) | 31[[11]](#footnote-12) | 25 | 26 | 24 | 23 | 21 | 21 | 18 | 18 | 18 |
| Total leave applications made to the panel | 210 | 197 | 216 | 216 | 228 | 201 | 180 | 227 | 216 | 181 |
| Average leave applications made per hearing | 5.8 | 6.8 | 7.2 | 8 | 8.4 | 7.7 | 6.9 | 10.8 | 9 | 10 |
| Average leave applications by each forensic patient or resident | 2.1 | 1.9 | 2.1 | 2.3 | 2.4 | 2.5 | 2.3 | 2.9 | 2.8 | 2.5 |
| Average leave purposes per application | 4.4 | 4.8 | 4.5 | 4.8 | 4.9 | 4.9 | 4.8 | 5 | 4.7 | 5 |

## Type of leave applications

| Type of leave | 2021 | 2020 | 2019 | 2018 | 2017 | 2016 | 2015 | 2014 | 2013 | 2012 |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| On-ground | 9 | 7 | 5 | 4 | 17 | 12 | 7 | 6 | 6 | 5 |
| Off-ground | 210 | 197 | 216 | 216 | 211 | 189 | 173 | 221 | 210 | 176 |
| Leave purposes | 920 | 949 | 974 | 1025 | 1,107 | 980 | 874 | 1,139 | 1,023 | 913 |

## Leave requests granted, suspended, appealed and revoked

| Leave measure[[12]](#footnote-13) | 2021 | 2020 | 2019 | 2018 | 2017 | 2016 | 2015 | 2014 | 2013 | 2012 |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| Granted | 92% | 97% | 96% | 90% | 85% | 86% | 91% | 90% | 85% | 86% |
| Modified and granted | 14% | 16% | 8% | 7% | 9% | 7% | 4% | 4% | 6.7% | 5.4% |
| Refused | 7.6% | 4% | 5% | 4% | 6% | 7% | 5% | 6% | 7.3% | 7.8% |
| Times applicants were assisted by interpreters | 15 | 14 | 16 | 14 | 9 | 7 | 8 | 18 | 13 | 14 |
| Times applicants were legally represented | 11 | 22 | 11 | 11 | 20 | 29 | 14 | 36 | 11 | 7 |
| Number of occasions patients or residents had on-ground or limited off-ground leave suspended | 3[[13]](#footnote-14) | 164 | 9 | 9 | 17 | 10 | 14 | 10 | 12 | 16 |
| Appeals against refusal to grant special leave by the authorised psychiatrist or the Secretary of the Department of Health | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 0 | 0 | 0 |
| Appeals against the transfer of a forensic patient from one designated mental health service to another | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Patients and residents granted extended leave by a court | 16 | 9 | 4 | 11 | 10 | 9 | 6 | 6 | 8 | 9 |
| Revocation of extended leave by the court | 1 | 0 | 2 | 1 | 1 | 0 | 1 | 0 | 1 | 1 |

## Applicant demographics

| Demographic | 2021 | 2020 | 2019 | 2018 | 2017 | 2016 | 2015 | 2014 | 2013 | 2012 |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| Male | 85 | 86 | 87 | 77 | 81 | 67 | 64 | 67 | 65 | 57 |
| Female | 15 | 16 | 16 | 15 | 15 | 13 | 14 | 12 | 13 | 12 |
| Average age of applicants (years) | 46.6 | 52 | 43.6 | 44.7 | 43 | 43.1 | 42.5 | 42.7 | 41.9 | 41.3 |

## Sentencing information

| Sentencing court/period | 2021 | 2020 | 2019 | 2018 | 2017 | 2016 | 2015 | 2014 | 2013 | 2012 |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| County Court | 41 | 42 | 44 | 36 | 37 | 26 | 24 | 24 | 21 | 17 |
| Supreme Court | 59 | 60 | 59 | 56 | 59 | 54 | 54 | 55 | 57 | 52 |
| Average length of custody (years)[[14]](#footnote-15) | 8.8[[15]](#footnote-16) | 8.4 | 7.9 | 8.6 | 8.4 | 9.0 | 9.0 | 8.2 | 8.6 | 8.2 |
| Longest period of custody (years)[[16]](#footnote-17) | 32 | 31 | 30 | 29.4 | 41.4 | 40.4 | 39.4 | 38.4 | 40.4 | 39.4 |

# Appendix 4: Figure description

## Figure 2: Legal framework for progression under the Act Crimes (Mental Impairment and Unfitness to be Tried) Act 1997

The diagram shows what happens once the court finds a person unfit to plead or not guilty of an offence due to mental impairment and how they progress through the system under the Act.

The court can make a custodial supervision order, which sees the person detained in a designated mental health service, residential treatment facility or residential institution. While detained, the Forensic Leave Panel grants on-ground and/or limited off-ground leave to that person until such time as the person applies for, and the court grants, extended leave for the person to live in the community for periods up to 12 months. Once the person successfully completes at least 12 months of extended leave they apply to the court to vary the custodial supervision order to a non-custodial supervision order.

The court can make a non-custodial supervision order, which sees the person released into the community, subject to the conditions imposed by the court. The court can revoke the non-custodial supervision order, meaning the person is no longer subject to the order. The court can also vary a non-custodial supervision order to a custodial supervision order.

The court can unconditionally release the person.

1. In August 2021, following a restructure, the former Disability Forensic Assessment and Treatment Services (DFATS) became part of the newly formed FRS. In previous annual reports, DFATS referred to the IRTP. [↑](#footnote-ref-2)
2. In 2021 the panel engaged an interpreter on 15 occasions, including one instance in which the interpreter could not provide assistance during an online hearing due to technical difficulties. [↑](#footnote-ref-3)
3. The percentage of leaves granted, modified or refused by the panel may not always total 100 per cent because at hearings applicants may withdraw leave requests, the panel may grant modified leave requests or, on occasion, grant additional leave requests. [↑](#footnote-ref-4)
4. Leave for all forensic patients was suspended by the Chief Psychiatrist on two separate occasions in 2020 due to COVID-19 restrictions. [↑](#footnote-ref-5)
5. There was another occasion in which following technical difficulties, an applicant agreed to proceed with a hearing without the assistance of an interpreter. [↑](#footnote-ref-6)
6. The percentage of leaves granted, modified or refused by the panel may not always total 100 per cent because at hearings applicants may withdraw leave requests, the panel may grant modified leave requests or, on occasion, grant additional leave requests. [↑](#footnote-ref-7)
7. Other contributing factors were panel hearing scheduling requirements, which necessitated holding multiple smaller hearings on the same day to process applications in a timely manner – for example, holding a County Court hearing and a Supreme Court hearing on the same day. [↑](#footnote-ref-8)
8. These figures are for the 100 forensic patients and residents who applied for leave in 2021. It is noted that some forensic patients and residents did not apply for leave. [↑](#footnote-ref-9)
9. The total number of times the panel convened for hearings for forensic patients and forensic residents. [↑](#footnote-ref-10)
10. Prior to 2021, hearings at Thomas Embling Hospital and the former DFATS were scheduled (when possible) to coincide so relevant members of a division of the panel could attend both hearings. [↑](#footnote-ref-11)
11. In 2021, there were four days in which more than one panel hearing was held. [↑](#footnote-ref-12)
12. The percentage of leaves granted, modified or refused by the panel may not always total 100 per cent because at hearings applicants may withdraw leave requests, the panel may grant modified leave requests or, on occasion, grant additional leave requests. [↑](#footnote-ref-13)
13. The data includes patients and residents who did not have a panel hearing in 2021. In these circumstances, a patient or resident was granted leave in 2020 that was later suspended in 2021 and the patient or resident did not apply for leave in 2021. [↑](#footnote-ref-14)
14. The reference date used to calculate the average length of custody was 31 December in each year. [↑](#footnote-ref-15)
15. The average length of custody relates to 97 panel applicants only, rather than the 100 applicants who applied for leave in 2021. It excludes people who were not in custody as of 31 December 2021 for various reasons including but not limited to death or being granted extended leave. [↑](#footnote-ref-16)
16. The decrease in 2018 is due to a long-term forensic patient receiving extended leave. [↑](#footnote-ref-17)