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| Forensic Leave Panel |
| Annual report 2020 |
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19 October 2021

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

Dear Attorney-General

In accordance with s. 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 2020 for tabling in parliament.

A copy of this report has also been provided to the Minister for Mental Health and the Acting Minister for Disability, Ageing and Carers, the Hon. James Merlino MP who is 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 2020, for what was a very challenging year.

## Response to COVID-19

The COVID-19 pandemic posed challenges for everyone, and the panel was no exception.

With the support of the Department of Health (formerly the Department of Health and Human Services), the panel was able to quickly move all operations online, ensuring that forensic patients and forensic residents could continue to be seen in a way that was safe and consumer-focused.

## Forensic Leave Panel Reform Project

The Forensic Leave Panel Reform Project continued throughout 2020 and saw the implementation of some major changes and development of new resources.

The redesign of the leave application forms and accompanying documentation was a large piece of work, and it was great to see them rolled out throughout the year. The forms redesign is intended to make them easier to complete, allowing consumers to feel confident that they can understand and complete the forms on their own if they choose. The leave application forms now come in a variety of different formats, allowing consumers to complete them on a computer, print them to complete by hand, or they can access a design that includes visual aides to assist them. I am happy to report that it is already apparent that consumers are feeling more engaged and empowered by these changes.

A range of resources explaining the forensic leave process has also been developed for consumers, carers and families, and staff. These resources explain the forensic leave process and the role of the panel in easy-to-understand language while also providing details on how to seek further information and support.

The improvements to operations and overall modernisation of the panel achieved under this project cannot be overstated.

## Royal Commission into Victoria’s Mental Health System

The final report of the Royal Commission into Victoria’s Mental Health System was tabled in parliament by the Victorian Government and publicly released on 2 March 2021. The panel welcomes the report and the government’s commitment to all 65 recommendations including to better resource and expand forensic mental health services to enable better support and recovery.

## Crimes (Mental Impairment and Unfitness to be Tried) Amendment Bill

On 17 March 2020 the government introduced the Crimes (Mental Impairment and Unfitness to be Tried) Amendment Bill 2020 to parliament.

Subject to passage through parliament, this Bill will transfer the functions of the panel to the Mental Health Tribunal, creating a new Forensic Division of the tribunal. The Forensic Division will comprise a legal member (providing the legal expertise previously provided by the judicial members on the panel), a psychiatrist or psychologist member, and a community member. The position of the Chief Psychiatrist and nominees on the panel will not be transitioned to the tribunal; however, the Chief Psychiatrist will continue to oversee mental health services and provide clinical leadership.

I acknowledge that this presents a significant period of change for the panel and I thank panel members for their support. The panel is committed to doing everything we can to support the smooth transition of the panel’s functions to the tribunal.

## Statistical data

This annual report shows that during 2020 the panel conducted 29 hearings (nine for forensic residents and 20 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 103 in 2019 to 102 in 2020.

The panel considered 197 applications for on-ground and limited off-ground leave and granted 97 per cent of those applications.

The data contained in this report shows that the rates of granting and refusing applications have been fairly consistent since 2011 (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 2020: The Hon. Justice Kevin Bell, Her Honour Judge Susan Pullen and His Honour Judge Frank Saccrado.

I would also like to acknowledge the passing of Associate Professor John Fielding in November 2020. Professor Fielding joined the panel as a psychiatrist member in July 2018 and his forensic psychiatry expertise was a real asset to the panel.

I want to acknowledge the important role of the lawyers from Villamanta Disability Rights Legal Service 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 of the Disability Forensic Assessment and Treatment Service, the Long-Term Residential Program, the Thomas Embling Hospital and the Mental Health Division of the Department of Health.



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
* ‘DFATS’ refers to the Disability Forensic Assessment and Treatment Service, which is a part of the Victorian Department of Families, Fairness and Housing, formerly the Department of Health and Human Services (for the purpose of this report, the new departmental name will be used)
* ‘Forensicare’ refers to the Victorian Institute of Forensic Mental Health, which is a statutory body established by the Mental Health Act
* ‘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.

# The 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 participate 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 DFATS in Fairfield 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 period 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 to ensure leave considerations for patients and residents could continue.

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 2020, the panel comprised:

* seven judicial members from the Supreme Court of Victoria
* four judicial members from the County Court of Victoria
* the Chief Psychiatrist
* six nominees of the Chief Psychiatrist
* six registered medical practitioners with experience in forensic psychiatry
* three registered psychologists with experience in intellectual disability and forensic psychology
* seven 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 2020’ contains a complete list of members, including their terms of appointment.

## Changes to our membership

### Supreme Court judicial members

* Justice Kevin Bell retired on 12 March 2020 after serving three terms.
* Justice Susan Pullen resigned on 15 November 2020 after serving three terms.
* Justice Christopher Beale was reappointed for his second term on 17 February 2020.
* Justice Michael Croucher was reappointed for his second term on 17 February 2020.
* Justice Richard Niall began his first term on 24 February 2020.

### County Court judicial members

* Judge Frank Saccardo resigned in February 2020 after serving two terms.
* Judge Rosemary Carlin began her first term on 12 May 2020.

### Chief Psychiatrist nominees

* Dr Jennifer Babb was nominated on 11 May 2020.
* Dr David Huppert was nominated on 4 September 2020.

### Psychiatrist members

* Associate Professor John Fielding passed away in November 2020 after serving one term.

# 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 DFATS do not require on-ground leave because there are sufficient grounds within the secure perimeter. Accordingly, no grounds have been declared under s. 52 of the Act in relation to Thomas Embling Hospital or DFATS.

### 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 participate 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 in order 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 2020 the Secretary did not suspend leave for any residents. There were 164 instances of leave being partially or wholly suspended by the Chief Psychiatrist during 2020. The high number of suspensions was due to leave for all forensic patients being suspended by the Chief Psychiatrist on two separate occasions in 2020 due to COVID-19 restrictions. COVID-19 restrictions and stay-at-home orders also affected specific leave for residents and patients. Anecdotally, the panel observed that a number of periods of leave 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.

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 DFATS in Fairfield 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 demonstrate 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 2020.

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 additional information or, by way of summons, request that another party 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 requires assistance during a hearing, the panel will engage an interpreter or other specialist, as necessary. During the year, the panel engaged an interpreter on 14 occasions, in the following languages:

* Auslan
* Arabic
* Mandarin
* Turkish
* Vietnamese.

Applicants have a right to legal representation at hearings. One patient and 10 residents chose to be legally represented over the course of the year on 22 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 2020 there was one request for a written statement of reasons.

# Operational report

## The year in review

### Forensic patients

| Measure | 2020 | 2019 | Change |
| --- | --- | --- | --- |
| Applicants | 91 | 93 | –2 |
| Male applicants | 75 | 77 | –2 |
| Female applicants | 16 | 16 | – |
| Applicants on Supreme Court orders | 56 | 56 | – |
| Applicants on County Court orders | 35 | 37 | –2 |
| First-time applicants | 7 | 10 | –3 |
| Hearings | 20 | 25 | –5 |
| Applications received | 170 | 200 | –30 |
| Individual leave purposes requested | 797 | 883 | –86 |
| Applications for on-ground leave | 0 | 0 | – |
| Applications for limited off-ground leave | 170 | 200 | –30 |
| Leave granted without modification | 80% | 87% | –7% |
| Leave granted with modification | 17% | 9% | +8% |
| Total leave granted[[1]](#footnote-1) | 97% | 95% | +2% |
| Leave refused | 5% | 5% | – |
| Leave suspensions by the Chief Psychiatrist | 164[[2]](#footnote-2) | 9 | +155 |
| Leave suspensions by the Secretary of the (then) Victorian Department of Health and Human Services | N/A | N/A | N/A |
| Times a patient or resident was assisted by an interpreter | 9 | 12 | –3 |
| Languages used | 5 | 5 | – |
| Legal representation | 1 | 1 | – |
| Appeals against refusal of special leave | 0 | 0 | – |

### Forensic residents

| Measure | 2020 | 2019 | Change |
| --- | --- | --- | --- |
| Applicants | 11 | 10 | +1 |
| Male applicants | 11 | 10 | +1 |
| Female applicants | 0 | 0 | – |
| Applicants on Supreme Court orders | 4 | 3 | +1 |
| Applicants on County Court orders | 7 | 7 | – |
| First-time applicants | 1 | 4 | –3 |
| Hearings | 9 | 5 | +4 |
| Applications received | 27 | 16 | +11 |
| Individual leave purposes requested | 152 | 91 | +61 |
| Applications for on-ground leave | 7 | 5 | +2 |
| Applications for limited off-ground leave | 27 | 16 | +11 |
| Leave granted without modification | 89% | 99% | +10% |
| Leave granted with modification | 11% | 1% | +10% |
| Total leave granted[[3]](#footnote-3) | 99% | 100% | –1% |
| Leave refused | 0% | 0% | – |
| Leave suspensions by the Chief Psychiatrist | N/A | N/A | N/A |
| Leave suspensions by the Secretary of the (then) Victorian Department of Health and Human Services | 0 | 0 | – |
| Times a patient or resident was assisted by an interpreter | 5 | 4 | +1 |
| Languages used | 1 | 1 | – |
| Legal representation | 21 | 10 | +11 |
| 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 consistent with changes in the forensic patient and resident population.

Individual applications for leave decreased from 216 in 2019 to 197 in 2020. Overall requests for distinct leave purposes decreased from 974 in 2019 to 949 in 2020. Resident requests for distinct leave purposes increased from 91 in 2019 to 152 in 2020, whereas for patients this decreased from 883 in 2019 to 797 in 2020. This is consistent with changes in the forensic resident and patient population. The number of leave applications per person varied from one to three, with an average of 1.9 leave applications by each forensic patient or resident. Out of the 102 applicants over the calendar year:

* Nineteen made one application.
* Seventy-one made two applications.
* Twelve 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 2011 to 2020.

## Our finances

The Mental Health and Wellbeing Division of the Department of Health 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 persons 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:

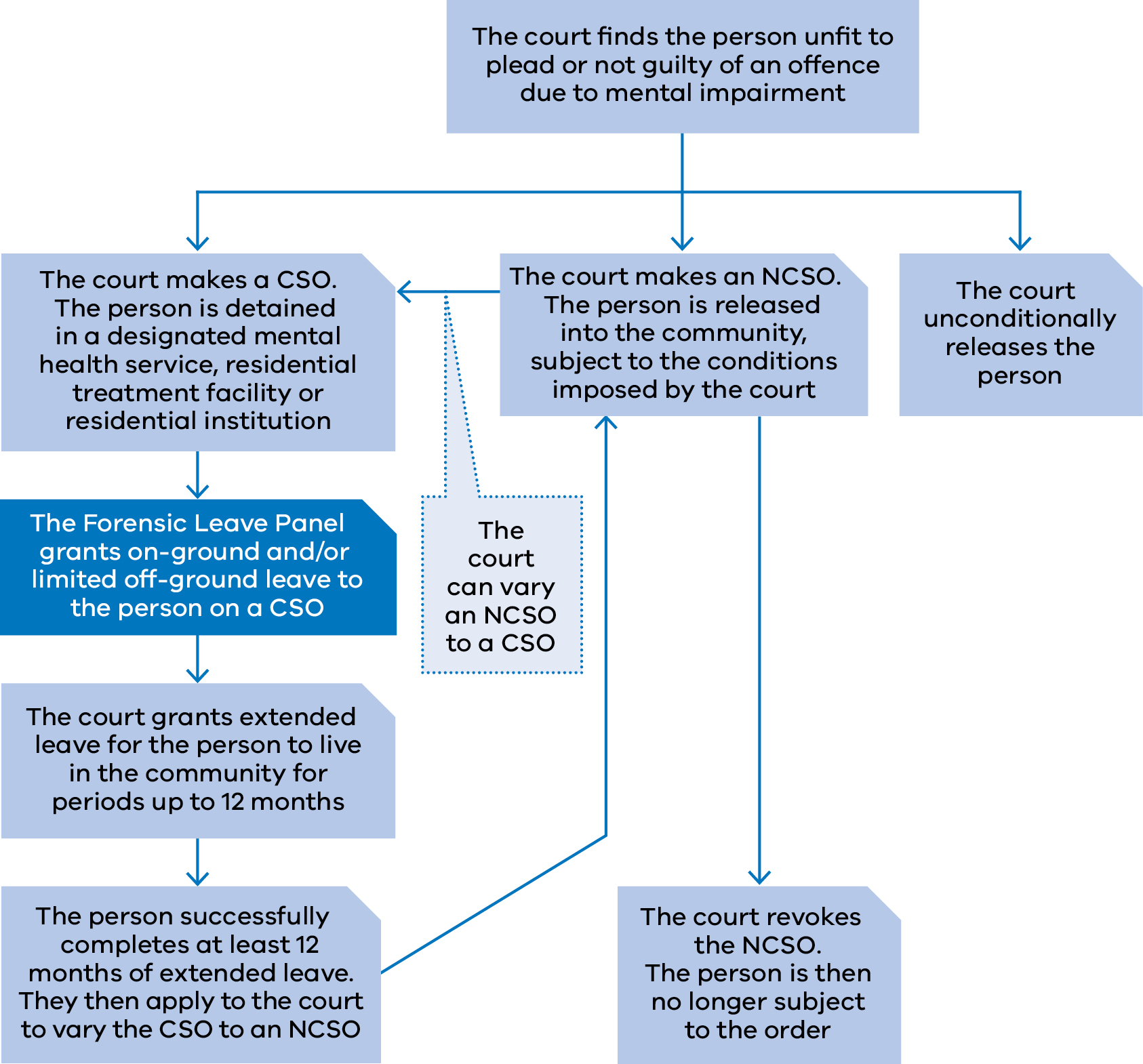
* custodial supervision orders (CSOs), which commit a person to custody in a designated mental health service under the *Mental Health Act 2014* or to a residential treatment facility or residential institution under the *Disability Act 2006*
* CSOs, which commit a person to custody in a prison but only 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 demonstrates 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 2020

## 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 |
| Assoc. Prof. Peter Burnett | 18 December 2015 | 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 30 June 2022 | 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 29 August 2023 | 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 2011 to 2020.

## General information

| Application information | 2020 | 2019 | 2018 | 2017 | 2016 | 2015 | 2014 | 2013 | 2012 | 2011 |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| Forensic patients | 91 | 93 | 85 | 88 | 74 | 74 | 76 | 75 | 69 | 67 |
| Forensic residents | 11 | 10 | 7 | 8 | 6 | 4 | 3 | 3 | 2 | 2 |
| Hearings[[4]](#footnote-4) | 29 | 30 | 27 | 27 | 26 | 26 | 21 | 24 | 18 | 22 |
| Hearing days[[5]](#footnote-5) | 25 | 26 | 24 | 23 | 21 | 21 | 18 | 18 | 18 | 19 |
| Total leave applications made to the panel | 197 | 216 | 216 | 228 | 201 | 180 | 227 | 216 | 181 | 184 |
| Average leave applications made per hearing | 6.8 | 7.2 | 8 | 8.4 | 7.7 | 6.9 | 10.8 | 9 | 10 | 8.4 |
| Average leave applications by each forensic patient or resident | 1.9 | 2.1 | 2.3 | 2.4 | 2.5 | 2.3 | 2.9 | 2.8 | 2.5 | 2.6 |
| Average leave purposes per application | 4.8 | 4.5 | 4.8 | 4.9 | 4.9 | 4.8 | 5 | 4.7 | 5 | 5.2 |

## Type of leave applications

| Type of leave | 2020 | 2019 | 2018 | 2017 | 2016 | 2015 | 2014 | 2013 | 2012 | 2011 |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| On-ground | 7 | 5 | 4 | 17 | 12 | 7 | 6 | 6 | 5 | 4 |
| Off-ground | 197 | 216 | 216 | 211 | 189 | 173 | 221 | 210 | 176 | 180 |
| Leave purposes | 949 | 974 | 1025 | 1,107 | 980 | 874 | 1,139 | 1,023 | 913 | 962 |

## Leave requests granted, suspended, appealed and revoked

| Leave measure[[6]](#footnote-6) | 2020 | 2019 | 2018 | 2017 | 2016 | 2015 | 2014 | 2013 | 2012 | 2011 |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| Granted | 97% | 96% | 90% | 85% | 86% | 91% | 90% | 85% | 86% | 87% |
| Modified and granted | 16% | 8% | 7% | 9% | 7% | 4% | 4% | 6.7% | 5.4% | 4.5% |
| Refused | 4% | 5% | 4% | 6% | 7% | 5% | 6% | 7.3% | 7.8% | 5.5% |
| Times applicants were assisted by interpreters | 14 | 16 | 14 | 9 | 7 | 8 | 18 | 13 | 14 | 11 |
| Times applicants were legally represented | 22 | 11 | 11 | 20 | 29 | 14 | 36 | 11 | 7 | 6 |
| Number of occasions patients or residents had on-ground or limited off-ground leave suspended | 164 | 9 | 9 | 17 | 10 | 14 | 10 | 12 | 16 | 9 |
| Appeals against refusal to grant special leave by the authorised psychiatrist or the Secretary of the (then) Victorian Department of Health and Human Services | 0 | 0 | 0 | 0 | 0 | 1 | 0 | 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 | 9 | 4 | 11 | 10 | 9 | 6 | 6 | 8 | 9 | 4 |
| Revocation of extended leave by the court | 0 | 2 | 1 | 1 | 0 | 1 | 0 | 1 | 1 | 1 |

## Applicant demographics

| Demographic | 2020 | 2019 | 2018 | 2017 | 2016 | 2015 | 2014 | 2013 | 2012 | 2011 |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| Male | 86 | 87 | 77 | 81 | 67 | 64 | 67 | 65 | 57 | 58 |
| Female | 16 | 16 | 15 | 15 | 13 | 14 | 12 | 13 | 12 | 11 |
| Average age of applicants (years) | 52 | 43.6 | 44.7 | 43 | 43.1 | 42.5 | 42.7 | 41.9 | 41.3 | 40 |

## Sentencing information

| Sentencing court/period | 2020 | 2019 | 2018 | 2017 | 2016 | 2015 | 2014 | 2013 | 2012 | 2011 |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| County Court | 42 | 44 | 36 | 37 | 26 | 24 | 24 | 21 | 17 | 20 |
| Supreme Court | 60 | 59 | 56 | 59 | 54 | 54 | 55 | 57 | 52 | 49 |
| Average length of custody (years)[[7]](#footnote-7) | 8.4 | 7.9 | 8.6 | 8.4 | 9.0 | 9.0 | 8.2 | 8.6 | 8.2 | 7.1 |
| Longest period of custody (years)[[8]](#footnote-8) | 31 | 30 | 29.4 | 41.4 | 40.4 | 39.4 | 38.4 | 40.4 | 39.4 | 38 |

# 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 demonstrates 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. 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-1)
2. Leave for all forensic patients was suspended by the Chief Psychiatrist on two separate occasions in 2020 due to COVID-19 restrictions. [↑](#footnote-ref-2)
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-3)
4. The number of hearings held for forensic residents and the number of hearings held for forensic patients. [↑](#footnote-ref-4)
5. Hearings at Thomas Embling Hospital and DFATS are scheduled (when possible) to coincide so that relevant members of a division of the panel can attend both hearings. [↑](#footnote-ref-5)
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-6)
7. The reference date used to calculate the average length of custody was 31 December in each year. Prior to 2012, the reference date is likely to have been the undefined year, accounting for the percentage increase in 2012. [↑](#footnote-ref-7)
8. The decrease in 2018 is due to a long-term forensic patient receiving extended leave. [↑](#footnote-ref-8)