

**REPORT OF THE REVIEW PANEL APPOINTED TO  
CONSIDER LEAVE ARRANGEMENTS FOR PATIENTS AT  
THE VICTORIAN INSTITUTE OF FORENSIC MENTAL  
HEALTH**

May 2001

## Contents

<b>1</b>	<b>INTRODUCTION AND OVERVIEW .....</b>	<b>1</b>
<b>2</b>	<b>BACKGROUND .....</b>	<b>3</b>
2.1	THE VICTORIAN INSTITUTE OF FORENSIC MENTAL HEALTH (FORENSICARE) AND THE THOMAS EMBLING HOSPITAL .....	3
2.2	LEGISLATIVE PROVISIONS FOR PATIENTS AT THOMAS EMBLING .....	3
2.2.1	Legal Status of Patients .....	3
2.2.2	Security Patients .....	4
2.2.3	Forensic Patients .....	5
2.2.4	Involuntary Patients .....	5
2.3	NUMBER OF PATIENTS .....	6
2.4	PATIENT LEAVE .....	6
2.4.1	Figure 1: Current Leave Process .....	8
2.4.2	Leave for Security Patients .....	8
2.4.3	Leave for Forensic Patients .....	9
2.4.4	Leave for Involuntary Patients .....	10
2.4.5	Patient Leave at Thomas Embling .....	11
2.5	PATIENTS ABSCONDING FROM LEAVE .....	12
2.5.1	October 2000 .....	12
2.5.2	November 2000 .....	12
2.5.3	March 2001 .....	12
2.5.4	The Forensicare Response to Patients Absconding .....	13
<b>3</b>	<b>THE LEAVE PROCESS .....</b>	<b>14</b>
3.1	APPLICATION FOR LEAVE .....	14
3.1.1	Leave Plans .....	14
3.1.2	Developing and Considering Leave Plans .....	16
3.2	DECISION TO GRANT OR REFUSE LEAVE .....	17
3.2.1	Security Patients .....	17
3.2.2	Forensic Patients .....	21
3.2.3	Involuntary Patients .....	22
3.3	IMPLEMENTATION OF LEAVE .....	23
3.3.1	Escorts for Special Leave .....	24
3.3.2	Leave of Absence and Limited Off-ground Leave .....	25
3.3.3	Qualifications of Escorts .....	25

3.4	REVIEW OF LEAVE.....	26
<b>4</b>	<b>OTHER MATTERS .....</b>	<b>27</b>
4.1	TRANSFERS TO AND FROM PRISON .....	27
4.2	PATIENTS ABSCONDING INTERSTATE .....	28
4.3	OBLIGATIONS OF THE CORRECTIONAL AND MENTAL HEALTH SYSTEMS .....	28
4.4	INDETERMINATE PERIOD OF SECTION 93(1)(D) ORDERS .....	29
4.5	ACCESS TO ST AUGUSTINE WARD AT ST VINCENT’S HOSPITAL.....	29
<b>5</b>	<b>APPENDIX 1: SUMMARY OF RECOMMENDATIONS.....</b>	<b>31</b>
<b>6</b>	<b>APPENDIX 2: REQUIREMENTS FOR ESCORTING STAFF .....</b>	<b>35</b>
6.1	MINIMUM REQUIREMENTS.....	35
6.2	ADDITIONAL DESIRABLE SKILLS, KNOWLEDGE AND EXPERIENCE.....	35
6.3	MINIMUM REQUIREMENTS FOR DRIVERS.....	35
6.4	MINIMUM REQUIREMENTS FOR PROFESSIONAL SECURITY GUARD.....	36

# 1 Introduction and Overview

In March 2001 the Minister for Health, the Hon John Thwaites MP, established a Review Panel to consider leave arrangements for patients of the Victorian Institute of Forensic Mental Health who reside at Thomas Embling Hospital.

Membership of the Review Panel comprised Justice Frank Vincent as chair, Ms Penny Armytage, Correctional Services Commissioner, Mr Noel Perry, Assistant Commissioner Police and Associate Professor Norman James, chief psychiatrist.

The terms of reference for the Panel were to review and make recommendations on:

- All aspects of leave including the level and type of escort required on a given leave;
- The leave categories available to sentenced prisoners who then become patients at Thomas Embling Hospital;
- When and if a security patient is able to access leave and what category of leave this patient can access;
- The procedure to be followed in the process of applying for given leave;
- Any other arrangements that would improve current leave arrangements to be determined by the Panel.

The appointment of the Review Panel followed the absconding of a patient on escorted leave from Thomas Embling Hospital on 26 March 2001 which raised public concern about community safety. The patient's absconding followed similar actions by two other patients in earlier months.

The Review Panel makes recommendations for each stage of the leave process: application for leave, the decision to grant or refuse leave, the implementation of leave and the review of leave.

In undertaking its work, the panel has been mindful of a number of key principles that should, in its opinion, govern the interface between Victoria's Mental Health and Correctional systems. These include:

- That the *Mental Health Act 1986* requires that treatment be provided in the least possible restrictive environment and least possible intrusive manner.
- That security patients are either under sentence or on remand.
- That a transfer from the prison system to the Victorian Institute of Forensic Mental Health should not, of itself, lead to a diminution of security and that there must be a continuity of security between services.
- That while the arrangement for the escort of any person on leave must ensure that the necessary security arrangements are in place and that the public is protected, the primary issues are whether leave should be granted at all and

that such leave can only be granted when it is assessed that the community will not be seriously endangered.

- That any leave must be in the context of an overall rehabilitation and treatment program.
- That any leave must also be considered in terms of the potential impact on public safety, security of the individual and impact on any individual involved in the offence, ie any victim.
- That any leave is part of a process of reintegration of the person into the community in a manner that minimizes that person's likelihood of re-offending in the future.

In undertaking its work, the Panel was mindful that an effective leave program is an integral part of modern and progressive mental health and correctional systems. It was also, however, mindful that such leave programs present the highest level of risk associated with the management of persons who have been determined by the courts to require a period of detention. It was recognised that the Victorian Institute of Forensic Mental Health managed the taking of leave on many occasions in a 12 month period and that only three adverse events occurred. However, it was equally recognised that such a breakdown in the system has the potential to do significant harm to the individual patient/prisoner (by disrupting their rehabilitation program), any victim (by re-traumatising them) and to the mental health and correctional services systems overall, as well as creating a risk to members of the community.

Accordingly, the Panel has aimed to establish a set of recommendations that appropriately balances the treatment needs of the individual against their legal status, public safety and potential impact on victims.

In addition, it has been evident to the Panel that there are a number of inconsistencies in the interaction between the mental health system and the correctional system. These issues are not just reflected in practice but also have been embodied in the governing legislative frameworks for each area. This is not to say that either system is wrong. To the contrary, it is a reflection of the fact that each system works within its own paradigm. It is where the mental health and correctional systems interface that further consideration is required.

## 2 Background

### 2.1 *The Victorian Institute of Forensic Mental Health (Forensicare) and the Thomas Embling Hospital*

The Victorian Institute of Forensic Mental Health is a statutory body established by section 117B of the *Mental Health Act 1986*. The Institute is also known as 'Forensicare'. Forensicare provides clinical services (in-patient and community) and professional education and research.

Thomas Embling Hospital ('Thomas Embling') is the in-patient clinical service operated by Forensicare. Thomas Embling was built to replace the Rosanna and Aradale Forensic Mental Health inpatient services and provides a secure environment in which security, forensic, and involuntary patients can be treated. Patients were transferred to Thomas Embling in April 2000. There are currently 80 beds available at Thomas Embling; the maximum operating capacity is 120 beds.

The increased bed capacity created by the move to Thomas Embling has enabled a wider range of persons with a mental illness to be more appropriately treated. Some of these people are prisoners who are younger and have less chronic but serious and disabling illnesses than was previously the case. The risks to security posed by these patients are greater than have been experienced in the past and have required new and more effective security measures to be established.

### 2.2 *Legislative Provisions for Patients at Thomas Embling*

#### 2.2.1 **Legal Status of Patients**

Treatment is provided at Thomas Embling to patients who fall into three broad categories:

- **Security Patients:** patients transferred from prison or directly from court on remand or under a sentence;
- **Forensic patients:** patients found unfit to plead or not guilty by reason of mental impairment, and those on remand pending a determination, under the *Crimes (Mental Impairment and Unfitness to be Tried) Act 1997*; and
- **Involuntary patients:** patients admitted under the *Mental Health Act 1986* or from the court for involuntary treatment.

Table 1 contains a list of all provisions under which patients are admitted to Thomas Embling.

**Table 1: Legislative Provisions Governing Admission to Thomas Embling**

Status	Legislative Provision
<b>Security</b>	<ul style="list-style-type: none"> <li>• <i>Mental Health Act 1986</i>, s. 16(3)(b) (Restricted Hospital Order, on transfer from prison)</li> <li>• <i>Sentencing Act 1991</i>, s. 93(1)(e) (Hospital Security Order, on order of the Court)</li> </ul>
<b>Forensic</b>	<ul style="list-style-type: none"> <li>• <i>Crimes (Mental Impairment and Unfitness to be Tried) Act 1997</i>, s. 19(1)(b) (remanded in custody / unfitness to be tried)</li> <li>• <i>Crimes (Mental Impairment and Unfitness to be Tried) Act 1997</i>, s. 24(1)(b) (remanded in custody / mental impairment)</li> <li>• <i>Crimes (Mental Impairment and Unfitness to be Tried) Act 1997</i>, s. 26(2)(a)(i) (custodial supervision order)</li> </ul>
<b>Involuntary</b>	<ul style="list-style-type: none"> <li>• <i>Mental Health Act 1986</i>, s. 12</li> <li>• <i>Mental Health Act 1986</i>, s. 16(3)(a) (Hospital Order, on transfer from prison)</li> <li>• <i>Sentencing Act 1991</i>, s. 90 (Assessment Order, on order of the Court)</li> <li>• <i>Sentencing Act 1991</i>, s. 91 (Diagnosis, Assessment and Treatment order, on order of the Court)</li> <li>• <i>Sentencing Act 1991</i>, s. 93(1)(d) (Hospital Order, on order of the Court)</li> </ul>

## 2.2.2 Security Patients

### 2.2.2.1 Disposition by the Courts

A court may make a hospital security order under section 93(1)(e) of the *Sentencing Act 1991* by way of a sentence if the person has been found guilty of an offence and would, but for the mental illness, have been sentenced to a term of imprisonment.

Before this order may be made the following criteria must be met:

- the person appears to be suffering from a mental illness and requires treatment;
- the treatment can be obtained by admission to and detention in an approved mental health service; and
- because of the person's mental illness, the person should be admitted and detained as an involuntary patient for his or her health or safety (whether to prevent a deterioration in the person's physical or mental condition or otherwise) or for the protection of members of the public.

### 2.2.2.2 Transfer

Convicted and sentenced offenders, or people on remand awaiting trial and requiring treatment for a mental illness, may be transferred from prison to hospital upon an order of the Secretary of the Department of Justice.

The Secretary of the Department of Justice has power under section 16(3)(b) of the *Mental Health Act 1986* to make a restricted hospital order whereby a prisoner is admitted to and detained as a security patient in an approved mental health service.

Other persons with power to make a restricted hospital order under section 16(7) of the *Mental Health Act 1986* are:

- the Secretary of the Department of Human Services, who may order the transfer of a mentally ill young person from a remand centre, or a youth training or residential centre; and
- the Chief Commissioner of Police, who may order the transfer of a mentally ill person from a police cell.

In determining whether to transfer a prisoner as a security patient, the Secretary must consider the criteria in s. 16 of the *Mental Health Act 1986*, which include the public interest and all the circumstances of the case including the person's criminal record and psychiatric history.

Transfer to an approved mental health service occurs on the recommendation of a psychiatrist and the approval of the Correctional Services Commissioner as the delegate of the Secretary of the Department of Justice. Transfer back to the prison system occurs when the chief psychiatrist or Mental Health Review Board finds, having regard to the statutory criteria, that continued detention as a security patient is no longer necessary.

### **2.2.3 Forensic Patients**

The *Crimes (Mental Impairment and Unfitness to be Tried) Act 1997* provides for the making of custodial and non-custodial supervision orders for persons found not guilty of an offence in the County or Supreme Court due to mental impairment.

A supervision order is for an indefinite period but the court must set a nominal term. At the expiration of the nominal term, the court must undertake a major review. The purpose of a major review is to determine whether the person can be released from a supervision order.

A forensic patient may make an application to the court prior to the expiration of the nominal term for extended leave or for a non-custodial supervision order. The court must not grant extended leave or a non-custodial supervision order unless satisfied that the safety of the applicant or members of the public will not be seriously endangered.

### **2.2.4 Involuntary Patients**

Involuntary patients are admitted to Thomas Embling under:

- s. 12 of the *Mental Health Act 1986*;
- s. 90 of the *Sentencing Act 1991* (assessment order);

- s. 91 of the *Sentencing Act 1991* (diagnosis, assessment and treatment order); and
- s. 93(1)(d) of the *Sentencing Act 1991* (hospital order instead of a sentence where the person has been found guilty of an offence).

Section 12 patients at Thomas Embling are typically persons who have been placed there because other area mental health services have been unable to appropriately manage their behaviour. Other involuntary patients are those who were previously admitted from court under s. 93(1)(e) of the *Sentencing Act 1991* or transferred from prison under s. 16(3)(b) of the *Mental Health Act 1986* and who, on expiry of their sentence, are considered by the authorised psychiatrist to meet the requirements of s. 12 of the *Mental Health Act 1986*.

An authorised psychiatrist can confirm the admission of a person as an involuntary patient in an approved mental health service under s. 12 of the *Mental Health Act 1986*. Involuntary patients are usually admitted from the community and not usually involved with the criminal justice system. Approved mental health services are proclaimed under the provisions of the *Mental Health Act 1986*. The Victorian Institute of Forensic Mental Health is one of 30 approved mental health services in Victoria.

### 2.3 Number of Patients

There were 76 patients at Thomas Embling on 12 April 2001. The number of patients under each legal category at Thomas Embling is set out in Table 2 below.

**Table 2: Legal Status of Patients at Thomas Embling at 12 April 2001**

Status	Legislative Provision	Number
Security	<i>Mental Health Act 1986</i> , s. 16(3)(b)	28
	<i>Sentencing Act 1991</i> , s. 93(1)(e)	7
Forensic	<i>Crimes (Mental Impairment and Unfitness to be Tried) Act 1997</i>	32
Involuntary	<i>Mental Health Act 1986</i> , s. 12	6
	<i>Sentencing Act 1991</i> , s. 93(1)(d)	3
<b>Total</b>		76

### 2.4 Patient Leave

Patients and prisoners are able to be temporarily absent from secure facilities for the following reasons:<sup>1</sup>

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<sup>1</sup> For prison leave, see the *Corrections Act 1986*, s. 57.

- access to necessary services which cannot be provided within the secure environment (such as some medical services for both acute and chronic conditions);
- attendance at court as required;
- humanitarian grounds (allowing leave to attend funerals of close family members, for example);
- in anticipation of release / discharge (finding accommodation, seeking employment, linking with mental health services);
- as part of a rehabilitation plan through encouraging patients and prisoners to develop social skills necessary for rehabilitation and social reintegration.

The type and duration of leave that is available to a patient, and the process through which it is approved, is dependent on the legislative provision by which they were admitted to treatment. The following leave-types are available to patients at Thomas Embling:

**Table 3: Types of Leave Available to Patients at Thomas Embling**

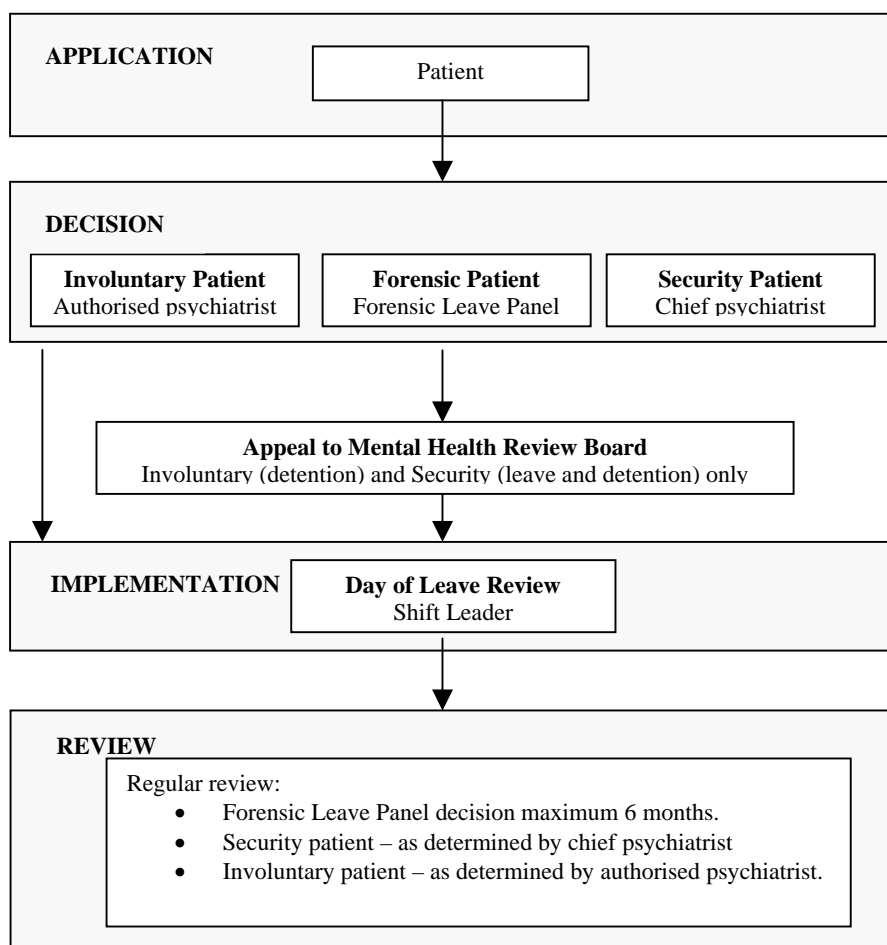
Status	Type of Leave	Period	Authorising Body
Security	Special leave	Not more than 24 hours	Chief psychiatrist with advice to OCSC
	Leave of absence	Set by chief psychiatrist	Chief psychiatrist in consultation with OCSC
Forensic <sup>2</sup>	Special leave of absence	Not more than 24 hours	Authorised psychiatrist
	Limited off-ground leave	Between 7.30 and 7.30 pm and outside these hours on a maximum of 3 consecutive days in any 7 day period.	Forensic Leave Panel
	Extended leave	Not more than 12 months but may be extended	Court of original disposition (Supreme or County Court)
Involuntary	Leave of absence	Set by authorised psychiatrist	Authorised psychiatrist

The process by which leave is granted is described in Figure 1 below:

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<sup>2</sup> 'On-ground' leave, which is provided for by *Crimes (Mental Impairment and Unfitness to be Tried) Act 1997*, s. 54, is no longer used because the grounds at Thomas Embling are secured by the perimeter wall. 'Campus leave', which is granted on the basis of clinical considerations, is an administrative category that has been created to allow patients freedom of movement within the perimeter but outside their Units.

### 2.4.1 Figure 1: Current Leave Process



Patient leave is governed by a legal framework, which is described below.

### 2.4.2 Leave for Security Patients

Leave of absence for security patients held under section 16(3)(b) of the *Mental Health Act 1986* or section 93(1)(e) of the *Sentencing Act 1991* can only be approved by the chief psychiatrist. There are two types of leave. Under sections 51 and 52 the chief psychiatrist may approve leave of absence and special leave.

#### 2.4.2.1 Leave of Absence

The chief psychiatrist may allow leave of absence for a set period and subject to any conditions considered appropriate.

In determining leave of absence arrangements the chief psychiatrist:

- consults with the Office of the Correctional Services Commissioner, prior to the leave being granted, and
- must be satisfied that the safety of members of the public will not be seriously endangered (*Mental Health Act 1986*, s. 51).

Leave of absence may be extended or revoked by the chief psychiatrist. If revoked, the security patient must return to the approved mental health service or if necessary may be apprehended and returned.

Under section 53 of the *Mental Health Act 1986*, a security patient absent without leave may be apprehended for the purpose of being returned to the approved mental health service. A member of the police force, an ambulance officer, a prescribed person (including a medical practitioner, nurse, social worker or the authorised psychiatrist or someone they authorise) may apprehend the security patient.

The *Mental Health Act 1986* further provides that the section 53 apprehension provisions do not affect the application of any law enabling the recapture of a person for the purpose of being returned to a prison.

#### 2.4.2.2 Special Leave

The chief psychiatrist may approve special leave for up to 24 hours subject to any conditions. The security patient must in the application state the special circumstances for which special leave is required (such as attendance at court or a medical appointment).

The chief psychiatrist must be satisfied that:

- there are special circumstances; and that
- the safety of members of the public will not be seriously endangered (*Mental Health Act 1986*, s. 52).

The Secretary to the Department of Justice (or delegate) must be advised before the special leave application is granted. This is typically done through the Director of Sentence Management within the Office of the Correctional Services Commissioner.

Security patients may appeal to the Mental Health Review Board on the refusal of leave of absence or special leave by the chief psychiatrist. The Board must give notice of the appeal to the Secretary to the Department of Justice.

### 2.4.3 Leave for Forensic Patients

#### 2.4.3.1 Forensic Leave Panel

The *Crimes (Mental Impairment and Unfitness to be Tried) Act 1997* established the Forensic Leave Panel. The functions of the Forensic Leave Panel are to hear applications for leave, appeals against a refusal to grant special leave and any other functions conferred by the *Crimes (Mental Impairment and Unfitness to be Tried) Act 1997* or any other Act.

#### 2.4.3.2 Limited Off-ground Leave

Primarily, the Forensic Leave Panel is responsible for granting limited off-ground leave for forensic patients detained on custodial supervision orders. The *Crimes*

*(Mental Impairment and Unfitness to be Tried) Act 1997* provides an operational definition of this type of leave in section 53.

#### 2.4.3.3 Special Leave

Special leave, which cannot be for more than 24 hours, can be approved only by the authorised psychiatrist. If the authorised psychiatrist refuses special leave, the forensic patient may appeal the refusal to the Forensic Leave Panel.

#### 2.4.3.4 Suspension of Special Leave and Limited Off-ground Leave

The chief psychiatrist may suspend special leave and limited off-ground leave if he or she is satisfied on the evidence available that the safety of the patient or members of the public will be seriously endangered if leave is not suspended. If the chief psychiatrist is satisfied that the grounds for suspension no longer exist, then he or she must lift the suspension immediately.

#### 2.4.3.5 Extended Leave

The court that made the order may grant extended leave to a person on a custodial supervision order if satisfied that the statutory grounds are met, including that the safety of the applicant or members of the public will not be seriously endangered. The court will consider any proposed plan of leave submitted to the court by the authorised psychiatrist for the approved mental health service. The court may attach conditions to extended leave.

#### 2.4.3.6 Suspension of Extended Leave

The chief psychiatrist may suspend extended leave at any time if satisfied that the safety of the person on leave or members of the public will be seriously endangered if leave is not suspended. If extended leave is suspended, the chief psychiatrist must within 48 hours make an application to the court for revocation of the leave or lift the suspension. On hearing the application the court may revoke the leave if satisfied on the evidence available that the safety of the forensic patient or members of the public will be seriously endangered or, if not satisfied, may lift the suspension.

#### 2.4.3.7 Apprehension of Forensic Patients

Under section 53AD of the *Mental Health Act 1986*, a forensic patient absent without leave may be apprehended for the purpose of being returned to the approved mental health service. A member of the police force, an ambulance officer, a prescribed person (including a medical practitioner, nurse, social worker or the authorised psychiatrist or someone they authorise) may apprehend the forensic patient.<sup>3</sup>

### 2.4.4 Leave for Involuntary Patients

The authorised psychiatrist may allow an involuntary patient to be absent from an approved mental health service (*Mental Health Act 1986*, s. 40). Forensicare is an

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<sup>3</sup> See *Mental Health Regulations 1998*, r 5(7).

approved mental health service and treats involuntary patients under section 12 of the *Mental Health Act 1986* and sections 90, 91 and 93(1)(d) of the *Sentencing Act 1991*. The leave arrangements for involuntary patients at Thomas Embling are appropriately consistent with all other area mental health services.

### 2.4.5 Patient Leave at Thomas Embling

The taking of leave is a common occurrence at Thomas Embling. In the first 11 months in which patients have been at Thomas Embling, leave was taken on almost 4000 occasions.

Patients may go on leave with staff escorts or without escort. In some cases, patients may be allowed to take unescorted leave so long as they are accompanied by specified people (family members, for example) who meet with treating staff concerning the leave.

The number of patients taking leave and the escort arrangements used during leave is recorded in Table 4 below.

**Table 4: Leave from Thomas Embling, 28 April 2000 to 28 March 2001**

Purpose	Unescorted	Escorted	Total
Medical	0	430	430
Rehabilitation / humanitarian	1457	1795	3252
Legal	0	102	102
Discharge Planning	115	78	193
<b>Total</b>	1572	2405	3977

Despite the large amount of leave taken, not all groups of patients are equally likely to have had leave granted. As Table 5 shows, only one patient transferred from prison was entitled to leave as at 20 April 2001. Forensic patients are the patients most likely to have had leave granted.

**Table 5: Patient Leave Status, 20 April 2001<sup>4</sup>**

Status	Patients	Patients with leave	Patients with escorted leave	Patients with unescorted leave
Forensic Patient	32	18	18	11
s12	6	2	2	0
s16(3)(b)	28	1	1	0
s93(1)(d)	3	1	1	0
s93(1)(e)	7	1	1	0
<b>Total</b>	76	23	23	11

<sup>4</sup> The total number of patients is for 12 April 2001. Note that patients may have both escorted and unescorted leave.

## **2.5 Patients Absconding from Leave**

The appointment of the Review Panel was precipitated by the absconding of a security patient from an escorted leave to a busy restaurant area in metropolitan Melbourne. This incident followed two earlier incidents (in October and November 2000) in which security patients absconded from escorted leave. A brief account of these incidents provides some context for the deliberations of the Review Panel.

### **2.5.1 October 2000**

Mr B., a security patient, who was on remand on stalking, failing to appear and other minor charges, was granted special leave to attend the Austin and Repatriation Medical Centre for a CT scan. He was escorted by two Forensicare staff: one a Psychiatric State Enrolled Nurse with 6 months forensic mental health experience, the other a Registered Psychiatric Nurse with 6 months forensic mental health experience. Both nurses had substantial prior general experience. Mr B. was transported in a taxi. One nurse was sitting in the front seat of the taxi, the other in the rear with Mr B. Upon arriving at the Austin, Mr B. slammed the door on the nurse sitting in the rear of the taxi and absconded on foot. Police returned Mr B. to Forensicare later that day.

### **2.5.2 November 2000**

Mr S., a security patient, who was on remand on charges relating to theft of a motor vehicle and aggravated burglary with a weapon, was granted special leave to attend the Austin Hospital for a chest X-ray. He was escorted by Forensicare staff: one a female Registered Psychiatric Nurse with extensive forensic mental health experience and 8 months experience with Forensicare, the other a male Registered Psychiatric Nurse with two years' forensic mental health experience. Mr S. requested to use the toilet while waiting to be treated. The male Registered Psychiatric Nurse inspected the toilet and, having found it apparently secure, allowed Mr S. to use it unescorted. The nurse waited outside the toilet for one minute before checking the whereabouts of Mr S. Mr S. had absconded through a window in the toilet cubicle. Mr S. was absent without leave from Forensicare for six days.

### **2.5.3 March 2001**

Mr G., a security patient, was found guilty of murder and attempted murder in 1995. He was sentenced to 22 years' imprisonment with a non-parole period of 11 years 9 months pursuant to section 93(1)(e) of the *Sentencing Act 1991*. He was treated under section 93(1)(e) before being transferred to prison following improvement in his mental state. He was subsequently transferred for further treatment under s. 16(3)(b) of the *Mental Health Act 1986*. Mr G. was granted leave of absence on 29 August 2000 for a maximum of three hours per week to attend shopping or socially oriented activities on condition that he be attended by two escorts. On Sunday 25 March 2001, Mr G. requested access to his leave to go to Southbank and was assigned two escorts, one a female Psychiatric State Enrolled Nurse with 30 years' experience and the other a female graduate nurse. While one of the escorts was purchasing drinks from a café, Mr. G. suddenly jumped up and ran off. The escorts searched for Mr G. but were

unable to locate him. Mr G. was subsequently discharged from Thomas Embling, returned to custody by police, and returned to prison.

#### **2.5.4 The Forensicare Response to Patients Absconding**

Forensicare responded to patients absconding from special leave by taking the following actions:<sup>5</sup>

- (i) Circulating a memorandum from the Clinical Director to all medical staff concerning patients requiring medical leave outlining steps to be taken to ensure that the community is not placed at unnecessary risk.
- (ii) Commencing a project to find ways of reducing the amount of leave required for medical purposes (including consideration of having general medical services provided within Thomas Embling and the use of telemedicine) and commenced negotiations to implement an extended-hours roster for registrars and medical officers.
- (iii) Initiating a security management training course for staff.
- (iv) Amending the Thomas Embling Hospital *Policy and Procedure Manual* to require constant observation for some patients, including all security patients, under escort and arms-length proximity in some cases.
- (v) Providing mobile phones to all staff while escorting patients.

**Recommendation 1: That Forensicare continue to implement its response to patients absconding, as a priority.**

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<sup>5</sup> Report to the Secretary, Department of Human Services, Management of Security Incidents at Thomas Embling Hospital, 12 February 2001.

### **3 The Leave Process**

Notwithstanding the importance of the actions that Forensicare have already taken, and the likelihood that they will reduce risk of absconding in the future, the three absconding patients drew attention to the need to improve arrangements for patients taking leave from Thomas Embling. The Review Panel makes recommendations for change at each stage of the leave process: application for leave, the decision to grant or refuse leave, implementation of leave, and review of leave.

#### **3.1 Application for Leave**

All leave commences with an application by a patient. The Review Panel does not believe that there should be any change to the categories of patient who should be able to apply for leave. However, the Panel is of the view that applications from all categories of patients at Forensicare (security, involuntary, and forensic) would benefit from greater scrutiny and certainty, as described below.

##### **3.1.1 Leave Plans**

Requests for leave are made by patients, usually in consultation with, and with the assistance of, the treating team.

Requests for leave have not typically been accompanied by detailed leave plans although a plan is usually drawn up prior to leave being sought. Grants of leave are usually made in general terms, leaving a significant level of discretion with the treating team as to how they should be carried out. In some situations it would appear that the occasion of leave has been considered as a matter of right rather than as a component of an overall rehabilitation plan.

There is capacity for significant improvement by Forensicare developing a leave plan that integrates all knowledge of the patient and reflects the necessary clinical expertise and for that information to be put before the relevant decision making body.

The Panel is aware of a related issue that has emerged in implementing leave granted by the Forensic Leave Panel. Applications to the Forensic Leave Panel may be made at any time. Currently the Forensic Leave Panel meets monthly. While leave is granted by the Panel for up to six months, patients may apply to the Panel each month for new leave. In practice, this has led to multiple applications over numbers of months for leave for different purposes, creating multiple orders, each with a different expiration date and not obviously linked to an overall rehabilitation plan. It is possible that multiple leave could be approved for security or involuntary patients in a similar fashion.

The Panel recommends that when an application for leave is made, Forensicare develop a detailed leave plan that provides a comprehensive rehabilitation program of which the proposed leave is a component. The plan would incorporate:

- the purpose in context of rehabilitation / treatment goals;
- the nature of the proposed leave;
- the destination;
- the escort arrangements;

- the transport arrangements;
- the duration;
- the frequency;
- consideration of public safety and security;
- consideration of the potential impact of the proposed leave on any victim of the offence;
- the nature and date of all offences, period of detention and details of the (nominal) term where appropriate;
- any relevant clinical, legal and forensic information.

The proposed leave plan would incorporate all leaves and be presented to the relevant body each time an application was made. All prior leaves would be cancelled and any new orders by the decision making body would be inclusive and represent an overall program of leave arrangements with the decision making body amending, authorising or denying leave based on the presentation of all information relevant to that person's rehabilitation.

The plan will ensure that decision makers have a wide range of relevant information in front of them to inform their decisions. It will also provide a basis for staff responsible for implementing leave.

**Recommendation 2: When an application for leave (other than special leave) is made, Forensicare develop a detailed leave plan that provides a comprehensive rehabilitation program of which the proposed leave is a component. The plan should incorporate:**

- **the purpose, in the context of rehabilitation / treatment goals;**
- **the nature of the proposed leave;**
- **the destination;**
- **the escort arrangements;**
- **the transport arrangements;**
- **the duration;**
- **the frequency;**
- **consideration of public safety and security;**
- **consideration of the potential impact of the proposed leave on any victim of the offence;**
- **the nature and date of all offences, period of detention and details of the (nominal) term where appropriate; and**
- **any relevant clinical, legal and forensic information.**

**The plan should incorporate all types of leave currently available (or previously approved) to the patient in order to present an integrated program and will form the basis of the decision-making process for the relevant body.**

### 3.1.2 Developing and Considering Leave Plans

Applications for leave are currently developed by the patient in discussion with the treating team. There is no single person or body within Forensicare that routinely provides a quality check on all requests for leave or who authorises the service's report to the decision making body.

The Review Panel recommends that a more formal forum for comment on leave applications be established and convened by the Clinical Director at Forensicare and the chief psychiatrist and attended by senior clinical staff and the heads of treating teams. The focus of discussion should be on finalising the leave plan (as appropriate) and on relevant clinical matters for presentation to the respective decision-making body. The meeting would provide a service-wide view of requests for leave, ensure consistency in the approach to leave, and provide a whole-of-service clinical perspective.

The purpose of the meeting would be to consider:

- leave applications (other than applications for special leave);
- the associated treatment plans;
- ensure relevant clinical issues are considered; and
- formally endorse the plans.

The advice of the forum would be conveyed to the relevant decision-making body by the Clinical Director.

**Recommendation 3: That a forum for comment on leave applications be established and convened by the Clinical Director at Forensicare and the chief psychiatrist to be attended by senior clinical staff and the heads of treating teams. The forum will:**

- **consider leave applications (other than applications for special leave);**
- **consider the associated treatment plans;**
- **ensure relevant clinical issues are considered; and**
- **formally endorse the plans.**

**The advice of the forum will be conveyed to the relevant decision-making body by the Clinical Director.**

### **3.2 Decision to Grant or Refuse Leave**

The person or body that is responsible for the decision to grant or refuse leave is determined by the category of patient seeking leave, as described in the 'Background and Context' section above. Recommendations for changes in the decision making process for each category of patient at Forensicare (security, forensic and involuntary) are made below.

#### **3.2.1 Security Patients**

Currently the chief psychiatrist has the statutory authority to grant special leave and leave of absence for security patients. Leave of absence must not be granted unless the Secretary to the Department of Justice (or delegate) has been consulted. The chief psychiatrist must not grant special leave unless the Secretary to the Department of Justice (or delegate) has been advised. A security patient has a right of appeal to the Mental Health Review Board if the chief psychiatrist refuses leave.

The Review Panel has a number of concerns with this procedure. Security patients have been either convicted and sentenced by the courts or are on remand awaiting trial.<sup>6</sup> This must be the primary consideration in determining the security arrangements, including leave arrangements, concerning security patients.

Transfer from prison to Thomas Embling for the purpose of treatment should not, of itself, lead to reduced security. Such a reduction would be inconsistent with the legal status of the person, with any decision of the courts and of wider social and community expectations. Any compromise in the security conditions of this group of patients has the potential to undermine confidence that the Victorian corrections system and the public in general has in Thomas Embling. Subsequent reluctance to transfer prisoners suffering mental illness would have the potential to undermine the standard of care and treatment available to this group of people.

The procedure for leave currently operating in the prison system provides a point of contrast. Access to community programs for prisoners is for specific purposes and on limited occasions.<sup>7</sup> Applications for leave from high profile prisoners are considered by the Ministerial Community Advisory Committee (MCAC) (an independent body). The MCAC reports directly to the Minister for Corrections and makes recommendations or provides advice on the operation and direction of community access programs and the participation in the program of 'High Profile' prisoners. The Committee comprises:

- two representatives appointed by the Minister for Corrections;
- a nominee of the Chief Commissioner of Police;

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<sup>6</sup> As at 20 April 2001, none of the 13 patients on remand at Thomas Embling had been granted leave of absence.

<sup>7</sup> See the *Corrections Act 1986*, s. 57.

- a Victims Association representative;
- a nominee of Victorian Association for the Care and Resettlement of Offenders; and
- a nominee of the Correctional Services Commissioner.

The MCAC recommendations are conveyed to the prison governor for decision as a delegate of the Secretary of the Department of Justice.

The Review Panel believes that leave of absence for security patients should not be considered by the chief psychiatrist alone. The fact that security patients are under sentence or awaiting trial means that the criminal justice system has a legitimate interest in the extent to which they are free to leave the secure environment and re-enter the community. The Panel believes that input into leave decisions by the Department of Justice alone, however, is not sufficient.

The Review Panel believes that the process for considering leave of absence for security patients should be essentially the same as that used for prisoners, with some necessary amendments to ensure that clinical considerations are fully taken into account. Accordingly, it is proposed that applications for leave of absence by security patients should go to the Secretary of the Department of Justice (Correctional Services Commissioner as delegate). Advice on these requests should be provided by the MCAC.

In considering applications for leave of absence from security patients, the membership of the MCAC should be supplemented by the addition of the chief psychiatrist and its terms of reference amended to require that it consider the treatment and rehabilitative needs of the applicant.

It is the view of the Review Panel that the final decision in relation to leave of absence for security patients should sit with the Department of Justice at a senior level. Accordingly, it is the Panel's recommendation that the appropriate decision making authority in relation to leave of absence from Thomas Embling for security patients is the Correctional Services Commissioner and not the chief psychiatrist.

In the case of a security patient at Thomas Embling, the application would be provided in the form of a leave plan (as described above) to the Secretary of the Department of Justice (Correctional Services Commissioner as delegate) who would refer the matter to the MCAC. That committee would consider the matter and make a recommendation.

The Panel believes that the process of granting leave to security patients would also benefit from greater certainty about the criteria to be taken into consideration. Relevant factors include:

- psychiatric history and current mental state;
- nature and circumstances of the offence;
- other criminal history;

- risk profile and exposure to ‘destablisers’;
- public interest;
- benefit of leave in context of leave plan; and
- personal and community support.

The Committee may recommend conditions on leave that it considers appropriate. These may include stipulations as to:

- escort arrangements;
- time/frequency of leave;
- destination;
- geographical restrictions;
- activities or limitations of activities; and
- any other relevant matter.

This revised process will result in persons transferred to Thomas Embling for treatment (security patients) being maintained under the provisions that the court intended. That is, security patients will receive the treatment necessary for their mental illness while being maintained in an appropriate secure environment where access to leave is the same as if they had remained in prison.

The Panel recognises that legislative amendment is required to achieve the change in approval processes for security patients. In the interim, the panel recommends that the chief psychiatrist work closely with and consult the Correctional Services Commissioner in the manner outlined above prior to making any decision on leave of absence applications.

Currently a security patient has a right of appeal to the Mental Health Review Board if the chief psychiatrist refuses leave. The Panel is of the view that, consistent with the authority for the granting of leave resting with the Department of Justice and the importance of considerations of security, the right of appeal to the Mental Health Review Board should be removed.

**Recommendation 4: That the *Mental Health Act 1986* be amended to remove the power to grant leave of absence to security patients from the chief psychiatrist and that the necessary legislative amendments be made for that power to be vested with the Secretary of the Department of Justice with delegation to the Correctional Services Commissioner.**

**Recommendation 5: That the terms of reference of the Minister of Corrections' Ministerial Community Advisory Committee be amended to:**

- require it to consider all applications for leave of absence from security patients;
- make the chief psychiatrist a member of the Committee when considering applications for leave of absence from security patients; and
- require the Committee to consider the treatment and rehabilitative needs of the applicant in deciding whether or not to approve leave of absence for a security patient.

The Committee should fix criteria by which it will assess requests from security patients. Relevant criteria include:

- psychiatric history and current mental state;
- nature and circumstances of the offence;
- other criminal history;
- risk profile and exposure to 'destablisers';
- public interest;
- benefit of leave in context of leave plan; and
- personal and community support.

The Committee may impose conditions of leave it considers appropriate. These may include stipulations as to:

- escort arrangements;
- time/frequency of leave;
- destination;
- geographical restrictions;
- activities or limitations of activities; and
- any other relevant matter.

**Recommendation 6: That the *Mental Health Act 1986* be amended to remove the right of appeal to the Mental Health Review Board in relation to leave of absence for security patients.**

**Recommendation 7: That, pending legislative amendment, the chief psychiatrist work closely with and consult the Correctional Services Commissioner on any proposed leave of absence for a security patient.**

## 3.2.2 Forensic Patients

### 3.2.2.1 Applications to the Forensic Leave Panel

Applications to the Forensic Leave Panel will be accompanied by the leave plan outlined in section 3.1.1.

The Panel may impose conditions on leave that it considers appropriate. These may include stipulations as to:

- escort arrangements;
- time/frequency of leave;
- destination;
- geographical restrictions;
- activities or limitations of activities; and
- any other relevant matter.

### 3.2.2.2 Process for Considering Applications

The administrative difficulty created by multiple orders for different types of leave has been noted in 3.1.1 above.

The Review Panel recommends (Recommendation 2) that all leave be considered as part of an integrated program and documented in a leave plan. The leave plan will provide a context for making decisions about additional leave for a patient.

The Panel believes that leave arrangements could be improved and simplified if all leave was part of a single order, as recorded in the leave plan.

**Recommendation 8: That the Forensic Leave Panel make its orders for leave in such a way that a single order contains all leave currently available to a forensic patient.**

### 3.2.2.3 Criteria for Considering Applications

The *Crimes (Mental Impairment and Unfitness to be Tried) Act 1997* provides that the Forensic Leave Panel must not grant leave unless satisfied on the evidence available that the safety of the applicant or members of the public will not be seriously endangered as a result of the applicant being allowed leave.

Some guidance as to statutory interpretation has arisen in major reviews before the Supreme Court.<sup>8</sup> The Supreme Court has commented that in using the phrase ‘on the

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<sup>8</sup> In the Matters of Percy, Farrell and RJO [1998] VSC 70 Eames J made comments on a number of legislative phrases.

evidence available' Parliament should be taken to have recognized the difficulties associated with the determination of dangerousness. In addition, the Court considered that 'will not be' requires some predictive assessment where a reasonable degree of probability is necessary which should be distinguished from a use of 'may' that suggests a possibility or likelihood. 'Seriously' means more than minimal or trivial, but also more than significant. 'Endangered' means the nature of the risk posed has been identified as a key issue in the predictive exercise.

While the Supreme Court has offered some assistance with statutory interpretation in this regard, some uncertainty remains. Some strengthening of the provision should be considered.

The Review Panel is aware of concerns that the legislation, as currently drafted, presumes that leave will be granted unless reason can be shown why it should not be granted. The Panel raises the question whether a prima facie right to limited off-ground leave for forensic patients should be presumed, or whether it should only be given when reasonable and practical to do so and for a specific purpose, linked to a rehabilitation and leave plan. Specification of criteria for when leave should be granted, in addition to when it should not, may address that concern.

**Recommendation 9: That the Attorney-General and Minister for Health give consideration to legislative amendment to ensure that the Forensic Leave Panel considers specific criteria before granting leave.**

**Recommendation 10: That the Attorney-General and Minister for Health give consideration to strengthening the standard required for granting leave to forensic patients.**

### 3.2.3 Involuntary Patients

#### 3.2.3.1 Patients Detained Under Section 12

Requests for leave of absence by involuntary patients at Forensicare are considered by the authorized psychiatrist. This is consistent with the framework for involuntary treatment established by the *Mental Health Act 1986*.

The Review Panel considers that this procedure should continue for patients admitted under s. 12 of the *Mental Health Act 1986*, supplemented with advice from the Forensicare leave forum recommended above.

#### 3.2.3.2 Patients Detained Under Section 93(1)(d)

The consideration of leave for patients admitted under s. 93(1)(d) of the *Sentencing Act 1991* raises a wider range of issues relating to the use of this section by courts as a means for the disposition of offenders. An order under s. 93(1)(d) is an indeterminate order of a court. However, interventions to release the person into the community and indeed discharge the person from the order are administrative actions, being a decision of either the chief psychiatrist or the Mental Health Review Board.

Any consideration of the use of s. 93(1)(d) should include consideration of Restricted Community Treatment Orders, to which s. 93(1)(d) provides a gateway.

The Review Panel believes that the use of s. 93(1)(d) of the *Sentencing Act 1991* should be reconsidered. The Panel believes that this section is not suitable for the disposition of persons who have been found guilty of serious crimes and that the *Sentencing Act 1991* should be amended to provide criteria governing its use.

### 3.2.3.3 Process for Considering Applications for Leave

Applications for leave by involuntary patients at Forensicare will be accompanied by a leave plan as outlined in section 3.1.1. Appropriate conditions may be imposed on leave for involuntary patients. These may include stipulations as to:

- escort arrangements;
- time/frequency of leave;
- destination;
- geographical restrictions;
- activities or limitations of activities; and
- any other relevant matter.

**Recommendation 11: That the Attorney-General consider the use of s. 93(1)(d) of the *Sentencing Act 1991* and amend the legislation to provide criteria for the circumstances in which it should be used, and that these criteria reflect that s. 93(1)(d) should not be used in matters where a serious crime has been proven.**

## 3.3 Implementation of Leave

The Panel has also reviewed the way in which leave is implemented. In particular, the Panel has examined the way in which the number of escorts and level of observation for patients on leave is determined.

The process by which leave occurs and the responsibilities that staff are required to undertake when escorting patients are described in the Thomas Embling Hospital *Policy and Procedure Manual*. The relevant policy and procedure for escorting patients from Rosanna Forensic Psychiatry Centre was made on 15 September 1998. The *Manual* was substantially revised on 15 November 2000 in response to the absconding of a patient on leave from Thomas Embling Hospital and again on 9 February in relation to another patient absconding. The requirements put in place on 9 February 2001 are set out in Table 6 below.

**Table 6: Current Arrangements for Determining the Number of Escorts and Level of Observation**

Status	Number of escorts and level of observation
<b>Security</b>	Two staff escorts and constant visual observation.
<b>Forensic</b>	Specified by the Forensic Leave Panel. If not, then determined by the shift leader in consultation with the authorized psychiatrist.
<b>Involuntary</b>	Determined by the shift leader in consultation with the authorized psychiatrist.

The Review Panel believes that these procedures represent a significant improvement over earlier standards, which were less prescriptive. However, the Panel also believes that further guidance should be given concerning the number of escorts that should accompany patients.

It is important to recognise that the nature of leave is a critical factor in determining the type of escort. Leave of absence for security patients and limited off-ground leave for forensic patients is formally planned and subject to the approval processes outlined above. In such circumstances, leave is only granted when the relevant body has determined that the person's leave will not seriously endanger the community. Accordingly, the nature of the escort should be an integral part of that leave decision and should give consideration to the escort role in terms of security and rehabilitative benefits.

Special leave arrangements are, by their nature, a higher level of risk. Special leave is typically an urgent matter (e.g. medical need) and any patient may require such leave. Accordingly, the primary consideration of the escort is one of security and the arrangements must reflect that.

### **3.3.1 Escorts for Special Leave**

The panel believes that the type of escort provided should reflect the individual situation of each patient and that the most suitable guide is whether any form of planned leave is currently available to the patient (excluding security patients).

The Panel's recommended standards for escorts in cases of special leave are set out in Table 7 below:

**Table 7: Proposed Grading System for Specifying Minimum Escort Requirements for Special Leave**

Category	Risk	Patient Group	Escort Arrangements
<b>A</b>	High	No current leave of absence has been formally granted.  All security patients.	Minimum of 3 staff escorts.  1 of the 3 will be a professional security guard.
<b>B</b>	Medium	Escorted leave has been formally granted.	Minimum of two escorts
<b>C</b>	Low	Unescorted leave has been formally granted.	Minimum of one escort.

In each case, additional escorts would be added if clinically indicated as determined by the authorised psychiatrist.

### 3.3.2 Leave of Absence and Limited Off-ground Leave

The number of escorts for patients on leave of absence or limited off-ground leave will be included in the leave plan and included in the terms of the grant of leave by the decision making body. Table 7 may serve as a guide to the number of escorts required for patients.

### 3.3.3 Qualifications of Escorts

In each instance, it is important that all escort personnel meet minimum standards. The minimum requirements for escorting staff are set out in Appendix 2.

**Recommendation 12: That the following grading system be implemented to determine the *minimum* level of escort required for patients on special leave from Thomas Embling:**

Category	Risk	Patient Group	Escort Arrangements
<b>A</b>	High	No current leave of absence has been formally granted.  All security patients.	Minimum of 3 staff escorts.  1 of the 3 will be a professional security guard.
<b>B</b>	Medium	Escorted leave of absence has been formally granted.	Minimum of two escorts.
<b>C</b>	Low	Unescorted leave of absence has been formally granted.	Minimum of one escort.

**Recommendation 13: That all escort personnel have, at the least, the minimum qualifications set out in Appendix 2 to this report.**

### ***3.4 Review of Leave***

The Forensic Leave Panel may grant access to limited off-ground leave for up to six months. The leave expires at the end of this period unless renewed by the Panel. This limitation provides an opportunity for the Panel to review the patient's use of leave at regular intervals.

The Review Panel believes that a similar limitation should also apply to grants of leave to security patients. Involuntary patients should be dealt with under existing provisions. In each case, the maximum period should be reduced where the authorised psychiatrist or chief psychiatrist (as appropriate) considers that a shorter period would be appropriate.

**Recommendation 14: That the Minister for Health and Attorney-General consider legislative amendment to impose a maximum period of six months on grants of leave to security patients.**

## 4 Other Matters

In considering leave for patients at Forensicare, the following matters have been drawn to the Panel's attention.

### 4.1 Transfers to and from Prison

While considering leave for security patients, the Panel considered the broader issue of the process by which prisoners are transferred to Forensicare and returned to prison.

Transfers from prison take place under s. 16(3)(b) of the *Mental Health Act 1986*. Security patients are returned to prison following the decision to discharge a person from involuntary treatment by the Mental Health Review Board under s. 46 of the *Mental Health Act 1986* or the chief psychiatrist under s. 45 of that Act.

The Panel is of the view that there is considerable confidence in this process and believes that it should remain unaltered.

However, the Panel also believes that the criteria that determine when a patient should be returned to prison should be defined more closely. The statutory criteria give both the Board and the chief psychiatrist a wide discretion when deciding when security patients should be returned to prison. The beds at Forensicare are a limited resource that should be used wisely to treat the most seriously ill patients. In this context, prevention of relapse is an important goal. The focus of treatment for security patients at Forensicare must be the acute phase of illness, after which treatment may be able to proceed within the prison system. Furthermore, the period that security patients spend outside the prison system should be as short as possible. From both correctional and mental health perspectives, it is important that security patients should return to prison unless continued treatment at Forensicare is necessary and can be justified.

The panel believes that the chief psychiatrist should formulate criteria for deciding when a patient should be returned to prison based on these principles to be used by Forensicare, the chief psychiatrist and the Mental Health Review Board. The Minister for Health should give consideration to amending the *Mental Health Act 1986* to reflect these criteria.

**Recommendation 15:** That the process by which prisoners are transferred to Forensicare and returned to prison remain unaltered but that the chief psychiatrist work with the Mental Health Review Board and the Correctional Services Commissioner to formulate criteria for deciding when a patient should be returned to prison based on these principles to be used by Forensicare, the chief psychiatrist and the Mental Health Review Board. That the Minister for Health give consideration to amending the *Mental Health Act 1986* to reflect these criteria.

## **4.2 Patients Absconding Interstate**

The Panel is concerned that forensic patients and involuntary patients who abscond interstate cannot be apprehended and returned to Victoria.

Amendments to the *Mental Health Act 1986* by the *Mental Health (Interstate Provisions) Act 1996* made provision for the return to Victoria of Victorian patients absent without leave in another jurisdiction. These provisions cannot be used until Ministerial agreement is reached with the jurisdiction in question. The Panel believes that agreements should be sought with other jurisdictions as soon as possible. In cases where the interstate provisions of the *Mental Health Act 1986* are unworkable, other mechanisms for apprehending and returning patients should be explored.

In addition, the Panel noted the view that there is no offence committed by a person escaping from Thomas Embling. The Panel determined that it was not in a position to comment on that matter further.

**Recommendation 16: That the Minister for Health use Ministerial agreements with other jurisdictions under s. 93C of the *Mental Health Act 1986* or other mechanisms to ensure that patients absconding interstate can be apprehended and returned to Victoria as a matter of priority.**

## **4.3 Obligations of the Correctional and Mental Health Systems**

The Panel's deliberations have revealed that there are antithetical opinions about the obligations of the correctional and mental health systems towards prisoners with mental illness. This is not to say that either perspective is wrong or illogical, but more a reflection that each system operates within its own paradigm and has not given sufficient consideration to the areas where they interface

In addition, it is evident that significant improvements could be made through more effective communication processes between the Victorian Institute of Forensic Mental Health and the Department of Justice, in particular the Office of the Correctional Services Commissioner and senior corrections staff. It is evident that there would be significant benefits in an improved understanding of all parties around issues such as the transfer of patient/prisoner information, progress of treatment, court disposition and security issues in general. Such improved processes can only benefit a person through ensuring appropriate transition arrangements, continuity of care and the overall safety of the individual.

**Recommendation 17: That the Department of Justice and Department of Human Services jointly review their respective legislative frameworks to ensure consistency for the care and treatment of mentally ill prisoners and establish an ongoing liaison forum between the Victorian Institute of Forensic Mental Health, Office of the Correctional Services Commissioner and senior corrections staff.**

#### **4.4 Indeterminate Period of Section 93(1)(d) Orders**

The use of section 93(1)(d) of the *Sentencing Act 1991* has been brought to the Panel's attention. Of particular concern is the fact that detention under s. 93(1)(d) is indeterminate, there being neither a maximum nor minimum period. The detention of patients under s. 93(1)(d) is reviewed annually by the Mental Health Review Board, and patients may appeal to the Board against their detention at any time. The chief psychiatrist may also discharge a patient detained under s. 93(1)(d).

The Panel is concerned that patients detained under s. 93(1)(d) may be discharged earlier than they would have been released had they been sentenced by the court. This has potential to undermine confidence in the courts. The Panel is also concerned that patients under s. 93(1)(d) may spend periods in detention much greater than they would have spent had the court sentenced them.

The Review Panel is of the view that legislative guidelines for determining when patients detained under s. 93(1)(d) should be discharged should be provided to the chief psychiatrist and the Mental Health Review Board. The Panel believes that the Minister for Health should consider amending the *Mental Health Act 1986* to include criteria for determining when patients detained under s. 93(1)(d) should be discharged.

**Recommendation 18: That legislative guidelines be provided to the chief psychiatrist and the Mental Health Review Board for when a person on a 93(1)(d) order should be discharged from that order. That the Minister for Health consider amending the *Mental Health Act 1986* to include criteria for determining when patients detained under s. 93(1)(d) of the *Sentencing Act 1991* should be discharged.**

#### **4.5 Access to St Augustine Ward at St Vincent's Hospital**

Prisoners have access to medical treatment within a secure setting at St Augustine Ward at St Vincent's Hospital. Currently, patients at Forensicare are not able to access treatment in St Augustine ward. These facilities offer an infrastructure that would enable patients from Forensicare to receive medical treatment in a secure environment and accordingly lessen the risk of absconding. As a result of this lack of access, patients at Thomas Embling who require overnight hospital stay for medical/surgical treatment are treated at a mainstream hospital with additional staffing provided by Forensicare at a high cost. It is view of the Panel that access to St Augustine's may afford more appropriate security arrangements.

It is feasible that a suitable situation may be able to be established such as:

- That any involuntary treatment be provided by a mental health professional employed by either Forensicare or the St Vincent's area mental health services.
- That in order to ensure the necessary security arrangements 'Group Four' (the current professional security provider) be delegated the authority to detain and apprehend patients (pursuant to the *Mental Health Act 1986*) by the authorised psychiatrist of Thomas Embling.

St Vincent's hospital is an approved mental health service for the purposes of section 94 of the *Mental Health Act 1986* and, accordingly, can admit persons as involuntary patients. It is the Panel's understanding that, as St Augustine is a component of St Vincent's hospital, it may be able to be used for such a purpose.

The Review Panel believes that the facilities at St Augustine could be used to treat, for example, 'Category A' patients from Forensicare without compromising their psychiatric care where an overnight stay is required. The Panel noted that any such arrangement would be subject to a satisfactory agreement between the Department of Human Services and the Department of Justice in relation to costs.

**Recommendation 19: That St Vincent's Hospital, the Minister for Health and the Minister for Corrections consider ways in which facilities at St Augustine Ward at St Vincent's could be made available for the treatment of patients from Forensicare.**

## 5 Appendix 1: Summary of Recommendations

**Recommendation 1:** That Forensicare continue to implement its response to patients absconding, as a priority.

**Recommendation 2:** When an application for leave (other than special leave) is made, Forensicare develop a detailed leave plan that provides a comprehensive rehabilitation program of which the proposed leave is a component. The plan should incorporate:

- the purpose, in the context of rehabilitation / treatment goals;
- the nature of the proposed leave;
- the destination;
- the escort arrangements;
- the transport arrangements;
- the duration;
- the frequency;
- consideration of public safety and security;
- consideration of the potential impact of the proposed leave on any victim of the offence;
- the nature and date of all offences, period of detention and details of the (nominal) term where appropriate; and
- any relevant clinical, legal and forensic information.

The plan should incorporate all types of leave currently available (or previously approved) to the patient in order to present an integrated program and will form the basis of the decision-making process for the relevant body.

**Recommendation 3:** That a forum for comment on leave applications be established and convened by the Clinical Director at Forensicare and the chief psychiatrist to be attended by senior clinical staff and the heads of treating teams. The forum will:

- consider leave applications (other than applications for special leave);
- consider the associated treatment plans;
- ensure relevant clinical issues are considered; and
- formally endorse the plans.

The advice of the forum will be conveyed to the relevant decision-making body by the Clinical Director.

**Recommendation 4:** That the *Mental Health Act 1986* be amended to remove the power to grant leave of absence to security patients from the chief psychiatrist and that the necessary legislative amendments be made for that power to be vested with the Secretary of the Department of Justice with delegation to the Correctional Services Commissioner.

**Recommendation 5:** That the terms of reference of the Minister of Corrections' Ministerial Community Advisory Committee be amended to:

- require it to consider all applications for leave of absence from security patients;
- make the chief psychiatrist a member of the Committee when considering applications for leave of absence from security patients; and
- require the Committee to consider the treatment and rehabilitative needs of the applicant in deciding whether or not to approve leave of absence for a security patient.

The Committee should fix criteria by which it will assess requests from security patients. Relevant criteria include:

- psychiatric history and current mental state;
- nature and circumstances of the offence;
- other criminal history;
- risk profile and exposure to 'destablisers';
- public interest;
- benefit of leave in context of leave plan; and
- personal and community support.

The Committee may impose conditions of leave it considers appropriate. These may include stipulations as to:

- escort arrangements;
- time/frequency of leave;
- destination;
- geographical restrictions;
- activities or limitations of activities; and
- any other relevant matter.

**Recommendation 6:** That the *Mental Health Act 1986* be amended to remove the right of appeal to the Mental Health Review Board in relation to leave of absence for security patients.

**Recommendation 7:** That, pending legislative amendment, the chief psychiatrist work closely with and consult the Correctional Services Commissioner on any proposed leave of absence for a security patient.

**Recommendation 8:** That the Forensic Leave Panel make its orders for leave in such a way that a single order contains all leave currently available to a forensic patient.

**Recommendation 9:** That the Attorney-General and Minister for Health give consideration to legislative amendment to ensure that the Forensic Leave Panel considers specific criteria before granting leave.

**Recommendation 10:** That the Attorney-General and Minister for Health give consideration to strengthening the standard required for granting leave to forensic patients.

**Recommendation 11:** That the Attorney-General consider the use of s. 93(1)(d) of the *Sentencing Act 1991* and amend the legislation to provide criteria for the circumstances in which it should be used, and that these criteria reflect that s. 93(1)(d) should not be used in matters where a serious crime has been proven.

**Recommendation 12:** That the following grading system be implemented to determine the *minimum* level of escort required for patients on special leave from Thomas Embling:

Category	Risk	Patient Group	Escort Arrangements
A	High	No current leave of absence has been formally granted.  All security patients.	Minimum of 3 staff escorts.  1 of the 3 will be a professional security guard.
B	Medium	Escorted leave of absence has been formally granted.	Minimum of two escorts.
C	Low	Unescorted leave of absence has been formally granted.	Minimum of one escort.

**Recommendation 13:** That all escort personnel have, at the least, the minimum qualifications set out in Appendix 2 to this report.

**Recommendation 14:** That the Minister for Health and Attorney-General consider legislative amendment to impose a maximum period of six months on grants of leave to security patients.

**Recommendation 15:** That the process by which prisoners are transferred to Forensicare and returned to prison remain unaltered but that the chief psychiatrist

work with the Mental Health Review Board and the Correctional Services Commissioner to formulate criteria for deciding when a patient should be returned to prison based on these principles to be used by Forensicare, the chief psychiatrist and the Mental Health Review Board. That the Minister for Health give consideration to amending the *Mental Health Act 1986* to reflect these criteria.

**Recommendation 16:** That the Minister for Health use Ministerial agreements with other jurisdictions under s. 93C of the *Mental Health Act 1986* or other mechanisms to ensure that patients absconding interstate can be apprehended and returned to Victoria as a matter of priority.

**Recommendation 17:** That the Department of Justice and Department of Human Services jointly review their respective legislative frameworks to ensure consistency for the care and treatment of mentally ill prisoners and establish an ongoing liaison forum between the Victorian Institute of Forensic Mental Health, Office of the Correctional Services Commissioner and senior corrections staff.

**Recommendation 18:** That legislative guidelines be provided to the chief psychiatrist and the Mental Health Review Board for when a person on a 93(1)(d) order should be discharged from that order. That the Minister for Health consider amending the *Mental Health Act 1986* to include criteria for determining when patients detained under s. 93(1)(d) of the *Sentencing Act 1991* should be discharged.

**Recommendation 19:** That St Vincent's Hospital, the Minister for Health and the Minister for Corrections consider ways in which facilities at St Augustine Ward at St Vincent's could be made available for the treatment of patients from Forensicare.

## **6 Appendix 2: Requirements For Escorting Staff**

### **6.1 Minimum Requirements**

All staff that are undertaking patient escort duties must possess and be able to demonstrate the following requirements:

1. Qualifications: Registered Nurse with post graduate qualification, Registered Nurse undertaking the Graduate Program, Enrolled Nurse, Allied Health Professional staff member, or have completed or are working towards attaining Certificate 3 Correctional Practice.
2. A sound working knowledge of relevant Thomas Embling Hospitals Policies and Procedures such as: Escorting Patients, Special Leave and Patient Abscond/Attempted Abscond.
3. Completion of Thomas Embling Hospital Induction and Orientation Program.
4. Completion of the M4 Aggression Management Workshop (Thomas Embling staff).
5. Completion of modules CSC110A Maintain Safety and Security, CSC130A Contain Incidents which Jeopardize Safety and Security, CSC180A Promote Cooperative Behaviour and CSC040A Communicate Effectively. (Group 4 staff).
6. That the composition of the escorting personnel is consistent with the hospital's Gender Sensitive Practice Policy and that at least one staff member is of the same gender as the client.

### **6.2 Additional Desirable Skills, Knowledge and Experience**

- Are the case coordinator, primary nurse or associate nurse of the patient being escorted.
- Have a positive therapeutic relationship with the patient.
- Have undertaken escorts for the purposes of special leave previously.
- Have at least 6 months recent experience working within a forensic mental health or correctional setting.

### **6.3 Minimum Requirements for Drivers**

1. Must possess a current Victorian Drivers Licence.
2. Qualifications as listed under minimum requirements for escorting staff, but additionally they may also be a Psychiatric Service Officer (PSO).

3. Have a working knowledge of relevant Thomas Embling Hospitals Policies and Procedures relating to Escorting Patients, Special Leave and Patient Abscond/Attempted Abscond.
4. Have completed Thomas Embling Hospital Induction and Orientation Program.
5. Have completed the M4 Aggression Management Workshop (Thomas Embling staff).
6. Have completed modules CSC110A Maintain Safety and Security, CSC130A Contain Incidents which Jeopardize Safety and Security, CSC180A Promote Cooperative Behaviour and CSC040A Communicate Effectively (Group 4 staff).

#### ***6.4 Minimum Requirements for Professional Security Guard***

Professional security guards will have completed an accredited level 3 correctional officer training program and have a sound working knowledge of relevant Thomas Embling Hospitals Policies and Procedures.