



# Mapping the forensic mental health policy ecosystem in Australia: A national audit of strategies, policies and plans

A report for the National Mental Health Commission

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## Contents

<b>1</b>	<b>Introduction and overview</b> .....	<b>3</b>
1.1	Scope and structure .....	4
1.2	Overall themes .....	6
<b>2</b>	<b>Police and mental health services</b> .....	<b>8</b>
2.1	Overview .....	8
2.2	Relevant standards .....	9
2.3	Identification, screening and care in custody .....	9
2.4	Cross-agency collaboration .....	10
<b>3</b>	<b>Court-based mental health services</b> .....	<b>13</b>
3.1	Overview .....	13
3.2	Relevant standards .....	14
3.3	Specialty courts .....	15
3.4	Court liaison services .....	16
<b>4</b>	<b>Forensic orders and imprisonment</b> .....	<b>18</b>
4.1	Overview .....	18
4.2	Relevant standards .....	19
4.3	Forensic orders.....	21
4.4	Mental health services in prisons .....	22
<b>5</b>	<b>Community corrections and release from prison</b> .....	<b>26</b>
5.1	Overview .....	26
5.2	Relevant standards .....	27
5.3	Continuity of care.....	28
<b>6</b>	<b>Conclusions and opportunities for reform</b> .....	<b>31</b>
<b>7</b>	<b>Appendix 1 Methodology</b> .....	<b>35</b>
<b>8</b>	<b>Appendix 2 Key standards</b> .....	<b>47</b>
<b>9</b>	<b>Appendix 3 Overview of legislation</b> .....	<b>50</b>
<b>10</b>	<b>References</b> .....	<b>65</b>

## 1 Introduction and overview

This report was commissioned by the National Mental Health Commission (NHMC) to examine the policy environment in Australia relevant to mental health services for people who come into contact with the criminal justice system, and to identify any policy gaps and potential opportunities for reform.

A knowledge gap has been previously identified in a number of settings and documents, including very clearly in a dedicated chapter of the Commission's 2013 national Report Card.<sup>1</sup> This articulated an urgent need for research and analysis to provide a nationally consistent picture of the different approaches to the mental health needs of justice-involved people:

*"We do not have a national reporting system or consistent framework across the criminal justice, police and court system in Australia. It is therefore not surprising that being able to see a national picture is difficult...."*

*"It is of the utmost importance to have a criminal justice system that gives justice to people with mental illness. Underlying this principle is the need to have a strong evidence base upon which to plan and deliver services, interventions and supports." (p.81)*

Although the epidemiological evidence has grown since 2013, the fundamental gap that the NMHC identified then – the lack of a national picture about specific policy approaches to mental health and the justice system – remains.

There are good reasons why this is a priority issue. There is an emerging recognition internationally that 'prisoner health is public health',<sup>2</sup> that addressing the mental health needs of justice-involved populations is critical to reducing health inequalities at the population level,<sup>3</sup> and that a 'prison health in all policies'<sup>4</sup> framework is beneficial for achieving public health goals. This recognition that prisons are critical sites for reducing health inequalities at the population level draws on the 2013 [WHO Helsinki Statement on Health in All Policies](#), and aligns with the [WHO Trenčín Statement on Prisons and Mental Health](#), which asserts that promoting mental health and well-being should be central to a prison's health care policy, and that effective leadership and adequate resources are essential to achieving this.<sup>5</sup>

There is also considerable research demonstrating the critical role of the justice system for achieving public mental health objectives, and the very high prevalence of mental disorder among justice-involved populations, including among those who come into contact with the police,<sup>6</sup> courts,<sup>7</sup> prisons,<sup>8</sup> and the youth justice system.<sup>9</sup> This heavy burden of mental disorder among justice-involved populations manifests in elevated rates of morbidity and mortality, both in custody and in the community, notably including high rates of self-harm<sup>10</sup> and suicide.<sup>11</sup> These poor outcomes are compounded by low engagement with community mental health services,<sup>12</sup> and heavy utilisation of acute and tertiary health services, often due to co-occurring substance use and mental illness.<sup>13</sup>

National, state and territory policy decisions are central to improving this situation. They set the direction for investment of resources, establish processes for information to be collected and shared, and can reduce the structural separation which often defines mental health services in justice settings. This has enormous potential impact, for example in determining whether mental health services in justice settings are included within national mental health reform policies designed to improve quality and access.

This report describes the results of an audit of high-level policies of justice and mental health agencies relevant to mental health services for justice-involved adults in Australia. The report is a brief overview

of the key themes which emerged from the audit, and a description of the most notable gaps and opportunities for reform which it identified.

This report uses person-first language to describe people who are in contact with the criminal justice system. Often the language used in this area is stigmatising and dehumanising, defining people entirely by the fact that they were convicted of a crime, or by their status in the criminal justice system. Unless directly quoting documents this report avoids using words such as 'offender', and talks about 'people', such as people in prison and people on parole.

## 1.1 Scope and structure

The range of potential documents was very large, and limits were placed around the scope of the audit to enable a useful report to be provided within a reasonable time. Firstly the review was solely of policy documents, and not of levels of service, adequacy of resourcing, quality of care, conditions within facilities, organisational performance, or other empirical questions, all of which are very important issues in their own right and are worthy of research. The audit of documents was limited to high-level policy and strategy documents, acknowledging that deciding which documents meet these criteria inevitably involves a degree of discretion. The policy documents reviewed were intended to enable a snapshot of high-level policies in key areas, with a focus on systemic issues.

The audit focused on policy documents from mental health and justice agencies, acknowledging that there are variations in types of policies and how jurisdictions administratively structure policy responsibilities. A large number of portfolios and social policy systems beyond mental health and justice are of relevance to the mental health of justice-involved people. These include physical health, housing, disability, welfare, education, child protection and aged care, to name just a few. A comprehensive review of policies across these areas would be a very worthy endeavour, and would provide valuable insights, but was beyond the scope and resources of this report.

The audit did not include policy documents relating to services specifically for justice-involved youth, although this is an area of great importance. The very high burden of mental health problems in youth justice settings, and the complexity of relevant arrangements and documents in each jurisdiction, indicates that a separate piece of work dedicated to mental health services for justice-involved youth is warranted.

Some jurisdictions have produced a large number of policy documents relevant to the mental health of justice-involved people. This tends to have a skewing effect on an audit of this nature, because of the need to spend more time reviewing the documents of some jurisdictions than of others. A large number of documents within a jurisdiction provides a density of policy material, much of which is useful and relevant. However it also adds complexity when considering how these different policy documents relate to each other and to relevant legislation. This is particularly important given that one of the key issues of concern for mental health and justice areas is fragmentation, siloed services, and discontinuities. During the audit the large number of documents in several jurisdictions reinforced the need for a concise, overarching snapshot of the national situation.

Policy documents for each of the jurisdictions were identified through keyword searches of online government agency websites, search engines and Australian Policy Online (the methodology is described further in Appendix 1). The documents were reviewed to determine whether and how they referred to mental health services for justice-involved people, and were structured into key portfolio areas. Documents within jurisdictions were compared, as well as comparing jurisdictions against each other. Where applicable, national policy documents, such as those relating to the national mental health reforms, were compared to their state and territory level counterparts. National documents were also considered in their own right. References are made to particular documents throughout the chapters to illustrate aspects of the discussion, and each chapter also makes reference to some of the

relevant legislation, with more information about key aspects of the relevant legislation provided in Appendix 3. The observations in the report are informed by the literature and, where useful and relevant, references are made to articles or other reviews, although this is kept to a minimum to keep the report concise.

The review and the report have been structured around key stages of criminal justice system involvement, reflecting the main intervention points for mental health services. Structuring the report in this way reflects the realities of the administrative and policy landscape, highlighting the fact that justice-involved people face many transitions through separate systems - police, courts, forensic services, prisons, and community-based mental health services. It is also consistent with other applied analyses of mental health / justice policy interaction, such as the use of the Sequential Intercept Model in the United States.<sup>14</sup>

Each chapter gives an overview of key themes which emerged from considering the policy documents relevant to that particular stage of the criminal justice system and the relevant standards. Key standards considered are listed in each chapter, with a complete list in Appendix 2. The standards were compiled from a review of:

- International human rights conventions ratified by Australia;
- Other relevant UN documents setting standards for mental health or justice; and
- National documents which could be considered as standards, whether described formally as such or not.

International standards are clearly of importance to Australia's national mental health reforms. The *Fifth National Mental Health and Suicide Prevention Plan*<sup>15</sup> acknowledges that 'international norms and standards are generally seen as the minimum acceptable standard for health policy' (p. 11). The Fifth Plan recognises obligations arising from Australia's ratification of international agreements, including the *International Covenant on Civil and Political Rights*, the *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, *Convention on the Rights of the Child*, the *International Covenant on Economic, Social and Cultural Rights*, the *Convention on the Elimination of All Forms of Discrimination Against Women*, the *International Convention on the Elimination of All Forms of Racial Discrimination*, and the *United Nations Declaration on the Rights of Indigenous Peoples*.

In addition to the international standards, Australian governments have endorsed several sets of directly relevant national standards and principles, including most relevantly:

- In 2006 the Council of Australian Governments (COAG) Australian Health Ministers' Advisory Council endorsed the *National Statement of Principles for Forensic Mental Health*;
- In 2015 a working group established under the COAG Law, Crime and Community Safety Council developed the *National statement of principles relating to persons unfit to plead or not guilty by reason of cognitive or mental health impairment*, endorsed by all governments other than South Australia; and
- In 2018 the Corrective Services Administrators' Council, comprised of all jurisdictions, developed the *Guiding Principles for Corrections in Australia*.

Many of the relevant international and national standards can be interpreted as applying at service or agency level (such as by police, the courts, prisons, or mental health services) or at system-wide level (considering how health and justice agencies collectively respond). Justice-involved people, almost by definition, are people who move between different systems. Given the importance of continuity of mental health services across these systems, the report emphasises the systemic implications of the standards. Such a focus on system coordination aligns with several of the priority areas in the *Fifth Plan*:

- achieving integrated regional planning and service delivery;
- effective suicide prevention;
- coordinating treatment and supports for people with severe and complex mental illness;
- improving Aboriginal and Torres Strait Islander mental health and suicide prevention;
- improving the physical health of people living with mental illness and reducing early mortality;
- reducing stigma and discrimination;
- making safety and quality central to mental health service delivery; and
- ensuring that the enablers of effective system performance and system improvement are in place.

Considering key standards from a system perspective is also consistent with the obligations corresponding to the international standards. UN Member States are held accountable at jurisdiction level, not at portfolio level, for meeting the international standards to which they commit, and an agency-level focus is insufficient to answer how well the jurisdiction is meeting its obligations.

## 1.2 Overall themes

Whilst there is considerable diversity in many policy documents across Australia, several consistent themes emerged from the audit.

A key theme is system complexity and variation in approach. Examples include where the objectives of mental health legislation are not congruent with provisions relating to standards of mental health service articulated in justice legislation; where separate pilot or specialist services operate in parallel with mainstream ones; and where strategic plans for different stages of the justice system contain very different levels of detail or a different emphasis about how mental illness is responded to. The vast majority of high level state and territory documents reviewed were produced by a single department or agency and focus on that agency's priorities, initiatives and objectives.

Another element of diversity is the level of key policy documents regarding mental health services and justice settings. At police stage and specialist court stage, operational manuals and interagency memoranda of understanding (MOUs) hold much of the policy content. These vary significantly across jurisdictions, with the most comprehensive ones articulating key issues regarding shared objectives, information sharing, respective agency roles, collaborations, and review processes. Specialist courts often operate as pilot programs, again often relying on interagency MOUs and webpages rather than legislation to set out policy. Forensic orders invariably have strong legislative frameworks, typically with significant detail.

Another theme at state and territory level is a recognition that there are gaps in how well services in justice settings respond to gender, disability and cultural considerations, including in relation to mental health. There are specific examples of strategies and plans relating to women, people with disabilities, and Aboriginal and Torres Strait Islander people, which acknowledge gaps in available diversionary options, court-based services, accommodation for non-custodial forensic orders, and post-release services.

Jurisdictions share approaches in some areas, including referencing several principles – sometimes by reference to the relevant standards – in an aspirational form within some key documents. Examples include:

- That each state and territory's mental health legislation contains objects, sections or guiding principles that people should be treated in the least restrictive and most appropriate setting;
- That policy documents often refer to the principle that health services in prisons should be of equivalent standard to that in community; and
- That national mental health documents describe the importance of police and court mental health diversion programs as part of a coordinated mental health system response.

However, while these principles and statements are present within policy documents and legislation, it is rare to see references to concrete indicators and outcomes through which progress towards their achievement could be measured.

A similar theme at the national mental health policy level is that there is little mention of criminal justice settings. The *Fifth National Mental Health and Suicide Prevention Plan* and its implementation plan, for example, do not mention the words 'police', 'court', 'prison' or 'justice', and there is only passing mention of forensic services. Similarly the [National Mental Health Service Planning Framework](#) (NMHSPF), which uses national average estimates of required resources for mental health service delivery based on the national average prevalence of mental illness, does not take criminal justice settings into account. The NMHSPF recognises this gap in these terms:

*Currently, the NMHSPF does not...consider the specific mental health needs of special populations such as culturally diverse populations, including Aboriginal and Torres Strait Islander peoples, or people with mental illness within the criminal justice system. All of these factors may affect the relative demand for mental health services, the relative cost of delivering the same quality of service, and/or the types of service models implemented, in turn affecting the resources required for service delivery. While the NMHSPF epidemiology counts the whole Australian population, including these subgroups, it does not consider adjustments to the standard model which would be required to address the specific needs of these populations or to deliver services in rural areas.<sup>16</sup> (p. 24)*

Where justice settings are considered within mental health policy documents, this is also uneven. Forensic services have greater inclusion in national level policy documents than do other justice settings. They are included, for example, within national safety and quality measures of seclusion and restraint, and considered within scope of the *National Standards for Mental Health Services*. Police, court settings, prisons, and community corrections, however, have little or no visibility in the national mental health documents. In the case of national mental health data collections, a notable exception is the inclusion of prisons and youth detention settings. The Australian Institute of Health and Welfare produces a triennial data collection on the health of people in prison,<sup>17</sup> and in 2019 included the health of people in prison within its annual report on Australia's welfare.<sup>18</sup> Commonwealth agencies and primary care services do not appear to play significant roles in MOUs with justice agencies, apart from in the ACT where they have specific territory level roles.

The policy landscape is diverse and rich. There are many examples of clearly articulated, thoughtful policy responses which seek to respond to the relevant standards, and a number of these are mentioned in this report. Viewed systemically and nationally, however, there is a major gap in overall policy coherence and sharing of information.

## 2 Police and mental health services

### 2.1 Overview

Police interaction with people with mental illness is a critical intervention point in determining whether people enter the criminal justice system. Surveys of police in Australia indicate that officers spend a considerable amount of their time responding to people they believe to be mentally ill,<sup>19</sup> and research from Victoria shows significantly higher rates of people with diagnosable mental disorders in police custody than in the general population.<sup>20</sup> The over-representation of people with mental disorders in arrest populations suggests that the effectiveness of screening, diversion, referrals and access to mental health services at the point of police contact is likely to make a difference to the numbers of people with mental disorder in the criminal justice system.<sup>21</sup> Effective training to assist police responding to mental health crises has been identified as of critical importance,<sup>22</sup> and research suggests that more experienced police officers are more likely to refer people to psychiatric services.<sup>23</sup>

In every state and territory, mental health legislation sets out the responsibilities and powers of police where a person is believed to be a risk to themselves or another person because of a suspected mental illness. This legislation is relatively consistent across jurisdictions, in providing police with powers to enter premises, search and apprehend people, and transport them to a mental health service for an assessment. In each jurisdiction mental health legislation also contains principles or objects that people with mental illness should be treated in the least restrictive and most appropriate environment possible, as noted in Appendix 3.

In recent years a number of Australian jurisdictions have developed and trialed varying models of specialist police mental health responses.<sup>24</sup> Evaluations of some of these have been published,<sup>25</sup> and indicate that they have potential to improve response capacity, although challenges in cross-agency communications, data sharing and coordination are also identified. International and national reviews of the literature have identified a significant gap in research to understand the effectiveness of different models.<sup>26</sup> Where evaluations have been undertaken, these have been done by states and territories separately. There are no nationally agreed outcomes for these services.

While mental health legislation provides clarity in particular circumstances, it will not apply in the majority of encounters, which do not involve people who meet the criteria for arrest or referral for potential involuntary treatment.<sup>27</sup> There is evidence that the process of connecting people with health services continues to be a significant systemic challenge. The literature suggests that experiences of people in contact with police who require mental health treatment and care are highly variable, depending on such factors as geographic location within a jurisdiction, local interagency arrangements, and whether specialist police-mental health responses exist in that area.

Jurisdictions vary with respect to the level of integration of mental health services in police settings with wider mental health planning. NSW and Queensland, for example, provide useful models of a more systematic approach inclusive of police settings, being developed within high level policy documents. Useful examples include the *NSW Justice & Forensic Mental Health Network Strategic Plan 2018-2022*<sup>28</sup> and a 2017 options paper developed by the Queensland Mental Health Commission proposing a systemic approach to police/mental health interactions,<sup>29</sup> and the 2019 progress report which includes responses from police, ambulance and health services.<sup>30</sup>

More typically within mental health policy documents, police are included predominantly in relation to apprehension of people in the community and their transfer to hospital for mental health assessments. Where national level policy documents relating to the mental health reforms contain references to police, this takes the form of narrative mention of the importance of police, rather than through incorporation into funding, planning, outcomes, monitoring and reporting policies. There also appears to be no data collected at national or state/territory level about processes and levels of

screening and identification of mental disorders of people in police custody, referral rates to mental health services of people in police custody, or admission rates by mental health services of people referred by police.

Jurisdictions appear to vary considerably in how they provide or otherwise procure mental health services within police custody facilities, and in the level of policy guidance around these services. The available policy documents do not enable a clear picture to be developed of the different mental health service delivery models across all jurisdictions.

## 2.2 Relevant standards

- *National Forensic Mental Health Principles (2006)*
  - *Principle 1 Equivalence to the non-offender: Prisoners and those in the community who are under the supervision or control of the criminal justice system have the same rights to availability, access and quality of mental health care as the general population...*
  - *Principle 4: All persons entering a custodial environment should be assessed with regard to their mental health needs and referral arranged accordingly.*
- *UN Convention on the Rights of People with Disabilities (2007)*
  - *Article 14 1 (b) People are not deprived of their liberty unlawfully or arbitrarily, and that any deprivation of liberty is in conformity with the law, and that the existence of a disability shall in no case justify a deprivation of liberty.*
  - *Article 13: Access to Justice – In order to help to ensure effective access to justice for persons with disabilities, States Parties shall promote appropriate training for those working in the field of administration of justice, including police and prison staff.*
- *United Nations Principles for the protection of persons with mental illness and the improvement of mental health care*
  - *Principle 9: Every patient shall have the right to be treated in the least restrictive environment and with the least restrictive or intrusive treatment appropriate to the patient's health needs and the need to protect the physical safety of others.*

## 2.3 Identification, screening and care in custody

Legislation and policy guidance regarding how identification, monitoring and access to health care in police custody for people with mental illness is undertaken is variable across jurisdictions. At the legislative level, little detail is provided about what is expected of police, and there are no references to standardised approaches such as the use of recognised screening tools. An example is the *Law Enforcement (Powers and Responsibilities) Act 2002 (NSW)*, which provides in s129 that:

*The custody manager for a detained person or protected suspect must arrange immediately for the person to receive medical attention if it appears to the custody manager that the person requires medical attention or the person requests it on grounds that appear reasonable to the custody manager.*

This minimalist legislative approach is in some jurisdictions balanced with comprehensive guidance and operational orders. Not all jurisdictions make their operational policies available online, but of those who do there is considerable variation in how the issue of mental disorder and distress is dealt with.<sup>31</sup> Both Queensland and NSW have developed extremely detailed and comprehensive guidance in relation to identifying and responding to people who may have mental disorders or may be distressed, including in relation to trauma associated with arrest.<sup>32</sup> In the NSW handbook, for example, guidance is provided for how to phrase screening interviews in relation to mental health and suicide risk:

*Custody questionnaire*

*The foundation of the screening process is a successful interview. When questioning the person, show due respect. This attitude helps the gathering of accurate information, maximises personal safety and makes your task easier. After the trauma of arrest, a properly conducted screening of the detained person should settle the person and relieve any concerns they might have.*

*You cannot force the person to respond to questions but encourage communication by showing respect and a genuine concern for welfare. Explain in simple terms, the rationale for the process, e.g.: 'I'm going to ask you some questions about your health which we ask all people in custody - we are interested in your health and welfare. Should you wish to answer, I will record any reply. This information may then be given to other police, departments, organisations or agencies to ensure your safe custody'.*

*Information provided by a detained person is voluntary. They have the right to refuse to answer. Do not coerce them. Conduct questionnaires as privately as possible. If you are not understood, repeat questions slowly and clearly and consider the need for an interpreter. The risk of self-harm or suicide may be increased if the detained person:*

- *has medical problems*
- *is severely agitated and aggressive*
- *is under the influence of drugs and alcohol*
- *is excessively despondent or displays feelings of guilt*
- *has neck or wrist scars or other injuries, suggesting previous self-harm*
- *has threatened to inflict self-injury in custody*
- *is irrational or mentally ill*
- *has a history of suicidal behavior*
- *is arrested and placed in a cell for the first time (at p38):*

The requirement that people receive mental health treatment in the least restrictive and most appropriate environment possible implies that people entering police custody should be effectively identified through standardised, validated tools, enabling consideration of their referral and connection to mental health assessment and treatment. Given the high level of variability in legislation and policy regarding police response to mental disorder, there is an opportunity to develop national policy guidance and a national evidence base on this issue.

It may be that some national operational level guidance exists, as some jurisdictional manuals referred to the *Standard Guidelines for Police Custodial Facilities*. These were issued by the former Ministerial Council for Police and Emergency Management (now superseded, most recently by COAG's Ministerial Council for Policy and Emergency Management). They are not obtainable through online searches, and their status and content is unknown. However, the fact that three state and territory operational policies updated in the last year do not refer to these suggests that they are no longer in use or are outdated.

## 2.4 Cross-agency collaboration

In all states and territories, police are involved in interagency collaborations regarding mental health. A major example is the various specialist police/mental health responses. These operate through different models and varying geographic areas in Queensland, NSW, Western Australia, Victoria, South Australia and the ACT. The state/territory documents governing police/mental health specialist responses are typically operational-level MOUs, and particularly focus on situations where police respond to people in the community and transfer them to the care of health services.

These MOUs vary in their complexity and content. All deal to some degree with information sharing, role description, expectations during transfer of people from police to mental health services, and where to find further information. The Tasmanian MOU does not extend further than this. The Northern Territory and WA MOUs could not be sourced. Others are far more comprehensive documents articulating relationships and processes across a larger range of situations, and acting more as a policy framework. Examples include:

- The [NSW Health – NSW Police Force Memorandum of Understanding 2018](#). This sets up a framework for local area MOUs at an operational level for the development and implementation of local operational protocols. Local committees feed back to the district MOU committee if a potential district-wide issue is identified. District MOU committees then monitor the district-wide operation of the MOU, and the state NSW MOU committee monitors statewide implementation and operation.
- The *South Australia Mental Health, Health and Emergency Services Memorandum of Understanding between SA Health, SA Ambulance Service, Royal Flying Doctor Service, and South Australia Police, 2010*. This establishes a process for key performance indicators (KPIs) to be developed, reported on by local liaison groups, and audited. The MOU states that it will be formally evaluated on a bi-annual basis, with reports provided to the Chief Executives of the different agencies. The reporting is to cover consumer outcomes, KPIs, and operational disputes.

While MOUs provide flexibility and build collaboration between agencies, their non-binding status also renders them dependent on the goodwill of those involved, and vulnerable to legislative or contractual override, or an unwillingness or perceived inability to share information because of legislative or other barriers. The relationship between differently structured MOUs and mental health outcomes is unknown, and may be an opportunity for national research and sharing of best practice.

There are a number of opportunities for greater national coordination and information sharing in the area of police and mental health. A useful framework for considering these issues is provided by the options paper for a systemic response to mental health and police developed by the Queensland Mental Health Commission, including its model of agencies publicly reporting back on identified priorities.<sup>33</sup> Some of the areas for reform identified within it could be relevant for future national policy and research priorities:

1. *Building relationships and adopting a holistic approach*

*Police continue to build relationships, including through police liaison officers, with communities and with people living with mental illness, families, carers and support people, including the non-government sector.*

2. *Involving families and carers*

*Queensland Health, Queensland Police Service and Queensland Ambulance Service consider ways of involving families, carers and support people as far as possible and as appropriate, in providing advice and support when responding to situations involving people living with a mental illness or experiencing a mental health crisis.*

3. *The system of support*

*The Commission, Queensland Police Service, Queensland Health and the Queensland Ambulance Service investigate:*

- *options to provide safe places for people experiencing a mental health crisis who do not meet the criteria for receiving treatment and support in mental health services;*
- and*

- ways to better link people who are not admitted to hospital to support services, including to GPs.

4. *Better collaboration and information sharing*

*The Queensland Police Service, Queensland Health and Queensland Ambulance Service investigate options to extend information sharing and collaborative arrangements to the non-government sector, as appropriate.*

5. *Training in mental health (co-design)*

*The Queensland Police Service and Queensland Ambulance Service develop training in mental health that is co-designed by people with a lived experience and the non-government mental health sector.*

6. *Training in mental health (mentors)*

*The Queensland Police Service investigate options for more experienced officers acting as mentors to new recruits and officers.*

7. *Training in mental health legislation*

*Provide training on the new Mental Health Act 2016 and the Public Health Act 2005 to police and ambulance officers.*

8. *Wellbeing of first responders*

*Continue to provide and strengthen support to improve and maintain mental health and wellbeing of frontline police and ambulance officers.*

A number of these areas, such as training and information sharing, would directly address the relevant standards referred to above. More generally, evidence gaps appear to be common across all jurisdictions, and significantly limit the ability to assess compliance with the relevant standards. There is also very little research available on the health of or health services for people in police custody in Australia, and internationally.<sup>34</sup> An opportunity exists nationally to address these gaps, including in areas of particular relevance, such as:

- How best to equip police officers with the training and resources required to respond to people experiencing mental illness in the community;<sup>35</sup>
- Use of screening and identification processes in police settings;
- Culturally secure models of police responses to people with mental disorders;
- Evaluations of different models of police-mental health co-responses;
- Comparisons of how different models of governance of police-mental health collaboration, as set out in MoUs, relate to outcomes and access to services for people with mental illness;
- Involvement of people with lived experience in mental health responses in police settings;
- Methods for inclusion of police settings in national mental health policy documents, such as data collection, outcomes, and prevalence of referrals to services; and
- Understanding barriers for people in police custody accessing mental health services in community or hospital.

## 3 Court-based mental health services

### 3.1 Overview

The courts are a key opportunity for diversion away from incarceration. As with all stages of the criminal justice system, jurisdictions in Australia show significant variation in their policies relating to mental health services at the court stage.

Forensic mental health services play a major role at the court stage, in both diversion and liaison. Each jurisdiction has legislation which governs its court procedures and administration, and separate legislation which provides for processes for court ordered assessments of mental capacity and fitness for trial, discussed further in Appendix 3. In each jurisdiction these assessments are undertaken as a court liaison service as part of the state or territory forensic mental health service. Some jurisdictions, such as Victoria, have established their forensic mental health services as separate statutory agencies. Others, such as Western Australia, operate their forensic mental health services under the auspices of general mental health service legislation.

Within the national mental health policy landscape there is an absence of discussion of, for example, how quality treatment and care should be provided to people in court and court liaison settings, and how these services should be included in national mental health funding, planning, measurement and data collection. There is also diversity in the extent to which planning and reporting of these services is integrated within state and territory mental health plans and strategies. NSW, for example, in its *Justice & Forensic Mental Health Network Strategic Plan 2018-2022*, articulates how the forensic service performance and planning framework is aligned to NSW Health priorities, and refers to KPIs and a performance framework. In some other states and territories, such as the Northern Territory, much less detailed information is available on how forensic services are included in broader mental health planning.

Court-based diversion and support programs<sup>36</sup> exist in most jurisdictions, although with very different models. Nearly all jurisdictions have also established specialist ‘problem solving’ or therapeutic courts, which also vary significantly. Often these are not established through legislation, but rather operate as programs or divisions within existing courts. These have developed organically within each jurisdiction, and in every jurisdiction where they exist they operate on a geographically limited basis.

A challenge for all jurisdictions is how to provide equitable access to appropriate mental health expertise and responses for everyone with a mental disorder coming into the court system, rather than in this limited fashion. One of the major barriers to scaling up appears to be difficulties in information sharing beyond specific programs or local areas. The need for cross-agency information sharing and collaboration in court diversion and specialist court initiatives, for example, often appears to be addressed by interagency MOUs rather than in legislation or high-level policy documents, which may suggest that the structural changes required for this information sharing at system level are currently not being addressed.

### 3.2 Relevant standards

- *National Forensic Mental Health Principles (2006):*
  - *Principle 1 Equivalence to the non-offender: Prisoners and those in the community who are under the supervision or control of the criminal justice system have the same rights to availability, access and quality of mental health care as the general population...*
  - *Principle 4: All persons entering a custodial environment should be assessed with regard to their mental health needs and referral arranged accordingly.*
  - *Principle 10 Forensic mental health services must have in place a quality improvement process which through performance outcomes identifies opportunities for improvement in the delivery of services and includes action to address identified deficiencies. This improvement process must involve carers and consumers...Quality care and containment should be provided in a cost effective and efficient manner...Research and evaluation is an important component of quality forensic mental health services. The collection and analysis of routine outcome measures is necessary for the adequate evaluation of services.*
- *UN Convention on the Rights of People with Disabilities (2007)*
  - *Article 14 1 (b) p. 11: People are not deprived of their liberty unlawfully or arbitrarily, and that any deprivation of liberty is in conformity with the law, and that the existence of a disability shall in no case justify a deprivation of liberty.*
  - *Article 13: Access to Justice – In order to help to ensure effective access to justice for persons with disabilities, States Parties shall promote appropriate training for those working in the field of administration of justice, including police and prison staff.*
- *United Nations Principles for the protection of persons with mental illness and the improvement of mental health care*
  - *Principle 9: Every patient shall have the right to be treated in the least restrictive environment and with the least restrictive or intrusive treatment appropriate to the patient's health needs and the need to protect the physical safety of others.*
- *United Nations Mandela Rules:*
  - *Rule 24.1: The provision of health care for prisoners is a State responsibility. Prisoners should enjoy the same standards of health care that are available in the community, and should have access to necessary health-care services free of charge without discrimination on the grounds of their legal status.*
  - *Rule 24.2: 2. Health-care services should be organized in close relationship to the general public health administration and in a way that ensures continuity of treatment and care...*
- *National statement of principles relating to persons unfit to plead or not guilty by reason of cognitive or mental health impairment*
  - *People found unfit to plead, of unsound mind, or not guilty by reason of cognitive or mental health impairment should have access to tailored assistance, service pathways and reasonable adjustments, including those needed to facilitate their effective participation in the criminal justice system or forensic mental health system.*
  - *Consideration should be given, where practical, to the implementation of specialist courts or specialist court lists to deal with proceedings relating to cognitive or mental health impairment.*
  - *Consideration should be given to any reasonable adjustments or modifications to usual processes or assistance that may be necessary to facilitate the person's effective participation in the criminal justice system...*
  - *The needs of particular population groups, including Aboriginal and Torres Strait Islander people, and their understanding and experience of impairment, disability, health and wellbeing, should inform policy and practice relating to persons who are found unfit to plead, of unsound mind, or not guilty by reason of cognitive or mental health impairment.*

- *Culturally appropriate approaches, which may include the participation of elders, family and relevant agencies, should be considered when making orders in relation to Aboriginal and Torres Strait Islander people who are found unfit to plead, of unsound mind, or not guilty by reason of cognitive or mental health impairment.*
- *Jurisdictions should aim to make programs available that provide tailored support to assist the individual needs of people with cognitive or mental health impairment who are released from detention to reintegrate into the community taking account of ethnicity, cultural background and social factors e.g. Aboriginal and Torres Strait Islander people and migrants.*
- *Training and resources should be provided to build the skills and capacity of relevant agencies and reviewing authorities to work with people who are found unfit to plead, of unsound mind, or not guilty by reason of cognitive or mental health impairment. This should include specialist training in adolescent mental health for staff working with young people.*
- *Courts and the legal profession should have access to information about reasonable adjustments and the supports and services available to persons with cognitive or mental health impairment through appropriate means—such as practice notes or an equal treatment bench book.*
- *Victims, their families and support groups should have access to information about processes and procedures for determining people to be unfit to plead, of unsound mind, or not guilty by reason of cognitive and mental health impairment and the appropriate supports and treatment those people require and why.*

### 3.3 Specialty courts

Specialty problem-solving courts in Australia are distinguished by a high degree of heterogeneity. Jurisdictions have developed varying models of, for example, drug courts, family violence courts, Indigenous courts, mental health courts, and courts dealing with multiple areas of focus. All of these are likely to be relevant to people with mental disorders.

These courts are distinguished by diversity in their policy basis – whether they are established in legislation or as an administrative stream of an existing court, as pilot programs or ongoing measures, and how broadly they are applied. In all jurisdictions, the policy documents also indicate that specialist courts have significant inequities in their geographic coverage, with people in rural areas typically having limited or no access to specialist courts, and metropolitan courts frequently existing as pilots which are not further expanded, despite positive assessments by jurisdictions on the effectiveness of their specialist court programs.<sup>37</sup> In Victoria, for example, the Auditor General noted in 2017 that pilots of specialist courts to divert people with a mental illness into treatment have reduced rates of imprisonment. The Auditor General also noted:

*“However, there is no current plan guiding the development of the Magistrates' Court's specialist courts and support programs for people with a mental illness—including a framework describing the role these initiatives could play if they were extended beyond their current pilot locations to operate more widely across the Magistrates' Court's 12 major regional locations.”<sup>38</sup> (p. 11)*

While this variety could be leveraged to increase the understanding of the effectiveness of different models and approaches, it appears that there is no policy framework, either between jurisdictions or nationally, to facilitate and promote the sharing of data and evidence in relation to specialist courts. There are similarly no national outcomes or national data collection on, for example, prevalence of mental disorder, orders from these courts, or the relationship between these courts and longer-term mental health status, access to community mental health services, or return to justice involvement.

Justice agencies identify information sharing in their strategic documents as a priority area of reform in order to deliver court services which are more effective and connected to community need.<sup>39</sup> In relation to mental health services and the courts, there are significant evidence and information gaps. In relation to both court diversion and court liaison, there are no national outcomes or performance measures, and there is no data collection or best practice framework for inclusion of lived experience, for example. McCausland and Baldry argue that the inconsistencies in practice and gaps in information regarding these programs are likely to disadvantage particularly vulnerable groups, such as Indigenous women with mental illness and cognitive impairment. They note that Indigenous women are the fastest growing group in prison.<sup>40</sup> There are opportunities for a national approach to developing policy guidance and building the evidence base in relation to court-based mental health services.

A further national opportunity for improvement exists in improving policy guidance for courts in relation to reasonable adjustment for people with disabilities, including mental disorders. Examples of potentially relevant policy developments in this area include the *ACT Disability Justice Strategy 2019-2029*, which includes the appointment of staff focused on ensuring the courts are more accessible for people with disability, and the development of educational materials for the courts to enable reasonable adjustments to be made.

### 3.4 Court liaison services

Court Liaison Services in Australian jurisdictions provide assessments, referrals and short-term treatment, but do not normally provide ongoing treatment.<sup>41</sup>

Nationally there are no shared or consistent policy approaches or standards relating to the identification and screening of people when they come into contact with the courts. This is consistent with the broader issue noted above, that there are significant gaps in data collection and sharing regarding mental health services at court level. Davidson et al. documented in their 2016 national survey of court liaison services that:

*“In the majority of jurisdictions, the assessment details are recorded, but the outcome of any triage recommendations that the [court liaison service] may make is not routinely recorded. Such variation in data collection practices is likely to be an impediment to further evaluation.”<sup>42</sup> (p. 917)*

Providers of forensic mental health services make some mention in policy documents of their approach to screening and identification in court settings, such as [Forensicare’s \(Victoria\) Strategic Plan 2018/19 – 2020/21](#) which references its mental health screening of people being considered for a mental health or community corrections order. However, in general, information about policies in this area appear to sit in operational level documents, such as the NSW Justice Health and Forensic Mental Health Network operational policy *Health assessments in male and female adult correctional centres and police cells*.

This lack of data about prevalence, outcomes, types of orders and best models of care for court liaison services is a significant gap in Australia’s capacity to comply with the expectation that people with mental health problems will receive equivalent levels of care in the justice system and in the community. National mental health data collection and outcomes measures in non-forensic areas carry much more robust reporting and recording requirements, enabling external scrutiny of care and outcomes. As Davidson et al. note:

*There is scant research about the effectiveness of CLS across Australia or what is deemed necessary for an optimal service. While there is national policy to support early identification of people with mental illness who have come into contact with the criminal justice system and for diversion to treatment, a lack of clear national*

*guidelines or cross-border collaboration has resulted in the ad hoc development of these services.*<sup>43</sup> (p. 910)

Davidson et al. also note that audits of mental health liaison and diversion schemes in the United Kingdom have similarly identified this as a weakness there, identifying collaborative efforts towards standardisation as a likely means of improving services.<sup>44</sup>

There are clearly conceptual and practical challenges to the development of nationally appropriate outcomes and indicators for forensic mental health services, which as Hanley and Ross<sup>45</sup> note include the variety and complexity in legislative and administrative arrangements. However, there appears to be significant benefit in a coordinated process to achieve a greater level of consistency and some common outcomes and measures, and this is a significant area for potential national leadership. The discussion in the next chapter, about forensic orders and imprisonment, identifies some recommendations specifically relevant to court liaison services.

## 4 Forensic orders and imprisonment

### 4.1 Overview

Forensic orders are made by courts in relation to people who are found unfit to plead, or who are found not guilty by reason of mental disorder, and impose conditions of supervision and/or detention. To some extent a national framework for forensic orders has been endorsed by Australian governments: the 2006 *National Forensic Mental Health Principles* and the 2015 *National statement of principles relating to persons unfit to plead or not guilty by reason of cognitive or mental health impairment* both set out principles and protections for forensic orders, providing for treatment and care in the least restrictive and most appropriate setting, and restricting detention to circumstances where it is deemed to be unavoidable and necessary.<sup>46</sup>

While this framework is important, there are clear examples of non-compliance, which raise significant human rights concerns. A notable example is Western Australia's *Criminal Law (Mentally Impaired Accused) Act 1996*, which provides no capacity for the court to impose community-based supervision options for people found unfit to stand trial, allowing only unconditional release or a custody order.<sup>47</sup> The Act also sets out a large range of offences for which a custody order must be made, providing the court with no discretion.<sup>48</sup> The current Western Australia government undertook to reform this legislation in 2016,<sup>49</sup> although at the time of writing this has not occurred. A less obvious difficulty in relation to this framework for forensic orders is that it lacks an agreed process for measuring, monitoring and reporting on compliance.

From the perspective of the national mental health system, there are important gaps regarding both prison and forensic mental health services. There is no national outcomes framework, no national reporting on the number of people on forensic orders, including those detained in prison settings. There are no shared funding or workforce models, and there is little information about how the different governance models in existence relate to health outcomes or to service quality or access. It appears that the *National standards for mental health services* and the 2017 National Safety and Quality Health Service (NSQHS) Standards are not applied in prison settings, or if they are this is not apparent from the policy documents.

A positive national development has been the national prisoner health collection by the Australian Institute of Health and Welfare,<sup>50</sup> undertaken since 2009. While this is a critical source of information, it is much more limited and less robust than mental health collections in community or hospital settings. A fruitful area for national improvement would be the development of agreed indicators of performance and the funded expansion of national data collection against these.

## 4.2 Relevant standards

- *National statement of principles relating to persons unfit to plead or not guilty by reason of cognitive or mental health impairment*
  - *A person should be entitled to treatment and/or support in the least restrictive environment that will protect against serious risk of significant harm to the person or to others.*
  - *Detention of persons found unfit to plead, of unsound mind or not guilty by reason of cognitive or mental health impairment should occur as far as possible in facilities appropriate to the person's needs.*
  - *Step down accommodation options should be available to facilitate transition to the community for persons with mental health or cognitive impairment who are discharged from detention.*
  - *Forensic systems should build capacity across high, medium, low secure and community environments to ensure that people can recover and transition to life in the community. Forensic mental health and cognitive impairment systems should be continuously improving and offer evidence-based interventions that address risk.*
  - *Persons subject to detention orders should be informed about ways in which they can secure their leave or release.*
  - *Criteria for leave and release from detention should have regard to a person's recovery, program participation, treatment progression or habilitation, risk of harm the person poses to themselves or the community, including victims and not reflect punitive principles such as whether the person has spent sufficient time in detention. Decision makers should have flexibility in extending and suspending leave or release, and in imposing leave or release conditions.*
- *UN Principles for the Protection of Persons with Mental Illness and the improvement of Mental Health Care (1991)*
  - *Principle 9: Every patient shall have the right to be treated in the least restrictive environment and with the least restrictive or intrusive treatment appropriate to the patient's health needs and the need to protect the physical safety of others.*

- *National Forensic Mental Health Principles (2006):*
  - *Principle 1 Equivalence to the non-offender: Prisoners and those in the community who are under the supervision or control of the criminal justice system have the same rights to availability, access and quality of mental health care as the general population...*
  - *Principle 3: The provision of mental health care for offenders is the joint responsibility of the Health, Justice (including police and court systems) and Correctional systems and is to be addressed in partnership. The contributions/responsibilities of the agencies involved are to be planned, agreed, documented and freely available. Effective communication between Health, Justice and Corrections (and any external agencies or professional groups engaged by them) is essential to implementing these joint responsibilities....*
  - *Custodial practices should promote positive mental health and minimise negative impacts on the mental health of those in custody. Correctional services are responsible for providing an environment conducive to mental health within the constraints of needing to maintain a secure and safe environment. Mentally ill persons in custody need to be involved, to the full extent of their capabilities and without discrimination, in the educational, occupational and rehabilitation activities available within prison. Mentally ill persons in prison need access to quality general medical services.*
  - *Principle 4: All persons entering a custodial environment should be assessed with regard to their mental health needs and referral arranged accordingly.*
  - *Principle 13: ...Consistency of legislation throughout the States and Territories is desirable. Legislation must allow the Minister in any State or Territory to enter into an agreement with another State about the application of that State's mental health laws - such that persons can be apprehended, detained, treated or transferred...*
  - *Legislation should not allow coercive treatment for mental illness in a correctional facility. Where there is no alternative place for treatment coercive treatment should only occur subject to strict criteria and appropriate review of decision-making in accordance with relevant legislative provisions, external review and ethical guidelines.*
- *Guiding Principles for Corrections in Australia (Revised 2018)*
  - *4.1.4 Prisoners are provided a standard of health care equal to services available in the community that meet their individual physical health, mental health and social care needs fostering continuity of care between custody and the community.*
  - *4.1.5 Prisoners are provided with appropriate health practitioners to deliver the right care at the right time, consistent with equivalent codes of conduct and professional/ethical standards as those applying to public health services in the community.*
  - *4.1.6 Health services within correctional services provide for trauma informed care practices.*
  - *4.1.8 All prisoners, including remandees, are screened and provided with access to multidisciplinary health care and advice throughout their sentence.*
  - *4.1.9 Prisoners are provided with respectful and culturally appropriate health care.*
  - *4.1.10 Holistic health services are provided to Aboriginal and Torres Strait Islander prisoners that encompass mental and physical health; cultural and spiritual health needs; and recognise how connection to land, ancestry, and family and community affect each individual.*
  - *4.1.12 Appropriate mental health care is accessible to prisoners with systems in place to refer persons with deteriorating or acute mental illness for specialist mental health treatments.*
- *The United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) 2015*

- *Rule 5.2 Prison administrations shall make all reasonable accommodation and adjustments to ensure that prisoners with physical, mental or other disabilities have full and effective access to prison life on an equitable basis.*
- *Rule 24.1 The provision of health care for prisoners is a State responsibility. Prisoners should enjoy the same standards of health care that are available in the community, and should have access to necessary health-care services free of charge without discrimination on the grounds of their legal status.*
- *Rule 24.2 Health-care services should be organized in close relationship to the general public health administration and in a way that ensures continuity of treatment and care...*
- *Rule 39.3 Before imposing disciplinary sanctions, prison administrations shall consider whether and how a prisoner's mental illness or developmental disability may have contributed to his or her conduct and the commission of the offence or act.*
- *Rule 109.1 Persons who are found to be not criminally responsible, or who are later diagnosed with severe mental disabilities and/or health conditions, for whom staying in prison would mean an exacerbation of their condition, shall not be detained in prisons, and arrangements shall be made to transfer them to mental health facilities as soon as possible.*
- *Rule 109.2 If necessary, other prisoners with mental disabilities and/or health conditions can be observed and treated in specialized facilities under the supervision of qualified health-care professionals.*
- *Rule 109.3 The health-care service shall provide for the psychiatric treatment of all other prisoners who are in need of such treatment.*

### 4.3 Forensic orders

Policies for the delivery of forensic mental health services sit within strategies of the state or territory's specialist provider of forensic mental health services, and typically form a small part of broader mental health system documents. The jurisdictions have largely comparable legislative arrangements for how the courts may refer and transfer people to forensic services for assessment and report. Differences between jurisdictions are primarily concerned with:

- The length of time for which a person may be detained on a forensic order, and whether detention may be indefinite;
- Review processes for orders; and
- The range of orders, including the availability and capacity for orders to support arrangements other than detention.

Some jurisdictions draw distinctions in their available orders between people found unfit to plead and people found not guilty by reason of mental disorder.

Several recent policy developments point towards a potentially greater level of national consistency and compliance with international standards. One of these is exploratory work to scope the forensic component of the *National Mental Health Services Planning Framework*. The first stage of this work has been completed, with the input of state directors of forensic mental health services. Further work currently awaits a national decision. Another important development was discussed above, being the development in 2015 of the *National Statement of Principles relating to persons unfit to plead or not guilty by reason of cognitive or mental health impairment*. This complies with an action identified in the *National Disability Strategy 2010-2020*, being the development of a national statement of principles for people found not guilty by reason of mental impairment. In 2015 all jurisdictions other than South Australia agreed to apply the *National Statement of Principles* within their own settings.

As discussed, one of the key challenges nationally is the lack of integration and consistency between each jurisdiction's approach to forensic mental health and the national mental health reforms. In this

respect a number of recommendations in the 2019 [Report on the review of Forensic Mental Health and Disability Services within the Northern Territory](#)<sup>51</sup> are relevant, and worthy of consideration for national adaptation. They include recommendations relating to:

- Using work underway to develop the forensic chapter of the *National Mental Health Service Planning Framework* to identify gaps and priorities in forensic service elements, to quantitatively identify future mental health workforce needs and to develop a structured plan to attract and retain that workforce;
- Developing a mental health services plan that articulates expected components of the forensic service system in broad terms, anticipated delivery settings and functions, and the basis on which they are funded;
- Identifying expected role relationships between forensic services and the other parts of the mental health treatment system, the disability service system including the NDIS, access to community mental health services and disability support services in remote communities, and primary care services in the corrections environment;
- Establishing a statutory annual reporting requirement to publish data on forensic patients that captures the number entering into the system, those exited, those continuing, the average duration of orders, those held in custodial services, and those unable to be placed in the locations preferred by oversight bodies;
- Supporting culturally appropriate services for forensic clients including access to interpreters, service design initiatives, and models of care; and
- Establishing Forensic Consumer and Carer Liaison Panels, with appropriate representation of Indigenous people, to provide input to policy directions and service design initiatives.

The reference in these recommendations to the importance of the development of the forensic chapter of the *National Mental Health Service Planning Framework* underscores the importance of completing this work, both for individual jurisdictions and nationally. There is a significant opportunity to advocate for the continuation of this critical project.

#### 4.4 Mental health services in prisons

Prison mental health services provide screening and early identification of mental illness; assessment, treatment and care; and transfer of patients to hospital and to community care after release from prison. Each jurisdiction has legislative provision to transfer people in prison to a public sector mental health service or a specialist forensic mental health service.

There is significant variation in the legislation adopted by jurisdictions in relation to prison mental health services. A critical example is the level and standard of health care required by the legislation. Some jurisdictions are almost silent or at best vague as to the standard of care required, reinforcing the notion of a lesser level of care being expected or required in prison compared to the rest of the community. Examples include the *Corrections Act 1997 (Tas)*, which provides in s29 that prisoners who are mentally ill have the right to have ‘reasonable access within the prison, or, with the Director’s approval, outside the prison to such special care and treatment as a medical officer considers necessary or desirable in the circumstances’, without reference to any particular standard or right. In Western Australia the *Prisons Act 1981 (WA)* provides that ‘the chief executive officer is to ensure that medical care and treatment is provided to the prisoners in each prison, again being silent as to any standard.<sup>52</sup> The South Australian *Correctional Services Act (SA) 1982* provides for medical assessments, but is silent regarding the level of care, and the wording of the relevant section appears to require such assessments only for people who have been sentenced to six months imprisonment or more.<sup>53</sup>

Two jurisdictions, in contrast, specifically require that prison health care be of a standard equivalent to the community – the ACT<sup>54</sup> and the Northern Territory.<sup>55</sup> The ACT legislation stands in stark contrast to all other jurisdictions. In addition to the explicit requirement that health care be provided to a

standard equivalent to that of community services, the entire *Corrections Management Act (ACT) 2007* is structured in a way that is compliant with the relevant human rights standards and principles of access to health care. Relevant extracts from the legislation are set out in Appendix 3 to illustrate this. There is an opportunity nationally to develop consistent guidelines with respect to how legislation provides for mental health in prisons, and the ACT *Corrections Management Act (ACT) 2007* provides a useful model in this regard.

There is also significant diversity in the approach to whether and how involuntary treatment can be provided in prison, and the safeguards around this. Prison mental health services reported in a 2016 national survey of prison mental health services that operationally they do not use involuntary treatment in custody.<sup>56</sup> An opportunity exists at national level to collaboratively develop frameworks, safeguards and reporting around this issue, as exists for secure mental health units, and to include prison settings within national safety and quality initiatives regarding such issues as seclusion and restraint.

The effectiveness of prison mental health services depends significantly on resourcing, staffing and governance models, which appear to vary widely. The 2016 national survey of prison mental health services discussed above compared resourcing of prison mental health services to the estimates of the staffing required for equivalence to mental health service provision in the community, based on the model developed by Sainsbury Centre for Mental Health. The survey found that only Tasmania and the ACT were meeting the level of staffing required, and further noted that these estimates did not take account of the higher staffing levels expected to be needed for services to women, Indigenous people, and people with co-occurring substance use disorders.<sup>57</sup>

At state and territory level there is significant variation in prison mental health service models, governance arrangements, and resourcing. Particular areas of variation include screening workforce and tools, referral processes and pathways, assessment processes and tools, transition services, and means of storing, collecting and sharing information.<sup>58</sup> In terms of governance, significant areas of variation include whether a jurisdiction has private prisons, whether mental health care is contracted out and/or delivered by state providers, whether the relevant department is that responsible for justice or for health, or a hybrid sub-department, and whether public prison mental health services are governed centrally or in a devolved model across area health services or regional prisons. There is no shared framework for assessing the extent to which these varying governance arrangements facilitate or limit the requirement in rule 24.2 of the Mandela Rules that *health-care services should be organized in close relationship to the general public health administration and in a way that ensures continuity of treatment and care*.

Despite the apparently significant under-resourcing of prison mental health services, it is clear that they play a critical role in responding to Australia's mental health burden. It is noteworthy, for example, that diagnoses of mental disorder among Indigenous people are almost 40% in prison health settings, highlighting the critical need for prison mental health services to provide culturally informed assessment and management mental health services. The importance of developing services that are meaningful for Indigenous Australians is highlighted by the evidence of barriers to service engagement experienced by Indigenous Australians in the community.<sup>59</sup> Overall the gaps in the area of prison mental health services indicate it would be of benefit to have a national research project aimed at articulating resourcing and governance of prison mental health services, to inform policy, investment and operations.

The Royal Australian College of General Practitioners (RACGP) made a significant contribution to greater national consistency through the development in 2011 of the *Standards for health services in Australian prisons*. These are adapted from the standards for general practice in the community. They

have an explicit focus on processes relating to safety and quality, and note the literature surrounding the relative strengths and limitations of measures of structure, process and outcomes in health care.

The RACGP standards refer to the need to provide a standard of care in prison ‘comparable to that in the general community’, which was the wording in the then-current *Standard guidelines for corrections in Australia*. The wording in the 2018 revised version of the (renamed) *Guiding Principles for Corrections in Australia* is that:

*Prisoners are provided a standard of health care equal to services available in the community that meet their individual physical health, mental health and social care needs fostering continuity of care between custody and the community.*

The RACGP standards acknowledge the specific challenges around achieving and measuring a standard comparable to community, including:

*First the closed environment of prisons means that prisoners necessarily have restricted access to the broad range of healthcare available in the wider community. In addition, health professionals often need to balance a patient’s right to privacy and confidentiality against a need for safety and security. Second, the patient population in prisons is generally characterised by complex clinical needs making it more difficult for health professionals to achieve good health outcomes... (at p2)*

They also articulate the challenges of developing outcome measures for health services in prisons, given the more limited control health services have over factors which contribute towards outcomes. The RACGP standards use process measures as a pragmatic decision and because of their importance in prisons:

*Most process measures require less risk adjustment for patient illness than do most outcome measures. This is important in a context such as corrections, where the population of people incarcerated may change rapidly and frequently. Where the determinants of the outcome are beyond the control of the health service provider, process indicators are preferable. As a result, the RACGP decided to focus on process indicators that are in the direct control of health services. Although in many instances, outcome indicators are the ideal measure of quality, consideration needs to be given to causality, and to whether there are intervening variables affecting the outcome that are beyond the control of the health service under assessment, in which case pragmatism is required. (p. 5)*

The challenge described within the RACGP standards illustrates a much larger issue, being the lack of any nationally agreed outcomes measures in prison mental health, which limits the capacity to meaningfully measure whether the standard of equivalence is being met. This is a significant deviation from the national performance framework in place for public mental health services under the national mental health reforms. In the absence of any specific reference to outcomes, bare reference to equivalence, or health care of a ‘comparable standard’, can be interpreted in many ways, which may not reflect the higher level of need and complexity among people in prison, or the challenges of providing appropriate care in prison settings. Developing a national approach regarding the minimum standard of mental health care required in prison settings, and how this should be measured, would be a significant contribution.

Another important aspect of prison mental health services is how well they address the needs of specific groups, such as women, Indigenous people, and people with disabilities. Across different jurisdictions a range of policy examples are in place which could inform national research and policy strategies, including:

- Tasmania's *Disability Justice Plan*, which has clear action areas relating to the screening and identification of mental illness at prison reception, referral to appropriate mental health services whilst incarcerated, and planning for release;
- The ACT Government's commissioning of an Aboriginal health service, *Winnunga Nimmitjahn Aboriginal Health Service*, to provide prison, transitional and community health care;
- Queensland's *Indigenous Mental Health Intervention Program*, an Indigenous-led program providing mental health and wellbeing care in prisons and transitional services to community.

In addition to a national research program on such policy areas, a range of relevant policy recommendations are contained within the *2017 Model of Care for Aboriginal Prisoner Health and Wellbeing for South Australia – Final Report*.<sup>60</sup> Some of these may form a useful starting point for a future national framework. Examples of relevant recommendations which could inform national policy guidance include:

- *Provide training and support for [prison health staff] and prisoners to use existing technologies (e.g. MyGov) to track health care and other services and entitlements;*
- *Review the initial assessments of health needs conducted on entry of all Aboriginal people into prison/remand, to ensure a comprehensive medical and wellbeing assessment is able to be conducted. The review would assess current processes, capacity, systems, and workforce and map a planned approach to reaching a "best-practice" approach to assessment, care planning and health and wellbeing management and support;*
- *Review current practices for release of Aboriginal prisoners as it relates to transition of their health care to a primary care service/practitioner. Effective transition will require coordination across [prison health services, Corrective Services] and relevant community based and in-reach social and health services, from first entry to prepare for return to community;*
- *Establish facilities in all prisons to support the use of telehealth and videoconferencing for Aboriginal prisoners to access specialist assessments, treatments and care and avoid unnecessary, costly and disruptive transfers;*
- *Increase the number of in-reach programs, especially to form links with primary health and to provide therapeutic services for substance use disorders, mental illness, domestic and family violence and other trauma;*
- *Develop systems and procedures to ensure relevant medical records, medications and links to community services are prepared for all prisoners prior to court hearings to facilitate effective transition of health care and wellbeing if prisoners are released off-Court, including development of a checklist to cover:*
  - *Entitlements - Medicare number and card, Centrelink status*
  - *Access to finances*
  - *Access to medications, including contraception*
  - *Contacts for primary health care and specialist support*
  - *Housing*
  - *Transport*

## 5 Community corrections and release from prison

### 5.1 Overview

The period of time around release from incarceration is critical for mental health outcomes and wellbeing, and there are clear benefits to ensuring continuity of care for people when re-engaging with community services. For some people prison is a regrettable opportunity to engage with mental health services, perhaps for the first time. Some people experience mental health stabilisation during incarceration, yet improvements in mental health and wellbeing are often rapidly lost after release.<sup>61</sup> Most notably, people released from prison are at dramatically increased risk of death compared to the general population.<sup>62</sup> The elevation in risk of death after release from prison is typically greater for women than for men.<sup>63</sup> Indigenous men and women released from prison are at approximately five and 13 times higher risk of death, respectively, compared to their counterparts from the general population.<sup>64</sup> Mental illness and substance use related factors, including a psychiatric admission during custody, are associated with higher risk of death among people released from prison.<sup>65</sup> The risk of death from suicide among people released from prison is commonly an order of magnitude higher than in the general population.<sup>66</sup>

Addressing the mental health needs of people released from prison aligns with national mental health policy objectives of ensuring sustainable investment, and avoiding over-reliance on expensive acute services. People released from prison are more likely than the general population to have an emergency department presentation for substance use disorder, mental illness, and other ambulatory care-sensitive conditions.<sup>67</sup> People released from prison also have higher rates of hospitalisation for mental disorders than people in the general population,<sup>68</sup> particularly for alcohol use disorders, depression, and schizophrenia.<sup>69</sup> This is particularly significant for Indigenous people released from prison, who are at increased risk of hospitalisation compared to non-Indigenous people, with mental disorders being the most common cause of admissions.<sup>70</sup>

While continuity of care is a key factor in the improvement of outcomes for people released from prison, evidence indicates that continuity of care is typically inadequate. Even for individuals who have had contact with mental health services prior to their prison sentence, discontinuity of mental health service provision after release from prison is common.<sup>71</sup> A key example is access to schedule 8 medications following release from prison. Research conducted in NSW found that for individuals receiving opioid substitution therapy (OST) whilst incarcerated, OST exposure in the four weeks following release from prison is associated with a 75% reduction in the risk of death.<sup>72</sup> States and territories have developed programs and guidelines for OST following release from prison, such as Victoria's [Prison Opioid Substitution Therapy Program Guidelines](#) developed by the Department of Justice and Regulation, and Tasmania's [Opioid Pharmacotherapy Program Policy and Clinical Practice Standards](#), which prioritises opioid dependent people recently released from prison and deemed to be at risk of overdose. However, it appears that acceptance into these programs is often limited by resource constraints, leaving people recently released from prison who are unable to access these programs at increased risk of fatal and non-fatal overdose. The 2017 report by the Tasmanian Inspection of Adult Custodial Services identified lack of access to schedule 8 medications as a key concern in the management and treatment of substance use for people being released from prison. The report cites a key contributing factor to this as being limited places available in the community to enable people to continue treatment on release from prison.<sup>73</sup>

Across jurisdictions there is evidence to suggest that current investment in throughcare is inadequate, and that mental health services for people leaving prison are not adequately addressing priority needs. Recent Australian research indicates that almost half of adults recently released from prison did not receive recommended mental healthcare within seven days of discharge from acute care following

self-harm. <sup>74</sup> Where initiated, rates of mental health service disengagement after release from prison are also high, even among individuals experiencing very high levels of psychological distress. <sup>75</sup>

## 5.2 Relevant standards

### *National Forensic Mental Health Principles 2006*

- *Principle 6 Integration and Linkages: Forensic mental health services must be linked with other relevant services in order to provide treatment in the most clinically appropriate manner and setting. Other services are often required by forensic mental health clients, especially drug and alcohol services and disability support services; appropriate linkages between forensic mental health and these services must be ensured.*
- *Similar linkages are required between mental health and general health care services, and social services such as housing and income support, which are necessary to maximise the positive clinical outcomes for forensic mental health clients. Effective inter-agency pre-release planning is vital to successful reintegration into the community following release.*
- *Guiding Principles for Corrections in Australia (Revised 2018)*
  - *5.2.1 All prisoners, including remandees and unsentenced prisoners, are provided access to reintegration programs and services to meet their individual needs both prior to and at the time of release.*
  - *5.2.2 Prisoners are supported to maintain family relationships and links to the community through personal and professional visits.*
  - *5.2.3 Prisoners can access relevant staff, external services / agencies, family and community groups to assist in meeting their reintegration needs.*
- *The United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) 2015*
  - *Rule 110 It is desirable that steps should be taken, by arrangement with the appropriate agencies, to ensure if necessary the continuation of psychiatric treatment after release and the provision of social-psychiatric aftercare.*
- *United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules) 1990*
  - *13.1 Within the framework of a given non-custodial measure, in appropriate cases, various schemes, such as case-work, group therapy, residential programmes and the specialized treatment of various categories of offenders, should be developed to meet the needs of offenders more effectively.*
  - *13.2 Treatment should be conducted by professionals who have suitable training and practical experience.*
  - *13.3 When it is decided that treatment is necessary, efforts should be made to understand the offender's background, personality, aptitude, intelligence, values and, especially, the circumstances leading to the commission of the offence*
  - *20.2 Research on the problems that confront clients, practitioners, the community and policy-makers should be carried out on a regular basis.*
  - *20.3 Research and information mechanisms should be built into the criminal justice system for the collection and analysis of data and statistics on the implementation of non-custodial treatment for offenders.*
  - *22.1 Suitable mechanisms should be evolved at various levels to facilitate the establishment of linkages between services responsible for non-custodial measures, other branches of the criminal justice system, social development and welfare agencies, both governmental and non-governmental, in such fields as health, housing, education and labour, and the mass media.*
- *National Standards for Mental Health Services 2010*
- *Standard 4: Diversity responsiveness*
  - *4.4 The mental health service has demonstrated knowledge of and engagement with other service providers or organisations with diversity expertise / programs relevant to the unique needs of its community.*

- 4.5 *Staff are trained to access information and resources to provide services that are appropriate to the diverse needs of its consumers.*
- 4.6 *The mental health service addresses issues associated with prejudice, bias and discrimination in regards to its own staff to ensure non-discriminatory practices and equitable access to services.*
- **Standard 8: Governance, leadership and management**
  - 8.1 *The governance of the mental health service ensures that its services are integrated and coordinated with other services to optimise continuity of effective care for its consumers and carers.*
  - 8.9 *The mental health service manages and maintains an information system that facilitates the appropriate collection, use, storage, transmission and analysis of data to enable review of services and outcomes at an individual consumer and mental health service level in accordance with Commonwealth, state/territory legislation and related Acts.*
  - 8.11 *The mental health service has a formal quality improvement program incorporating evaluation of its services that result in changes to improve practice.*
- **Standard 9: Integration**
  - 9.3 *The mental health service facilitates continuity of integrated care across programs, sites and other related services with appropriate communication, documentation and evaluation to meet the identified needs of consumers and carers.*
  - 9.4 *The mental health service establishes links with the consumers' nominated primary health care provider and has procedures to facilitate and review internal and external referral processes.*
  - 9.5 *The mental health service has formal processes to develop inter-agency and intersectoral links and collaboration*
- **Standard 10: Delivery of care**
  - 10.1.5 *The mental health service promotes the social inclusion of consumers and advocates for their rights of citizenship and freedom from discrimination.*
  - 10.3.2 *The mental health service makes known its entry process, inclusion and exclusion criteria to consumers, carers, other service providers, and relevant stakeholders including police, ambulance services and emergency departments.*
  - 10.3.4 *The entry process to the mental health service is a defined pathway with service specific entry points that meet the needs of the consumer, their carer(s) and its community that are complementary to any existing generic health or welfare intake systems.*
  - 10.5.8 *The views of the consumer and their carer(s), and the history of previous treatment is considered and documented prior to administration of new medication and/or other technologies.*
  - 10.5.9 *The mental health service ensures that there is continuity of care or appropriate referral and transfer between inpatient, outpatient, day patient, community settings and other health/community services.*
  - 10.6.5 *The mental health service provides consumers, their carers and other service providers involved in follow-up with information on the process for re-entering the mental health service if required.*
  - 10.6.6 *The mental health service ensures ease of access for consumers re-entering the mental health service.*

### 5.3 Continuity of care

Within state and territory level policy documents, policy approaches to the provision of mental health care appear to vary according to whether people are:

- On parole or on other community-based corrections orders;
- On non-custodial forensic orders; or
- Released from prison not subject to any order.

Policy documents relating to the first two groups indicate that responsibilities are shared between community corrections agencies, forensic mental health services and community mental health services, yet in different ways in different jurisdictions. In some cases these relationships and pathways are described in MOUs and similar operational level agreements, such as Victoria's 2012 *Protocol between mental health, drugs and regions division and community correctional services*,<sup>76</sup> and the arrangements between its forensic mental health services and community mental health services via its *Non-custodial supervision order consultation and liaison program*. Responsibilities for mental health service provision to the third group are less visible in policy documents, and presumably sit operationally with prison-based transition services, where these exist.

A survey of Australian jurisdictions conducted in 2016 showed significant national variation in the levels and models of transitional care for people in prison returning to the community.<sup>77</sup> Many of the publicly available documents relating to provision of mental health services for people leaving prison are largely operational. For example, [NSW's Offender Classification & Case Management Policy & Procedures Manual Transitional Support Framework](#) is a procedure manual outlining the 'co-operation and partnerships between government and non-government agencies to improve post-release services in areas such as income support, housing, mental and other health services' (p. 3).

Nationally, there are significant policy gaps relevant to all of these services. There is no national data collection, relating to people with mental disorders on release from prison or on community corrections orders. Little or nothing is known regarding their access to and engagement with primary care and mental health services, or their health outcomes. There are no agreed national models or frameworks regarding good mental health care in these circumstances, and no national outcomes, KPIs or benchmarks. As discussed earlier, high level national level mental health documents contain limited mention of forensic mental health services, and are virtually silent with respect to people on parole, on community-based orders, or released from prison. At primary care level there are no Medicare items which relate to care for people leaving prison, and mental health policy guidance to Primary Health Networks does not contain mention of this group.

While the *National Standards for Mental Health Services* require mental health services to develop processes which promote continuity of care, cross-agency information sharing and connected pathways, it is not clear whether accreditation processes consider how this requirement applies in the case of people leaving and returning to justice settings. Similarly, it is not apparent to what extent requirements on mental health services to address stigma and discrimination take into account the stigma attaching to justice-involved people. There appears to be an opportunity nationally to identify ways that mental health services can ensure their services are accessible to justice-involved people, and reduce stigma and discrimination regarding justice-involved consumers. This could consist of developing consolidated policy guidance in this area for both justice and mental health agencies, including regarding support to identify best practice for information sharing.

A number of jurisdiction-specific initiatives may be worthy of further investigation as possible models for addressing some of these national level gaps. Examples include:

- the *Disability Justice Plan for Tasmania 2017-2020*, which outlines a strategy for improving the capacity to identify disability through use of a screening tool and provide enhanced rehabilitation and reintegration options for people on community corrections orders through case management;
- The Victorian *Forensicare Strategic Plan 2018-19*, which describes strategies for strengthening links with a range of Aboriginal services including the Victorian Aboriginal Community Controlled Health Organisation;
- The NSW [Justice Health & Strategic Mental Health Network Strategic Plan 2018-2022](#), which refers to indicators relating to connection of people leaving prison with community health

services, which include: the average waiting time for community health services upon release, percentage of patients referred/linked to community health care on release, the number of adult centres with sustainable services from Aboriginal Community Controlled Organisations & non-government organisations;

- The Tasmanian *Opioid Pharmacotherapy Program: Policy and Clinical Practice Standards*, which have the purpose of providing ‘contemporary policy and clinical practice standards for the delivery of opioid pharmacotherapy for the treatment of opioid dependence in Tasmania,’ and embeds people recently released from prison as a priority population within the broader strategy; and
- The Queensland Corrective Services *Strategic Research Agenda 2017-2022*, which re-establishes an internal Research and Evaluation unit tasked with supporting, conducting and disseminating high quality research and evaluations relating to the Corrective Services system in Queensland. Research and evaluation priorities relating to release from prison outlined in the strategic agenda include: effective delivery of opioid substitution treatment; the analysis of rehabilitation programs designed for Aboriginal and Torres Strait Island people; pre-release planning; factors that improve the likelihood of successful parole completion; and increasing employment opportunities post-release.

## 6 Conclusions and opportunities for reform

This comprehensive review of policies relevant to mental health services in justice settings has identified that in general the national policy framework is piecemeal, lacks a strategic and comprehensive approach and therefore opportunities exist to significantly enhance this area through relatively small policy shifts. The clearest opportunity for this is through population mental health policies explicitly incorporating justice settings and justice-involved people throughout the suite of tools. At a national level the absence of adequate consideration of justice settings and justice-involved people is particularly notable, and the potential benefits from greater inclusion of these settings and populations are significant.

This is perhaps most clearly illustrated through the two principles which receive frequent reference throughout policy documents at different stages of the justice system,

- That mental health treatment be provided in the least restrictive and most appropriate environment; and
- That people in justice settings receive care of an equivalent standard to that provided in the community.

While these principles enjoy strong recognition and support, this is likely because their inherent vagueness renders them flexible and open to interpretation. In the absence of agreed and useable outcomes and indicators, understanding and measuring compliance with them can largely only be done by estimate, anecdote or assertion. The broad support expressed for these principles often sits uncomfortably alongside arrangements within policies that structurally separate mental health services in justice settings from those in other settings. As Hanley and Ross note,<sup>78</sup> this tendency towards separation constrains the capacity to achieve equivalence, and a lack of indicators constrains the capacity to measure the gap.

The performance of mental health services for justice-involved people cannot be measured to the same degree as expected for mainstream services, which limits the imperative for compliance with key standards. The national mental health reforms provide a set of information, planning, financing and measurement tools which, if they included justice settings, could partially address these issues and similar ones which are apparent in other stages of the justice system. The absence of these tools for mental health services in criminal justice settings is a constraint on the capacity of decision makers to understand performance in these areas and to make intelligent decisions to promote change.

Several areas for reform are listed below, intended to provide a basis for the National Mental Health Commission to consider whether and how it may wish to progress reform in this area, whether through its own action or by encouraging or supporting others to take action. It is recommended that any action be preceded and informed by a consultation process. Any desk-based review, such as this one, is necessarily limited in the perspective it brings to the issues. This analysis of policy gaps and opportunities should be tested, challenged and enriched through input from different stakeholders. It is recommended that when developing any agenda for action the National Mental Health Commission undertake targeted national consultation, in particular with people with lived experience of these processes, with justice personnel, clinicians, administrators – broadly, people involved in working and living between health and justice entities and services. It is recommended in particular that significant consultation be undertaken with Aboriginal and Torres Strait Islander people and the relevant community organisations.

Based on the audit, there are several key opportunities for significant policy improvement:

**Area 1:** Systematically including justice settings and justice-involved people within population-level national mental health policies, in particular with regard to:

- Service planning
- Outcomes
- Standards
- Safety and quality
- Data collection and publication
- Workforce planning
- Inclusion of lived experience

Potential first steps could include:

- the creation of a framework for reporting against compliance with the *National Forensic Mental Health Principles* and the *National statement of principles relating to persons unfit to plead or not guilty by reason of cognitive or mental health impairment*;
- developing a national approach to the standard of mental health care required in prison settings, and how this should be measured;
- identifying ways that mental health services can ensure their services are accessible to justice involved people, and reduce stigma and discrimination regarding justice-involved consumers.

Other specific early steps could involve adapting relevant recommendations from the *2019 Report on the review of Forensic Mental Health and Disability Services within the Northern Territory* for the national setting. It is understood that the Northern Territory government has accepted the recommendations, but that no announcements have been made as to specific actions which will be taken.

A key focus of these recommendations is about improving the available information to inform planning and investment, including by using work underway to develop the forensic chapter of the *National Mental Health Service Planning Framework*. The first scoping stage of this work has been completed, and a significant opportunity is available to the NMHC to advocate for this work to be supported nationally through the next stages. This would make a meaningful contribution to the capacity to identify gaps and priorities in forensic service elements, to quantitatively identify future mental health workforce needs and to develop a structured plan to attract and retain that workforce.

Other relevant recommendations in the 2019 report which provide useful models for national action are:

- Developing a mental health services plan that articulates expected components of the forensic service system in broad terms, anticipated delivery settings and functions, and the basis on which they are funded;
- Identifying expected role relationships between forensic services and the other parts of the mental health treatment system, the disability service system including the NDIS, access to community mental health services and disability support services in remote communities, and primary care services in the corrections environment;
- Establishing a statutory annual reporting requirement to publish data on forensic patients that captures the numbers entered into the system, those exited, those continuing, the average duration of orders, those held in custodial services, and those unable to be placed in the locations preferred by oversight bodies;
- Supporting culturally appropriate services for forensic clients including access to interpreters, service design initiatives, and models of care; and
- Establishing Forensic Consumer and Carer Liaison Panels, with appropriate representation of Indigenous people, to provide input to policy directions and service design initiatives.

**Area 2:** Development of national, evidence-informed policy guidance on identification and screening of people with mental disorders at all stages of involvement in the criminal justice system.

Little is known, for example, about the different processes used in practice to identify or screen people for mental illness in police custody. There is evidence that much is left to the discretion of police officers, and that mental health encounters are often highly complex situations which present difficulties for police in knowing how to respond and how to find appropriate supports.<sup>79</sup> There is evidence from Australia and internationally<sup>80</sup> relating to the use of formalised, validated screening processes for people detained in police custody.<sup>81</sup> Police operational policy documents suggest that there is significant variation across Australia, and no shared framework or evidence base.

This issue is one where national leadership and a process for sharing of best practice would likely be of significant benefit. A standardised, evidence-based approach to screening and identification of mental health issues would increase opportunities for diversion of people with mental disorders at all stages of the justice system. It would also provide a means of complying with Principle 4 of the *National Forensic Mental Health Principles*, that ‘All persons entering a custodial environment should be assessed with regard to their mental health needs and referral arranged accordingly.’

There are opportunities to align work on this area with related recommendations regarding the need for disability screening in justice settings. The Senate Community Affairs References Committee, in its 2016 *Report on the Indefinite detention of people with cognitive and psychiatric impairment in Australia*,<sup>82</sup> recommended that COAG develop and implement a disability screening strategy for all Australian jurisdictions which would apply to all people who engage with the criminal justice system. The Committee recommended that this apply at multiple points throughout the criminal justice system, such as first contact with police, courts, prisons and related facilities.

Nationally coordinated work in this area could enable the development of reliable and evidence-based processes, tools and training for identifying people with mental disorders and disabilities across different stages of the justice system.

**Area 3:** Improve connections and continuity between justice settings and community mental health providers, for example through incentives linked to Medicare funding, policy settings for Primary Health Networks, and through Commonwealth leadership on information sharing.

Primary care providers have the capacity to make a significant difference to health outcomes of justice-involved people both through their own care and through facilitating access to specialist mental health services. There are opportunities to increase the focus on people at all stages of the justice system, including leaving prison, within national policy settings for primary care. This could include:

- Development of model MOUs between primary care providers and prison mental health care providers;
- Development of policy guidance for Primary Health Networks to assist them in assessing whether their commissioned services are providing accessible, connected care to people who are moving between prison and community;
- Support for Primary Health Networks to include people moving between justice and community settings as a priority group within their local needs assessment tools; and
- Financial incentives to improve continuity of care, such as creation of Medicare items relating to pre-release primary care prison in-reach services, and post-release health assessment.

Another area of focus could be in developing a national framework for systemic responses by police to mental health issues. A useful first step could build on the priority areas identified by the Queensland Mental Health Commission and being used as a reform framework within Queensland:

- Building relationships and adopting a holistic approach;
- Involving families and carers;
- The system of support, in particular:
  - options to provide safe places for people experiencing a mental health crisis who do not meet the criteria for receiving treatment and support in mental health services; and
  - ways to better link people who are not admitted to hospital to support services, including to GPs;
- Better collaboration and information sharing;
- Training in mental health (co-design);
- Training in mental health (mentors);
- Training in mental health legislation; and
- Wellbeing of first responders.

**Area 4:** Development of a justice/mental health evidence and research strategy addressing key gaps, which could include:

- Police mental health co-response models;
- Specialist courts;
- Court liaison services;
- Prevalence of forensic orders nationally;
- Scope and character of prison mental health services;
- Effective continuity of care and information for people transitioning between prison and community;
- Mental health services and community-based corrections;
- Systematic inclusion of justice settings into all relevant mental health policies;
- Evidence-based processes for best treatment and care of people in criminal justice settings;
- Embedding therapeutic design of justice infrastructure and processes into policies;
- Incorporating prison, court and police settings into national mental health safety and quality initiatives;
- The impact of prison and forensic health governance models on outcomes;
- Key performance indicators for mental health services operating in justice settings.

**Area 5:** Supporting and expanding existing efforts to prevent involvement in the criminal justice system, such as through supporting Justice Reinvestment initiatives. Relevant recommendations were made in 2018 for example by the Australian Law Reform Commission report *Pathways to Justice—Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples*,<sup>83</sup> which suggested the development of a national justice reinvestment body and support across levels of government for more local justice reinvestment pilots. Such recommendations seek to address evidence and data gaps and support local collaboration. This is consistent with the recommendations within this audit.

## 7 Appendix 1 Methodology

An overview of the methodology can be seen in the flow chart in figure S1. Policy documents for each of the jurisdictions were identified through keyword searches of online government agency websites, search engines, and Australian Policy Online.

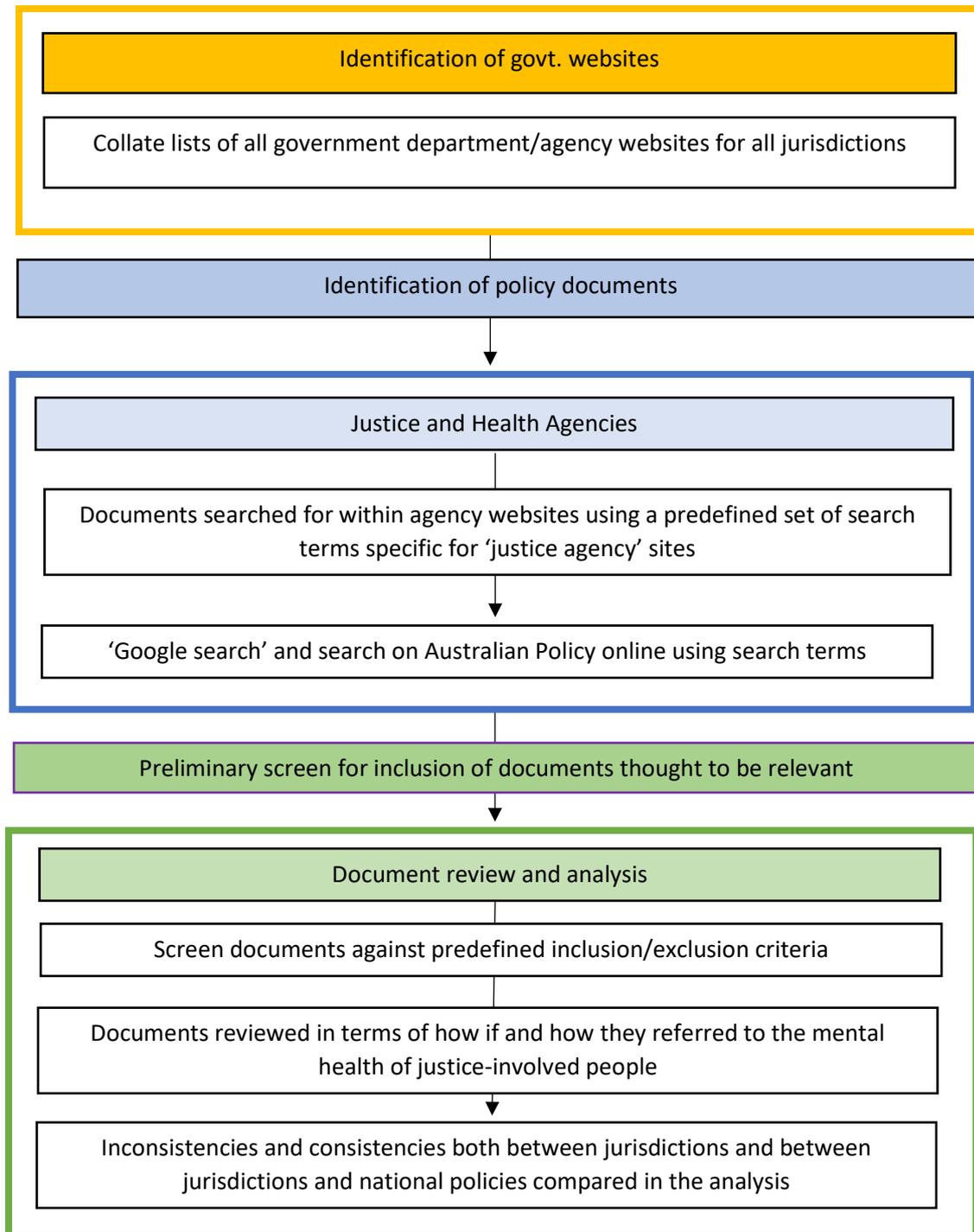
Firstly, lists of relevant ‘health’, ‘justice’, ‘human rights’, and ‘legislative’ Government agency websites were collated for each jurisdiction and the Commonwealth (see tables S1-9). Then using a predefined set of search terms, the Government agency websites were searched for potentially relevant documents (see table S10). In recognition of the varying algorithms in search engines that may exist between jurisdictions and agency websites, a ‘google search’ and search in Australian Policy Online were also performed with search terms for each jurisdiction and the Commonwealth (see table S11). Documents meeting the inclusion criteria were included in the analysis. The inclusion criteria can be seen below:

***Inclusion criteria:***

1. Document produced by a Government agency/department and purport to set out government intentions and actions, and to guide decision making (i.e. strategies, policies, and plans).
2. The policy document is relevant to mental health, alcohol and other drug use, health system, criminal justice system, and/or human rights
3. The policy relates to adults (over 18 years)
4. The policy document is the most recent and has not been superseded
5. The policy document is ‘high-level’

As previously mentioned, determining whether a policy document is ‘high-level’ is made with a degree of subjectivity, the limitations of which have been addressed elsewhere. It is also important to note that high-level policy documents were included in the analysis irrespective of whether they did or did not contain relevant policies, strategies, or plans relating to the mental health and justice-involved populations. This was important for analysing inconsistencies and consistencies between jurisdictions and in terms of their alignment with national policies. This also allowed us to assess how the mental health of justice-involved populations fits into strategies for the broader mental health system. For example, whether or not the mental health of justice-involved populations were considered in the state or territory mental health plan. The documents were reviewed to determine whether and how they referred to mental health services for justice-involved people, and were structured into key portfolio areas.

Documents within jurisdictions were compared, as well as comparing jurisdictions against each other. Where applicable, national policy documents, such as those relating to the national mental health reforms, were compared to their state and territory level counterparts. National documents were also considered in their own right.

**Figure S1: Flow Diagram of Audit Methodology**

**Table S1: Commonwealth Agency Websites**

Health Agencies	Website link
Department of Health	<a href="http://www.health.gov.au/">http://www.health.gov.au/</a>
Department of Human Services	<a href="https://www.humanservices.gov.au/">https://www.humanservices.gov.au/</a>
Australian Commission for Safety and Quality in Healthcare	<a href="https://www.safetyandquality.gov.au/">https://www.safetyandquality.gov.au/</a>
Australian Institute of Health and Welfare	<a href="https://www.aihw.gov.au/">https://www.aihw.gov.au/</a>
National Mental Health Commission	<a href="http://www.mentalhealthcommission.gov.au/">http://www.mentalhealthcommission.gov.au/</a>
Justice Agencies	
Attorney-General's Department	<a href="https://www.ag.gov.au/Pages/default.aspx">https://www.ag.gov.au/Pages/default.aspx</a>
Australian Commission for Law Enforcement Integrity	<a href="https://www.aclei.gov.au/">https://www.aclei.gov.au/</a>
Australian Criminal Intelligence Commission	<a href="https://www.acic.gov.au/">https://www.acic.gov.au/</a>
Australian Federal Police	<a href="https://www.afp.gov.au/">https://www.afp.gov.au/</a>
Australian Institute of Criminology	<a href="https://aic.gov.au/">https://aic.gov.au/</a>
Other Agencies	
Council of Australia Governments	<a href="https://www.coag.gov.au/">https://www.coag.gov.au/</a>
Department of Social Services	<a href="https://www.dss.gov.au/">https://www.dss.gov.au/</a>
Australian Human Rights Commission	<a href="https://www.humanrights.gov.au/">https://www.humanrights.gov.au/</a>
Australian Law Reform Commission	<a href="https://www.alrc.gov.au/">https://www.alrc.gov.au/</a>
Department of the Prime Minister and Cabinet	<a href="https://www.pmc.gov.au/">https://www.pmc.gov.au/</a>
Office of the Parliamentary Council	<a href="https://www.opc.gov.au/">https://www.opc.gov.au/</a>

**Table S2: ACT Agency Websites**

Health Agencies	Website link
ACT Health	<a href="https://www.health.act.gov.au/">https://www.health.act.gov.au/</a>
<b>Justice Agencies</b>	
Justice and Safety Directorate	<a href="http://www.justice.act.gov.au/">http://www.justice.act.gov.au/</a>
Legal Aid ACT	<a href="https://www.legalaidact.org.au/">https://www.legalaidact.org.au/</a>
ACT Courts & Tribunal	<a href="https://www.courts.act.gov.au/">https://www.courts.act.gov.au/</a>
ACT Policing	<a href="https://police.act.gov.au/">https://police.act.gov.au/</a>
Office of the ACT Director of Public Prosecutions	<a href="https://www.dpp.act.gov.au/">https://www.dpp.act.gov.au/</a>
<b>Other Agencies</b>	
The Chief Minister, Treasury and Economic Development Directorate	<a href="https://www.cmtedd.act.gov.au/">https://www.cmtedd.act.gov.au/</a>
ACT Community Services	<a href="https://www.communityservices.act.gov.au/">https://www.communityservices.act.gov.au/</a>
ACT Audit Office	<a href="https://www.audit.act.gov.au/">https://www.audit.act.gov.au/</a>

**Tables S3: NSW Agency Websites**

Health Agencies	Website link
NSW Health	<a href="https://www.health.nsw.gov.au/Pages/default.aspx">https://www.health.nsw.gov.au/Pages/default.aspx</a>
Mental Health Commission	<a href="https://nswmentalhealthcommission.com.au/">https://nswmentalhealthcommission.com.au/</a>
Justice Agencies	
District Court NSW	<a href="http://www.districtcourt.justice.nsw.gov.au/">http://www.districtcourt.justice.nsw.gov.au/</a>
Department of Family and Community Services	<a href="https://www.facs.nsw.gov.au/">https://www.facs.nsw.gov.au/</a>
Department of Premier and Cabinet	<a href="https://www.dpc.nsw.gov.au/">https://www.dpc.nsw.gov.au/</a>
NSW Crime Commission	<a href="https://www.crimecommission.nsw.gov.au/">https://www.crimecommission.nsw.gov.au/</a>
Legal Aid Commission	<a href="https://www.legalaid.nsw.gov.au/">https://www.legalaid.nsw.gov.au/</a>
Office of the Director of Public Prosecutions	<a href="https://www.odpp.nsw.gov.au/">https://www.odpp.nsw.gov.au/</a>
Local Court NSW	<a href="http://www.localcourt.justice.nsw.gov.au/">http://www.localcourt.justice.nsw.gov.au/</a>
Multicultural NSW	<a href="https://multicultural.nsw.gov.au/">https://multicultural.nsw.gov.au/</a>
NSW Police	<a href="https://www.police.nsw.gov.au/">https://www.police.nsw.gov.au/</a>
NSW Department of Justice	<a href="https://www.justice.nsw.gov.au">https://www.justice.nsw.gov.au</a>
Supreme Court of NSW	<a href="http://www.supremecourt.justice.nsw.gov.au/">http://www.supremecourt.justice.nsw.gov.au/</a>
NSW Bureau of Crime Statistics and Research	<a href="https://www.bocsar.nsw.gov.au/">https://www.bocsar.nsw.gov.au/</a>
Other Agencies	
Public Service Commission	<a href="https://www.psc.nsw.gov.au/">https://www.psc.nsw.gov.au/</a>
Family & Community Services	<a href="https://www.facs.nsw.gov.au/">https://www.facs.nsw.gov.au/</a>

**Table S4: Northern Territory Agency Websites**

Health Agencies	Website link
Department of Health	<a href="https://health.nt.gov.au/">https://health.nt.gov.au/</a>
Department of the Chief Minister	<a href="https://dcm.nt.gov.au/">https://dcm.nt.gov.au/</a>
Health and Community Services Complaints Commission	<a href="https://www.hcsc.com.au/">https://www.hcsc.com.au/</a>
Justice Agencies	
Department of Attorney General and Justice	<a href="https://justice.nt.gov.au/">https://justice.nt.gov.au/</a>
Office of the Children's Commissioner NT	<a href="https://occ.nt.gov.au/">https://occ.nt.gov.au/</a>
Parole Board of the Northern Territory	<a href="http://www.paroleboard.nt.gov.au/Pages/default.aspx">http://www.paroleboard.nt.gov.au/Pages/default.aspx</a>
Northern Territory Police	<a href="http://pfes.nt.gov.au/Police.aspx">http://pfes.nt.gov.au/Police.aspx</a>
Director of Public Prosecutions NT	<a href="http://www.dpp.nt.gov.au/Pages/welcome.aspx">http://www.dpp.nt.gov.au/Pages/welcome.aspx</a>
Supreme Court NT	<a href="http://www.supremecourt.nt.gov.au/">http://www.supremecourt.nt.gov.au/</a>
NT Local Court	<a href="https://localcourt.nt.gov.au/">https://localcourt.nt.gov.au/</a>
Legal Aid Commission NT	<a href="https://www.legalaid.nt.gov.au/">https://www.legalaid.nt.gov.au/</a>
Ombudsman NT	<a href="http://www.ombudsman.nt.gov.au/">http://www.ombudsman.nt.gov.au/</a>
Other Agencies	
Territory Families	<a href="https://territoryfamilies.nt.gov.au/about">https://territoryfamilies.nt.gov.au/about</a>
Department of Local Government, Housing, and Community Development	<a href="https://dlghcd.nt.gov.au/homepage">https://dlghcd.nt.gov.au/homepage</a>

**Table S5: QLD Agency Websites**

Health Agencies	Website link
Queensland Health	<a href="https://www.health.qld.gov.au/">https://www.health.qld.gov.au/</a>
Education Queensland	<a href="https://education.qld.gov.au/">https://education.qld.gov.au/</a>
<b>Justice Agencies</b>	
Department of Premier and Cabinet	<a href="https://www.premiers.qld.gov.au/">https://www.premiers.qld.gov.au/</a>
Department of Justice and Attorney General	<a href="https://www.justice.qld.gov.au/">https://www.justice.qld.gov.au/</a>
Queensland Corrective Services	<a href="https://corrections.qld.gov.au/">https://corrections.qld.gov.au/</a>
Queensland Police	<a href="https://www.police.qld.gov.au/">https://www.police.qld.gov.au/</a>
Queensland Courts	<a href="https://www.courts.qld.gov.au/">https://www.courts.qld.gov.au/</a>
Office of the Health Ombudsman	<a href="http://www.hqcc.qld.gov.au/">http://www.hqcc.qld.gov.au/</a>
Legal Aid Queensland	<a href="https://www.legalaid.qld.gov.au/Home">https://www.legalaid.qld.gov.au/Home</a>
<b>Other Agencies</b>	
Anti Discrimination Commission Queensland	<a href="https://www.adcq.qld.gov.au/">https://www.adcq.qld.gov.au/</a>
Department of Aboriginal and Torres Strait Islander Partnerships	<a href="https://www.datsip.qld.gov.au/">https://www.datsip.qld.gov.au/</a>
Department of Communities, Disability Services and Seniors	<a href="https://www.communities.qld.gov.au/">https://www.communities.qld.gov.au/</a>
Public Service Commission	<a href="https://www.qld.gov.au/about/how-government-works/government-structure/public-service-commission">https://www.qld.gov.au/about/how-government-works/government-structure/public-service-commission</a>

**Table S6: SA Agency Websites**

Health Agencies	Website link
SA Health	<a href="https://www.sahealth.sa.gov.au/wps/wcm/connect/Public+Content/SA+Health+Internet/">https://www.sahealth.sa.gov.au/wps/wcm/connect/Public+Content/SA+Health+Internet/</a>
Department of Human Services	<a href="https://dhs.sa.gov.au/">https://dhs.sa.gov.au/</a>
Justice Agencies	
Attorney-General's Department	<a href="https://www.agd.sa.gov.au/">https://www.agd.sa.gov.au/</a>
Court's Administration Authority	<a href="http://www.courts.sa.gov.au/Pages/default.aspx">http://www.courts.sa.gov.au/Pages/default.aspx</a>
Department for Correctional Services	<a href="https://www.corrections.sa.gov.au/">https://www.corrections.sa.gov.au/</a>
SA Police	<a href="https://www.police.sa.gov.au/">https://www.police.sa.gov.au/</a>
Legal Services Commission of SA	<a href="https://lsc.sa.gov.au/">https://lsc.sa.gov.au/</a>
SA Civil and Administrative Tribunal	<a href="http://www.sacat.sa.gov.au/">http://www.sacat.sa.gov.au/</a>
Other Agencies	
Office of the Commissioner of for Public Sector Employment	<a href="https://publicsector.sa.gov.au/">https://publicsector.sa.gov.au/</a>
Department of Premier and Cabinet	<a href="https://www.dpc.sa.gov.au/">https://www.dpc.sa.gov.au/</a>

**Table S7: TAS Agency Websites**

Health Agencies	Website link
Department of Health and Human Services	<a href="https://www.dhhs.tas.gov.au/">https://www.dhhs.tas.gov.au/</a>
State Emergency Service Tasmania	<a href="https://www.ses.tas.gov.au/">https://www.ses.tas.gov.au/</a>
Health Complaints Commissioner	<a href="https://www.healthcomplaints.tas.gov.au/home">https://www.healthcomplaints.tas.gov.au/home</a>
Justice Agencies	
Department of Justice	<a href="https://www.justice.tas.gov.au/">https://www.justice.tas.gov.au/</a>
Magistrates Court of Tasmania	<a href="https://www.magistratescourt.tas.gov.au/about_us/coroners">https://www.magistratescourt.tas.gov.au/about_us/coroners</a>
Courts and Tribunals Tasmania	<a href="https://www.courts.tas.gov.au/">https://www.courts.tas.gov.au/</a>
Legal Aid Commission of Tasmania	<a href="https://www.legalaid.tas.gov.au/">https://www.legalaid.tas.gov.au/</a>
Tasmania Police	<a href="https://www.police.tas.gov.au/">https://www.police.tas.gov.au/</a>
Director of Public Prosecutions	<a href="https://www.dpp.tas.gov.au/">https://www.dpp.tas.gov.au/</a>
Ombudsman Tasmania	<a href="https://www.ombudsman.tas.gov.au/">https://www.ombudsman.tas.gov.au/</a>
Other Agencies	
Equal Opportunity Tasmania	<a href="https://equalopportunity.tas.gov.au/">https://equalopportunity.tas.gov.au/</a>

**Table S8: Victorian Agency Websites**

Health Agencies	Website link
Department of Health and Human Services	<a href="https://dhhs.vic.gov.au">https://dhhs.vic.gov.au</a>
Victorian Agency for Health Information	<a href="https://bettersaferecare.vic.gov.au/about-us/about-vahi">https://bettersaferecare.vic.gov.au/about-us/about-vahi</a>
Victorian Health Promotion Foundation	<a href="https://www.vichealth.vic.gov.au/">https://www.vichealth.vic.gov.au/</a>
Victorian Institute of Forensic and Mental Health	<a href="http://www.forensicare.vic.gov.au/">http://www.forensicare.vic.gov.au/</a>
Victorian Pharmacy Authority	<a href="https://www.pharmacy.vic.gov.au/">https://www.pharmacy.vic.gov.au/</a>
Justice Agencies	
County Court Victoria	<a href="https://www.countycourt.vic.gov.au/">https://www.countycourt.vic.gov.au/</a>
Corrections, Prisons and Parole Victoria	<a href="http://www.corrections.vic.gov.au/">http://www.corrections.vic.gov.au/</a>
Department of Justice and Community Safety	<a href="https://www.justice.vic.gov.au/">https://www.justice.vic.gov.au/</a>
Department of Premier and Cabinet	<a href="https://www.vic.gov.au/department-premier-and-cabinet">https://www.vic.gov.au/department-premier-and-cabinet</a>
Magistrates Court Victoria	<a href="https://www.mcv.vic.gov.au">https://www.mcv.vic.gov.au</a>
Office of Public Prosecutions	<a href="http://www.opp.vic.gov.au/">http://www.opp.vic.gov.au/</a>
Victorian Legal Services Board and Commissioner	<a href="http://www.lsb.vic.gov.au/">http://www.lsb.vic.gov.au/</a>
Public Record Office of Victoria	<a href="https://prov.vic.gov.au/">https://prov.vic.gov.au/</a>
Supreme Court of Victoria	<a href="https://www.supremecourt.vic.gov.au/">https://www.supremecourt.vic.gov.au/</a>
Victorian Government Solicitors Office	<a href="http://vgso.vic.gov.au/">http://vgso.vic.gov.au/</a>
Victoria Police	<a href="https://www.police.vic.gov.au/">https://www.police.vic.gov.au/</a>
Victorian Legal Aid	<a href="https://www.legalaid.vic.gov.au/">https://www.legalaid.vic.gov.au/</a>
Other Agencies	
Family Safety Victoria	<a href="https://w.www.vic.gov.au/familyviolence/family-safety-victoria.html">https://w.www.vic.gov.au/familyviolence/family-safety-victoria.html</a>
Safer Care Victoria	<a href="https://bettersaferecare.vic.gov.au/about-us/about-safer-care-victoria">https://bettersaferecare.vic.gov.au/about-us/about-safer-care-victoria</a>
Victorian Equal Opportunity and Equal Rights Commission	<a href="https://www.humanrightscommission.vic.gov.au/">https://www.humanrightscommission.vic.gov.au/</a>

**Table S9: Western Australian Agency Websites**

Health Agencies	Website link
Commission for Occupational Safety and Health	<a href="https://www.commerce.wa.gov.au/worksafe/commission-occupational-safety-and-health-0">https://www.commerce.wa.gov.au/worksafe/commission-occupational-safety-and-health-0</a>
Department of Health	<a href="https://ww2.health.wa.gov.au/">https://ww2.health.wa.gov.au/</a>
Mental Health Commission	<a href="https://www.mhc.wa.gov.au/">https://www.mhc.wa.gov.au/</a>
Health and Disability Services Complaints Office (HaDSCO)	<a href="https://www.hadsco.wa.gov.au/home/">https://www.hadsco.wa.gov.au/home/</a>
Justice Agencies	
Department of Justice	<a href="https://www.justice.wa.gov.au/">https://www.justice.wa.gov.au/</a>
Department of the Premier and Cabinet	<a href="https://www.dpc.wa.gov.au/Pages/Default.aspx">https://www.dpc.wa.gov.au/Pages/Default.aspx</a>
District Court of WA	<a href="https://www.districtcourt.wa.gov.au/">https://www.districtcourt.wa.gov.au/</a>
Legal Aid Western Australia	<a href="https://www.legalaid.wa.gov.au/">https://www.legalaid.wa.gov.au/</a>
Magistrates Court of WA	<a href="https://www.magistratescourt.wa.gov.au/">https://www.magistratescourt.wa.gov.au/</a>
Ombudsman WA	<a href="http://www.ombudsman.wa.gov.au/Contact_Us/Contact.htm">http://www.ombudsman.wa.gov.au/Contact_Us/Contact.htm</a>
Supreme Court of Western Australia	<a href="https://www.supremecourt.wa.gov.au/">https://www.supremecourt.wa.gov.au/</a>
Western Australia Police Service	<a href="https://www.police.wa.gov.au/">https://www.police.wa.gov.au/</a>
Other Agencies	
Department for Communities	<a href="https://www.communities.wa.gov.au/">https://www.communities.wa.gov.au/</a>
Public Sector Commission	<a href="https://publicsector.wa.gov.au/">https://publicsector.wa.gov.au/</a>
Equal Opportunity Commission	<a href="http://www.eoc.wa.gov.au/">http://www.eoc.wa.gov.au/</a>
Law Reform Commission of Western Australia	<a href="https://www.lrc.justice.wa.gov.au/">https://www.lrc.justice.wa.gov.au/</a>

**Table S10: Search terms within Government agency websites**

<b>Justice Agencies</b>	<b>Health Agencies</b>	<b>Legislative &amp; human rights</b>
1. Health	1. Criminal	1. Criminal
2. Mental Health	2. Justice	2. Justice
3. Substance use	3. Prison	3. Prison
4. Drug and alcohol	4. Incarcerat*	4. Incarcerat*
5. Mental health legislation	5. Bail	5. Health
	6. Home detention	6. Mental Health
	7. Court	7. Bail
	8. Remand	8. Home detention
	9. Mental health legislation	9. Court
	10. Forensic order	10. Remand
	11. Community corrections	11. Forensic order
	12. Probation	12. Community corrections
	13. Tribunal	13. Probation
	14. Board	14. Human Rights
	15. Parole	15. Tribunal
	16. Sentencing	16. Board
		17. Parole
		18. Sentencing

**Table S11: Search terms for Google and Australian Policy Online**

<b><i>Justice Agency name +</i></b>	1. Health
	2. Mental Health
	3. Substance use
	4. Drug and alcohol
<b><i>Health Agency name +</i></b>	1. Criminal
	2. Justice
	3. Prison
	4. Incarcerat*
	5. Police
	6. Arrest
	7. Forensic order
	8. Community corrections
	9. Probation
	10. Tribunal
	11. Board
	12. Parole
	13. Sentencing
<b><i>Treasury Agency +</i></b>	1. Criminal
	2. Justice
	3. Prison
	4. Incarcerat*
	5. Health
	6. Mental Health
	7. Bail
	8. Home detention
	9. Court
	10. Remand
	11. Tribunal
	12. Board
	13. Parole
	14. Sentencing

## 8 Appendix 2 Key standards

### International

- Universal Declaration of Human Rights
- UN International Covenant on Civil and Political Rights
- UN International Covenant on Economic, Social and Cultural Rights
- UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- UN Convention on the Rights of the Child
- UN Convention on the Elimination of all forms of Racial Discrimination
- UN Declaration on the Elimination of Violence against Women
- UN Convention on the Elimination of All Forms of Discrimination Against Women
- UN Convention on Rights of People with Disabilities
- UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power
- UN Principles of Medical Ethics (Protection of Prisoners and Detainees)
- UN Basic Principles for the Treatment of Prisoners
- UN Code of Conduct for Law Enforcement Officials
- UN Guidelines for the effective implementation of the Code of Conduct for Law Enforcement Officials
- UN Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)
- UN Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules)
- UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment
- UN Rules for the Protection of Juveniles Deprived of their Liberty
- UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules)
- World Medical Association Declaration on the Rights of the Patient
- World Medical Association Declaration of Tokyo: Guidelines for Physicians to Prevent Torture

### National

- Australian Medical Association (AMA) Health care of Prisoners and Detainees 1998
- Australian Health Ministers' Advisory Council, Mental Health Standing Committee, (2006) *National Forensic Mental Health Principles*
- Australian Commission on Safety and Quality in Health Care, (2010) *National Standards for Mental Health Services*
- Royal Australian College of General Practitioners (2011) *Standards for health services in Australian prisons*
- Australian Health Ministers' Advisory Council, Safety and Quality Partnership Subcommittee (2012) *Mental Health Statement of Rights and Responsibilities*
- COAG Law, Crime and Community Safety Council, (2015) *National Statement of Principles relating to Persons Unfit to Plead or Not Guilty by Reason of Cognitive or Mental Health Impairment*
- Australian Health Ministers' Advisory Council, Safety and Quality Partnership Standing Committee, (2016) *National Principles to Support the Goal of Eliminating Mechanical and Physical Restraint in Mental Health Services*
- Australian Commission on Safety and Quality in Health Care, (2017) *National Safety and Quality Health Service Standards*
- Royal College of Pathologists of Australia (2017) *Medical Care in Police Custody*
- Corrective Services Administrators' Council, (2018) *Guiding Principles for Corrections in Australia*

- Australian Federal Police (undated) *AFP National Guideline on persons in custody and police custodial facilities*
- Australian Institute of Health and Welfare (2019) *National Mental Health Performance Framework 2020*



## 9 Appendix 3 Overview of legislation

### Mental health legislation - objects

Each state and territory's principal mental health legislation regulates the care, treatment and protection of people with mental illness, and has objectives which involve ensuring that people who have a mental illness receive the best possible treatment and care, with respect for their dignity and with the least possible interference of their freedom and rights. The objectives also refer to protection of people with mental illness and the community from harm.

#### ACT

*Mental Health Act 2015 (ACT) Ch 2, Ch 12*

Objectives of the legislation relevantly provide for the treatment, care, rehabilitation and protection of mentally ill or mentally disordered persons in a manner and environment that is least restrictive or intrusive of their human rights, needs and dignity

The legislation must be administered taking into account that persons with mental illness have the same rights and responsibilities as other members of the community, have the right to provide consent, refuse or cease treatment, care or support and to determine their own recovery, have the right to have their preferences taken into account in decisions made about their treatment, care or support, have the right to access the best available treatment and most appropriate services in relation to their individual needs, (including age, gender, culture, language, religion, sexuality, trauma), have the right to be given timely and accessible information about the person's assessment and treatment, care or support and have the right to communicate.

#### NSW

*Mental Health Act 2007 (NSW)*

Objectives of the legislation for the care, treatment and control of mentally ill or mentally disordered persons. The Act expressly provides that it is the intention of Parliament that the following principles are observed in the care and treatment of people with mental illness:

- a) care and treatment is to be effectively given, in the least restrictive environment possible;
- b) treatment and care should be timely and of high quality;
- c) prescriptions of medicine should be for the purposes of therapeutic and diagnostic needs only;
- d) appropriate information should be given to patients about their treatment, its effects and any alternatives;
- e) restrictions on liberty and any interference with the rights, dignity and self-respect of patients should be kept to a minimum;
- f) special needs, such as those presented by age, gender, religious affiliation, culture and language, should be recognised;
- g) every effort should be made for persons to be involved with their own treatment plans and ongoing care plans;
- h) patients should be informed of their legal rights and this information should be provided in the language, mode of communication or terms that they are likely to understand; and
- i) the role of carers and their right to be kept informed should be given effect.

#### Victoria

The *Mental Health Act 2014 (Vic)* contains specified general objectives and provides principles of treatment and care for mentally disordered persons. The objectives relevantly include to provide for

persons to receive assessment and treatment in the least restrictive way possible with the least possible restrictions on human rights and human dignity.

### **Queensland**

The purpose of the *Mental Health Act 2016 (Qld)* is to provide for the involuntary assessment, treatment and protection of persons (whether adults or minors) suffering from mental illness while safeguarding their rights and freedoms. The main objects of the Act relevantly include:

- enabling persons to be diverted from the criminal justice system if found to have been of unsound mind at the time of committing an unlawful act or to be unfit for trial; and
- protecting the community if persons diverted from the criminal justice system may be at risk of harming others.

The main objects are to be achieved in a way that safeguards the rights of persons and is the least restrictive of the rights and liberties of a person who has a mental illness.

### **South Australia**

The objectives of the *Mental Health Act 2009 (SA)* are to ensure that persons with mental illness receive a comprehensive range of services of the highest standard for their treatment, care and rehabilitation and that they retain their freedom, rights, dignity and self-respect as far as is consistent with their protection, the protection of the public and the proper delivery of the services. The guiding principles relevantly require that:

- mental health services be provided in accordance with international treaties and agreements to which Australia is a signatory;
- mental health services should be provided on a voluntary basis as far as possible, and otherwise in the least restrictive way and in the least restrictive environment that is consistent with their efficacy and public safety...

### **Western Australia**

The objectives of the *Mental Health Act 2014 (WA)* are to:

- 1) ensure that persons with a mental illness receive the best care and treatment with the least restriction of their freedom and the least interference with their rights and dignity;
- 2) ensure the proper protection of patients as well as the public;
- 3) recognize the role of families and carers in the support and treatment of patients; and
- 4) minimise the adverse effects of mental illness on family life.

### **Tasmania**

The *Mental Health Act 2013 (Tas)* contains objectives in relation to the care and treatment of persons with mental illness. The Act also provides principles of minimum interference with the civil rights of involuntary patients that must be observed when powers conferred by the legislation are exercised. The objects relevantly include to provide for...assessment and treatment to be given in the least restrictive setting consistent with clinical need, legal and judicial constraints, public safety and patient health, safety and welfare.

### **Northern Territory**

The *Mental Health and Related Services Act 1998 (NT)* contains detailed objectives of the legislation in relation to the care, treatment and protection of people with mental illness while protecting their civil rights. The Act also provides fundamental principles relating to:

- 1) the provision of care and treatment;
- 2) involuntary admission and treatment;

- 3) admission, care and treatment of Aborigines and Torres Strait Islanders;
- 4) rights of carers and families; and
- 5) rights and conditions in approved treatment facilities.

Principles relating to treatment and care relevantly include that the person is to be provided with timely and high-quality treatment and care in accordance with professionally accepted standards. The objects of the Act relevantly include:

- to provide for the care, treatment and protection of people with mental illness while at the same time protecting their civil rights;
- to establish provisions for the care, treatment and protection of people with mental illness that are consistent with the United Nations' Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care, the Australian Health Ministers' Mental Health Statement of Rights and Responsibilities and the National Mental Health Plan;
- to mainstream and integrate, as far as possible, provision for the administration and review of admission, hospitalisation and treatment of prisoners.

## Police legislation

### ACT

#### *Mental Health Act 2015 (ACT)*

S80 enables police to apprehend and transport a person for assessment if they believe on reasonable grounds that the person has a mental disorder or mental illness, and the person has attempted or is likely to attempt suicide or to inflict serious harm to self or others.

#### *Human Rights Act 2004 (ACT)*

s 19 provides that a person who is under arrest must be treated with humanity and with respect for human dignity, and must not be subjected to cruel, inhuman or degrading treatment.

### NSW

#### *Mental Health Act 2007 (NSW)*

S22 provides empowers police to apprehend and transport a person for assessment if the officer believes on reasonable grounds that the person is committing or has recently committed an offence or has recently attempted to kill themselves or it is probable they will attempt to kill or seriously harm themselves or others, and that it would be beneficial for the person to be dealt with under the *Mental Health Act*.

#### *Law Enforcement (Powers and Responsibilities) Act 2002 (NSW)*

Section 129 requires the custody manager for a detained person or protected suspect to arrange immediately for the person to receive medical attention if it appears to the custody manager that the person requires medical attention or the person requests it on grounds that appear reasonable to the custody manager.

### Victoria

#### *Mental Health Act 2014 (Vic)*

Under Part 15 Division 3 a police officer can apprehend a person who appears to have mental illness to prevent serious and imminent harm to the person or to others. The Act permits police to enter premises, apprehend people, use force and bodily restraint and provide transport to take people to a designated mental health service in prescribed circumstances.

#### *Victoria Police Act 2013 (Vic)*

Under section 200AB a police custody officer is required to take all reasonable steps to ensure the safety and welfare of a person in custody are maintained.

### Queensland

#### *Mental Health Act 2016 (Qld)*

s 157B police have powers of apprehension, restraint and transport for examination if they believe that a person's behavior indicates the person is at immediate risk of serious harm, that the risk appears to be the result of a major disturbance in the person's mental capacity, and the person appears to require urgent examination or treatment and care for the disturbance.

#### *Police Powers and Responsibilities Act 2000 (Qld)*

Under s609 police have powers of entry to prevent offence, injury or domestic violence.

The Act places specific duties are placed on police in relation to legal and other rights for people in custody, and provides for extensive procedures and duties for care and medical examination of people who appear to be intoxicated and are held in custody.

*Criminal Code 1899 (Qld)285*

Section 285 Creates a duty on every person having charge of someone because of detention to provide for the necessities of life and take reasonable care to prevent danger to life, safety or health of the person.

**South Australia**

*Mental Health Act 2009 (SA)*

Under s 57 police have powers of apprehension, restraint, search, seizure and transport for examination if they believe on reasonable grounds that a person meets the criteria of having a mental illness, requiring medical examination and at significant risk of harm to self, others or property.

*Police Regulations 2014 (SA)*

Section 84 establishes a duty for a responsible officer to convey a prisoner to a hospital for medical care if needed, or if that is not practicable to ensure the prisoner receives care from a police office or other legally qualified medical practitioner.

Section 85 requires the responsible officer to afford a prisoner every reasonable facility necessary to get private medical advice if requested.

**Western Australia**

*Mental Health Act 2014 (WA)*

Under Part 11 Division 1 police have powers of apprehension, restraint, search, seizure and transport for assessment if they reasonably suspect a person has a mental illness, and because of this needs to be apprehended to protect their or another's health or safety, or to prevent the person causing serious damage to property.

*Criminal Investigation Act 2006 (WA)*

S137 provides that arrested people are entitled to any necessary medical treatment.

*Criminal Code Act (WA)*

262 Creates a duty on every person having charge of someone because of detention to provide for the necessities of life and take reasonable care to prevent danger to life, safety or health of the person.

**Tasmania**

*Mental Health Act 2013*

Under chapter 2, part 2 police are empowered to take people into protective custody if they reasonably believe that the person has a mental illness, should be examined against assessment criteria, and their safety or the safety of others is likely to be at risk if they are not taken into custody.

*Criminal Law (Detention and Interrogation) Act 1995 (Tas)*

Section 16 provides for the duties of a custody officer in relation to persons in custody, which include ensuring people are treated in accordance with standing orders.

#### Northern Territory

##### *Mental Health & Related Services Act 1998*

Under section 32A police are authorised to enter, use reasonable force and apprehend a person if they believe on reasonable grounds the person may require mental health treatment or care, and the person is likely to cause serious harm to self or another unless apprehended immediately, and it is not practicable in the circumstances to seek assistance from an authorised mental health practitioner or medical practitioner. The person must be taken to a practitioner for assessment as soon as practicable.

##### *Police Administration Act 1978 (NT)*

Sections 128-133AC provide for procedures and duties for care and medical examination of people who appear to be intoxicated and are held in custody.

##### *Criminal Code Act 1983 (NT)*

S 149 creates a duty on every person having charge of someone because of detention to provide for the necessities of life and take reasonable care to prevent danger to life, safety or health of the person.

## Court and forensic legislation

In each State and Territory, a court may adjourn proceedings while a person accused of committing a criminal offence receives care or treatment for a mental illness.

### ACT

The primary legislation is the *Crimes Act 1900 (ACT)* and the *Mental Health Act 2015 (ACT)*. Pursuant to these Acts the Supreme Court or Magistrate's Court may decide whether an accused person is unfit to plead. If the person is unfit to plead, and is unlikely to be fit to plead within 12 months, the court must hold a special hearing to determine whether the accused person should be acquitted of the charges.

If the person is proven to have committed the offences beyond reasonable doubt, the court may order that the person be detained for review by the ACT Civil and Administrative Tribunal (ACAT) or submit to the jurisdiction of ACAT to enable the making of a forensic mental health order.

Under the *Mental Health Act 2015 (ACT)*, ACT the ACT Civil and Administrative Tribunal (ACAT) may make a forensic psychiatric treatment order or a forensic community care order. Before making a forensic mental health order, the ACAT must hold a hearing and consider the circumstances of the alleged offences, the nature and effect of the person's mental illness, and whether detention would prevent risk to the person's health or safety or harm to others.

The ACAT may review the person's fitness to plead at any time, either on application or on its own initiative. The ACAT must review the person's fitness to plead as soon as practicable (within 3 months) after the end of 12 months of the date of the order and at least every 12 months following each review. On review, the ACAT must decide on the balance of probabilities whether the person is unfit to plead.

A court may make an order under the *Crimes Act 1900 (ACT)* requiring a person to submit to the jurisdiction of ACAT to enable ACAT to determine whether the person has a mental impairment and to make recommendations to the court about how the person should be dealt with. Following an inquiry, ACAT must determine on the balance of probabilities whether the person has a mental impairment, and the ACAT must make recommendations to the court about how the person should be dealt with.

### NSW

The *Mental Health (Forensic Provisions) Act 1990 (NSW)* governs the assessments of mental fitness. If, at the commencement or at any time during the course of a hearing before a magistrate, it appears to the magistrate that the defendant is mentally ill, the magistrate may order that the person be discharged into the care of a responsible person, or taken to and detained in a mental health facility for assessment. Similar powers exist in respect of authorised officers in proceedings under the *Bail Act 2013 (NSW)*. If on assessment the person is found not to be mentally ill or mentally disordered, the magistrate may order that the person be brought back by a police officer so that he or she may appear before a magistrate or an authorised officer. At any time during the proceedings, a magistrate may order a community treatment plan be implemented for the defendant. Under s32 magistrates in local court proceedings may dismiss charges against a person without conviction on the basis of their mental illness or cognitive disability.

Prior to the Supreme Court conducting an inquiry as to whether an accused person is fit to be tried, the Supreme Court may remand the person in custody for up to 28 days. If the Mental Health Review Tribunal determines that the person is suffering from a mental illness and is currently unfit to be tried but will be fit to be tried within 12 months, the Supreme Court may order that the person be taken to

and detained in a mental health facility, or a place other than a mental health facility, for a period not exceeding 12 months. Alternatively, the Supreme Court may grant the person bail under the *Bail Act 2013 (NSW)* for a period not exceeding 12 months.

If the Mental Health Review Tribunal determines that the person will not be fit to be tried within 12 months, the Supreme Court must obtain advice from the Director of Public Prosecutions as to whether further proceedings will be taken, and is to conduct a special hearing as soon as possible, unless the Director of Public Prosecutions advises that no further proceedings will be taken. If the Supreme Court determines that the unfit accused person committed the offence charged, it may impose a limiting term and may, upon being notified of the Mental Health Review Tribunal's determination, order that the accused be detained in a mental health facility or another place.

Forensic orders can be for detention care or treatment in a mental health facility, correctional centre or other place; Forensic community treatment order.

## Victoria

The *Magistrates Court Act 1989 (Vic)* provides for specialist divisions and lists which operate in some courts, and include the Assessment and Referral Court List, for people who meet diagnostic, functional and needs eligibility criteria. The ARC list works on a case management model, receiving people on referral.

The *Crimes (Mental Impairment and Unfitness to be Tried) Act 1997 (Vic)* is the primary legislation regarding determinations of whether an accused person is fit to stand trial. A court may make orders, including a custody order at a mental health service or an order requiring the defendant to undergo an examination by a registered medical practitioner or psychologist, pending the investigation or during an adjournment into the question of the defendant's fitness to stand trial. These services are provided by Forensicare, a statutory agency established and governed under ss328-345 of the *Mental Health Act 2014 (Vic)*.

Where a person is found not guilty of an offence because of mental impairment, the court must declare the person liable to supervision under Part 5 of the *Crimes (Mental Impairment and Unfitness to be Tried) Act* or order the defendant to be released unconditionally. For this to apply it must be established that a person was suffering from a mental impairment at the time of engaging in conduct constituting the offence with which the person is charged. If the court declares that a person is liable to supervision, the Court must make a supervision order committing the person to custody in an approved mental health service or residential service or prison, or release the person pursuant to a non-custodial supervision order. The types of forensic orders are:

- a custodial supervision order for custody in prison;
- a custodial supervision order for custody in an 'appropriate place';
- a non-custodial supervision order releasing the person into the community subject to supervision and on certain conditions.

Under the *Sentencing Act 1991 (Vic)* the court may make a court assessment order for a period of seven days to enable a person who has pleaded guilty or been convicted to be compulsorily examined by a psychiatrist, either in the community or in a secure inpatient setting.

Under the *Sentencing Act* the court may make a Court Secure Treatment Order, which provides for admission to an approved mental health service for treatment as an involuntary patient. The period of the order may not exceed the period of imprisonment that the court would have ordered, and a parole date must be set as with a sentence of imprisonment. The court may make such an order if:

- but for the person having the mental illness, the court would have sentenced the person to a term of imprisonment, and
- the court is satisfied that because of the mental illness, the person needs treatment to prevent serious deterioration in mental or physical health, or to prevent serious harm to the person or to another person.

The court must also be satisfied that there is no less restrictive means reasonably available to enable the person to access the treatment.

### Queensland

Under Chapter 7 Part 7, three types of forensic order are possible: 'mental health', 'disability; and 'criminal code'. The first two of these may be made by the Mental Health Court. A forensic mental health order authorises involuntary treatment, and may be an inpatient or community order. The court may set non-revocation periods of up to 10 years for prescribed offences, and also make recommendations about intervention programs and impose conditions. Forensic orders are reviewed every six months by the Mental Health Review Tribunal, which may revoke orders other than those with a non-revocation period.

Under ss 299-309 forensic orders may also be made by a criminal court following a jury determination of unfitness, or the Minister if a person is detained in correctional custody following the jury determination.

### South Australia

The relevant legislation is the *Criminal Law Consolidation Act 1935 (SA)*, which provides that the Supreme Court may order an investigation into a person's mental fitness. The Court may adjourn or discontinue a trial to allow for an investigation, and before the formal investigation commences, the Supreme Court may require psychiatric or other expert reports to be prepared. If it appears from the report that the person is mentally unfit to stand trial but that there is a reasonable prospect that the person will regain mental capacity over the next 12 months, the Court may adjourn the trial for not more than 12 months. Forensic orders available to the court are:

- An order for release on licence for up to 5 years on any conditions the Court thinks fit, for summary or minor offences
- A Supervision Order, for either detention or release on licence. The limiting term is equivalent to the period of imprisonment and/or supervision the Court considers the person would have received if they had been convicted of the offence.
- A Continuing Supervision Order, for either detention or release on licence, which remains in place until it is revoked by the Court.
- An Interim Order for detention pending review.
- An Order for custody pending determinations of mental competence or fitness to stand trial, or
- Any other order the Court thinks fit.

### Western Australia

The relevant legislation is the *Criminal Law (Mentally Impaired Accused) Act 1996 (WA)*. The question of fitness is decided by the presiding judicial officer on the balance of probabilities. If a person brought before the courts is deemed to require psychiatric assessment by a magistrate, and bail is denied, a Hospital Order (seven day assessment) can be ordered by the magistrate. A Hospital Order requires the person to be detained in an authorised hospital as an involuntary patient or, in any other case, in strict custody. The court may at any time require the person having custody of the person to report to the court. If bail is granted and an authorised mental health practitioner takes the view that the

person meets the criteria for assessment for involuntary treatment under the *Mental Health Act 2014 (WA)*, the person can be transferred to an authorised hospital under that Act.

Under sections 16 and 19 of the *Criminal Law (Mentally Impaired Accused) Act 1996 (WA)*, if a judicial officer is satisfied that a defendant will not become mentally fit to stand trial within six months an order may be made to either release the person or make a custody order. Such orders can also be made if the proceedings were adjourned for up to six months and during that time the person has not become fit. A custody order requires the person to be detained in an authorised hospital, a declared place, a detention centre or a prison, as determined by the Mentally Impaired Accused Review Board.

If a release order or custody order is made by a magistrate in summary proceedings, the defendant cannot be charged or again tried for the offence. This is not the case if similar orders are made by a superior court.

### Tasmania

The relevant legislation is the *Criminal Justice (Mental Impairment) Act 1999 (Tas)*. This provides that the question of fitness may be investigated by the court. An investigation can be dispensed with or terminated by a court if the prosecutor and defendant agree. During an investigation of a person's fitness, the court may require the defendant to undergo a psychiatric or expert examination.

Where a person has, on the balance of probabilities, been found to be unfit to stand trial, a court or jury must also determine whether the defendant is likely to become fit for trial within the following 12 months. If it is unlikely, the proceedings may be adjourned for that period or, otherwise, the court must hold a special hearing to determine whether, on the limited evidence available, the person is or is not guilty of the offence.

A person who is found not guilty of an offence at a special hearing is taken to have been found not guilty at an ordinary criminal trial. If the person is found not guilty due to unsound mind, or a finding cannot be made that the person is not guilty, the court may make a restriction order, release the person under a supervision order, make a treatment order under the *Mental Health Act 2013 (Tas)* or release the person with or without conditions.

### Northern Territory

The *Mental Health and Related Services Act 1998 (NT)* is the primary legislation. It provides that where a person is before a court and charged with an offence, the court is empowered to adjourn proceedings at any stage and make an order that the person be admitted for diagnosis, assessment and treatment, with adjournments for up to 15 days or a specified period. The court may request advice from the Chief Health Officer as to whether it is practicable to conduct an outpatient assessment.

The court may impose conditions on an admission and treatment order, including whether the person must be detained in a particular part of the treatment facility, kept under guard or granted leave of absence and, if the person is a prisoner, whether the person is to be subject to the same restrictions as were applicable in prison. If the person absconds from or refuses to attend the treatment facility to undertake treatment, a court may issue a warrant to arrest the person. An authorised psychiatric practitioner or the Mental Health Review Tribunal may determine that the person is no longer required to be admitted as an involuntary patient at a treatment facility if satisfied that the person does not fulfil the criteria for involuntary admission following examination by the practitioner or the review of the person's admission by the Tribunal.

## Prison mental health legislation

### NSW

The *Crimes (Administration of Sentences) Act 1999 (NSW)* is the primary legislation, and s72A provides that:

*an inmate must be supplied with such medical attendance, treatment and medicine as in the opinion of a medical officer is necessary for the preservation of the health of the inmate, of other inmates and of any other person.*

Justice Health, a statutory body established under the *Health Services Act (NSW) 1997*, has designated health care functions in prisons and other custodial settings, including providing health services to people in custody, monitoring the provision of health services in managed correctional centres and keeping medical records. Section 24 provides for people to be transferred between prison and hospital.

Under s 73 a medical practitioner may carry out medical treatment without the consent of a person in prison if the Chief Executive Officer, Justice Health, is of the opinion that it is necessary. However the *Mental Health Act 2007 (NSW)* provides that patients under that Act may only be treated involuntarily within a declared mental health facility. Selected parts of NSW correctional centres have been declared under the Act for this purpose, such as Long Bay Hospital.

Under s 55 of the *Mental Health (Forensic Provisions) Act 1990 (NSW)* a prisoner may be transferred to a mental health facility. The 2016 review of prison mental health services in Australia notes advice from NSW that in practice prisoners requiring hospital admissions for mental health treatment are transferred to the Long Bay Hospital within the Long Bay Correctional Complex and, therefore, remain in the custody of correctional services while receiving mental health treatment.<sup>84</sup>

### Victoria

The primary legislation is *Corrections Act 1986 (Vic) 1986*, s47 of which provides that the rights of every prisoner include:

- *the right to have access to reasonable medical care and treatment necessary for the preservation of health including, with the approval of the principal medical officer but at the prisoner's own expense, a private registered medical practitioner...chosen by the prisoner;*
- *if intellectually disabled or mentally ill, the right to have reasonable access within the prison or, with the Governor's approval outside a prison to such special care and treatment as the medical officer considers necessary or desirable in the circumstances;*

Involuntary treatment is precluded from being provided in Victorian prisons and must be provided by a designated mental health service, transfer to which is provided for in Division 2 of the Act. Under the *Mental Health Act 2014 (Vic)* a secure treatment order may be made for a prisoner to enable their transfer from a prison to a designated mental health service for treatment.

### Queensland

The principal legislation is the *Corrective Services Act 2006*, s 3 of which, describing the purpose of the Act, includes the provision that:

*(2) This Act recognises that every member of society has certain basic human entitlements, and that, for this reason, an offender's entitlements, other than those that are necessarily diminished because of imprisonment or another court sentence, should be safeguarded.*

- (3) *This Act also recognises—*
- a. *the need to respect an offender’s dignity; and*
  - b. *the special needs of some offenders by taking into account—*
    - i. *an offender’s age, sex or cultural background; and*
    - ii. *any disability an offender has.*

Section 284 sets out the functions of prison doctors, which include examination, treatment, making recommendations and keeping medical records. Section 21 provides for medical examinations and includes provision for involuntary treatment. Prison mental health services report that as this is not declared to be specific to mental health service provision it is not used in practice for provision of involuntary mental health services in prison.<sup>85</sup> Section 68 provides for transfer to medical services.

Chapter 3 of the *Mental Health Act 2016 (Qld)* provides in more detail for transfers of people in custody to mental health services for assessment, treatment and care. A prisoner who requires assessment or treatment in a mental health service can be transferred from custody to an authorised mental health service. Once transferred to hospital, the custody of the prisoner is transferred to the health service entirely. A person in prison cannot be commenced on an involuntary treatment authority, but must be transferred to an inpatient unit of an authorised mental health service for the assessment to take place.

#### South Australia

The *Correctional Services Act (SA) 1982* is the primary legislation, and provides in s23 for initial and periodic assessments of prisoners, including taking account of health needs and background. This is not framed as in accordance with a particular right to health care. Section 27 provides for hospital transfers of prisoners for medical or psychiatric examination, assessment or treatment, and the *Criminal Law Consolidation Act 1935 (SA)* s269X provides for transfers of people person on remand.

Under the *Mental Health Act 2009 (SA)* involuntary treatment and administration of medication may be authorised within the custodial setting, and ‘experienced Correctional Officers authorised by the General Manager of a prison’ have been designated as ‘Authorised Officers’ under the *Mental Health Act* by the South Australian Chief Psychiatrist.<sup>86</sup> Primary health care services in state-run prisons are provided by the South Australia Prison Health Service, part of the Central Adelaide Local Health Network which is established under the *Health Care Act 2008*.

#### Western Australia

The principal legislation is the *Prisons Act 1981 (WA)*, which provides in s95A (1) that the chief executive officer is ‘to ensure that medical care and treatment is provided to the prisoners in each prison’. S 95B provides for duties of the prison medical officers, including assessments, treatment, medical supervision and medical record keeping. Section 83(1) provides for transfer from prison for provision of medical or health services

Section 95D provides for a power of involuntary medical examination and treatment, and s 42 enables restraint of prisoners with medication on medical grounds, with the approval of a medical officer. The issue of involuntary treatment in custody is not expressly dealt with in the *Mental Health Act 2014 (WA)*. If prisoners meet the criteria under the *Mental Health Act 2014 (WA)* for assessment for involuntary treatment, they are referred under that Act, which requires that they be transported to specialist mental health facilities.

#### Tasmania

The principal legislation is the *Corrections Act 1997 (Tas)*.

Section 29 sets out the rights of people in prison, which includes:

*(f) the right to have access to reasonable medical care and treatment necessary for the preservation of health, and*

*(g) if intellectually disabled or mentally ill, the right to have reasonable access within the prison or, with the Director's approval, outside the prison to such special care and treatment as a medical officer considers necessary or desirable in the circumstances;*

Section 36A provides for transfer of a person from prison to a secure mental health unit. Admission may occur if both the Director of Corrective Services (or delegate) and the Chief Forensic Psychiatrist agree. The Director of Corrective Services must be satisfied that the prisoner or detainee's removal from prison to a secure mental health unit is in the best interests of the prisoner or detainee, or other persons in the prison, hospital or institution in which the prisoner or detainee is being detained. A prisoner or detainee may also ask to be moved to a secure mental health unit. The Chief Forensic Psychiatrist must also be satisfied that the prisoner or detainee is suffering from a mental illness; that the prisoner or detainee's admission is necessary for his or her care or treatment; and that adequate facilities and staff exist at the secure mental health unit for the appropriate care and treatment of the prisoner or detainee. Involuntary mental health treatment is only permissible in approved mental health facilities under the *Mental Health Act*, not in prison.

#### Northern Territory

The principal legislation is the *Correctional Services Act 2014 (NT)*. Division 4 deals with health care, with s82 providing that:

- 1) *The Commissioner must arrange for the provision of appropriate health care for prisoners.*
- 2) *The Commissioner must ensure that prisoners are provided with access to health care that is comparable with that available to persons in the general community in the same part of the Territory.*

Section 83 provides that that to the extent practicable, health practitioners and prisoners are able to access each other, and s85 provides that if a health practitioner makes a recommendation about health care to the general manager, the general manager must give reasonable consideration to implementing it. Section 86 provides for a person to be transferred from prison to a health care facility.

Involuntary medical treatment in prison is permissible under s92 of the *Correctional Services Act*. Under the *Mental Health and Related Services Act (NT)1998* a person in prison may be placed on an interim community management order, which enables treatment to be provided in acute circumstances, however use of force to provide involuntary treatment in custody is not permitted under the *Mental Health and Related Services Act (NT)*. Under s79 of the *Mental Health and Related Services Act* a designated mental health practitioner or authorised psychiatric practitioner may examine and assess a prisoner to determine whether the person requires a voluntary or involuntary admission to an approved treatment facility. If requested to do so by a medical practitioner, the Commissioner of Correctional Services must arrange for a prisoner to be examined and assessed by a practitioner within 24 hours after receiving the request.

#### ACT

The principal legislation is the *Corrections Management Act (ACT) 2007*, and its drafting provides a significant contrast to the legislation in the other jurisdictions. In particular the entire Act is structured around principles, which explicitly include rights and conditions for people in prison. In section 7 the main objects of the Act include ensuring that detainees are treated in a decent, humane and just way. This is also referred to in the preamble, which also relevantly includes statements that:

1. *The inherent dignity of all human beings, whatever their personal or social status, is one of the fundamental values of a just and democratic society;*
2. *The criminal justice system should respect and protect all human rights in accordance with the Human Rights Act 2004 and international law;*
3. *Sentences are imposed on offenders as punishment, not for punishment...*

Section 8 provides that 'correctional services must be managed so as to achieve the main objects of this Act', particularly by:

- a) *ensuring that public safety is the paramount consideration in decision-making about the management of detainees; and*
- b) *ensuring respect for the humanity of everyone involved in correctional services, including detainees, corrections officers and other people who work at or visit correctional centres; and*
- c) *ensuring behaviour by corrections officers that recognises and respects the inherent dignity of detainees as individuals; and*
- d) *ensuring that harm suffered by victims, and their need for protection, are considered appropriately in decision-making about the management of detainees.*

Section 9 provides for treatment of detainees generally, and states that:

*Functions under this Act in relation to a detainee must be exercised as follows:*

- a) *to respect and protect the detainee's human rights;*
- b) *to ensure the detainee's decent, humane and just treatment;*
- c) *to preclude torture or cruel, inhuman or degrading treatment;*
- d) *to ensure the detainee is not subject to further punishment (in addition to deprivation of liberty) only because of the conditions of detention;*
- e) *to ensure the detainee's conditions in detention comply with section 12 (Correctional centres—minimum living conditions);*
- f) *if the detainee is an offender—to promote, as far as practicable, the detainee's rehabilitation and reintegration into society.*

Section 12 provides for minimum living conditions in correctional centres, and states that

(1) *To protect the human rights of detainees at correctional centres, the director-general must ensure, as far as practicable, that conditions at correctional centres meet at least the following minimum standards:*

...

(j) *detainees must have access to suitable health services and health facilities;*

In relation to health care, s53 provides that:

1. *The director general must ensure that:*
  - a) *detainees have a standard of health care equivalent to that available to other people in the ACT; and*
  - b) *arrangements are made to ensure the provision of appropriate health services for detainees; and*
  - c) *conditions in detention promote the health and wellbeing of detainees; and*
  - d) *as far as practicable, detainees are not exposed to risks of infection.*
2. *In particular, the director-general must ensure that detainees have access to—*
  - a) *regular health checks; and*
  - b) *timely treatment where necessary, particularly in urgent circumstances; and*
  - c) *hospital care where necessary; and*
  - d) *as far as practicable—*
    - i. *specialist health services from health practitioners; and*

- ii. *necessary health care programs, including rehabilitation programs.*

Under s21 much more power is provided to doctors than is the case in other jurisdictions. This section provides that the director general responsible for the administration of the *Public Health Act 1997* must appoint a doctor for each correctional centre. It goes on to provide that:

- 2) *The doctor's functions are*
  - a. *to provide health services to detainees; and*
  - b. *to protect the health of detainees (including preventing the spread of disease at correctional centres).*
- 3) *...*
- 4) *The doctor may give written directions to the director general for subsection (2) (b).*
- 5) *The director general must ensure that each direction under subsection (4) is complied with unless the director general believes, on reasonable grounds, that compliance would undermine security or good order at the correctional centre.*

Sections 54 and 54A provide for people to be transferred to health services, including mental health services, which is also provide for in the *Mental Health Act 2015 (ACT)*. The use of force to provide involuntary treatment may only be undertaken in a gazetted mental health facility and the ACT's prison is not gazetted for this purpose.

## 10 References

- <sup>1</sup> The National Mental Health Commission. *A Contributing Life, the 2013 National Report Card on Mental Health and Suicide Prevention*. Sydney: NMHC 2013.
- <sup>2</sup> WHO. *Declaration on prison health as part of public health*. Moscow: World Health Organization, 2003
- <sup>3</sup> Kinner SA, Southalan L, Janca E, et al. The role of prisons, jails and youth detention centres in addressing health inequalities in the Americas: Submission to the PAHO Commission on Equity and Health Inequalities in the Americas. Melbourne, Australia: University of Melbourne, 2018
- <sup>4</sup> WHO. *Prisons and Health*. Denmark: World Health Organization 2014.
- <sup>5</sup> WHO. *Trencin statement on prisons and mental health*. Copenhagen: World Health Organisation, Regional Office for Europe, 2008
- <sup>6</sup> Heffernan EB, Finn J, Saunders JB, Byrne G. Substance-use disorders and psychological distress among police arrestees. *Medical Journal of Australia* 2003; 179(8): 408-11; Rekrut-Lapa T, Lapa A. Health needs of detainees in police custody in England and Wales. Literature review. *Journal of Forensic and Legal Medicine* 2014; 27: 69-75
- <sup>7</sup> Vanny KA, Levy MH, Greenberg DM, Hayes SC. Mental illness and intellectual disability in Magistrates Courts in New South Wales, Australia. *Journal of Intellectual Disability Research* 2009; 53(3): 289-97; Davidson F, Heffernan E, Greenberg D, Butler T, Burgess P. A Critical Review of Mental Health Court Liaison Services in Australia: A first national survey. *Psychiatry, Psychology and Law* 2016; 23(6): 908-21
- <sup>8</sup> Fazel S, Danesh J. Serious mental disorder in 23 000 prisoners: a systematic review of 62 surveys. *The Lancet* 2002; 359(9306): 545-50; Fazel S, Hayes AJ, Bartellas K, Clerici M, Trestman R. Mental health of prisoners: prevalence, adverse outcomes, and interventions. *The Lancet Psychiatry* 2016; 3(9): 871-81
- <sup>9</sup> Fazel S, Doll H, Langstrom N. Mental disorders among adolescents in juvenile detention and correctional facilities: a systematic review and metaregression analysis of 25 surveys. *J Am Acad Child Adolesc Psychiatry* 2008; 47(9): 1010-19; Teplin LA, Welty LJ, Abram KM, Dulcan MK, Washburn JJ. Prevalence and persistence of psychiatric disorders in youth after detention: A prospective longitudinal study. *Archives of General Psychiatry* 2012; 69(10): 1031-43; Kinner SA, Degenhardt L, Coffey C, Sawyer S, Hearps S, Patton G. Complex health needs in the youth justice system: A survey of community-based and custodial offenders. *Journal of Adolescent Health* 2014; 54(5): 521-6
- <sup>10</sup> Borschmann R, Young JT, Moran P, Spittal MJ, Kinner SA. Self-harm in the criminal justice system: A public health opportunity. *The Lancet Public Health* in press; Borschmann R, Coffey C, Moran P, et al. Self-harm in young offenders. *Suicide and Life-Threatening Behavior* 2014; Borschmann R, Thomas E, Moran P, et al. Self harm following release from prison: A prospective data linkage study. *Australian and New Zealand Journal of Psychiatry* 2017; 51(3): 250-9
- <sup>11</sup> Fazel S, Ramesh T, Hawton K. Suicide in prisons: an international study of prevalence and contributory factors. *The Lancet Psychiatry* 2017; 4(12): 946-52; Spittal MJ, Forsyth S, Pirkis J, Alati R, Kinner SA. Suicide in adults released from prison in Queensland, Australia: a cohort study. *Journal of Epidemiology and Community Health* 2014; 68(10): 993-8; Kinner SA, Spittal MJ, Borschmann R. Suicide and the criminal justice system: A more complete picture [Letter to the Editor]. *Lancet Psychiatry* in press
- <sup>12</sup> Thomas EG, Spittal MJ, Heffernan EB, Taxman FS, Alati R, Kinner SA. Trajectories of psychological distress after prison release: implications for mental health service need in ex-prisoners. *Psychological Medicine* 2016; 46(3): 611-21
- <sup>13</sup> Butler T, Indig D, Allnutt S, Mamoon H. Co-occurring mental illness and substance use disorder among Australian prisoners. *Drug Alcohol Rev* 2011; 30(2): 188-94; Borschmann R, Young JT, Moran P, et al. Ambulance attendances resulting from self-harm after release from prison: a prospective data linkage study. *Social Psychiatry and Psychiatric Epidemiology* 2017; 52(10): 1295-305; Andrade Dd, Spittal MJ, Snow K, Taxman F, Crilly J, Kinner SA. Emergency health service contact and reincarceration after release from prison: a prospective cohort study. *Criminal Behaviour and Mental Health* in press; Young JT, Heffernan E, Borschmann R, et al. Dual diagnosis and injury in adults recently released from prison: A prospective cohort study. *The Lancet Public Health* in press
- <sup>14</sup> Munetz MR, Griffin PA. 'Use of the Sequential Intercept Model as an approach to decriminalization of people with serious mental illness.' *Psychiatr Serv*. 2006; 57(4):544-9; Kennedy-Hendricks A, Huskamp H, Rutkow L and Barry C (2016) 'Improving Access To Care And Reducing Involvement In The Criminal Justice System For People With Mental Illness', *Health Affairs* 35, No. 6 (2016): 1076-108
- <sup>15</sup> Government of Australia (2017) The Fifth National Mental Health and Suicide Prevention Plan, available at: <https://apo.org.au/sites/default/files/resource-files/2017/10/apo-nid114356-1220416.pdf>

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- <sup>16</sup> National Mental Health Service Planning Framework (2019) *Introduction to the NMHSPF: Population Based Planning for Mental Health*
- <sup>17</sup> Most recently Australian Institute of Health and Welfare 2019. The health of Australia's prisoners 2018. Cat. no. PHE 246. Canberra: AIHW
- <sup>18</sup> Australian Institute of Health and Welfare 2019. Australia's welfare 2019 data insights. Australia's welfare series no. 14. Cat. no. AUS 226. Canberra: AIHW
- <sup>19</sup> J. W. Godfredson and S. D. Thomas et al., 'Police perceptions of their encounters with individuals experiencing mental illness: A Victorian survey' *Australian and New Zealand Journal of Criminology* (2011)
- <sup>20</sup> Baksheev GN, Thomas SD, Ogloff JR. Psychiatric disorders and unmet needs in Australian police cells. *The Australian and New Zealand Journal of Psychiatry* 2010; 44(11): 1043-51
- <sup>21</sup> Hanley, N. & Ross, S. (2013). Forensic mental health in Australia: charting the gaps. *Current Issues in Criminal Justice*, 24 (3), 341-356
- <sup>22</sup> Ogloff, J., Thomas, S. Luebbers, S., Bashkeev, G., Elliot, I., Godfredson, J., Kesic, D., Short, T., Martin, T., Warren, L., Clough, J., Mullen, P., Wilkins, C., Dickenson, A., Sargent, L., Perez, E., Ballek, D., & Moore, E. (2013). Policing services with mentally ill people: Developing greater understanding and best practice. *Australian Psychologist*, 48, 57-68
- <sup>23</sup> Godfredson JW, Ogloff JRP, Thomas SDM, Luebbers S. Police Discretion and Encounters with People Experiencing Mental Illness: The Significant Factors. *Criminal Justice and Behavior* 2010; 37(12): 1392-405. "Generally, police officers with enhanced knowledge of mental illness were more likely to refer to psychiatric services. These officers are described as 'knowing what they do not know'. The finding corresponds with other studies that have found more experienced officers were the least likely to invoke restrictive criminal justice or mental health involvement because of the perceived ineffectiveness of these outcomes."
- <sup>24</sup> Henry P and Rajakaruna N. *WA Police Force Mental Health Co-Response Evaluation Report*, Edith Cohan University 2018; Queensland Forensic Mental Health Service, *Police Communications Centre Mental Health Liaison Service Evaluation Report* 2016.]
- <sup>25</sup> Henry P and Rajakaruna N. *WA Police Force Mental Health Co-Response Evaluation Report*, Edith Cowan University, 2018; Edith Cowan University; Herrington V and Pope R, *The impact of police training in mental health: an example from Australia, Policing and Society* 2015, 24:5, 501-522; Lee SJ, Thomas P, Doulis C, Bowles D, Henderson K, Keppich-Arnold S, Perez E, Stafrace S. Outcomes achieved by and police clinician perspectives on a joint police officer and mental health clinician mobile response unit. *International journal of mental health nursing*, 2015 Dec;24(6):538-46; , Evangelist E, Lee S, Gallagher A, Peterson V, James J, Warren N, Henderson K, Keppich-Arnold S, Cornelius L, Deveny E. Crisis averted: How consumers experienced a police and clinical early response (PACER) unit responding to a mental health crisis. *International journal of mental health nursing* 2016 Aug;25(4):367-76.
- <sup>26</sup> Puntis, S., et al. (2018). "A systematic review of co-responder models of police mental health 'street' triage." *BMC Psychiatry* 18(1).
- <sup>27</sup> Godfredson JW, Ogloff JRP, Thomas SDM, Luebbers S. Police Discretion and Encounters with People Experiencing Mental Illness: The Significant Factors. *Criminal Justice and Behavior* 2010; 37(12): 1392-405; Green TM. Police as Frontline mental health workers. The decision to arrest or refer to mental health agencies. *Int J Law Psychiatry* 1997;20(4):469-86; Wylie J. Deinstitutionalisation of the mentally disabled and its impact on police services. Marden, South Australia: Australasian Centre for Policing Research 1990.
- <sup>28</sup> NSW Justice Health & Forensic Mental Health Network. *Strategic Plan 2018-2022*, Sydney: NSW Government, 2018.
- <sup>29</sup> Queensland Mental Health Commission (2017) *Improving outcomes from police interactions: A systemic approach*, available at: [https://www.qmhc.qld.gov.au/sites/default/files/downloads/options\\_paper\\_improving\\_outcomes\\_from\\_police\\_interactions\\_a\\_systemic\\_approach\\_october\\_2017\\_0.pdf](https://www.qmhc.qld.gov.au/sites/default/files/downloads/options_paper_improving_outcomes_from_police_interactions_a_systemic_approach_october_2017_0.pdf)
- <sup>30</sup> Queensland Mental Health Commission (2019) *Final progress report: Improving outcomes from police interactions (a systemic approach)*, available at: [https://www.qmhc.qld.gov.au/sites/default/files/final\\_progress\\_report\\_improving\\_outcomes\\_from\\_police\\_interactions\\_april\\_2019.pdf](https://www.qmhc.qld.gov.au/sites/default/files/final_progress_report_improving_outcomes_from_police_interactions_april_2019.pdf)
- <sup>31</sup> See, for example Australian Federal Police National Guideline on persons in custody and police custodial facilities (for use within the ACT), available at: <https://www.afp.gov.au/sites/default/files/PDF/IPS/AFP%20National%20Guide%20on%20Persons%20in%20Custody%20and%20Police%20Custodial%20Facilities%20and%20People%20in%20Custody%2010MAY2012.pdf>, the 2018 Tasmania Police Manual, available at: <https://www.police.tas.gov.au/uploads/TPM-RTI-18-December-2018.pdf> the NSW Police Force Handbook, October 2019, available at: [https://www.police.nsw.gov.au/data/assets/pdf\\_file/0014/631004/nsw\\_police\\_force\\_handbook.pdf](https://www.police.nsw.gov.au/data/assets/pdf_file/0014/631004/nsw_police_force_handbook.pdf); and the Queensland Police (2019) Operational Procedures Manual Issue 73 Public Edition, 5 December 2019,

- available at: <https://www.police.qld.gov.au/sites/default/files/2019-12/OPM%20-%20Chapter%2016%20-%20Custody.pdf>;
- <sup>32</sup> Queensland Police (2019) Operational Procedures Manual Issue 73 Public Edition, 5 December 2019, available at: <https://www.police.qld.gov.au/sites/default/files/2019-12/OPM%20-%20Chapter%2016%20-%20Custody.pdf>; NSW Police, NSW Police Force Handbook, October 2019, available at: [https://www.police.nsw.gov.au/data/assets/pdf\\_file/0014/631004/nsw\\_police\\_force\\_handbook.pdf](https://www.police.nsw.gov.au/data/assets/pdf_file/0014/631004/nsw_police_force_handbook.pdf)
- <sup>33</sup> Queensland Mental Health Commission (2019) *Final progress report: Improving outcomes from police interactions (a systemic approach)*, available at: [https://www.qmhc.qld.gov.au/sites/default/files/final\\_progress\\_report\\_improving\\_outcomes\\_from\\_police\\_interactions\\_april\\_2019.pdf](https://www.qmhc.qld.gov.au/sites/default/files/final_progress_report_improving_outcomes_from_police_interactions_april_2019.pdf)
- <sup>34</sup> Henry P and Rajakaruna N. *WA Police Force Mental Health Co-Response Evaluation Report*, Edith Cohan University 2018; Evangelist E, Lee S, Gallagher A, Peterson V, James J, Warren N, Henderson K, Keppich-Arnold S, Cornelius L, Deveny E. Crisis averted: How consumers experienced a police and clinical early response (PACER) unit responding to a mental health crisis. *International journal of mental health nursing* 2016 Aug;25(4):367-76.
- <sup>35</sup> Note recommendations as to training in this area were made on p.1403 in Godfredson JW, Ogloff JRP, Thomas SDM, Luebbbers S. Police Discretion and Encounters with People Experiencing Mental Illness: The Significant Factors. *Criminal Justice and Behavior* 2010; 37(12): 1392-405
- <sup>36</sup> Such as the Victorian Court Integrated Services Program, Queensland Integrated Court Referrals, NSW Magistrates Early Referral Into Treatment, and South Australia Magistrates Court Diversion Program.
- <sup>37</sup> See for example the discussion of different jurisdictions in Frieberg et al (2016) *Queensland Drug and Specialist Courts Review: Final Report*, Government of Queensland; evaluations of the NSW MERIT program, available at <http://www.merit.justice.nsw.gov.au/magistrates-early-referral-into-treatment/evaluation-publication-and-resources>; Office of Crime Statistics and Research (2011) *Magistrates Court Diversion Program - An Analysis of Post Program Offending - Evaluation findings*, Government of South Australia; program description of the South Australian Treatment Intervention Program at: <http://www.courts.sa.gov.au/OurCourts/MagistratesCourt/InterventionPrograms/Pages/Treatment-Intervention-Court.aspx#description>; eligibility criteria for the Assessment and Referral Court list, in *Magistrates' Court Act (Vic) 1989 s4T*, and for the Court Integrated Services Program at <https://www.mcv.vic.gov.au/find-support/bail-support-cisp>; Queensland Courts Court Link program at <https://www.courts.qld.gov.au/services/court-programs/court-link> and Integrated Court Referrals service at <https://www.courts.qld.gov.au/services/court-programs/queensland-integrated-court-referrals>; Western Australia Start court [https://www.magistratescourt.wa.gov.au/S/start\\_court.aspx](https://www.magistratescourt.wa.gov.au/S/start_court.aspx); Tasmanian Magistrates Court diversion list [https://www.magistratescourt.tas.gov.au/about\\_us/criminal\\_division/diversion\\_list](https://www.magistratescourt.tas.gov.au/about_us/criminal_division/diversion_list)
- <sup>38</sup> Victorian Auditor General's Report. *Mental Health Strategies for the Justice System*, October 2014-15:11
- <sup>39</sup> See, for example, Queensland Court Services *Strategic Plan 2019-2021*; South Australian Attorney-General's Department *Strategic Overview: Transforming Criminal Justice: Putting People First*.
- <sup>40</sup> McCausland R and Baldry E. "I feel like I failed him by ringing the police": Criminalising disability in Australia'. *Punishment & Society* 2017, 19(3):290-309, at p296.
- <sup>41</sup> Davidson F, Heffernan E, Greenberg D, Butler T, Burgess P. A critical review of mental health court liaison services in Australia: a first national survey. *Psychiatry, psychology and law* 2016;23(6):908-21
- <sup>42</sup> Davidson F, Heffernan E, Greenberg D, Butler T, Burgess P. A critical review of mental health court liaison services in Australia: a first national survey. *Psychiatry, psychology and law* 2016;23(6):908-21 at p 917.
- <sup>43</sup> Davidson F, Heffernan E, Greenberg D, Butler T, Burgess P. A critical review of mental health court liaison services in Australia: a first national survey. *Psychiatry, psychology and law* 2016;23(6):908-21at p 910.
- <sup>44</sup> Davidson F, Heffernan E, Greenberg D, Butler T, Burgess P. A critical review of mental health court liaison services in Australia: a first national survey. *Psychiatry, psychology and law* 2016;23(6):908-21at p 917.
- <sup>45</sup> Hanley, N. & Ross, S. (2013). Forensic mental health in Australia: charting the gaps. *Current Issues in Criminal Justice*, 24 (3), 341-356.
- <sup>46</sup> Australian Government, Attorney General's Department 'National Statement of Principles relating to Persons Unfit to Plead or Not Guilty by Reason of Cognitive or Mental Health Impairment' webpage accessed 15 December 2019: <https://www.ag.gov.au/RightsAndProtections/HumanRights/Pages/national-statement-of-principles-relating-to-Persons.aspx> When announcing the *National statement of principles* in 2015, states and territories, with the exception of South Australia, committed to implement the principles in the manner that best suited their own contexts.
- <sup>47</sup> Criminal Law (Mentally Impaired Accused) Act 1996 (WA) s22
- <sup>48</sup> Criminal Law (Mentally Impaired Accused) Act 1996 (WA) schedule 1

- <sup>49</sup> Western Australian Department of Justice, Annual Report 2017-18, p38, available at: [https://www.parliament.wa.gov.au/publications/tabledpapers.nsf/displaypaper/4011862ac0d6bdbfe3e9a5a482583210027f33f/\\$file/1862.pdf](https://www.parliament.wa.gov.au/publications/tabledpapers.nsf/displaypaper/4011862ac0d6bdbfe3e9a5a482583210027f33f/$file/1862.pdf)
- <sup>50</sup> Most recently Australian Institute of Health and Welfare 2019. The health of Australia's prisoners 2018. Cat. no. PHE 246. Canberra: AIHW
- <sup>51</sup> David McGrath Consulting. Report on the review of Forensic Mental Health and Disability Services within the Northern Territory January 2019,
- <sup>52</sup> *Prisons Act 1981 (WA) s95A*
- <sup>53</sup> *Correctional Services Act (SA) 1982 Section 23*
- <sup>54</sup> *Corrections Management Act (ACT) 2007 s53*
- <sup>55</sup> *Correctional Services Act 2014 (NT) s82*
- <sup>56</sup> Clugston B, Perrin M, Davidson F, Heffernan E, Kinner S. Prison Mental Health Services: A Comparison of Australian Jurisdictions. Brisbane: Griffith University, 2018, at p23.
- <sup>57</sup> Clugston B, Perrin M, Davidson F, Heffernan E, Kinner S. Prison Mental Health Services: A Comparison of Australian Jurisdictions. Brisbane: Griffith University, 2018.
- <sup>58</sup> Clugston B, Perrin M, Davidson F, Heffernan E, Kinner S. Prison Mental Health Services: A Comparison of Australian Jurisdictions. Brisbane: Griffith University, 2018 p30.
- <sup>59</sup> AIHW. The Health of Australia's Prisoners 2012. Canberra: Australian Institute of Health and Welfare, 2013.
- <sup>60</sup> SA Sivak, L., Cantley, L., Kelly, J., Reilly, R., Hawke, K., Mott, K., Stewart, H., Mckivett, A., Rankine, S., Coulthard, A., Miller, W. and Brown, A. 2017. Model of Care for Aboriginal Prisoner Health and Wellbeing for South Australia – Final Report, Wardliparingga Aboriginal Health Research Unit: SAHMRI Adelaide, South Australia.
- <sup>61</sup> Fazel S, Seewald K. Severe mental illness in 33 588 prisoners worldwide: systematic review and meta-regression analysis. *Br J Psychiatry* 2012; 200(5): 364-73; Dias S, Ware RS, Kinner SA, Lennox NG. Physical health outcomes in prisoners with intellectual disability: a cross-sectional study. *J Intellect Disabil Res* 2013; 57(12): 1191-6; Adams DL, Leath BA. Correctional health care: implications for public health policy. *J Natl Med Assoc* 2002; 94(5): 294-8; Binswanger IA, Krueger PM, Steiner JF. Prevalence of chronic medical conditions among jail and prison inmates in the USA compared with the general population. *J Epidemiol Community Health* 2009; 63(11): 912-9; Wilper AP, Woolhandler S, Boyd JW, et al. The Health and Health Care of US Prisoners: Results of a Nationwide Survey. *Am J Public Health* 2009; 99(4): 666-72; Cockram J. People with an Intellectual Disability in the Prisons. *Psychiatry, Psychology and Law* 2005; 12(1): 163-73; Butler T, Belcher JM, Champion U, Kenny D, Allerton M, Fasher M. The physical health status of young Australian offenders. *Aust N Z J Public Health* 2008; 32(1): 73-80; Hobbs M, Krazlan K, Ridout S, Mai Q, Knuiman M, Chapman R. Mortality and morbidity in prisoners after release from prison in Western Australia 1995-2003. Canberra: Australian Institute of Criminology, 2006; Young S, Adamou M, Bolea B, et al. The identification and management of ADHD offenders within the criminal justice system: a consensus statement from the UK Adult ADHD Network and criminal justice agencies. *BMC Psychiatry* 2011; 11(1): 32; Azbel L, Wickersham JA, Grishaev Y, Dvoryak S, Altice FL. Burden of Infectious Diseases, Substance Use Disorders, and Mental Illness among Ukrainian Prisoners Transitioning to the Community. *PLoS One* 2013; 8(3): e59643; Popova S, Lange S, Bekmuradov D, Mihic A, Rehm J. Fetal alcohol spectrum disorder prevalence estimates in correctional systems: A systematic literature review. *Can J Public Health* 2011; 102(5): 33640; Spaulding AC, Seals RM, McCallum VA, Perez SD, Brzozowski AK, Steenland NK. Prisoner Survival Inside and Outside of the Institution: Implications for Health-Care Planning. *Am J Epidemiol* 2011; 173(5): 479-87.
- <sup>62</sup> Zlodre J, Fazel S. All-Cause and External Mortality in Released Prisoners: Systematic Review and Meta-Analysis. *Am J Public Health* 2012; 102(12): e67-e75.
- <sup>63</sup> Zlodre J, Fazel S. All-Cause and External Mortality in Released Prisoners: Systematic Review and Meta-Analysis. *Am J Public Health* 2012; 102(12): e67-e75.
- <sup>64</sup> Kariminia A, Butler T, Jones J, Law M. Increased mortality among Indigenous persons during and after release from prison in New South Wales. *Aust N Z J Public Health* 2012; 36(3): 274-80.
- <sup>65</sup> Andrews J, Kinner S. Understanding drug-related mortality in released prisoners: a review of national coronial records. *BMC Public Health* 2012; 12(1): 270; Kariminia A, Law M, Butler T, et al. Factors associated with mortality in a cohort of Australian prisoners. *Eur J Epidemiol* 2007; 22(7): 417-28.
- <sup>66</sup> Jones D, Maynard A. Suicide in recently released prisoners: a systematic review. *Mental Health Practice* 2013; 17(3): 20-7; Haglund A, Tidemalm D, Jokinen J, et al. Suicide after release from prison: a population-based cohort study from Sweden. *J Clin Psychiatry* 2014; 75(10): 1047-53.
- <sup>67</sup> Frank JW, Andrews CM, Green TC, Samuels AM, Trinh TT, Friedmann PD. Emergency department utilization among recently released prisoners: a retrospective cohort study. *BMC Emerg Med* 2013; 13(1): 16.
- <sup>68</sup> Hobbs M, Krazlan K, Ridout S, Mai Q, Knuiman M, Chapman R. Mortality and morbidity in prisoners after release from prison in Western Australia 1995-2003. Canberra: Australian Institute of Criminology, 2006.

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- <sup>69</sup> Alan J, Burmas M, Preen D, Pfaff J. Inpatient hospital use in the first year after release from prison: a Western Australian population-based record linkage study. *Aust N Z J Public Health* 2011; 35(3): 264-9.
- <sup>70</sup> Alan J, Burmas M, Preen D, Pfaff J. Inpatient hospital use in the first year after release from prison: a Western Australian population-based record linkage study. *Aust N Z J Public Health* 2011; 35(3): 264-9.
- <sup>71</sup> Sodhi-Berry N, Knuiman M, Alan J, Morgan V, Preen D. Pre- and post-sentence mental health service use by a population cohort of older offenders ( $\geq 45$  years) in Western Australia. *Soc Psychiatry Psychiatr Epidemiol* 2015; 50(7): 1097-110.
- <sup>72</sup> Degenhardt L, Larney S, Kimber J, Gisev N, Farrell M, Dobbins T, Weatherburn DJ, Gibson A, Mattick R, Butler T, Burns L. The impact of opioid substitution therapy on mortality post-release from prison: retrospective data linkage study. *Addiction*. 2014 Aug;109(8):1306-17.
- <sup>73</sup> Custodial Inspector 2017 Inspection of Adult Custodial Services in Tasmania: Care and Wellbeing Inspection Report, at p 6, available at:  
[https://www.custodialinspector.tas.gov.au/\\_\\_data/assets/pdf\\_file/0020/451613/FINAL-TPS-Care-and-Wellbeing-Inspection-Report-Appendices-30-October-2018-PDF.PDF](https://www.custodialinspector.tas.gov.au/__data/assets/pdf_file/0020/451613/FINAL-TPS-Care-and-Wellbeing-Inspection-Report-Appendices-30-October-2018-PDF.PDF)
- <sup>74</sup> Young JT, Borschmann R, Heffernan E, et al. Contact with mental health services after acute care for self-harm among adults released from prison: A prospective data linkage study. Under Review.
- <sup>75</sup> Thomas EG, Spittal MJ, Heffernan EB, Taxman FS, Alati R, Kinner SA. Trajectories of psychological distress after prison release: implications for mental health service need in ex-prisoners. *Psychol Med* 2016; 46(3): 611-21.
- <sup>76</sup> Government of Victoria (2012) *Protocol Between Mental Health Drug and Regions and Community Correctional Services*, November 2012
- <sup>77</sup> Clugston B, Perrin M, Davidson F, Heffernan E, Kinner S. Prison Mental Health Services: A Comparison of Australian Jurisdictions. Brisbane: Griffith University, 2018.
- <sup>78</sup> Hanley, N. & Ross, S. (2013). Forensic mental health in Australia: charting the gaps. *Current Issues in Criminal Justice*, 24 (3), 341-356.
- <sup>79</sup> J. W. Godfredson and J. R. P. Ogloff et al., 'Police discretion and encounters with people experiencing Mental Illness: The Significant Factors', *Criminal Justice and Behavior* (2010); Alice Park, Alison Booth, Adwoa J Parker, Arabella Scantlebury, Kath Wright, Martin Webber, Models of Mental Health Triage for Individuals Coming to the Attention of the Police Who May Be Experiencing Mental Health Crisis: A Scoping Review, *Policing: A Journal of Policy and Practice*, at p1
- <sup>80</sup> Noga HL, Walsh EC, Shaw JJ, Senior J. The development of a mental health screening tool and referral pathway for police custody. *European Journal of Public Health* 2014 15;25(2):237-42.
- <sup>81</sup> Noga HL, Walsh EC, Shaw JJ, Senior J. The development of a mental health screening tool and referral pathway for police custody. *European Journal of Public Health* 2014 15;25(2):237-42.
- <sup>82</sup> Parliament of Australia (2016) Indefinite detention of people with cognitive and psychiatric impairment in Australia, Commonwealth of Australia, available at:  
[https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Community\\_Affairs/IndefiniteDetention45/Report](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/IndefiniteDetention45/Report)
- <sup>83</sup> Australian Law Reform Commission report Pathways to Justice—Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples ALRC Report 133, available at  
<https://www.alrc.gov.au/publication/pathways-to-justice-inquiry-into-the-incarceration-rate-of-aboriginal-and-torres-strait-islander-peoples-alrc-report-133/>
- <sup>84</sup> Clugston B, Perrin M, Davidson F, Heffernan E, Kinner S. Prison Mental Health Services: A Comparison of Australian Jurisdictions. Brisbane: Griffith University, 2018
- <sup>85</sup> Clugston B, Perrin M, Davidson F, Heffernan E, Kinner S. Prison Mental Health Services: A Comparison of Australian Jurisdictions. Brisbane: Griffith University, 2018
- <sup>86</sup> South Australian Government Gazette No. 35, 30 May 2017