



Australian Health Ministers' Advisory Council



Mental Health Standing Committee

**NATIONAL STATEMENT OF
PRINCIPLES
FOR
FORENSIC MENTAL HEALTH
2006**

Endorsed by AHMC (2002) and CSMC (2007)

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National Statement of Principles for Forensic Mental Health

Preamble

Forensic mental health is a specialised field within mental health. In terms of service planning and development, forensic mental health has been neglected and reform has lagged behind mainstream mental health services.

There is a high occurrence of mental illness amongst inmates in correctional settings. Often mental illness is present in association with other disabilities such as substance abuse and intellectual disability.

Offenders with a mental disorder are a highly stigmatised and marginalised group in our community. There are a number of particularly vulnerable populations within this group, including juveniles, Aboriginal and Torres Strait Islander peoples and people from culturally and linguistically diverse backgrounds. The marginalisation is increased by sensationalised media representations that often give misleading accounts of forensic mental health issues.

These Principles have been developed in the context of, and are underpinned by, international and national policy frameworks including: the United Nations *Principles on the Protection of People with a Mental Illness*; the *International Covenant on Civil and Political Rights*; the Australian Health Ministers' *Mental Health Statement of Rights and Responsibilities*; the *National Mental Health Strategy*; the *National Standards for Mental Health Services* and the *Royal Commission into Aboriginal Deaths in Custody*.

The National Mental Health Strategy acknowledges that forensic populations are a group requiring access to the same range of services as the wider community. The Second National Mental Health Plan identified forensic populations as one of the target groups for which the following reforms are essential:

- Improved service access
- Better service responses
- Further development
- Evaluation of appropriate service models

The Target Group

- Offenders or alleged offenders referred by police, courts, legal practitioners or independent statutory bodies for psychiatric assessment and/or treatment
- Alleged offenders detained, or on conditional release, as being unfit to plead or not guilty by reason of mental impairment
- Offenders or alleged offenders with mental illness ordered by courts or independent statutory bodies to be detained as an inpatient in a secure forensic facility
- Prisoners/young offenders with mental illness requiring secure inpatient hospital treatment
- Selected high-risk offenders with a mental illness referred by releasing authorities
- Prisoners/young offenders with mental illness requiring specialist mental health assessment and/or treatment in prison
- People with mental illness* in mainstream mental health services who are a significant danger to their carers or the community and who require the involvement of a specialist forensic mental health service
- The Principles are not intended to apply to those who suffer intellectual disability or substance abuse without co-morbid mental illness

* The diagnostic groups that constitute this group of people for the purpose of the Principles will be determined by each jurisdiction.

Rationale for National Principles

The National Statement of Principles for Forensic Mental Health aims to provide cohesion and credibility so that optimal diagnosis, treatment and rehabilitation can be provided to clients of forensic mental health services. While states and territories are responsible for the delivery of forensic mental health services, the services should be delivered within a framework provided by nationally agreed principles.

The Principles apply to clients in the adult and juvenile justice system. Services must appropriately provide for the special needs of people with comorbid physical and mental disorders and intellectual disabilities. Specific attention should ensure optimal outcomes for special groups such as women, youth, Aboriginal and Torres Strait Islander peoples, culturally diverse peoples, and older persons. The application of these Principles in relation to the particular developmental needs and rights of young people with a mental illness involved in the criminal justice system is crucial. It is recognised that the health status of prisoners/young offenders in general is lower than that of the community and that this should be considered in the determination of services and resource allocation.

These Principles are not intended to apply to clients under civil commitment provisions of mental health legislation or those before the civil courts. These Principles should also apply to individuals detained in custody by legislation other than criminal justice systems. It is recognised that there is a significant frequency of complexity among those who come to the attention of the criminal justice system. This may require the involvement of other government departments and may be the subject of separate principles. These Principles are primarily directed to the assessment, treatment and care of those who suffer mental illness however the underlying values and intent may be of use to those involved in service provision to other groups, including specialised areas such as the management of sex offenders. The Principles do not comment on the adequacy or otherwise of services provided to non-offender groups but should apply to the care and treatment provided to those under correctional based orders residing in the community.

Service Boundaries

Boundaries that confront forensic mental health services provide challenges for staff and clients. These are between:

- **Forensic mental health service and the correctional system** – there are inherent difficulties in providing a mental health service within a correctional facility given the major focus of correctional facilities being secure containment and the focus of mental health services being diagnosis, treatment and rehabilitation.
- **Forensic mental health service and the general mental health system** – a boundary between forensic mental health and general mental health services is created by the client's involvement in the criminal justice system.
- **Forensic mental health service and other human services** – the stigma and fear of forensic clients often creates boundaries between forensic mental health services and other human service agencies. This can result in other agencies being unwilling to provide ongoing support, care and treatment.

Competing Priorities of Professional Cultures

The relationship between the treatment and rehabilitation culture of forensic mental health services and the custodial culture of correctional agencies is often problematic. Similarly, the police, courts, corrections and forensic mental health have different foci and sets of expectations, which can, at times, be difficult to reconcile.

Legislation

Legislative reform is required to provide national consistency across mental health legislation, and national consistency across jurisdictions with respect to criminal codes and common law as they apply to forensic mental health clients. In the interim and prior to the achievement of such legislative reform, cross-border arrangements are to be facilitated.

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. Where health facilities are provided within a correctional facility, there should be appropriate equipment and trained staff, or arrangements made for such services to be available, at a standard comparable to regional and community standards.

Services should ensure equality in service delivery regardless of an individual's age, gender, culture, sexual orientation, socio-economic status, religious beliefs, previous conditions, forensic status and physical or other disability. This Principle of Equivalence applies to both primary and specialist mental health care. Consideration should be given to the special needs of Indigenous offenders.

Prisoners and those in the community who are under the supervision or control of the criminal justice system who are involved with the mental health system should have equivalence with regard to legal rights and protections. They should have access to competent legal representation when appropriate. They should not be subject to longer periods of incarceration than their non-offender counterparts based solely on the presence of mental illness.

Equivalence to the non-offender should extend to those who have been transferred from correctional facilities to come under the responsibility of the health system.

Principle 2:

Safe and Secure Treatment

Treatment and care will be provided in an appropriate environment compatible with the treatment and rehabilitation needs of the individual and the community's need for safety.

People with a mental illness often harm themselves and become victims of violence. Treatment decisions must be cognizant of:

- The legitimate needs of the community for a reasonable level of protection from dangerous or seriously disruptive behaviour.
- The protection of the individual patient from unacceptable risks of serious damage to self or serious deterioration.
- The cultural significance and impact of isolating practices on offenders
- The safety needs of the individual, other patients/prisoners and staff

Principle 3:

Responsibilities of the Health, Justice and Correctional Systems

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.

Mental health services are preferably staffed by mental health personnel employed by a health service (as preferred provider of mental health assessment and treatment services) rather than correctional agencies. Where the model adopted is that both mental health and correctional staff are employed by a single agency it is important to ensure that there is separation of management such that integrity of clinical records and professional responsibilities are maintained.

A prisoner/young offender who requires inpatient mental health care will be transferred from prison to an appropriate mental health facility having regard to the person's mental health needs. Issues such as the offence leading to the person's detention, their social circumstances and the likelihood of their remaining in treatment, may be considered by correctional managers when approving such transfer.

Specialist inpatient forensic mental health services (secure facilities) should be owned, funded and staffed by mental health and located beyond the geographic boundary of a prison and run independently from correctional services. Where such geographical or funding separation cannot exist, there should be clearly separated management 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:

Access and Early Intervention

A prisoner/young offender, whether remanded, sentenced or in police custody, should have timely referral and access to specialist mental health services when appropriate. Persons attending court who appear to be mentally ill, or about whom there is concern regarding their mental health, should have access to assessment by an appropriately trained mental health clinician. All persons entering a custodial environment should be assessed with regard to their mental health needs and referral arranged accordingly. Prisoners/young offenders should be made aware of the availability of specialist mental health services.

All custodial facilities should have capacity to assess and treat mental illness within the primary care setting, and to refer to specialist mental health services, both outpatient within the custodial setting and inpatient in a secure mental health hospital, as clinically indicated. The range of treatments and interventions available and the qualifications and experience of mental health staff, should be at least congruent with that available in the general community. There should be access to acute interventions including treatment directed to alcohol and substance dependence, and to psychosocial rehabilitation and pre-release planning, in order to minimise the acute effects of illness and longer-term disability.

It is recognised that persons within the criminal justice system and juvenile justice system have a higher prevalence of mental illness and mental disorder than the general population. Strategies aimed at early intervention and prevention through education, development of social skills and improved coping mechanisms should be available to those within the justice system. This range of services should be available to all those in custody including minority groups such as women and juveniles. Prisoners/young offenders from Aboriginal and Torres Strait Islander backgrounds, or other culturally and linguistically diverse backgrounds, should have access to appropriate cultural support, including access to accredited interpreters and the translation of written documents. Factors in the environment that are known to be detrimental to mental health and wellbeing such as isolation, uncertainty, and inconsistency in management should be minimised wherever possible.

People within the criminal justice system who experience mental illness, or offenders who have been diverted to secure mental health facilities, may at times seek transfer to another State or Territory for personal or family reasons. Where such transfer is seen to be in the best interests of the individual, access to appropriate services will be made available in the receiving State or Territory.

Principle 5:

Comprehensive forensic mental health services

A comprehensive forensic mental health service is a specialised mental health service providing integrated in-patient services, prison mental health services, court liaison services, and community mental health services, in a coordinated clinical and administrative stream. Strong links and partnerships with general mental health services and with consumer and carer organisations are a feature of these services. These services should provide evidence based, multidisciplinary, continuous care, consistent with those of general mental health services. Consideration should also be given to the most effective way to engage services providing intervention relating to homelessness, alcohol and substance use and aggression. There should be an agreed process for the exchange of information and participation by all appropriate agencies in the case management of the offender.

Broadly speaking a comprehensive forensic mental health service should provide the following main **functions**:

- mental health promotion and prevention
- assessment
- management, including treatment and rehabilitation
- coordination of care across settings, including pre-release planning and linking clients with general mental health and private mental health services
- delivery of care in a culturally sensitive environment
- facilitation of diversion to appropriate treatment settings
- consultation, liaison and support to general mental health services, corrections and other bodies
- provision of expert advice and reports as determined by individual State and Commonwealth requirements
- other functions such as administration, research, education and training

Principle 6:

Integration and Linkages

Forensic mental health services include: in-patient services; prison mental health services; court liaison services; community mental health services; and linkages with general mental health services and consumer and carer organisations. Integration of these elements of the forensic mental health service is required to minimise barriers to the treatment of clients in the most clinically appropriate setting. There should also be close integration with corrective services and parole bodies.

The duty of care in ensuring the safety of prisoners/young offenders, staff and visitors in correctional centres as well as in the community requires a coordinated and integrated approach to the case management of inmates.

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.

Principle 7:

Ethical Standards

The right of all clients to respect for individual human worth, dignity and privacy is not waived by any circumstance, regardless of an individual's history of offending or their status as a forensic mental health client or a prisoner/young offender. The capacity or right to consent is not forfeited as a result of a history of offending or status as a prisoner/young offender.

The conflicting needs of the client, prison and the criminal justice system demand the highest ethical standards at all times from professionals working in forensic mental health services, but serious ethical dilemmas may be expected to arise on some occasions. Professional codes of ethics provide guidance relevant to such dilemmas and should be adhered to.

All persons accessing mental health services, either within the health system or within the corrective services system, are entitled to the protection of their civil and human rights and freedom from abuse consistent with the United Nations Principles on the Protection of People with a Mental Illness and the relevant jurisdictional privacy legislation.

Likewise, the confidentiality of client information will be respected, other than in exceptional circumstances. Sharing of information between correctional and health providers will only occur to the extent necessary for treatment and care or with the consent of the client. Health records and files should be maintained and stored separately from the correctional files, in accordance with Health Privacy Guidelines.

Mental health treatment should always be provided only with the explicit informed consent of the client except in circumstances where the client is unable to give informed consent by virtue of their mental illness or intellectual impairment. Treatment should only be provided with the consent mechanisms outlined in the relevant jurisdictions' substitute decision-making legislation and/or mental health act, or in accordance with judicially determined conditions under relevant legislation.

Principle 8:

Staff: Knowledge, Attitudes and Skills

The forensic mental health workforce requires a high degree of professionalism and strong clinical leadership. In light of the specialised and often challenging nature of forensic mental health service delivery, it is recognised that appropriate training and support are required to maintain a highly skilled workforce.

Information and training should be made available to all those having contact with and/or responsibility for mentally ill offenders in relation to presentation and principles of treatment and care to enable delivery of appropriate services.

Staff should be provided with opportunities to develop, maintain and increase their skills to enable them to provide high quality professional services to clients, including cultural diversity training. The cultural knowledge of staff from Aboriginal or Torres Strait Islander backgrounds, or other culturally diverse backgrounds, should be drawn on wherever possible.

In addition, strategies will be implemented within the workplace to ensure that appropriate levels of supervision, support, and safety, are available to individual workers, including Occupational Health and Safety requirements.

Principle 9:

Individualised care

Forensic mental health services should meet the changing needs of an individual, taking into account the entirety of their biological, psychological, social, cultural and spiritual context.

Individualised care implies facilitated access, comprehensive assessment, unimpeded treatment, regular review and recognition of the humanity of the person including the involvement of significant others in treatment, support and care. There should be agreed recognition of the role and responsibilities of the involved agencies.

Historically there are population groups for whom it has been difficult to provide such individualised care within the forensic mental health system, and for whom special efforts are needed to ensure such care. These groups include: Aboriginal and Torres Strait Islander peoples; culturally and linguistically diverse populations; children and adolescents; those with intellectual impairment; and women.

Principle 10:

Quality and Effectiveness

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.

Effective treatment and rehabilitation will involve forensic mental health clients as fully as possible in decision-making. Quality mental health services will reduce the risk of re-offending of individuals who have committed offences as a result of having a mental illness.

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.

Principle 11:

Transparency and Accountability

There is a risk that forensic mental health services will fail to maintain the standards expected of a specialist health service, and will develop idiosyncratic practices. This risk is minimised by services being subject to processes of accreditation against national standards for mainstream services, external and peer review. The National Standards for Mental Health Services provide appropriate benchmarks for forensic mental health services.

Prisoners/young offenders who are detained under mental health legislation and who are provided treatment without their consent, should have access to the same external review and rights of appeal as those who are detained under civil law and compulsorily treated. There should be access to complaints mechanisms and to independent bodies such as the public advocate or ombudsman. The correctional provider should encourage external scrutiny through organisations such as community visitors.

Principle 12:

Judicial determination of detention/release

Decisions to detain, release or transfer mentally ill individuals found not guilty or unfit for trial because of a mental illness or intellectual impairment should be made by courts or independent statutory bodies of competent jurisdiction, not by a political process or the Governor/Administrator in Council.

Where transfer decisions between prison and hospital are the responsibility of the executive arm of government, these should be guided by relevant legislation.

These decisions should only be made in accordance with the applicable legislation and legal principles, on the advice of suitably qualified mental health practitioners and in accordance with best practice principles contained in this statement.

Judicial and Review Board hearings which determine detention, transfer, release or discharge are to be transparent, accountable and accessible to families, carers, victims and appropriate support services.

Principle 13:

Legal reform

Legislation must recognise the special needs of people with a mental illness involved in the criminal justice system and comply with the International Covenant on Civil and Political Rights, the United Nations Principles on the Protection of People with a Mental Illness and the Improvement of Mental Health Care.

- Mentally ill offenders must have the same standard of protection that the justice system offers everyone else.
- A formal legal process will determine the type of disposition but reserve flexibility that will permit those responsible for the health of the person to provide treatment.
- Courts or independent statutory bodies will consider expert evidence on the medical condition of the person. Courts or independent statutory bodies may consider material from a person who is not a party to a proceeding (eg. a victim), if it is relevant to the determination of the court.
- Release decisions must be made by the relevant court or independent statutory body not by political process.
- Legislation must permit the notification of next of kin, carers and victims about decisions regarding detention, release or transfer.
- 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 must not allow the detention of a person in a mental health facility merely on the basis of intellectual impairment, antisocial or illegal behaviour, sexual preference, or political or religious conviction.
- 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.

GLOSSARY OF TERMS

CIVIL COMMITMENT PROVISIONS

Legislative provisions contained within a jurisdiction's mental health legislation that allow for the involuntary treatment of a person with mental illness under specified criteria and circumstances.

COERCIVE TREATMENT

Treatment provided against the express wishes of the individual.

CORRECTIONAL FACILITY

A premise or place required or authorised under the relevant state legislation to detain a prisoner/young offender (May include a prison hospital).

CORRECTIVE SERVICES

The government department responsible for overseeing the custody and/or supervision of prisoners/young offenders.

CUSTODY

The guardianship or care of individuals who are detained in relation to specified legislation.

GOVERNOR/ADMINISTRATOR IN COUNCIL

The executive arm of Government

INTELLECTUAL IMPAIRMENT

Significantly sub-average general intellectual functioning that is accompanied by significant limitation in adaptive functioning, regardless of the cause. By definition, must occur before attaining adult status; does not include any cognitive decline that occurs in adult life. May be referred to in legal terms as natural mental infirmity or mental retardation.

MENTAL DISORDER

A clinically significant behavioural or psychological syndrome or pattern that occurs in an individual and that is associated with present distress (e.g., a painful symptom) or disability (i.e., impairment in one or more important areas of functioning) or with a significantly increased risk of suffering death, pain, disability, or an important loss of freedom.

MENTAL ILLNESS

A recognised, medically diagnosable, clinically significant behavioural or psychological syndrome that occurs in an individual and that is associated with distress or disability or with a significantly increased risk of suffering death, pain or disability.

PRIMARY CARE IN THE FORENSIC CONTEXT

General Practice and other Primary Care Services, which are the first point of health contact provided to those in custody, should have an emphasis on illness prevention and early detection.

PRISONER

A person required to be in lawful custody on a charge of an offence, awaiting sentence on conviction of an offence, or serving a sentence of imprisonment or detention on the order of a court. It applies to a person of any age. In some jurisdictions, the person may be referred to as a detainee or inmate.

SPECIALIST MENTAL HEALTH SERVICES

An organisation that provides, as its core business, specialist level mental health treatment and support to people with mental illness and/or mental health problems. This is distinguished from primary care services that provide a range of assessment and treatment services.