Transfer of Care – Custodial Settings

Chief Psychiatrist guideline

OFFICIAL

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In this document, ‘Aboriginal’ refers to both Aboriginal and Torres Strait Islander people. ‘Indigenous’ or ‘Koori/Koorie’ is retained when part of the title of a report, program or quotation.

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Available at Transfer of care and shared care <https://www.health.vic.gov.au/chief-psychiatrist/transfer-of-care-and-shared-care>

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Acknowledgement

The department acknowledges the strength of Aboriginal and Torres Strait Islander peoples across the Country and the power and resilience that is shared as members of the world's oldest living culture. We acknowledge Aboriginal and Torres Strait Islander peoples as Australia's First People and recognise the richness and diversity of all Traditional Owners across Victoria.

We recognise that Aboriginal and Torres Strait Islander peoples in Victoria practice their lore, customs and languages, and nurture Country through their deep spiritual and cultural connections and practices to land and water.

We pay our deepest respect and gratitude to ancestors, Elders, and leaders – past and present. They have paved the way, with strength and fortitude, for our future generations.

Purpose

This guideline serves as an addendum to the *Transfer of Care and Shared Care Guideline* https://www.health.vic.gov.au/sites/default/files/2023-09/transfer-of-care-and-shared-care-guideline-2023-09-08.pdf and provides specific guidance for the transfer of care for Justice Involved Service Users (JISUs) entering and leaving custody. The challenge of ensuring optimal mental health care for JISUs on release is a shared concern across jurisdictions throughout Australia and internationally.

JISUs are at the centre of a complex network of stakeholders, including but not limited to:

- Prison based mental health and wellbeing services (both primary and secondary (specialist)).
- Community-based Mental Health and Wellbeing Services.
- Psychosocial Support Services, including those funded by National Disability Insurance Scheme (NDIS) packages.
- Custodial providers and various arms of Corrections Victoria in public and private prisons, Community Corrections Services, Forensic Intervention Services, the Adult Parole Board, Justice Health and Courts Victoria.

There are compelling international human rights[1] and public safety[2] arguments that support the need for robust and effective transfers of care for those leaving custody. Research[3] <https://pubmed.ncbi.nlm.nih.gov/17908000/> indicates that the early weeks and months following release from prison constitute a high-risk period for suicide amongst JICs, especially where mental health follow-up is inadequate. Optimising quality of transfers of care from custody aligns with the Victorian government's Suicide Prevention and Response Strategy <https://www.health.vic.gov.au/mental-health-wellbeing-reform/victorian-suicide-prevention-and-

[1] 'United Nations Standard Minimum Rules for the Treatment of Prisoners <https://www.unodc.org/documents/justice-and-prison-reform/Nelson_Mandela_Rules-E-ebook.pdf>

[2] Empirical research from New South Wales <https://pubmed.ncbi.nlm.nih.gov/35575185/>; 'Safer Prisons, Safer People, Safer Communities' (2022)

[3] Kariminia A, Law MG, Butler TG, Levy MH, Corben SP, Kaldor JM, Grant L. Suicide risk among recently released prisoners in New South Wales, Australia. Med J Aust. 2007 Oct 1;187(7):387-90. doi: 10.5694/j.1326-5377.2007.tb01307.x. PMID: 17908000.

response-strategy> which aims to ‘build a systems-based approach to suicide prevention and response’.

Who is this guide for?

This guide is intended for:

- **Mental health and wellbeing consumers** who have had contact with the justice system.
- **Area Mental Health and Wellbeing Service clinicians** working with individuals who have been arrested or who are currently in prison.
- **Forensic mental health service clinicians** working in custodial, hospital or community settings.
- **Primary mental health service clinicians** who work with people involved in the justice system.
- **Non-government organisations** who are providing support for people involved in the justice system.
- **Custodial providers and staff in various arms of Corrections Victoria** in public and private prisons, who may be working with mental health service providers to support a mental health consumer.

Note: This guideline does not specifically address the release of Forensic Patients (subject to the CMIA) from Thomas Embling Hospital. However, it does apply to JISUs at Thomas Embling Hospital subject to the *Mental Health and Wellbeing Act 2022*.

Aboriginal Support and Cultural Safety

It is essential to uphold the safety of Aboriginal consumers in mental health services by prioritising their cultural needs and respecting their rights. Victorian Aboriginal communities are resilient, strong and rich in their culture however ongoing impacts of colonisation, racism, discrimination and transgenerational trauma continue to have an impact on Aboriginal health and social and emotional wellbeing.

Aboriginal consumers often prefer to engage with staff of the same gender due to cultural protocol, and this preference should be honoured where possible. Additionally, Aboriginal consumers should be provided with the opportunity to connect with local Aboriginal community-led services or Aboriginal staff.

At all times, Aboriginal self-determination must be respected, and Aboriginal concepts of health and social and emotional wellbeing should be central to decision-making processes. These principles should guide all interactions, ensuring a culturally safe and empowering experience for Aboriginal consumers.

Principles for practice

The following principles should guide the Transfer of Care for JISUs:

- **Equal access to services** – Persons being released from custody are entitled to the same access to public mental health and wellbeing services as other members of the Victorian community.

- **Adherence to existing guidelines** – Transfers of Care from custodial settings must uphold all principles outlined in the *Transfer of Care and Shared Care: Chief Psychiatrist's guideline* <https://www.health.vic.gov.au/chief-psychiatrist/transfer-of-care-and-shared-care>.
- **Application of the Mental Health and Wellbeing Act (MHWA)** – The same decision-making principles for treatment and interventions in the MHWA apply to JISUs both in custody and after release. Please refer to link <https://www.health.vic.gov.au/chief-psychiatrist/decision-making-principles-for-treatment-and-interventions-mental-health-and-wellbeing-act-2022> for further information.
- **Trauma Informed Approach -** Research[4] demonstrates that rates of both childhood and adult trauma are significantly higher in incarcerated populations, with trauma incidents increasing the likelihood of mental illness. Clinicians working with JICs should approach everyone accessing services with the understanding that trauma may be a factor in their experiences and wellbeing.

  Trauma informed principles should be embedded in policies and workplace practices regarding transfers of care. Please refer to link <https://www.health.vic.gov.au/practice-and-service-quality/trauma-informed-care> for further information.
- Transition periods represent a period of increased clinical risk. It is vital to prioritise relationship building between the consumer and mental health services, both within custodial settings and in the community, to facilitate an effective pathway to care upon release. Consideration of biopsychosocial principles – supporting the JISU with their biological, psychological, and social needs will increase the success of the transfer of care.

Release from custody

Release from custody can happen in a number of ways including:

Determined release dates, such as when the JIC has completed their sentenced time in custody. When the release date is known, discharges can be planned with certainty, allowing for appointments being made for the consumer with the allocated team and the transport on the day of release organised.

When a transfer of care to an AMHWS is anticipated at the end of a consumer's time in custody, a timely, early referral to the most appropriate AMHWS should occur to ensure sufficient time for supports to be put in place.

Uncertain release dates, such as in the possibility that the JIC may be released following court. In these circumstances, the mental health provider may receive advice from the consumer's legal representative regarding a possibility of release. This may mean making referrals and contingency plans that prepare for a transfer to an AMHWS multiple times before the transfer of care eventuates.

Unplanned release dates, such as the occasions where the JIC may be released directly from court with no previous planning or opportunity for a referral to be made to an AMHWS. These types of releases are unpredictable and may result in urgent referrals being made remotely by mental health services in custody when they become aware the JIC is not returning to custody.

[4] Baranyi G, Cassidy M, Fazel S, Priebe S, Mundt AP. Prevalence of Posttraumatic Stress Disorder in Prisoners. Epidemiol Rev. 2018 Jun 1;40(1):134-145. doi: 10.1093/epirev/mxx015. Erratum in: Epidemiol Rev. 2018 Jun 1;40(1):166. doi: 10.1093/epirev/mxy007. PMID: 29596582; PMCID: PMC5982805.

Transfers of mental health care from custodial settings

Effective Coordination

There are often many and varied services involved in discharges from custodial settings. Effective communication and coordination among these services is vital to ensure a safe and seamless transfer of care. Given the complexity of the discharge process, it is crucial that planning for reintegration into the community begins at the earliest opportunity.

Information-sharing is central to safe practice and in the context of the transfer of care of JICs:

- Gaining consent from the consumer for sharing of their health information is always best practice. Consumers should be made aware of the circumstances in which information can be provided without consent. This includes sharing of relevant information to other service providers about assessed serious risks of harm to self or others (including staff).
- The details of a risk assessment[5] required to ensure safe transfer to community-based care will differ significantly between consumers. Whilst offending history should always be considered as part of risk assessment and management, best practice requires careful consideration of historical factors together with current and anticipated future risk factors and protective factors.
- Prison-based mental health services may not have access to detailed information regarding offences or alleged offences, beyond that which is in the public domain or that provided by the JIC as part of clinical assessment.
- Some known offending history (such as serious violence or sexual offending) may flag the need for community-based services to consider specific precautions, including consultation with specialist community-based forensic services.

The relevant legal framework for information sharing is Section 17.1 of the MHWA <https://classic.austlii.edu.au/au/legis/vic/consol_act/mhawa2022224/s17.html>.

Case Conferences play a crucial role in planning and coordinating the discharge plan for JICs with higher levels of need. Where feasible, they should always occur for JICs leaving custody subject to the MHWA. These should enable the multi-service care team to reach agreement regarding:

- Identifying services responsible for providing treatment, care and support.
- Clarifying roles and responsibilities of the relevant services, including anticipated duration of service provision.
- What information is to be shared between the services and any limitations on information sharing.

Appointment of a transition coordinator – There should be an agreement about who will be the 'transition coordinator', the key professional coordinating the discharge and transfer of care in its entirety. This person will act as the central point for information regarding the plan and ensuring it is sequenced, cohesive and effectively communicated. There may be occasions where it is more appropriate for a professional from a non- mental health service provider to assume this role due to the length of engagement that they have/ will have with the consumer, particularly where this engagement follows the consumer from custody to community.

[5] https://www.health.vic.gov.au/chief-psychiatrist/white-paper-on-the-principles-of-mental-health-risk-assessment

Crisis planning – Given that some services involved in care will not be mental health services, a crisis plan should be considered by the treating mental health service during the transfer of care (where possible in collaboration with the consumer) and communicated to all services regarding measures to be taken in the event of acute deterioration in mental health after release from custody.

Assessment and referral processes

It is expected that needs for community services will be assessed by the service currently responsible for providing mental health care in prison (whether that be primary or specialist service) and that this service will take appropriate steps to facilitate appropriate community-based care and treatment. Consumers should be supported to collaborate with the treating team and contribute to the assessment of needs and transfer of care plan to the full extent possible.

- **Determining the most appropriate Area Mental Health and Wellbeing Service (AMHWS)** – When determining the most appropriate AMHWS for a consumer, the area with which the consumer has most meaningful connection should be identified. In many cases, people may lose their accommodation in the circumstances leading up to, or because of their arrest and incarceration.

    - Proactive, early involvement of the AMHWS, well before release from custody, is strongly encouraged where an early referral has been received. This maximises the likelihood of a safe and successful transition of care. Such involvement may take a variety of forms and should ideally include a direct assessment (in person or by telehealth) of the person by a senior clinician of the AMHWS.
    - For consumers who require involvement of an AMHWS after release, especially if subject to the MHWA, the 'Forensic Clinical Specialist' at the relevant AMHWS is likely to be a key point of contact and coordination.
    - Follow-up mental health appointments should be planned with the treating service for the consumer’s first week in the community or earlier if clinically indicated.
    - Where the transfer of care is voluntary, transport from prison may be through a personal support, a NDIS provider or the mental health service.

Rejection of a proactive referral to AMHWS triage services on the basis that such referrals should only be made on the day of release from custody, is not considered to be best practice.

- **Rights of homeless JICs** – JICs who are homeless at point of release from custody maintain the same rights of access to public mental health services as any other member of the Victorian community. Where the consumer has no fixed address, it is important that services consider the person’s views and preferences, the area in which the person has had the most recent and/or the most long-standing treatment, and their connections such as family, carers, or employment when identifying the appropriate receiving service.
- **Use of MHWA Orders at release** – In some cases, it may be appropriate to utilise a MHWA Order at point of release, even when a JIC has not been subject to the MHWA during their time in custody (there is no compulsory treatment in custody). Promoting safety and wellbeing for all is an iterative and continuous process and must consider:
- The consumer’s specific needs, strengths, safety issues and risks.
- The associated risks to the community including risks to family/ carers.

It is expected that in these circumstances the responsible service will be the secondary (specialist) mental health care provider i.e. that the assessment, documentation and handover to the receiving service shall be conducted by the relevant prison-based specialist mental health service, except in exceptional circumstances.

- Ambulance Victoria (AV) provides transfer for consumers requiring involuntary mental health treatment from prison to a designated Health Service. Victoria Police may be required to assist on a case-by-case basis to support safe transfer, subject to the AV risk assessment process.

Communication with family, carers and supporters

Remaining connected with family, carers and other social supports is essential to mental health recovery and overall wellbeing. It is important to consider and support both the consumer's and their family/carers' rights and preferences as much as possible when planning a transfer of care.

Family members and carers often provide information to health service providers regarding the mental state, family relationships, and other relevant matters concerning the JISU and the transfer of care. Without the consent of the JISU, only generalised information on the transfer of care processes and service system may be shared with the family member and/or carer.

- If both the JICs and the family/carer are wanting to engage in the transfer of care process, ensuring family and carers are included in care planning is important to support a safe and effective transfer.
- Clinicians should plan with the consumer, carer and team how communication and involvement of carers will occur, including clarifying:
- Who will be contact point.
- The nature and the frequency of contact.
- Family and carer involvement in a consumer’s care, and the support they can offer post release, need to be determined by them and supported by the mental health team.

Nominated persons/Advanced Statements – Mental health services should check whether the consumer has a nominated person identified and/ or an Advanced Statement of Preferences.

Orders preventing contact – It is important that prison-based clinicians check via E-Justice whether any intervention order/s are in place that may prevent contact with family/carers that need to be considered prior to any contact being made. Clinicians should be aware that families and carers may be the direct or indirect victims of offending by the consumer. Where there are no orders in place, communication with family and carers can occur with the consent of the consumer.

Family violence

Mental health and wellbeing services should provide a safe space for consumers to disclose family violence and respond appropriately to disclosures. The Chief Psychiatrist’s Guideline:

Implementing the MARAM framework in mental health and wellbeing services | health.vic.gov.au <https://www.health.vic.gov.au/chief-psychiatrist/maram-framework-mental-health-wellbeing-services>.

And the Family Violence Multi-Agency Risk Assessment and Management Framework (MARAM) <https://www.vic.gov.au/maram-practice-guides-and-resources> provides guidance to support services in identifying, assessing and managing family violence risk.

Difficulties with transport to designated service upon release

At times, a consumer may not be able to be transferred to the identified designated mental health service due to limitations in AV and Victoria Police resources. In such cases, if the consumer is diverted to another Health Service (i.e. the service geographically nearest to the prison),

- The custodial mental health service will ensure that the receiving health service has the up-to-date discharge summary and plan, and a clinical handover has occurred.
- The receiving health service will subsequently consider appropriate 'on-transfer' to the original identified AMHWS when possible.
- The JISUs preferred or original identified AMHWS service should work collaboratively with the service that has received the JISU to facilitate an effective plan for ongoing care and transfer.
- Health Services should continue to uphold the 'principles for practice' outlined on page 5 of this addendum, when making these decisions.

Escalation where there are concerns regarding the safety and quality of a transfer

- Where a consumer, family member/ carer, support person, or support service have concerns regarding the safety and quality of a proposed transfer of care they should raise these concerns with the clinical mental health service that is providing treatment to the JISU. Concerns may be raised verbally or in writing with the treating team directly.
- Where members of the current or receiving mental health service treating team have concerns regarding the safety and quality of a proposed transfer of care, this should be raised via their services Clinical Governance process in the first instance. If the transfer of care is escalated through the Clinical Governance process to the Authorised Psychiatrist and remains unresolved, the Authorised Psychiatrist may then escalate the issue to the Office of the Chief Psychiatrist.

Appendices

Appendix 1: Abbreviations

Abbreviation	Meaning
AMHWS	Area Mental Health and Wellbeing Service
AV	Ambulance Victoria
JISUs	Justice Involved Service Users
MHWA	Mental Health and Wellbeing Act 2022
NDIS	National Disability Insurance Scheme
PIMS	Prisoner Information Management System

Appendix 2: Definitions

Assessment Order (AO): An Assessment Order is the first step in initiating compulsory mental health treatment. For more details, refer to the *Mental Health and Wellbeing Act 2022* <https://content.legislation.vic.gov.au/sites/default/files/2023-08/22-39aa001-authorised.pdf>, Section 4.2-Assessment orders. Learn more on the process of an assessment order <https://www.health.vic.gov.au/sites/default/files/2023-08/assessment-orders-flow-chart-mental-health-and-wellbeing-act_0.pdf>.

Corrections Victoria's Transition and Reintegration Unit: Corrections Victoria's Transition and Reintegration Unit oversees a range of programs and initiatives that aim to assist prisoners to prepare for release and transition to life in the community.

Community Assessment Order (AO): An order which allows an authorised psychiatrist to assess an individual for mental illness in the community.

***Crimes (Mental Impairment and Unfitness to be Tried) Act 1997* (CMIA):** The purposes of this Act are (a) to define the criteria for determining if a person is unfit to stand trial; (b) to replace the common law defence of insanity with a statutory defence of mental impairment; (c) to provide new procedures for dealing with people who are unfit to stand trial or who are found not guilty because of mental impairment (link) <https://content.legislation.vic.gov.au/sites/default/files/2023-08/97-65aa081-authorised.pdf>.

Custodial Health Service (CHS): Provides physical and mental health assessments and treatment for individuals held in police cells across Victoria.

Forensic Mental Health Provider: A service specialising in mental health care for JICs in prisons, hospitals, or community settings.

Inpatient Assessment Order (IAO): An order that allows an authorised psychiatrist to assess an individual for mental illness in a hospital setting. This order is typically issued when a person cannot be assessed safely in the community. For more details, refer to the *Mental Health and Wellbeing Act 2022* https://content.legislation.vic.gov.au/sites/default/files/2023-08/22-39aa001-authorised.pdf>, Section 4.2-Assessment orders, Division 1-Making of assessment order.

Inpatient Treatment Order (ITO): An order authorising the compulsory treatment of an individual within a designated mental health service (hospital). This order is typically issued when an individual cannot be treated safely in the community. For more details, refer to the *Mental Health and Wellbeing Act 2022* <https://content.legislation.vic.gov.au/sites/default/files/2023-08/22-39aa001-authorised.pdf>, Section 4.5-Treatment orders.

Justice Involved Service User (JISU): A mental health service user also involved in the Criminal Justice System.

Mental Health Assessment and Response Service (MHARS): Established by Forensicare to play a pivotal role in addressing the overrepresentation of individuals with mental illness in the criminal justice system by offering mental health assessments and support within court settings. For more details, refer to the MHARS Forensicare site <https://www.forensicare.vic.gov.au/our-services/community-forensic-mental-health-services/court-mental-health-response-service/>.

***Mental Health and Wellbeing Act 2022* (MHWA):** landmark piece of legislation aimed at reforming Victoria's mental health system. The Act focuses on providing a more inclusive, person-centred approach to mental health care, drawing on the findings of the Royal Commission into Victoria's Mental Health System. It establishes new frameworks for treatment, rights, and care to ensure individuals receive the support they need with dignity and respect. For more information, refer to

Mental Health and Wellbeing Act 2022 Handbook <https://www.health.vic.gov.au/mental-health-and-wellbeing-act-handbook>.

Multi-Service Care Team: The cross-service team of professionals working together to support a consumer with complex needs. These teams are designed to address the multilayered challenges faced by consumers, ensuring that all aspects of their health and well-being are considered and managed effectively

Primary Mental Health Provider: The Primary Care services within prison settings that provide non-specialist mental health care services, which can include general practitioners, psychologists or nurses. They are responsible for identification, assessment and management of mental health concerns for incarcerated individuals.

Secondary Mental Health Provider (Forensic Mental Health Providers): Specialist providers in prison settings offering advanced care for individuals with severe or complex mental health conditions. Accessed via referrals from primary mental health providers. In the adult system, this is Forensicare (link) <https://www.forensicare.vic.gov.au/our-services/community-forensic-mental-health-services/court-mental-health-response-service/> and in the youth system, it is Orygen (link) <https://www.orygen.org.au/>.

Secure Treatment Order (STO): A legal directive issued by the Mental Health Tribunal under the *Mental Health and Wellbeing Act 2022* which mandates compulsory treatment for an individual in a designated mental health service when intensive care is needed. For more details, refer to the *Mental Health and Wellbeing Act 2022* <https://content.legislation.vic.gov.au/sites/default/files/2023-08/22-39aa001-authorised.pdf>, Chapter 10-Security patients, Part 10.2-Secure treatment order.

Appendix 2: Flow chart