

SECURITY CONDITIONS PROTOCOL
(section 76D of the *Mental Health (Forensic Provisions) Act 1990*)

BETWEEN

DIRECTOR-GENERAL, NSW DEPARTMENT OF HEALTH

AND

COMMISSIONER OF CORRECTIVE SERVICES

IN RELATION TO

FORENSIC PATIENTS AND CORRECTIONAL PATIENTS

Date: 2011

1. PARTIES

- 1.1 Director-General, NSW Department of Health
- 1.2 Commissioner of Corrective Services

2. APPLICATION OF THE PROTOCOL

- 2.1 This Protocol affects the operations of agencies in addition to the NSW Department of Health (DOH) and Corrective Services NSW (CSNSW), including Justice Health and Local Health Networks, when they provide health care to correctional patients and forensic patients. These affected agencies are listed in Schedule A to this Protocol.

3. DEFINITIONS

- 3.1 **Correctional patient** means a correctional patient as defined in section 41 of the *Mental Health (Forensic Provisions) Act 1990*.
- 3.2 **Corrective Services NSW** (CSNSW) means that part of the Department of Justice and Attorney General comprising the group of staff who are principally involved in the administration of the *Crimes (Administration of Sentences) Act 1999*.
- 3.3 **Department of Health ("DOH")** means the NSW Government Department specified as such in Schedule 1 of the *Public Sector Employment and Management Act 2002*.
- 3.4 **Forensic Hospital** means a new purpose-built high security psychiatric hospital that is administered by Justice Health. It is a declared mental health facility under s. 109 of the *Mental Health Act 2007* and is located outside the Long Bay Prison Complex.
- 3.5 **Forensic patient** means a forensic patient as defined in section 42 of the *Mental Health (Forensic Provisions) Act 1990*.
- 3.6 **Inmate** has the same meaning as in s. 3 of the *Crimes (Administration of Sentences) Act 1999* and includes a juvenile inmate and section 28 juvenile inmate as defined in s. 41A of the *Crimes (Administration of Sentences) Act 1999*.
- 3.7 **Justice Health** means the statutory health corporation constituted by section 41 of the *Health Services Act 1997* and specified in Schedule 2 of that Act.
- 3.8 **Local Health Network** means a local health network constituted under section 17 of the *Health Services Act 1997* and specified from time to time in Schedule 1 to that Act.
- 3.9 **NSW Health** has the meaning given in s4 of the *Health Administration Act 1982*.

4. SECURITY CONDITIONS

- 4.1 **Security conditions that apply to a forensic patient detained in a correctional centre or any part of a correctional centre that is a mental health facility**
 - 4.1.1 CSNSW is responsible for the security conditions that apply to a forensic patient detained in a correctional centre.
 - 4.1.2 CSNSW recognises that a forensic patient has a right to health care and will allow all forensic patients timely access to health services. Where a security requirement

might impinge upon access to health treatment, CSNSW staff will inform the senior Justice Health nurse on duty and discuss the matter with that nurse.

4.2 Security conditions that apply to a correctional patient detained in the Forensic Hospital

- 4.2.1 A correctional patient who is detained in the Forensic Hospital is subject to security controls and policies set down by Justice Health.
- 4.2.2 In most cases, CSNSW officers will not be required to supervise a correctional patient once he or she has been admitted to the Forensic Hospital. In exceptional cases, where CSNSW considers more security is appropriate, CSNSW officers may supervise a correctional patient in the Forensic Hospital in accordance with an agreement between CSNSW and Justice Health specific to that patient.
- 4.2.3 DOH agrees that in regards to section 76E(1) of the *Mental Health (Forensic Provisions) Act 1990*, before making any order to transfer a forensic patient to or from a mental health facility that is within the confines of a correctional centre or to transfer a correctional patient, the Director-General of the DOH will consider matters of security, including any security concerns expressed by the Commissioner of CSNSW.
- 4.2.4 In exceptional circumstances as determined by the Commissioner of CSNSW, after consultation with the Chief Executive of Justice Health, CSNSW may be responsible for the following security procedures in respect of correctional patients detained in the Forensic Hospital:
- (a) approving all visitors to a correctional patient. Any refused visitors are to be reported to the Chief Executive of Justice Health or delegate;
 - (b) approving certain items of incoming mail received and outgoing mail sent by a correctional patient. In these circumstances mail may be redirected through correctional centres to ensure that appropriate safety and security procedures are followed; and
 - (c) approving all telephone requests made by a correctional patient.

4.3 Security conditions that apply to persons the subject of a transfer order under section 55 of the MHFP Act, correctional patients, and forensic patients while they are being transferred

- 4.3.1 CSNSW will arrange the following transfers of persons the subject of a transfer order under section 55 of the MHFP Act and provide appropriate supervision and transport for:
- (a) a person the subject of a transfer order under section 55 of the MHFP Act from a correctional centre to a hospital or some other place for medical treatment in accordance with an order made by the Commissioner of CSNSW; and
 - (b) a person the subject of a transfer order under section 55 of the MHFP Act from a correctional centre to the Forensic Hospital or any mental health facility within the confines of a correctional centre, in accordance with an order made by the Director General of DOH or the Mental Health Review Tribunal or a court.
- 4.3.2 CSNSW will arrange the following transfers of correctional patients, and provide appropriate supervision and transport to:

- (a) a correctional patient from the Forensic Hospital or from any mental health facility within the confines of a correctional centre, to a correctional centre, in accordance with an order made by the Director-General of DOH or the Mental Health Review Tribunal or a court. Only the Commissioner of Corrective Services or his authorised delegate can determine placement in a specific correctional centre, once an order is made that a correctional patient may be discharged;
- (b) a correctional patient from the Forensic Hospital or any mental health facility within the confines of a correctional centre to court in accordance with an order made by a court, subject to a prior clinical assessment by Justice Health being carried out and the correctional patient being considered fit to attend court. Wherever possible the parties agree that video conferencing should be arranged rather than transport to court.
- (c) a correctional patient from court to the Forensic Hospital or to any mental health facility within the confines of a correctional centre in accordance with an order made by a court;
- (d) in exceptional circumstances as determined by the Commissioner of CSNSW in consultation with Justice Health, a correctional patient between mental health facilities including between the Forensic Hospital and other mental health facilities in accordance with an order made by the Director-General of DOH or the Mental Health Review Tribunal or a court; and
- (e) in exceptional circumstances as determined by the Commissioner of CSNSW, a correctional patient from a mental health facility **not** within the confines of a correctional centre or the Forensic Hospital back to the Forensic Hospital or a mental health facility within the confines of a correctional centre or a correctional centre in accordance with an order made by the Director-General of DOH or the Mental Health Review Tribunal.

4.3.3 CSNSW will arrange the following transfers of forensic patients and provide appropriate supervision and transport to:

- a) a forensic patient from a correctional centre or from any mental health facility within the confines of a correctional centre to a hospital or some other place for medical treatment in accordance with an order made by the Commissioner of CSNSW;
- b) a forensic patient from a correctional centre to the Forensic Hospital or to any mental health facility within the confines of a correctional centre in accordance with an order made by the Director-General of DOH or the Mental Health Review Tribunal or a court; and
- c) a forensic patient from the Forensic Hospital or from any mental health facility within the confines of a correctional centre to a correctional centre in accordance with an order made by the Director-General of DOH or the Mental Health Review Tribunal or a court. Only the Commissioner of CSNSW or his authorised delegate can determine placement in a specific correctional centre, once an order is made that a forensic patient may be discharged.

4.3.4 When a forensic patient detained in the Forensic Hospital is required to attend court, Justice Health will arrange the transport of, forensic patients during their required attendance at court. CSNSW will only assist in the provision of supervision of the forensic patient whilst at court.

4.3.5 Subject to any order of a court, Justice Health and CSNSW will work co-operatively, on a case by case basis, to identify options and arrange appropriate transport of, and

to provide security during any transport, of a forensic patient ordered by the court to be detained in a mental health facility following the finding of not guilty by reason of mental illness or the imposition of a limiting term under the *Mental Health (Forensic Provisions) Act 1990*. This however applies to CSNSW only if such forensic patient was a person already in the custody of CSNSW when they attended court and the court made an order making that person a forensic patient.

4.3.6 Justice Health or, where appropriate, NSW Health will arrange the following transfers of correctional patients, and provide appropriate supervision and transport:

a) a correctional patient from the Forensic Hospital to a hospital or other place for the purposes of medical appointments, medical treatment or any other lawful purpose, unless a combined risk assessment undertaken by Justice Health and CSNSW indicates that this would present an unacceptable security risk in which case CSNSW will arrange the transfer and provide appropriate supervision and transport;

b) all forensic patients other than those transfers referred to in 4.3.3, 4.3.4 and 4.3.5.

4.3.8 Prior to CSNSW transferring a correctional patient from the Forensic Hospital, CSNSW will consult with Justice Health staff to ascertain whether any health issues may affect the transport of the patient and whether a nurse escort is necessary.

4.4 Mental Health Facilities other than the Forensic Hospital and a mental health facility within the confines of a correctional centre

4.4.1 The parties recognise that an order under section 55 of the *Mental Health (Forensic Provisions) Act 1990* ordering an inmate to be transferred to and detained in a mental health facility other than the Forensic Hospital or a mental health facility inside a correctional centre should only occur in exceptional circumstances. Factors that may be considered in determining whether exceptional circumstances exist include:

a) where, owing to distance considerations, it is not reasonable to transfer an inmate to the Forensic Hospital or a mental health facility inside a correctional centre; and

b) where the medical condition of the inmate requires acute attention and the severity of the patient's condition would make it unreasonable to transfer the inmate to the Forensic Hospital or a mental health facility inside a correctional centre; and

c) the length of time in which the inmate is expected to be detained in a mental health facility.

4.4.2 Where, owing to exceptional circumstances, an order is made under section 55 of the *Mental Health (Forensic Provisions) Act 1990* ordering an inmate to be transferred to and detained in a mental health facility other than the Forensic Hospital or a mental health facility inside a correctional centre, CSNSW will arrange the transfer of an inmate the subject of an order under section 55 of the *Mental Health (Forensic Provisions) Act 1990*, and provide security while detained in a mental health facility other than the Forensic Hospital or a mental health facility inside a correctional centre.

4.4.3 The parties further recognise that any transfer of a correctional patient under s76E of the *Mental Health (Forensic Provisions) Act 1990* to a mental health facility other than the Forensic Hospital or a mental health facility inside a correctional centre should only occur in exceptional circumstances where it is not reasonable to continue to treat the patient in the Forensic Hospital or a mental health facility inside a correctional centre.

4.4.4 Where a correctional patient is ordered to be transferred to, and detained in, either:

- (a) a mental health facility *other than* the Forensic Hospital; or
- (b) a mental health facility within the confines of a correctional centre;

the following matters will be determined on a case-by-case basis between the Commissioner of CSNSW and the Medical Superintendent of the mental health facility concerned:

- (i) the agency responsible for any transfer to and from that mental health facility; and
- (ii) the agency responsible for supervision during such a transfer, including any subsequent other lawful transports, such as to and from court; and
- (iii) the agency responsible for providing security of the patient while being transferred and detained.

In regards to (iii) above, the Commissioner of CSNSW and the Director-General of DOH will consult, as required, in order to determine the applicable security conditions to be imposed upon a patient, where that transport is being undertaken by staff of CSNSW.

4.5 Security conditions that apply to a correctional patient who is granted leave of absence from a mental health facility

- 4.5.1 Despite any clause in this Part, the security conditions that apply to a correctional patient will be those specified in the order made by the Director-General of DOH or the Commissioner of CSNSW as the case may be.
- 4.5.2 If a correctional patient is granted leave of absence from a mental health facility, in accordance with s. 63 of the *Mental Health (Forensic Provisions) Act 1990*, the delegate of the Director-General of DOH who granted the leave of absence will notify the correctional centre from which the patient was originally transferred as soon as possible prior to, or in a medical emergency after, the making the order granting leave of absence.

5. REVIEWS

- 5.1 NSW Health and CSNSW will review this Protocol from time to time as necessary.

6. VARIATIONS

- 6.1 Any variations to this Protocol must be agreed, recorded in writing and signed by both the Director-General of DOH and the Commissioner of CSNSW. Any variations that are not so documented and signed will have no effect.

7. REPORTING REQUIREMENTS AND CO-OPERATION BETWEEN PARTIES

- 7.1 DOH and CSNSW will each nominate a liaison officer who will have responsibility for facilitating effective management of this Protocol and the resolution of issues which may arise from this Protocol.

8. JOINT OBLIGATIONS

- 8.1 Subject to this Protocol, DOH and CSNSW agree to do all things reasonably necessary and execute all documents required to obtain, facilitate and to give effect to each party's obligations pursuant to this Protocol.

9. FUNCTIONS OF COMMISSIONER OF CSNSW

- 9.1 Nothing in the *Mental Health (Forensic Provisions) Act 1990* or any order made under that Act, or this Protocol, prevents the Commissioner of CSNSW from exercising (or limits the exercise of) a function in relation to a forensic patient or a correctional patient who is detained on or in a correctional complex, a correctional centre or a residential facility as may be declared under the *Crimes (Administration of Sentences) Act 1999 NSW* if the function is exercised for the purpose of maintaining the personal safety of any person or the security of a correctional complex, a correctional centre or a residential facility or good order and discipline within the correctional environment.
- 9.2 Where appropriate, the Commissioner of CSNSW may delegate any of his functions (other than this power of delegation) in relation to any matters set out in this Protocol.

10. SIGNATURE

Signed by: Professor Debora Picone AM, Director-General, NSW Department of Health

Signature: Date:

Signed by: Ron Woodham, Commissioner of Corrective Services NSW

Signature: Date:

SCHEDULE A – AFFECTED AGENCIES

1. Justice Health
2. Forensic Mental Health Network
3. Sydney Local Health Network
4. South Western Sydney Local Health Network
5. South Eastern Sydney Local Health Network
6. Illawarra Shoalhaven Local Health Network
7. Western Sydney Local Health Network
8. Nepean Blue Mountains Local Health Network
9. Northern Sydney Local Health Network
10. Central Coast Local Health Network
11. Hunter New England Local Health Network
12. Murrumbidgee Local Health Network
13. Southern NSW Local Health Network
14. Western NSW Local Health Network
15. Far West Local Health Network
16. Mid North Coast Local Health Network
17. Northern NSW Local Health Network