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Fitness to stand trial in Australia: The investigation and comparison of clinical opinion and legal criteria

Miranda P. Hogg
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**Fitness to stand trial in Australia:
The investigation and comparison of clinical opinion and
legal criteria.**

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BA (Monash) GradDipAppPsych (Uni of Canberra)**

**A thesis submitted for partial requirements of the degree of
MASTER OF PSYCHOLOGY (FORENSIC)**

**Faculty of Health and Human Sciences
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March, 1998**

Abstract

The extent to which Australian psychologists and psychiatrists are cognisant of the legal standard for Fitness to Stand Trial (FST) was investigated. 198 psychologists from The Australian Psychological Society (APS), and 125 psychiatrists from The Royal Australian and New Zealand College of Psychiatrists (RANZCP) responded to a survey. Psychiatrists identified a greater number of legal criteria than psychologists. This finding extended across clinicians who had experience in the evaluation of fitness to stand trial and those who did not. No difference was found between psychologists and psychiatrists for mentioning irrelevant or insufficient considerations. However, a within-group analysis revealed that the most likely condition under which psychologists and psychiatrists were found to incorporate "mental state at the time of the offence" was when they had done between 1 and 4 evaluations. Membership of both the Forensic and Clinical Colleges of the APS and the Forensic Section of RANZCP was also associated with the ability to identify more of the relevant legal criteria. The methods that psychologists and psychiatrists use to establish FST differed and were found to reflect basic training. Psychiatrists rely on the use of the clinical interview and consultation with lawyers, regardless of whether the basis of the request for assistance is intellectual disability or mental disorder. Psychologists place much greater emphasis on the use of psychometric tests, particularly when intellectual disability is implicated. The results indicate that generally both psychologists and psychiatrists have an insufficient understanding of the legal criteria for fitness to stand trial. This investigation also points to the urgent need for the

APS and RANZCP to ensure membership of their forensic college or section is conditional on the completion of a formal forensic training program. Directions for future research and practical implications are discussed.

Statement of Authorship

I certify that this thesis does not, to the best of my knowledge and belief:

(i) incorporate without acknowledgment any material previously submitted for a degree or diploma in any institution of higher education.;

(ii) contain any material previously published or written permission by another person except where due reference is made in the text; or

(iii) contain any defamatory material.

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Fitness to stand trial in Australia: The investigation and comparison of clinical opinion and legal criteria.

Fitness to stand trial is derived from the fundamental principle that a person accused of a criminal offence is entitled to an impartial and fair trial (Mackay, 1995). A pivotal consideration in the assessment of whether a trial will be impartial and fair is the accused's capacity to understand and participate as a defendant in criminal proceedings. The question of whether an accused is capable of defending him or herself may arise because the behaviour of the accused suggests that he or she may be intellectually disabled or mentally disordered. Fitness to stand trial may therefore be identified as a protective safeguard that emanates from the fundamental right of every person to be able defend him or herself when charged with a criminal offence at Common Law.

In Australia, as elsewhere, the assistance of psychologists and psychiatrists is frequently sought by prosecution and defence lawyers to assess the fitness of an accused person to stand trial. Although one or more clinicians may assess the individual's fitness, the inquiry is not a medical, but both a legal question and a legal decision. While the legal standard for fitness to stand trial appears to be comprehensively defined, it offers psychologists and psychiatrists little insight as to what they are expected to do. There is also a paucity of information about Australian psychologists' and psychiatrists' knowledge of the legal requirements in establishing fitness to stand trial and the way in which they attempt to assess fitness. These issues were addressed by a national survey of psychologists and psychiatrists to find out their understanding of fitness to stand trial and how they establish the fitness of an accused person. The data from this survey are the subject of this thesis.

Legal standard for fitness to stand trial. In R v Presser [1958], the Supreme Court of Victoria enunciated clear and comprehensive criteria for fitness to stand trial in Australian Criminal law. Known as the "Presser Rule", this legal standard establishes that where the fitness of the accused to stand trial is an issue, the accused will not be required to stand trial unless the person is capable of:

1. understanding the nature of the charge;
2. pleading to the charge;
3. exercising his or her right of challenge;
4. understanding generally the nature of the proceedings, that it is an inquiry as to whether or not the person did what he or she is charged with;
5. following in general terms the course of the proceedings before the court;
6. understanding the substantial effect of any evidence that may be given against him or her; and
7. making a defence to the charge through counsel (if any) by giving any necessary instructions and by letting his or her counsel and the court know what his or her version of the facts is.

Similar guidelines have been formalised by the United States Supreme Court in Dusky v United States, (1960), and by the English House of Lords in R v Pritchard (1836).

In Dusky v United States it was stated that:

The test must be whether (the defendant) has sufficient present ability to consult with his attorney with a reasonable degree of rational understanding and a rational as well as

factual understanding of the proceedings against him (at 402).

In R v Pritchard it was stated by Baron Alderson that the accused should be able to plead to the indictment (and) be of sufficient intellect to comprehend the course of the proceedings in the trial so as to make a proper defence, to challenge a juror to whom he might wish to object and to comprehend the details of the evidence (at 303).

In Presser [1958] the matter of fitness arose out of s.426 of the Victorian *Crimes Act, 1928*, which is similar to s.393(1) of the *Crimes Act, 1958* (Vic). Section 393(1) states that:

if any person who has been charged with any indictable offence is brought before any court to be discharged for want of prosecution and such person appears to be insane it shall be lawful for such court to order a jury to be impanelled to try the sanity of such person.

According to Freckleton (1995), the High Court has clearly indicated that the Presser Rule is the "minimum standard" which an accused person must satisfy prior to being tried with fairness and justice. In Ngatayi v R (1980) the High Court adopted the guidelines of Justice Smith in R v Presser [1958] in interpreting s.631 of the *Criminal Code Act, 1913* (W.A.). The guidelines were again reiterated by the Victorian Supreme Court in R v Khallouf [1981].

The Presser Rule was affirmed by the Law Reform Commission of Victoria (1990, para. 126). The Australian Capital Territory's *Mental Health (Treatment and Care) Act, 1994* refers specifically to the Presser criteria as the minimum standard for fitness, and more recently the Model Criminal Code Officers Committee of Australia (MCCOCA)(1994) disseminated a draft Mental

Impairment Bill which adopted the Presser criteria as an essential test for a fitness ruling.

Assumptions implicit in the fitness doctrine. While the court did not specify what constitutes the psychological correlates of fitness, the Presser test contains certain implicit assumptions. First, fitness assesses the defendant's present and prospective ability to meaningfully participate in courtroom proceedings. It differs from the plea of "not guilty on the grounds of insanity" (NGRI) which involves a retrospective inquiry into the defendant's mental state at the time of the alleged criminal act. Second, the fitness doctrine is concerned with a defendant's capacity, not willingness to participate in criminal proceedings. Therefore, the defendant who deliberately refuses to communicate with his or her defence counsel despite being capable of doing so, will fail in his or her attempt to raise the question of fitness to stand trial.

Third, the standard does not expect defendants to be "champions of the criminal justice system" (Golding, Roesch & Schreiber, 1984). The test is not to be applied in any extreme sense, but in a reasonable and commonsense fashion (R v Presser, 1958). Fourth, the emphasis on a rational as well as factual understanding of the proceedings implies an emphasis on cognitive functioning. Although mental illness may be relevant insofar as it impacts on rational understanding, the test is not to be equated with the presence or absence of mental illness or the need for treatment (Melton, Petriña, Poythress & Slobogin, 1987).

Fifth, Smith J gave no indication in R v Presser [1958] that some criteria are more important than others. However, it could be argued that some of the criteria are more central to rational participation in the trial process than

others. Considering that Australian criminal courts do not practise the questioning of jurors, the ability of the accused to exercise right of challenge appears to be more peripheral to meaningful participation than the ability to understand the nature of the charge, for example. Indeed, inquiry into court application of the decision rule may be warranted. However, according to the decision in Presser, all criteria are necessary and therefore assumed to be equally important to the determination of fitness.

Disposition of persons found not fit for trial. Persons suffering from a mental disorder or intellectual disability who have been charged with a criminal offence pose great difficulties for Australian courts. On the one hand it is unfair to try persons, who because of their mental disorder or intellectual disability, are not capable of defending themselves. On the other hand, it is unjust not to give intellectually disabled and mentally disordered persons accused of an offence, the opportunity to test the evidence and prove their innocence. The latter concern is particularly salient given that legislation typically includes the provision of an indeterminate sentence at a secure mental health facility (*Crimes Act, 1958 (Vic.) s.393(1); MCCOCA, 1994*).

The courts operate under the assumption that an unfitness commitment at a mental health facility is for the welfare of the accused. However, there are various defects of this process that violate the rights of accused persons. The disposition of a person unfit for trial is predicated on the assumption that a presently incompetent person will eventually become of "sound mind" and therefore be able to stand trial on the offence charged. However, there is a danger that a person found unfit for trial, particularly if suffering from an intellectual disability, may never be considered fit and

therefore never be brought to trial. This time spent awaiting a determination of "fitness to stand trial" is known as Governor's Pleasure. Under this system, it is not only possible that time spent detained in a mental health facility may exceed that spent in prison if they had been found guilty, but that the civil rights of innocent persons are violated. There is also the danger of the unfit person becoming subject to stigmatization in the public and administrative mind. Freiberg (1976) claims this is accentuated by the detainment of unfit persons with restricted patients, such as those found "not guilty for reasons of insanity", and those transferred from prisons, rather than with general psychiatric patients.

Issues in clinical assessment. Fitness or competency to stand trial is just one area of law where the capacity of a person to do a certain task is under question. Australian law recognises that the rights of individuals must be protected in a variety of circumstances. For example, the law recognises that persons must be competent to make a will, to make a contract, to consent to treatment, to consent to surgical intervention and to consent to research. However, the courts sanction a more pivotal role for mental health professionals in the determination of fitness to stand trial than for any other competency.

Clinicians are invited to participate in fitness proceedings to assist the jury in reaching more valid conclusions than they otherwise might attain. Specifically, the role of the clinician is to inform the court about the cognitive and emotional capacities of the accused (Roesch & Golding, 1980), and in doing so, address the legal requirements for fitness to stand trial. Presumably, this would involve being able to respond to each of the seven Presser criteria and to nothing else. However, if the evaluating clinician has a poor understanding of the legal requirements for fitness to stand trial, there

exists, on the one hand, the danger of failing to consider all necessary criteria and, on the other hand, the danger of including matters that are irrelevancies.

Investigations have consistently revealed that the legal concepts most frequently confused by psychologists and psychiatrists are the legal doctrines of fitness to stand trial and legal insanity (Brookbanks, 1992; Chiswick, 1978; Larkin and Collins, 1989; Mackay, 1991). Insanity may apply in two legal contexts; namely, (1) at the time of the offense, and (2) during the trial. The former is a defence governed at common law by M'Naghten's Case (1843), and its satisfaction is dependent upon two conditions.

1. There is a defect of reason from disease of the mind.
2. The defect of reason is such that:
 - (a) the accused did not know the nature and quality of the act he or she was doing (*mens rea*); or
 - (b) if the accused did know it, he or she did not know it was wrong (*actus reus*).

The Criminal Codes in Australia have extended the M'Naghten Rules by providing for incapacity of volition of the accused, or "irresistible impulse". This test is satisfied upon proof that the accused lacked the capacity to control his or her actions. The satisfaction of insanity *during the trial* renders the accused not fit to stand trial.

Another commonly demonstrated error made by psychologists and psychiatrists is that behaviour suggestive of mental illness constitutes unfitness to stand trial (Grisso, 1986; Golding & Roesch, 1988; Larkin & Collins, 1989; Mackay, 1991) or that the absence of mental illness constitutes fitness to stand trial (Plotnick, Porter & Bagby, 1996). This is not to say that the absence or presence of mental illness is irrelevant to the question of fitness to stand trial.

However, this simple dichotomy ignores the fact that the presence or absence of mental illness is only relevant insofar as how it impacts on the ability of the accused to meet the legal criteria.

Larkin and Collins (1989) examined 77 pre-trial psychiatric reports of patients found unfit to plead and found that in 27% there was no explicit mention of the criteria. An example of one psychiatrist's response to the question of fitness was that "He has severe mental illness with thought disorder and therefore, is, unfit to plead, M'Naghten mad and suffering diminished responsibility" (p.30). This indicates a poor understanding of several of the key concepts used in forensic practice. Reference to M'Naghten is not appropriate when considering the question of the accused's fitness to stand trial, as M'Naghten insanity is concerned exclusively with the state of the accused's mind at the time the act was committed. The findings of Larkin and Collins (1989) provide support for the notion that some psychiatrists seem uncertain of the legal criteria for fitness to plead and confuse the issue with the test of criminal responsibility (Chiswick, 1978; Incomp., 1967).

In another investigation of clinician adherence to the legal criteria, Mackay (1991) examined the Home Office documentation in all cases of fitness to stand trial for the 11 year period between 1979 and 1989. The total number of unfitness determinations was 229, with the greatest number in any single year being 39 in 1980 and the least (11 cases) in 1989. An examination of the psychiatric reports revealed that only 4 reports made reference to *all* fitness criteria laid down in R v Pritchard (1836). Consistent with the findings of Larkin and Collins (1989), many reports contained "various combinations of the criteria" (p. 29).

Although there were indications that the issue had been considered in 67 (30%) of the cases, they failed to explicitly address the legal criteria. These 67 cases were organised into two categories. One category included conclusions that were reached without mention of the criteria. For example, one report stated that "because of psychosis, the patient is unfit to plead". The second category included conclusions made on the basis of criteria beyond the relevant legal standard. One such report referred to the defendant being "unable to comprehend the imposition of the sentence of the court" (p. 92). While there were no definite conclusions offered about the manner in which the fitness criteria were used, Mackay (1991) submits that many of the reports contained confusion and ignorance about the criteria, consistent with the findings of Larkin and Collins (1989).

In an investigation into the effects of legally relevant and legally irrelevant variables on fitness to stand trial evaluations, Plotnick, et al (1996) mailed 318 psychiatrists one of eight hypothetical case vignettes in which a specific set of variables were manipulated. It was found that psychiatrists do focus on the legal criteria in making fitness decisions, although under certain conditions are influenced by legally irrelevant information. If the vignette depicted the defendant as *fit* to stand trial, psychiatrists were influenced by legally irrelevant information, such as having no current psychotic symptoms. The investigators acknowledge that the findings lack ecological validity, as it is not known whether psychiatrists would respond differently in a genuine clinical situation.

While the presence or absence, or degree of intellectual disability or mental disorder may certainly be significant in evaluating a defendant's fitness

for trial, the important question is the actual ability of the defendant to perform tasks required at trial (Ellis & Luckasson, 1985). Therefore, the question of fitness is "not whether the accused is mentally ill per se or intellectually disabled, but whether his or her experience of hallucinations, delusions or other abnormalities" will adversely impact on his or her ability to satisfy the legal criteria set out in Presser (Freckleton, 1995, p.6).

However, the Presser criteria state only what characteristics a fit defendant should exhibit once the trial has commenced. They do not state what verbal and behavioural indicators should be present during the time of evaluation. Not surprisingly, clinicians may not know how to apply the criteria to the array of psychological and behavioural observations necessary to make an accurate recommendation (Schreiber, 1982), or alternatively, extrapolate from forensic observations to address the legal criteria. In the absence of a direct relationship between the legal criteria and psychological concepts that underlie the criteria, clinicians frequently rely on traditional diagnostic concepts in evaluating fitness (Nicholson, Robertson, Johnson, & Jensen, 1988).

Previous research on the use of psychological testing revealed that 22% (N=53) of forensic psychologists rated psychological testing as an essential component of competency to stand trial evaluations. This suggests that testing is not considered to be necessary at a minimum for clinical forensic evaluations (Borum and Grisso, 1995). It was also found that 60-70% rely on psychological test data in 40% or more of their evaluations. About half claimed they would use psychological testing in almost every criminal case.

Borum and Grisso (1995) suggest these findings fail to support a standard that requires testing in *all* forensic cases performed by a psychologist.

However, test use was found to be sufficiently frequent that it be considered the norm, rather than the exception. Certain tests (eg. Weschler Adult intelligence Scale- Revised. (WAIS-R), Minnesota Multiphasic Personality Inventory (MMPI)) were cited with "exceptionally high frequency" (p. 471) suggesting the possibility that even if testing is not viewed as essential across all cases, certain tests may represent standard practice in those cases in which testing is used.

Borum and Grisso (1995) also gathered data about the opinions of forensic clinicians toward use of psychological testing. There were no differences found between the 53 forensic psychologists and 43 forensic psychiatrists in the perceived importance of psychological testing for competency evaluations. However, with dichotomised frequency ratings of high use and low use, psychologists reported they conduct or order psychological testing in competency to stand trial evaluations significantly more frequently than psychiatrists. This is believed to be a function of the orientation toward testing during psychological training (Borum & Grisso, 1995). Yet, how relevant are the tests canvassed in basic training to the assessment of fitness to stand trial? According to Roesch (1979), they have limited relevance. Roesch argued that clinicians could no longer conduct traditional evaluations that were only peripherally related to legal competencies. As a consequence of the difficulties in establishing causal links between cognitive functioning and the legal criteria, standardised measures to assess fitness to stand trial emerged (Bagby, Nicholson, Rogers & Nussbaum, 1992).

Over the last two decades there has been extensive research comparing instruments used to assess fitness to stand trial (eg. Golding et al.,

1984; Lipsitt, Lelos & McGarry, 1971; Nicholson, Briggs & Robertson, 1988; Roesch, Eaves, Sollner, Normandin & Glackman, 1981; Schreiber, 1978; Schreiber, 1982). The focus tends to be evaluating the correlations between the various instruments used to assess competency in the absence of empirical support for the validity of such measures. One of the assessment instruments used to measure competency is the Competency Screening Test (CST) (Lipsitt et al., 1971). The CST is a short, 22 item sentence completion test designed to screen defendants for whom the question of fitness has been raised. The Competency Assessment Interview (CAI) was designed to be the basis of a more detailed interview that focuses on the legal standards outlined in Dusky. The CAI is a semi-structured, one-to-one interview with a range of areas that the evaluator is required to cover, along with brief descriptions of how one *might* code various defendant responses. The fact that the clinician is required to interpret responses according to legal criteria may contribute to error in clinical evaluation. Error may arise because the descriptions are only guidelines and not exhaustive of all possible responses, which may result in inconsistent or incorrect coding across different evaluators.

Furthermore, neither the CST or the CAI have been subject to empirical scrutiny (Nottingham & Mattson, 1981). There exists no reliability, validity, or clinical utility data for these tools; and it also appears that the CAI tends heavily toward a focus on legal issues (Golding et al., 1984). The Interdisciplinary Fitness Interview (IFI) was designed as a psycho-legal assessment tool that incorporated the joint participation of legal and mental health professionals. However, like the other assessment instruments, the IFI was not evaluated using a sample of potentially unfit defendants, which leaves

open the question of test validity.

The effect of limited training and experience on forensic practice.

It has been suggested that the provision of irrelevant legal criteria and information inappropriate to the legal inquiry is a function of inexperience and limited forensic training (Rogers, Turner, Helfield & Dickins, 1988). An investigation by Rogers et al. (1988) examined the knowledge and understanding of 211 forensic psychologists and psychiatrists on the Canadian Insanity standard. The primary focus of the survey addressed three basic concepts of S.16 of the Criminal Code: (a) disease of the mind; (b) appreciate the nature and quality; and (c) wrongfulness. A single-stage discriminant analysis permitted the correct classification of 78.9% of those with an incorrect understanding and 61.9% with a correct understanding. They claim the strongest predictor of an accurate understanding to be the number of times an expert has testified in insanity cases. Other variables found to correlate with correct understanding included the number of insanity evaluations and years of forensic training. One way the findings may be interpreted is that "experts need substantial experience, both in conducting insanity evaluations and subsequent testimony ... to achieve an accurate understanding of the psycho-legal standard" (p.694).

Although these findings pertain specifically to evaluations of insanity, competent standards of practice are equally important to the assessment of competency to stand trial. The issue of relevant training to achieve a standard of competent practice was canvassed by Perrin and Sales (1994). They make comment on the Forensic Activities section of the American Psychological Association's (APS) ethics code, which was added during the

1992 revision. Perin and Sales (1994) argue that the Forensic section fails to provide sufficient guidelines for competent practice, as it does not add any new information not already addressed in other sections of the code. Perrin and Sales (1994) advocate for more specific guidelines based on the manner in which psychologists enter forensic work. Psychologists typically provide forensic services as an extension of their non-forensic practice because there exist very few postgraduate opportunities to train in forensic psychology.

The same situation exists in Australia. The first opportunity for comprehensive training in Forensic Psychology was in 1990, when Monash University in the State of Victoria, commenced a Masters in Forensic Psychology. Since that time, the course has been relocated at Edith Cowan University, Western Australia, and formal training now extends to Doctoral level. In 1998, other institutions, such as the University of South Australia and Charles Sturt University, in N.S.W. and the University of Western Sydney have recently introduced courses in forensic psychology. Swinburne and La Trobe University, in Victoria, offer courses with a bias toward the integration of psychology in the justice system, however formal training remains limited.

Although Priest (1994) found that Australian psychologists working in the forensic field typically have backgrounds in clinical training, this is not representative of the Forensic College of the Australian Psychological Society (APS). The College comprises 157 members, 17 of whom have formal clinical training at Masters level (with one exception who attained a Post Graduate Diploma in Clinical Psychology in the 1970's) (Appendix K). According to the APS database, none of the Forensic College Members have formal training in Forensic Psychology. It might be argued that in the absence

of formal education, training or supervision in forensic practice, psychologists and psychiatrists are unlikely to be appropriately conversant with issues in forensic practice (Perrin and Sales, 1994).

Despite a statement by the High Court that the Presser criteria are the minimum standards to be considered in determinations of fitness to stand trial, the extent to which Australian psychologists and psychiatrists are knowledgeable of, and adhere to these standards is not known. Concerns over the provision of irrelevant and incredible assessments of fitness have been detailed. Failure to appropriately address the question posed by the court might be a function of ignorance through inadequate training, or of the difficulties in interpreting legal concepts. It is important to know the extent to which Australian psychologists and psychiatrists are knowledgeable of the legal requirements for establishing fitness to stand trial and the way in which they attempt to establish the fitness of an accused person. Specifically, this investigation will address the following questions:

1. What do psychologists and psychiatrists in Australia understand by fitness to stand trial?
2. What methods do psychologists and psychiatrists use to assess fitness to stand trial?
3. Does experience in evaluating an accused's fitness to stand trial influence clinician understanding of fitness to stand trial ?
4. Is Membership of a Forensic College in Psychology or a Forensic Section in Psychiatry associated with the ability to identify more legal criteria ?

Method

Participants

A national survey was distributed to 1010 psychologists, based on their Membership of the Clinical and/or Forensic Colleges of The Australian Psychological Society (APS); and 1473 psychiatrists from the Royal Australian and New Zealand College of Psychiatrists (RANZCP) pursuant to their Fellowship of the Psychotherapy and/or Forensic Sections.

Psychologists. The return rate for psychologists was 21% (214), however 7 surveys were returned not completed by retired psychologists, 5 were returned not completed on the basis that the participants did not have the expertise to complete them, and 4 were returned by the spouses of APS Members who were deceased. Consequently, the analysable sample consisted of 198 psychologists, of whom 104 (52.5%) were male and 94 (47.5%) were female. The majority of psychologists were Members of the Clinical College of the APS (78.3%). The remaining Members were associated with the Forensic College (12.1%) or both the Forensic and Clinical Colleges (9.6%). The mean number of years psychologist respondents had been practising as a clinician was 19.13 (range= 0-50; S.D.= 9.91). 18.2% of the sample had Honours or a Post Graduate Degree in psychology, 58.6% had attained a Master of Psychology and 21.2% a Ph.D. in Psychology. The remaining 1.5% had a Bachelor or Master of Education. One psychologist did not provide information about his education.

Psychiatrists. The return rate for psychiatrist respondents was 8% (131). Four surveys were returned by Section Fellows who stated that they did not have the expertise to complete them, and 2 by Section Fellows who were

retired. Therefore, the analysable sample was comprised of 125 psychiatrists; 94 of whom were male (75.2%) and 31 (24.8%) female. The majority of respondents were Fellows of the Psychotherapy Section of the RANZCP (64.7%). The remaining psychiatrists were Fellows of both the Psychotherapy and Forensic Sections (19.3%) or the Forensic Section (16%). Six psychiatrists did not state their Section Fellowship. The mean number of years psychiatrists had been practising as a clinician was 17.07 (range= 1-40; S.D.= 9.66). 62.4% of psychiatrists in the sample had undertaken College of Psychiatrists Training. The remaining participants had furthered their qualifications and completed a Diploma of Psychological Medicine (32%) or a Master of Psychological Medicine (5.6%).

Experience in fitness to stand trial evaluations. The sample was relatively inexperienced in undertaking fitness to stand trial evaluations, with only 35 (18%) psychologists and 46 (37%) psychiatrists having done one or more evaluations. The mean number of fitness to stand trial evaluations undertaken by psychologists who had done one or more evaluations was 15.11 (sd=33.43; range=1-49), and for those psychiatrists who had done one or more fitness evaluations the mean was 33.47 evaluations (sd=72.43; range=3-99).

Geographical location. The majority of respondents were located in Victoria (37.6%) and New South Wales (31.4%). Queensland was represented by 10.9% of the sample, South Australia by 7.8%, Western Australia by 5.6%, 4.3% of the respondents were from Tasmania, and 2.5% from the Australian Capital Territory. None of the sample population resided in the Northern Territory.

Materials

The survey was divided into two sections. The first section was concerned with collecting demographic data (Appendices A (psychologists) and B (psychiatrists)). To accommodate for possible difference in educational requirements and membership of professional association, two questions in section one of the survey differed across psychologists and psychiatrists. The second section of the survey (Appendix C) comprised five open-ended questions designed to collect data about clinician understanding of fitness to stand trial and the ways in which clinicians structure assessment and make inferences about the fitness of an accused person. Section 2 of the survey was the same for psychologists and psychiatrists.

Procedure

Letters were forwarded to the APS and RANZCP detailing the purpose of the research and requesting permission to distribute surveys to Members of the Clinical and Forensic Colleges of the APS and Fellows of the Psychotherapy and Forensic Sections of the RANZCP. For reasons of confidentiality, name and address labels could not be posted to the researchers, and therefore had to be attached to the envelopes and mailed at the Head Office of each professional body in Melbourne, Victoria.

A survey and accompanying letter was forwarded to Australian psychologists and psychiatrists (provided they were RANZCP Fellows or APS Members) requesting their participation and assistance with this research (Appendix D). The letter briefly outlined the purpose of the research, stated that participation was anonymous, and therefore they were not required to submit any identifiable information. The accompanying letter also expressed the

author's intention to publish the results upon completion of the research. Participants had the option of returning the completed survey via mail (in an enclosed stamped and self-addressed envelope) or by facsimile.

Design

A survey design was used to measure psychologists' and psychiatrists' understanding of fitness to stand trial and the best methods to assess this legal doctrine for reasons of anonymity, time effectiveness and breadth of distribution. The independent variables were profession (psychologist/ psychiatrist), experience in undertaking fitness evaluations (yes/no), APS College Membership (Clinical, Forensic or both Clinical and Forensic), and RANZCP Section Fellowship (Psychotherapy, Forensic, or Psychotherapy and Forensic).

The dependent variables were number of Presser criteria identified by clinicians (range = 0 -7); the type of Presser criteria identified by clinicians (nature of charge, plead, right of challenge, understanding proceedings, follow proceedings, understanding effect of evidence and instructing counsel); methods used to evaluate the "fitness" of an intellectually disabled person and a mentally disordered person (which fell into 7 categories: intelligence test; adaptive functioning test; visual/verbal memory test; clinical interview; personality inventory; consultation with legal counsel; and the seeking of other reports).

Upon receiving the returned surveys, data were entered and analysed using SPSS for Windows. In Section 1 of the survey, question 6(a) asked respondents how many fitness to stand trial evaluations they had undertaken. The responses were collapsed into 3 categories for analysis (0; 1-4;

5+). A content analysis was undertaken for responses in Section 2 of the survey. In Section 2, Question 1 asked what clinicians understood by the term fitness to stand trial. Responses were coded according to the number and type of legal criteria as outlined in Presser. Inherent in the coding procedure was the assumption that each criterion has equal weight. This assumption is implicit in the legal guidelines outlined in R v Presser [1958].

The possible score for each respondent ranged from 0 identification of correct criteria to all 7 criteria being correctly identified. There were 33 (16.7%) psychologists and 10 (8%) psychiatrists who indicated they did not know what was meant by the term fitness to stand trial, and these 43 responses were coded as 0 correct criteria. Irrelevant and insufficient responses were also coded for analysis. Irrelevant responses were those that confused fitness to stand trial with "mental state at the time of the offence". A variety of responses were synonymous with "mental state at the time of the offence" and were therefore collapsed into one category for analysis. These responses included reference to criminal responsibility, the McNaghten Rule, mens rea, and criminal intent.

Responses were categorized as insufficient if they claimed the "absence of mental illness" sufficient to satisfy the legal test of fitness to stand trial. The "absence of mental illness" may be a relevant consideration in the fitness or unfitness of a particular defendant, however all responses of this nature were given without any mention of the legal criteria. It can not be known whether or not clinicians providing this response have any knowledge of the legal criteria. These responses were therefore deemed insufficient for the purpose of establishing fitness to stand trial.

Question 2 asked "How do you establish the fitness to stand trial of an *intellectually disabled* person?", and question 3 asked clinicians to "Please state *why* you would establish the fitness of an intellectually disabled person in the way you described in (2) above." Questions 4 and 5 asked "How do you establish the fitness to stand trial of a *mentally disordered* person?" and "Please state *why* you establish the fitness of a mentally disabled person in the way you described in (4) above". Responses were coded according to each of the methods that clinicians supplied.

Results

The results of each research question are presented in sequence.

The number of Presser criteria identified by psychologists and psychiatrists.

A comparison of the mean number of Presser criteria identified by psychologists (mean= 1.489) and psychiatrists (mean= 2.712) showed that psychiatrists identified a greater number of the Presser criteria than psychologists, $F(1,321)= 31.748$, $p<.001$ (Appendix E). There were more psychiatrists ($N=12$; 9.6%) than psychologists ($N=6$; 3%) who identified all seven Presser criteria, $\chi^2(1, N=323)= 6.285$, $p<.05$.

The type of criteria identified by psychologists and psychiatrists.

A series of two-way chi squares was used to find any difference between psychologists and psychiatrists in their identification of correct and incorrect legal criteria for fitness to stand trial.

Correct legal criteria. The Presser criteria were examined individually to discover which criteria were identified most frequently by psychologists and psychiatrists. The results are shown in Figure 1.

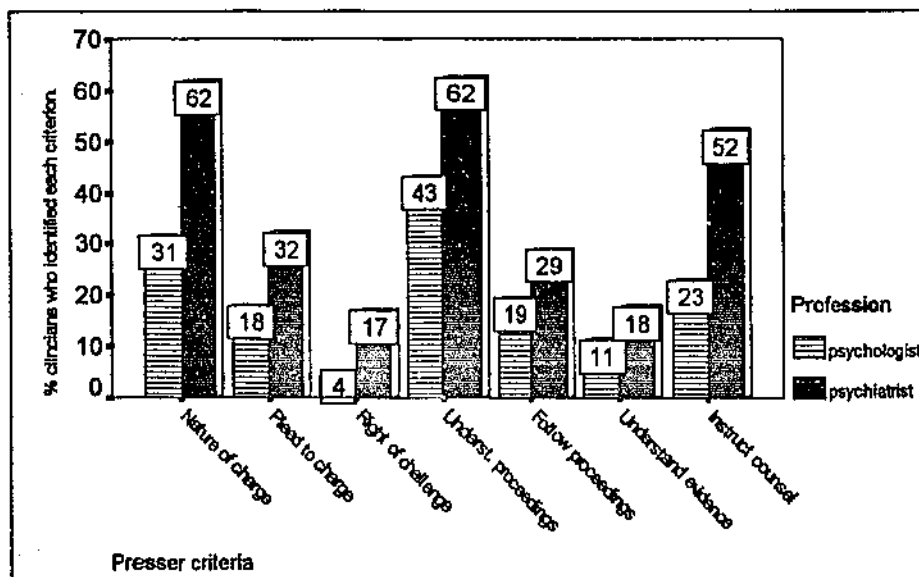


Figure 1: The identification of each Presser criterion according to profession.

The percentage of clinicians who identified the different Presser criteria are shown in Figure 1. The overall pattern is that psychiatrists identified more criteria than psychologists. Psychiatrists identified more often than psychologists, the accused's need to understand the nature of the charge [$\chi^2(1, N=323)= 28.672, p<.001$]; to plead to the charge [$\chi^2(1, N=323)= 8.818, p<.01$]; to exercise his or her right of challenge [$\chi^2(1, N=323)=15.265, p<.001$]; to understand generally the nature of the proceedings [$\chi^2(1, N=323)= 11.621, p<.001$]; to follow the proceedings [$\chi^2(1, N=323)= 4.01, p<.05$], and the ability to instruct counsel [$\chi^2(1, N=323)=29.237, p<.001$]. There was also a tendency for more psychiatrists than psychologists to identify the accused's ability to understand the substantive effect of any evidence, but this difference was not significant [$\chi^2(1, N=323)= 2.742, p> .05$]. Psychologists did not identify any of the Presser criteria more often than psychiatrists.

Irrelevant and insufficient legal criteria. Clinician responses were then analyzed to reveal any difference between profession and identification of (1) irrelevant, and (2) insufficient criteria. The first can be conceptualized as "mental state at the time of the offence", and comprises responses that confused the test of fitness to stand trial with legal insanity or criminal responsibility. The second, or "insufficient" criterion was "absence of mental illness (MI)", which reflects the incorrect assumption that the absence of mental illness is sufficient to satisfy the legal test of fitness to stand trial. All clinicians who mentioned "absence of mental illness" failed to relate their answers to any legal criteria. The percentage of clinicians who provided these responses is shown in Figure 2.

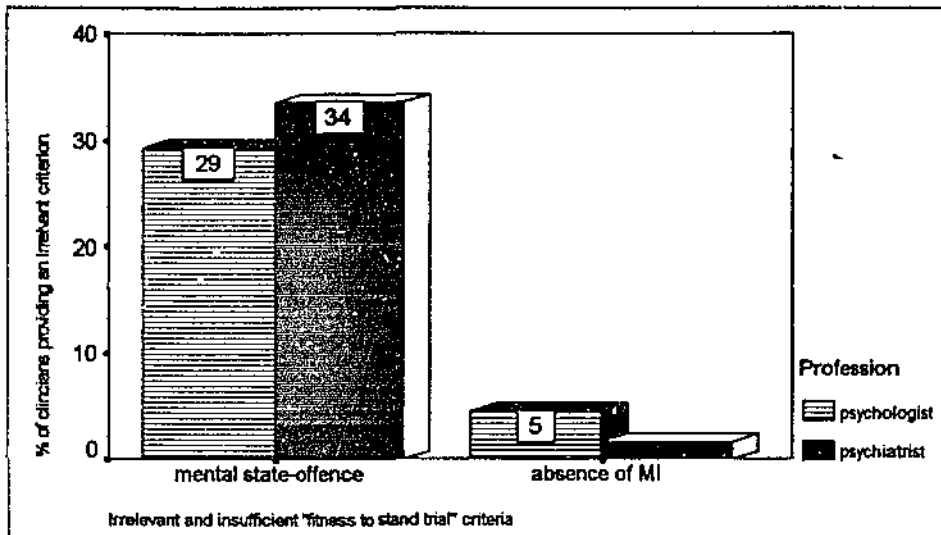


Figure 2: The identification of irrelevant and insufficient "fitness to stand trial" criteria by psychologists and psychiatrists.

"Mental state at the time of the offence" was incorrectly identified as relevant to fitness to stand trial by 90% (N=101) of clinicians who provided an irrelevant or insufficient criterion. Equating the "absence of a mental illness with fitness to stand trial" accounted for the remaining 10% (N=11) of incorrect responses.

No difference was found between psychiatrists and psychologists in their likelihood of assuming that "mental state at the time of the offence" was relevant to fitness to stand trial [$\chi^2(1, N= 323)= 0.929, p>.05$] or their likelihood of assuming that the absence of mental illness [$\chi^2(1, N=323)= 2.021, p>.05$] was sufficient to satisfy the test of fitness to stand trial.

Circumstances in which psychologists and psychiatrists provided irrelevant or insufficient criteria were then examined as a function of the number of correct criteria. The total number of correct criteria that could be identified were collapsed into three categories (0; 1-4; 5-7). The results are shown in Table 1.

Table 1: Number of psychologists and psychiatrists who identified irrelevant and insufficient criteria as a function of the number of correct criteria identified.

Psychologists			Psychiatrists		
Number of criteria identified	mental state at the time of the offence	absence of mental illness	Number of criteria identified	mental state at the time of the offence	absence of mental illness
0 criteria (N=75)	33 44%	9 12%	0 criteria (N=23)	11 48%	2 9%
1-4 criteria (N=108)	24 22%	0 0%	1-4 criteria (N=78)	30 39%	0 0%
5-7 criteria (N=15)	1 7%	0 0%	5-7 criteria (N=24)	2 8%	0 0%
Column Total N=198	58	9	N=125	43	2

Table 1 shows the total number of clinicians in each criteria category and the number of those clinicians who provided an irrelevant or insufficient criterion. The probability of referring to "mental state at the time of the offence" or the "absence of mental illness" depending upon the number of correct criteria identified is shown as a percentage. The "0 criteria" category comprised clinicians who provided an entirely irrelevant response (psychologists=42; psychiatrists=13), or who claimed they did not know what fitness to stand trial was (psychologists=33; psychiatrists=10).

Two-way chi-squares, using SPSS for Windows, were used to identify any association between the number of criteria identified and confusing fitness to stand trial with "mental state at the time of the offence" by psychologists and psychiatrists. Analyses could not be undertaken for equating the "absence of mental illness" with fitness for trial due to the insufficient number of clinicians who provided this response.

Psychologists. There was a difference in the number

of psychologists who refer to "mental state at the time of the offence" depending on the number of correct criteria identified, $\chi^2(2, N=198)= 14.147$, $p<.001$. Table 1 shows that the probability of psychologists referring to "mental state at the time of the offence" is greatest when they identify 0 correct criteria, and lowest when psychologists identify between 5 and 7 correct criteria. Only those psychologists who provided 0 correct criteria believed the "absence of mental illness" sufficient to satisfy the issue of fitness to stand trial.

Psychiatrists. There was a difference in the number of irrelevant criteria provided by psychiatrists depending on the number of correct criteria identified, $\chi^2(2, N=125)= 9.634$, $p<.01$. Table 1 shows that the probability of psychiatrists referring to "mental state at the time of the offence" is greatest when they identify 0 correct criteria, and lowest when psychiatrists identify between 5 and 7 correct criteria. Only those psychiatrists who provided 0 correct criteria believed the "absence of mental illness" sufficient to satisfy the test of fitness to stand trial.

Methods that psychologists and psychiatrists would use to establish the fitness to stand trial of an accused person.

A series of two-way chi squares, using SPSS for Windows, was used to reveal any difference between psychologists and psychiatrists in the methods they would employ to evaluate the fitness to stand trial of (1) an intellectually disabled person and (2) a mentally disordered person. Psychologists' and psychiatrists' methods of assessing "fitness to stand trial" fell into seven categories. Those categories were: intelligence tests, personality tests, clinical interviews, adaptive functioning tests, memory tests, consultation

with a lawyer, and the seeking of other reports. Figures 3 and 4 show the percentage of psychologists and psychiatrists who would use each method.

(1) Evaluation of an intellectually disabled person. The percentage of psychologists and psychiatrists who would assess the fitness of an intellectually disabled person using each method is shown in Figure 3.

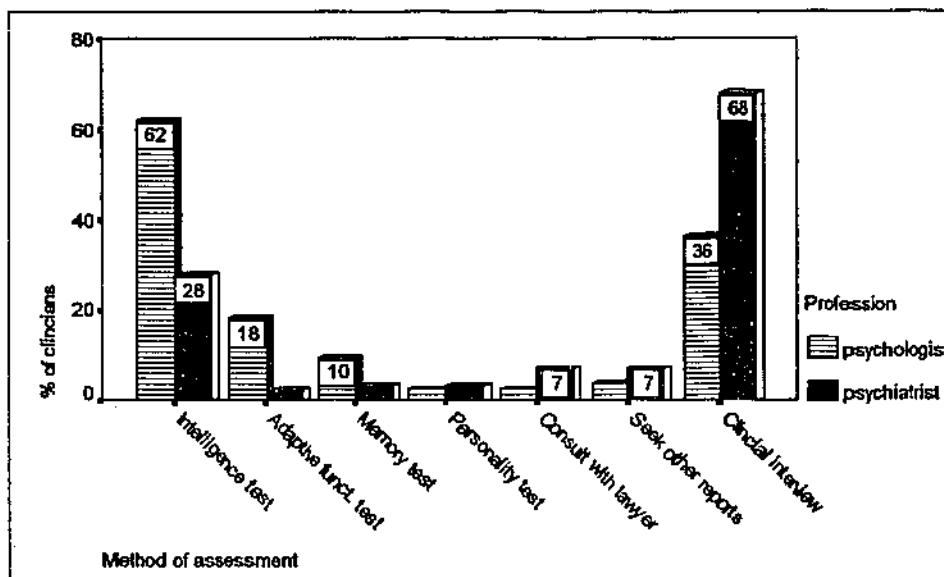


Figure 3: Percentage of clinicians who use each method to assess the fitness to stand trial of an intellectually disabled defendant.

Inspection of Figure 3 indicates psychologists were more likely to use an intelligence test [$\chi^2(1, N=323)= 35.701, p<.001$]; an adaptive functioning test [$\chi^2(1, N=323)= 17.977, p<.001$]; and focus on the assessment of visual and/or verbal memory [$\chi^2(1, N=323)= 4.74, p<.05$] when evaluating the fitness to stand trial of an intellectually disabled defendant. Psychiatrists were more likely than psychologists to consult a lawyer [$\chi^2(1, N=323)= 4.038, p<.05$], and conduct a clinical interview [$\chi^2(1, N=323)= 30.700, p<.001$]. There was no difference found between psychologists and psychiatrists for the use of a personality test [$\chi^2(1, N=323)= 0.129, p>.05$], or seeking other reports [$\chi^2(1,$

N=323)= 1.534, p>.05].

(2) Evaluation of the mentally disordered person The methods psychologists and psychiatrists would use to assess the fitness to stand trial of a mentally disordered person are shown in Figure 4.

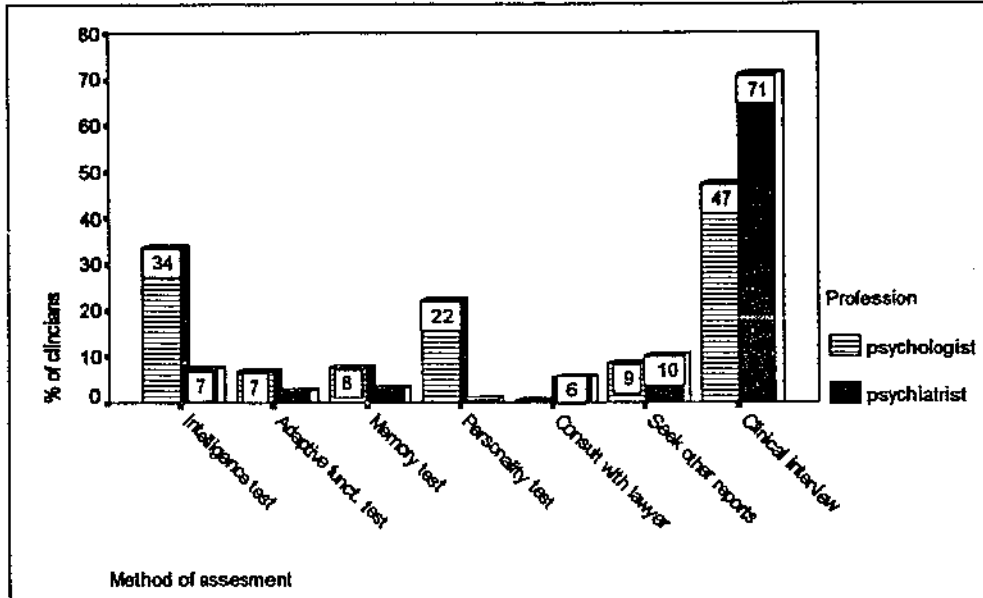


Figure 4: Percentage of clinicians who use each method to assess the fitness to stand trial of a mentally disordered defendant.

Figure 4 shows the difference between psychologists and psychiatrists on the seven assessment methods provided to evaluate the fitness to stand trial of a defendant suspected to be mentally disordered. Psychologists are more likely than psychiatrists to use an intelligence test [$\chi^2(1, N=323)= 30.219, p<.001$]; and a personality test [$\chi^2(1, N=323)= 29.325, p<.001$]. Conversely, psychiatrists are more likely than psychologists to conduct a clinical interview [$\chi^2(1, N=323)= 17.564, p<.001$]; and consult a lawyer [$\chi^2(1, N=323)= 8.235, p<.01$] to assess the fitness to stand trial of a mentally disordered defendant. There was no difference found between psychologists and psychiatrists for the use of an adaptive functioning test [$\chi^2(1, N=323)=$

2.824, $p > .05$]; a memory test [$\chi^2(1, N=323)=2.650$]; or to seek other reports [$\chi^2(1, N=323)= 0.299, p > .05$] when mental disorder is implicated.

A series of two-way chi squares were used to discover any difference in the method (1) psychologists use to assess intellectually disabled and mentally disordered persons, and in the method that (2) psychiatrists also use to evaluate these two groups. The results are shown in Figures 5 and 6.

(1) Method employed by psychologists. The percentage of psychologists who would use each of the seven methods to assess the fitness of an intellectually disabled person and a mentally disordered person is shown in Figure 5.

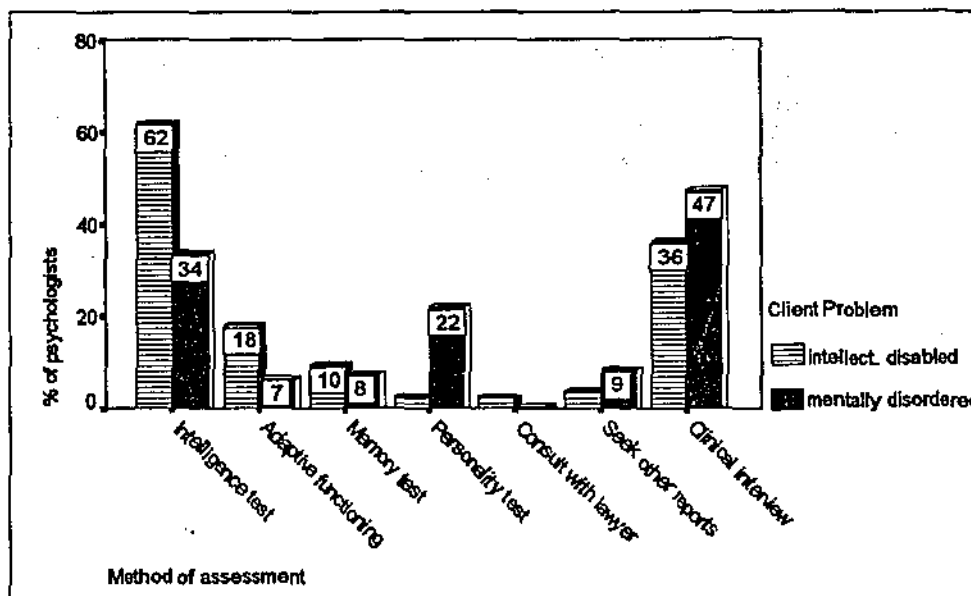


Figure 5: Methods used by psychologists to assess the fitness to stand trial of intellectually disabled and mentally disordered clients.

A series of two-way chi squares revealed a difference between the client groups for four of the seven methods. When intellectual disability is

implicated, psychologists are more likely to use an adaptive functioning test [$\chi^2(1, N=396)= 12.320, p<.001$], and an intelligence test [$\chi^2(1, N=396)=31.729, p<.001$]. When mental disorder is implicated, psychologists are more likely to use a personality test [$\chi^2(1, N=396)=35.424, p<.001$], and a clinical interview [$\chi^2(1, N=396)= 5.020, p<.05$]. There was no difference found between the client groups for use of a memory test [$\chi^2(1, N=396)= 0.515, p>.05$], consultation with a lawyer [$\chi^2(1, N=396)= 2.708, p>.05$], or to seek other reports [$\chi^2(1, N=396)= 3.458, p>.05$].

(2) Method employed by psychiatrists. The percentage of psychiatrists who would use each of the seven methods to assess the fitness of an intellectually disabled person and a mentally disordered person is shown in Figure 6.

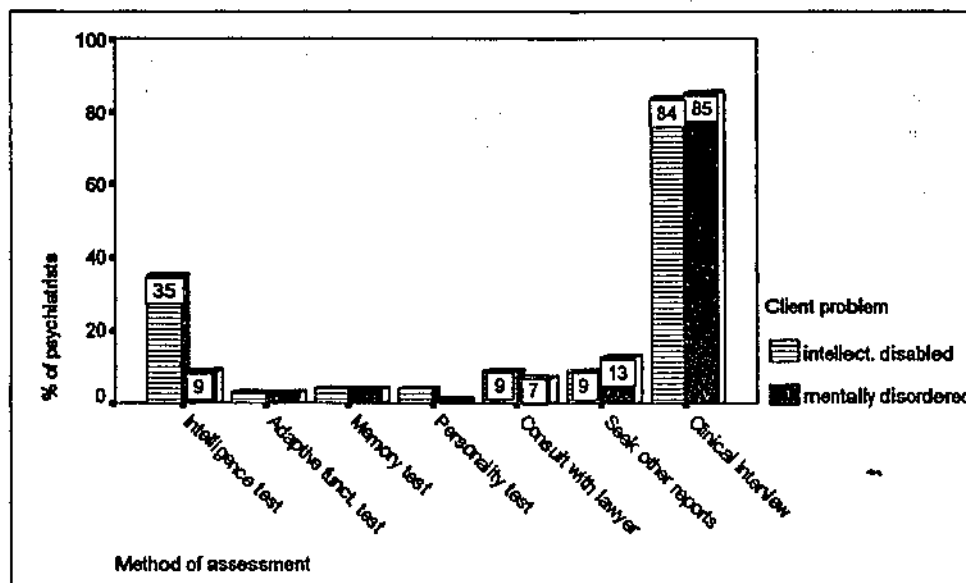


Figure 6: Methods used by psychiatrists to assess the fitness to stand trial of intellectually disabled and mentally disordered clients.

A series of two way chi squares revealed a difference between the methods of assessment of the client groups for only one of the seven methods. When intellectual disability is implicated, psychiatrists are more likely to use an intelligence test [$\chi^2(1, N=250)=19.756, p<.001$]. There was no difference found between the client groups for use of a personality test [$\chi^2(1, N=250)= 1.837, p>.05$], an adaptive functioning test [$\chi^2(1, N=250)= 0.000, p>.05$], a clinical interview [$\chi^2(1, N=250)= 0.302, p>.05$] memory test [$\chi^2(1, N=250)= 0.000, p>.05$], consultation with a lawyer [$\chi^2(1, N=250)= 0.267, p>.05$], or the seeking of other reports [$\chi^2(1, N=250)=0.797, p>.05$].

Experience in undertaking fitness to stand trial (FST) evaluations

The evaluation experience of psychologists and psychiatrists was compared to determine the relationship between profession and experience in undertaking fitness to stand trial evaluations. More psychiatrists (N=46; 56%) than psychologists (N=35; 44%) had undertaken a FST evaluation, $\chi^2(1, N=323)= 14.914, p<.001$.

The effect of evaluation experience on the number of Presser criteria identified. A comparison of the mean number of Presser criteria identified by psychologists (mean= 1.49) and psychiatrists (mean= 2.71), using a two-way analysis of variance, showed that across both experienced and non-experienced clinicians, psychiatrists identified a greater number of the Presser criteria than psychologists, $F_A(1,319)= 17.418, p<.001$] (Appendix F). A comparison of the mean number of Presser criteria identified by clinicians who have done a FST evaluation (total mean= 3.72; psychologists=2.94,

psychiatrists=4.30) and clinicians who have no experience in the assessment of FST (total mean= 1.38; psychologists=1.18, psychiatrists=1.78) showed that across both psychologists and psychiatrists, clinicians who have experience in the evaluation of FST identify a greater number of criteria than those who have no experience, $F_B(1,319)= 96.142, p<.001$. No interaction was found between profession and FST evaluation experience for the mean number of total criteria identified, $F_{AB}(1,319)= 2.977, p>.05$.

The frequency of psychologists and psychiatrists who provided an irrelevant or insufficient criterion was then examined according to their evaluation experience. The number of FST evaluations that clinicians had undertaken were collapsed into three categories (0; 1-4; 5 or more). The column labeled "mental state at the time of the offence" includes the number of clinicians who confused the test of fitness with that of legal insanity or criminal responsibility, and in the "absence of mental illness" column are those clinicians who incorrectly equated the absence of a mental illness with fitness to stand trial. The results are shown in Table 2.

Table 2: Number of psychologists and psychiatrists who identified irrelevant and insufficient criteria as a function of experience in evaluating fitness to stand trial.

	Psychologists		Psychiatrists	
	mental state at the time of the offence	absence of mental illness	mental state at the time of the offence	absence of mental illness
0 evals. (N=163)	47 29%	8 5%	0 evals. (N=79)	29 38% 2 3%
1-4 evals. (N=21)	10 48%	1 5%	1-4 evals. (N=17)	10 59% 0 0%
5+ evals. (N=14)	1 7%	0 0%	5+ evals. (N=29)	4 14% 0 0%
Column Total N=198	58	9	N=125	43 2

Two-way chi-squares, using SPSS for Windows, were used to identify any association between the number of fitness to stand trial evaluations undertaken and confusing fitness to stand trial with "mental state at the time of the offence" by psychologists and psychiatrists. Statistical analyses could not be undertaken for "equating the absence of mental illness" with fitness for trial due to the insufficient number of clinicians who provided this response.

Psychologists. A difference was revealed in the number of psychologists who refer to "mental state at the time of the offence" depending on the number of fitness to stand trial evaluations undertaken, $\chi^2(2, N=198) = 6.738, p < .05$. As shown in Table 2, the probability of psychologists referring to "mental state at the time of the offence" is greatest when they have undertaken 1-4 fitness to stand trial evaluations, while psychologists are least likely to refer to "mental state at the time of the offence" when they have undertaken 5 or more fitness evaluations. Psychologists who had no evaluation experience or had undertaken 1-4 fitness evaluations were equally likely to

believe the "absence of mental illness" sufficient to satisfy the issue of fitness to stand trial. None of the psychologists who had done 5 or more evaluations mentioned "absence of mental illness".

Psychiatrists. A difference was revealed in the number of irrelevant criteria provided depending upon the number of fitness to stand trial evaluations undertaken, $\chi^2(2, N=125)= 10.137, p<.01$. As can be seen in Table 2, the probability of psychiatrists referring to "mental state at the time of the offence" is greatest when they have undertaken 1-4 fitness to stand trial evaluations, while psychiatrists are least likely to refer to "mental state at the time of the offence" when they have done 5 or more fitness evaluations. Only those psychiatrists who have done no evaluations believed the "absence of mental illness" sufficient to satisfy the test of fitness to stand trial.

Presser criteria identified by members of the Australian Psychological Society (APS) Colleges.

Number of correct criteria identified A comparison of the mean number of Presser criteria identified by Members of the Clinical College (mean= 1.232); Forensic College (mean= 2.083); and Clinical and Forensic Colleges (mean= 2.842) showed that the number of criteria identified by psychologists differed across College membership, $F(2,195)= 9.692, p<.001$ (Appendix G). Post hoc comparisons using the Scheffe test revealed that psychologists who had Membership of *both* the Forensic and Clinical Colleges of the APS identified a greater number of Presser criteria than psychologists who only had Membership with the Clinical College. The number of Presser criteria successfully identified by psychologists who were only members of the Forensic

College fell midway between the other two groups.

Irrelevant criteria identified. The frequency of psychologists who provided irrelevant criteria was then examined according to their APS College Membership. The column labeled "mental state at the time of the offence" includes the number of psychologists who confused the test of fitness to stand trial with that of legal insanity or criminal responsibility, and in the "absence of mental illness" column are those clinicians who incorrectly assumed that the absence of a mental illness positively answers the question of fitness for trial. The results are shown in Table 3.

Table 3: Number of psychologists who identified irrelevant and insufficient criteria as a function of APS College Membership.

APS College Membership	Psychologists	
	mental state at the time of the offence	absence of mental illness
Clinical (N=155)	41 27%	8 5%
Forensic (N=24)	10 24%	1 4%
Clin& Forensic (N=19)	7 37%	0 0%
Column Total N=198	58	9

The probability of referring to "mental state at the time of the offence" and "absence of mental illness" depending upon College Membership is shown as a percentage. There was found to be no relationship between College Membership for confusing fitness to stand trial with "mental state at the time of the offence", $\chi^2(2, N=198)=2.901, p>.05$.

An analysis could not be performed across APS Colleges for equating "absence of mental illness" with fitness for trial due to the small frequency of psychologists who provided this response. The percentage of Members of both Clinical and Forensic Colleges, of the Forensic College and of the Clinical College making this assumption is 0%, 4% and 5% respectively.

Presser criteria identified by Fellows of the Royal Australian and New Zealand College of Psychiatrists (RANZCP) Sections.

Number of correct criteria identified A comparison of the mean number of criteria identified by psychiatrists in the Psychotherapy (mean= 1.844); Forensic (mean= 4.105); and Forensic & Psychotherapy (mean= 4.261) Sections showed a difference between RANZCP Section Fellowship and the number of Presser criteria identified, $F(2,116) = 21.286, p < .001$ (Appendix H). Post hoc comparisons using the Scheffe test revealed that psychiatrists who were Fellows of the Forensic or *both* Psychotherapy and Forensic Sections identified more of the Presser criteria than psychiatrists who only had Fellowship of the Psychotherapy Section.

Number of irrelevant criteria identified. The frequency of psychiatrists who provided irrelevant criteria was then examined according to their RANZCP Section Fellowship. Section Fellowship was divided into "Psychotherapy", "Forensic" and Fellowship of both "Psychotherapy and Forensic" Sections. The column labeled "mental state at the time of the offence" includes the number of psychiatrists who confused the test of fitness to stand trial with legal insanity or criminal responsibility, and in the "absence of mental illness" column are those clinicians who incorrectly assumed that the

absence of a mental illness positively answers the question of fitness for trial.

The results are shown in Table 4.

Table 4: Number of psychiatrists who identified irrelevant and insufficient criteria as a function of RANZCP Section Fellowship.

RANZCP Section Fellowship	Psychiatrists	
	mental state at the time of the offence	absence of mental illness
Psychotherapy (N=77)	31 40%	2 3%
Forensic (N=19)	3 16%	0 0%
Psythy&Forensic (N=23)	7 30%	0 0%
N=119	41	2

A two-way chi square, using SPSS for Windows, revealed no association between Section Fellowship of the RANZCP and confusing fitness to stand trial with "mental state at the time of the offence", $\chi^2(2, N=119)=4.243, p>.05$. An analysis could not be performed across RANZCP Sections for equating "absence of mental illness" with fitness for trial due to the small frequency of psychiatrists who provided this response. However, the percentage of Fellows belonging to both Forensic and Psychotherapy Sections, belonging to the Forensic Section, and belonging to the Psychotherapy Section was 0, 0 and 3 %.

Discussion

The purpose of this investigation was to examine the extent to which Australian psychologists and psychiatrists are cognisant of the legal criteria for fitness to stand trial. It included analyses of the effect of evaluation experience on clinician understanding of fitness to stand trial, whether Membership or Fellowship of a Forensic College or Section was associated with the ability to identify a greater number of legal criteria, and the method used by psychologists and psychiatrists to assess fitness to stand trial.

Correct legal criteria identified by psychologists and psychiatrists. One key finding is that psychiatrists who responded to the survey have a better knowledge of the legal criteria than psychologists. This finding extends across clinicians who are experienced at evaluating fitness to stand trial (one or more evaluations) and those who have no experience (never done an evaluation). Specifically, experienced psychiatrists identified more of the correct legal criteria than experienced and inexperienced psychologists. Inexperienced psychiatrists were also found to identify a greater number of the Presser criteria than inexperienced psychologists. Experienced psychologists did, however, perform better than psychologists who had never done a fitness to stand trial evaluation.

The Presser criteria were also examined individually to determine the frequency at which psychologists and psychiatrists identified each criterion. With the exception of one criterion for which there was no significant difference found, psychiatrists identified each of the seven legal criteria more often than psychologists.

The finding of no interaction between profession and experience

in evaluating "fitness" is surprising. One might expect psychologists and psychiatrists who have experience in fitness to stand trial evaluation not to differ in the number of legal criteria they identify. This is because people who do fitness to stand trial evaluations are expected by the legal profession to address the Presser criteria. Ideally, one would expect that having already done *at least one* fitness to stand trial evaluation, psychologists and psychiatrists would be conversant with the criteria.

Similarly, it might be expected that there would be no difference between the number of criteria identified by psychologists and psychiatrists who have *no experience* in the evaluation of fitness to stand trial. However, inexperienced psychiatrists identified a significantly greater number of correct legal criteria than inexperienced psychologists. One explanation for this finding is that psychiatrists receive a higher quality and quantity of forensic training than psychologists. An alternative explanation is that the finding can be attributed to sampling error. The small inexperienced group of psychiatrists may comprise more forensically supervised and/or trained clinicians than the larger inexperienced group of psychologists.

Forensic Training and supervision

Psychiatrists. As to the explanation that psychiatrists receive a superior quality and quantity of forensic training, it is difficult to identify what features of psychiatrist's training make them more knowledgeable of the fitness to stand trial doctrine than psychologists. Australian psychiatrists are formally educated for a minimum of 12 years. This period includes 6 years undertaking a Bachelor of Medicine and Bachelor of Surgery (MB,BS), 1 year internship, followed by specialist training of 5 years

with the Royal Australian and New Zealand College of Psychiatrists (hereafter referred to as RANZCP).

There is no formal forensic training program in the five year specialist training for psychiatrists. However, trainee psychiatrists have the opportunity for supervised sub-specialist training in forensic psychiatry for six months in 3rd year (RANZCP, 1992, By-law 4.2.4). During this six month training, supervision must be provided for not less than 4 hours per week and for a period not less than 20 weeks (RANZCP, 1992, By-law 6.2.1). At the conclusion of this six month training, trainees and supervisors must complete "Form C" (Appendix 1), which is a declaration that the trainee has completed training, and in the opinion of the supervisor, has performed satisfactorily. Although there is provision in "Form C" for the post being classified as "forensic", there is also no list of competencies against which the trainee is rated that are specific to performance in a forensic workplace.

In addition, trainee psychiatrists may elect supervised work in a forensic area for twelve months during their 5th or elective year (RANZCP, 1992, By-law 5(b)). There are no guidelines on the extent and nature of this supervision, only that it be approved prior to commencement of this elective year (RANZCP, 1992, By-law 6.2.6). According to the Chair of the Section of Forensic Psychiatrists, there exist many channels for psychiatrists to receive up to 18 months of comprehensive training on forensic issues within the community prior to graduation.

Requirements for admittance into the Section of Forensic Psychiatry. Entry into the Section of Forensic Psychiatry is open to all Fellows of the RANZCP on the basis of voluntary subscription. Fellowship of

the Forensic Section reflects a special interest or practice area in psychiatry and not necessarily special expertise in the area of forensic psychiatry.

An investigation into the number of Presser criteria identified by Fellows of different Sections of the RANZCP revealed that Fellowship of the Forensic Section was however, associated with the ability to recite a greater number of criteria than Fellowship of the Psychotherapy Section. One possible explanation for this finding is that the Forensic Section of the RANZCP is comprised almost entirely of those psychiatrists who elected supervision in a forensic area during training. However, this explanation can not be tested because the RANZCP has no available data on the extent or nature of forensic supervision of RANZCP Fellows, or specifically, Fellows in the Forensic Section.

Considering that Forensic Section Fellows identified a mean number of four criteria, and Psychotherapy Fellows a mean of two criteria, Fellowship of the Forensic Section may therefore be considered a more appropriate group from which lawyers should seek assistance with the assessment of fitness to stand trial. Given the courts have laid down *seven* criteria as being the minimum standard for fitness to stand trial, it must however be noted that the most knowledgeable RANZCP Section Fellows, who identify a mean of *four* criteria, still fail to meet on average three criteria.

Specialist titles. Psychiatrists may adopt the title "forensic psychiatrist" without completing a specialised training course in forensic psychiatry. The specialist title "forensic" is descriptive of forensic psychiatry practice rather than qualifications or expertise in the area.

Psychologists. Australian psychologists are formally educated

for a minimum of six years. This period may include academic qualifications and supervision in various combinations. Australian psychologists are granted Membership of the Australian Psychological Society (hereafter referred to as APS), if in addition to 4 years of formal training (APS, 1997a, By-law 3(3)(a)), they have a post-graduate qualification of supervised training and/or research in psychology for a period of not less than 2 years (APS, 1997a, By-law 3(3)(a)(i)), or have undertaken a 1 year post graduate course of supervised training and/or research with approved supervised experience as a psychologist for 1 year (APS, 1997a, By-law 3(3)(a)(ii)), or have been supervised for a period no less than 2 years (APS, 1997a, By-law 3(3)(a)(iii)).

There is no formal forensic program in the first four years of psychology training. However, trainee psychologists may elect to undertake research in a forensic area in their 4th year of training. Trainees may also elect training, research and/or supervision in a forensic-related area in the final two years of training. Under By-law 3(3)(a)(i) trainees have the option of doing a formal Forensic Master of Psychology program. The program offered at Edith Cowan University comprises formal course-work, research and supervised practicum in forensic psychology over a period of two years full-time.

Depending upon whether an applicant is applying for Membership of the APS under By-law 3(3)(a)(ii) or 3(3)(a)(iii), a period of one or two years of full time supervised experience is required. It is possible that trainees may undertake this supervised work in a forensic area. Supervision must be over a period of not less than 50 hours if supervisee is required to have one year supervised experience or 100 hours if two years is required (APS, 1997b, Guideline 6.2-6.3). Although we can outline the various opportunities

that trainee psychologists have for supervision and research on forensic issues, the extent to which these options are pursued is not known. The APS has no available data on the extent or nature of forensic supervision and research of APS Members.

Entry requirements of the College of Forensic Psychologists. Before being admitted into the Forensic College of the APS, psychologists must hold full Membership of the APS. The Forensic College of the APS has recently disseminated Draft Guidelines for Course Accreditation of the College of Forensic Psychologists which specify proposed routes of entry to the Forensic College (Appendix J). The most striking feature of these guidelines is in relation to formalised training. Entry into the College of Forensic Psychologists is achieved by completion of at least a Master or Doctoral Degree in an accredited Forensic Psychology Program, or a minimum one semester post-graduate Specialist Training Course in addition to a Master or Doctorate in another field of Psychology. This requirement has been accommodated by the recent introduction of forensic psychology at the University of South Australia, Monash University and the University of Melbourne in Victoria, and Charles Sturt University and the University of Western Sydney in New South Wales, which complement the existing programs offered at Edith Cowan University, W.A.

Up until the introduction of these guidelines, entry into the College of Forensic Psychologists was achieved in many and varied ways. This is evidenced by the fact that in 1996, when these data were collected, there were no Full Members of the APS College of Forensic Psychologists with the designation "forensic" in their "Degrees awarded" (Appendix K). The most

likely explanation for this state of affair is that the Forensic College comprised psychologists who have attained forensic experience through research, supervision or employment as an extension of their pursuing another branch of psychology. Without formal training or education in forensic psychology, they are likely to have a paucity of skills and knowledge necessary to competently integrate the disciplines of psychology and law.

Analyses included whether Members of the Forensic College could identify more of the Presser criteria than Members of another APS College. Members of *both* the Forensic and Clinical Colleges identified a greater number of the criteria than Clinical College Members. Membership of the Forensic College *alone* was not associated with the ability to identify a greater number of the Presser criteria than Members of the Clinical College. It was equally true that Membership of both Colleges did not lead to a better understanding of the criteria than Forensic College Members. It may therefore be argued that both Forensic and Clinical College Members of the APS is a more appropriate group than the Clinical College from which lawyers should request assistance with the evaluation of fitness. However, even the Members of the Clinical *and* Forensic Colleges identify less than half the legal criteria for fitness to stand trial. Perhaps this result is not surprising given that none of the Forensic College Members have formal training in Forensic Psychology.

Specialist titles. Western Australia (*Psychologists Board Rules, 1978, (as amended), Rule 16A*) and Victoria (*Psychologists Registration Regulations, 1995, Regulation 8(2)*) are the only two Australian States which have legislative provision to be registered to use the specialist title "forensic psychologist". Psychologists are eligible to use the specialist title of

forensic psychologist in W.A. and Victoria if, in addition to formal forensic training, they have been supervised for a period of not less than two years by a registered forensic psychologist.

In the absence of any detailed research comparing the forensic training opportunities of psychologists and psychiatrists, we can only draw tenuous conclusions about why our respondent psychiatrists had a better knowledge of the Presser criteria than psychologists. The basic training of psychologists and psychiatrists, however, comprises a wide variety of options for experience in forensic issues. This makes it difficult to identify areas that might result in psychiatrists having a better knowledge of the criteria than psychologists. The mean number of years of formal training of the respondent psychiatrists was 12.4 whereas the mean number for psychologists was 6.3. Psychiatrists have spent almost double the time of psychologists in formal training, which may have provided them with greater opportunity to acquire knowledge about legal issues such as fitness to stand trial. Even though there is no specialised forensic training program, it appears that psychiatrists-in-training generally have exposure to a more comprehensive and extensive forensic supervision than psychologists-in-training. It is likely that the introduction of more stringent eligibility criteria by the APS College of Forensic Psychologists, and the growing number of formal programs, will produce an improvement in the forensic expertise of psychologists.

The provision of irrelevant and insufficient criteria. Another key finding was that psychologists and psychiatrists are equally likely to (1) confuse the test of FST with *mental state at the time of the offence* and (2) assume that the *absence of mental illness* is sufficient to satisfy the test of FST.

Consideration of the "mental state of the offender at the time of the offence" is irrelevant to the question of fitness for trial, and raises concerns about the validity of the conclusions of psychologists and psychiatrists who assess fitness to stand trial on this basis.

Some clinicians explicitly referred to another legal question, as one respondent wrote "McNaghten Rule- understand what was doing and that it was wrong". Other responses were more implicit, but clearly focused on irrelevant legal criteria. For example, one clinician understood a fit defendant to be one who can "Understand concepts of good and evil, right and wrong. A sense of personal agency. A capacity for self-responsibility, even if denied". Another wrote "To have testamentary capacity means whether he or she can determine right from wrong and has control over his or her actions- no irresistible impulses." The finding that psychiatrists confuse the test of fitness with that of criminal responsibility is consistent with previous research (Larkin & Collins, 1989; Mackay, 1991).

Consistent with Plotnick et al. (1996), psychologists and psychiatrists assumed the absence of mental illness was sufficient to satisfy the test of fitness to stand trial. Psychologists and psychiatrists who responded in this way tended to provide explicit responses. When asked what they understood by fitness to stand trial, one respondent stated "Absence of mental illness", and another stated "Psychological fitness or having adequate emotional well-being; having a mental state not impaired by serious mental illness". Although this may be a correct clinical evaluation of the defendant's mental functioning, it is insufficient for the purpose of establishing fitness to stand trial for two reasons. First, mental illness aside, there may be other factors that

account for an inability to participate meaningfully in the trial process. For example, intellectual disability or extreme cultural or language barriers may render a person not fit for trial. Second, the law demands that the evaluator explain *how* the defendant's mental functioning impacts on his or her ability to meaningfully participate in the trial process. This would involve an assessment of whether or not the defendant can satisfy the legal criteria laid down in Presser.

The conditions under which psychologists and psychiatrists made these errors were also very similar. Both professions were most likely to mention mental state at the time of the offense when they could not recite any Presser criteria, and least likely when they recounted 5-7 criteria. This finding indicates that the more conversant psychologists and psychiatrists are with the legal criteria, the less likely they are to make mistakes by confusing the test of fitness to stand trial with legal insanity or state that the absence of mental illness renders a person fit for trial.

Evaluation experience and the provision of irrelevant and insufficient criteria. When the number of possible evaluations undertaken was collapsed into three categories (0; 1-4; 5 or more evaluations), a comparison across both psychologists and psychiatrists revealed a difference in the likelihood of these two professions referring to "mental state at the time of the offence" depending on the number of fitness to stand trial evaluations undertaken. The most likely condition under which psychologists and psychiatrists were found to incorporate "mental state at the time of the offence" was when they had done between 1 and 4 evaluations. This finding is important for two reasons. First, it confirms there are mental health

professionals who have undertaken fitness to stand trial evaluations based on criteria irrelevant to fitness to stand trial. Second, it indicates that clinicians receive insufficient feed-back about the appropriateness of the criteria they use, and continue to undertake assessments based on matters that are irrelevancies. This may be overcome by improved communication between lawyer and clinician regarding the relevant legal criteria. Ideally, clinicians would be responsible when agreeing to provide forensic services, and only undertake assessments if they have the appropriate training to understand and distinguish between different legal questions. Lawyers might also ensure they request the services of suitably trained psychologists and psychiatrists to address the issue of fitness to stand trial.

A comparison could not be made across psychologists and psychiatrists for assuming the absence of mental illness as determinative of fitness to stand trial depending upon the number of evaluations undertaken. However, the majority (91%) of clinicians who mentioned this insufficient criterion had never done an evaluation. Experience (five or more evaluations) in the assessment of fitness was found to be associated with no psychologists and psychiatrists equating the absence of mental illness with fitness.

APS College Membership and the provision of irrelevant and insufficient criteria. Even though Members of both the Clinical and Forensic Colleges identified a greater number of correct criteria, they were no less likely to provide irrelevant legal criteria. No difference was found between the Members of each College group for confusing the test of fitness to stand trial with that of "mental state at the time of the offence". In fact, examination of the probabilities revealed that Members of both Clinical *and*

Forensic Colleges had a higher likelihood of considering "mental state at the time of the offence" (37%) than Clinical (27%) or Forensic (24%) College Members. Membership of *both* Colleges was, however, associated with a 0% probability of equating the "absence of mental illness" with fitness to stand trial. Only Members of either the Clinical (5%) or Forensic (4%) Colleges of the APS believed the "absence of mental illness" to be a sufficient criterion for fitness to stand trial.

RANZCP Section Fellowship and the provision of irrelevant and insufficient criteria. Even though Forensic Section Fellows identified a greater number of the Presser criteria, they were no less likely than Psychotherapy Section Fellows to provide irrelevant criteria.

The most logical advancement in assuring the community that psychologists who have Membership of the APS College of Forensic Psychologists and psychiatrists with Fellowship of the RANZCP Section of Forensic Psychiatrists are appropriately conversant with this and other legal issues, would be to ensure that formal training, education and supervision are a pre-requisite to entry into a Forensic group, and most importantly, to adopting the specialist title of "forensic" psychologist or psychiatrist.

The findings of this investigation indicate that the psychologist and psychiatrist respondents have inadequate knowledge of the Australian legal criteria for fitness to stand trial. They provide support for the previous finding that many clinicians fail to address all of the legal criteria (Mackay, 1991), and also incorporate criteria not relevant to the fitness doctrine (Larkin & Collins, 1989). A difference was also found *between* psychologists and psychiatrists in their understanding of the criteria for fitness to stand trial. The results indicate

that psychiatrists who responded have superior knowledge of the legal criteria than psychologists who responded. Psychiatrists not only identified a greater number of criteria than psychologists, but were more likely to meet the legal standard as outlined in Presser by identifying all seven criteria. However, the findings also show that psychiatrists are equally likely to confuse the test of fitness to stand trial with "mental state at the time of the offence" or believe the "absence of mental illness" sufficient to satisfy the test of fitness to stand trial when compared with psychologist respondents. Therefore, between group comparisons showed that although psychiatrists address more of the relevant criteria than psychologists, they are just as likely as psychologists to incorporate criteria not relevant to fitness to stand trial.

Assessment methods of fitness to stand trial. Knowledge of the legal criteria is an essential, but primary consideration for a competent evaluation of fitness to stand trial. The clinician must also select methods of assessment that allow the identification of causal links between cognitive functioning and the legal criteria. Given that there is no direct relationship between the legal criteria and psychological or psychiatric concepts, this task is a difficult one.

It was found that psychologists and psychiatrists differ in the method they employ to assess fitness to stand trial, and that methods of assessment may vary as a function of the basis of the issue of fitness to stand trial. Psychiatrists rely much more on the clinical interview and consultation with lawyers than psychologists in assessing fitness, regardless of whether the basis of the request is intellectual disability or mental disorder. This finding might explain why psychiatrists with experience in the evaluation of fitness to

stand trial identify more relevant legal criteria than experienced psychologists. If psychiatrists consult with a lawyer more often than psychologists as part of assessment, they are providing themselves an opportunity to gain increased understanding of the relevant issues involved.

Consistent with the findings of Borum and Grisso (1995), psychologists place much greater emphasis on the use of intelligence tests, and adaptive functioning tests, particularly when intellectual disability is implicated. Psychologists were more likely than psychiatrists to rely on a personality test, but this is only when mental disorder is implicated. The finding that clinicians rely heavily on traditional diagnostic concepts is consistent with Nicholson et al (1988). However, the use of traditional diagnostic tools such as intelligence and personality tests, might also be complemented by a much greater emphasis on the seeking of other reports concerning the defendant in question, such as previous fitness to stand trial evaluations, reports prepared in government facilities such as prisons or mental health facilities or information from psychologists or psychiatrists in private practice.

An important consideration is why clinicians claim these methods are suitable for assessing fitness to stand trial. For example, what does it mean to give an intelligence test to a defendant thought to be mentally ill? There were 67 (34%) psychologists and 9 (7%) psychiatrists who believed that it was appropriate to assess the "fitness" of a defendant suspected as mentally ill, using an intelligence test. This finding poses a serious problem for the courts. It is conceivable that these clinicians are so daunted by the difficulties in assessing fitness to stand trial, that they select a wide range of psychological tests in anticipation that findings from various traditional assessment measures will

improve the likelihood of them responding to this legal concept. In fact, the initial inquiry into whether the accused has intellectual and/or emotional impairment is one stage in the evaluation process where clinicians can, and essentially must, rely on basic clinical skills. Prosecution and defense counsel are also important sources of information at this time in the inquiry.

Even if the clinician selects a traditional assessment method most appropriate for evaluating the accused's functioning, this is not sufficient for establishing fitness to stand trial. Traditional assessment measures are not designed to answer the legal question of fitness to stand trial. The Intelligence Quotient, for example, provides information about overall functioning, but does not address the legal criteria. Fitness to stand trial is defined in law and therefore clinical findings must be interpreted according to that law.

Traditional assessments, may however, be useful sources of information regarding the mental functioning of a defendant. The information obtained must be carefully integrated into a series of questions directed at the legal criteria. For example, an "understanding of the charge" requires concrete understanding by the accused of the charges, and may be assessed by asking questions such as "*What are you charged with?*", "*Why are you in prison?*" or "*What is arson?*". Traditional measures, such as The Weschler Adult Intelligence Scale- Revised (WAIS-R) (Weschler, 1981), may then be useful to explain why the accused is or is not having difficulty gaining a concrete grasp of arson and its behavioural meaning. Relevant subtests on the WAIS-R may include *Information* and *Picture Arrangement*. *Information* is relevant insofar as it relates to knowledge acquired via formal education and life experience, and *Picture Arrangement* relates to social awareness, the ability to think logically

and to anticipate consequences.

Other important sources of information include video-taped recording of the accused's interviews with the police, the police statements when the accused was questioned, the charge on which the accused was charged, and the findings of other psychological or psychiatric reports. One possible consequence of relying on traditional assessment techniques is that a greater number of evaluations undertaken is not necessarily reflective of a better method of assessing fitness to stand trial.

In summary, reliance on traditional, and particularly, inappropriately applied assessment methods may fail to identify the defendant deficits, which would preclude him or her from meaningful participation in a trial. An understanding of why a defendant does not satisfy one or more of the legal criteria (which may have an origin in mental illness, intellectual disability, or extreme language or cultural barriers) impact on the defendant's ability to assist in his or her defense is imperative to prevent the clinician from making a mockery of this legal principle.

The results highlight a need for formal forensic programs in psychology and psychiatry to ensure that clinicians have, at the very least a knowledge of the criteria, and know how to address each criterion. The evaluation of fitness to stand trial and other legal concepts, such as insanity at the time of the offence, can not be done by transposing general psychological services for specialised evaluation techniques. The evaluation of fitness to stand trial requires an understanding of the principle from a legal perspective and the selection of methods which best measure the capacity of a defendant to meet each criterion.

In addition to the selection of appropriate assessment measures, clinicians must also be trained to understand the intellectual and emotional capacity of the accused in relation to the charges faced by the accused and the legal process itself. Therefore, the question of fitness to stand trial cannot be considered without reference to the complexity of the criminal matter under investigation (Roesch & Golding, 1980; Bonnie, 1992). The test of fitness to stand trial will vary according to the extent of defendant involvement in the criminal proceedings, which is largely determined by the complexity of the charge. Therefore, a moderately intellectually disabled person may be fit to stand trial for more simple trials, but not for more complex trials.

Conclusions. Deficits in the knowledge of what constitutes fitness to stand trial highlight the need for formalising forensic programs in psychology and psychiatry to ensure (a) clinicians have knowledge of the relevant legal criteria, and (b) can appropriately assess the intellectual and emotional functioning of the accused in relation to each criterion. Psychiatrists who responded have a superior knowledge of the legal criteria when compared to psychologists. This may be accounted for by the forensic training of psychiatrists, which seems to equip them with a better understanding of this legal doctrine, and also their collaborative relationship with persons from the legal profession.

However, knowledge of the legal criteria is only preliminary to the evaluation process. The most cumbersome task is trying to operationalise each criterion in psychology and psychiatry. In the absence of formal guidelines to address the Presser rules, clinicians appear to rely on traditional assessment measures not designed to answer the question of fitness to stand trial. This is

insufficient for the purpose of providing "expert" information about the fitness of an accused to the court. A clinician requested to undertake a fitness to stand trial evaluation is expected to furnish the court with expert information that might otherwise not be attained. Our results suggest that the expert prowess of respondent psychologists and psychiatrists on the issue of fitness to stand trial is questionable.

This investigation does not give any weight to the legal criteria, which may be critical for a more appropriate application of the fitness question. The nature of the charge, the complexity of the issue, the duration of the charge, and the availability of skilled legal representatives will all affect fitness to stand trial. Although we have shown that psychiatrists who responded to the survey have a better understanding of the legal criteria than psychologists, there is great difficulty in generalising these findings. One reason why there is difficulty in extrapolating from the sample to clinicians generally, is because of the particularly low response rate for psychiatrists. It is possible that the results reflect a sampling bias rather than real differences between psychologists and psychiatrists. It is conceivable that only those psychiatrists who believed themselves to be knowledgeable of the fitness doctrine responded. Had the same number of psychologists responded in the same way as psychiatrists, the results may have indicated a different understanding of fitness to stand trial between the professions.

The content of the clinical interview was also not investigated. It would be important for future research to inquire about what psychologists and psychiatrists specifically do during the clinical interview. This is because a clinical interview might be oriented toward addressing the legal criteria through

questioning and observation, or alternatively it may focus on traditional mental status assessment techniques.

At a minimum, future membership of forensic groups should be conditional upon clinicians being conversant with these issues. The findings suggest a need to increase awareness of the need for adequate training programs to ensure clinicians working in the justice system provide legally valid and useful information. In the very short-term, legal professionals need to be sensitive to the inadequacies of clinician understanding and thereby take precautions to ensure assessments are conducted in accordance with legal requirements.

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Appendix A

SECTION 1

Please tick the box that corresponds to the appropriate response.

1. Gender

Male

Female

2. Please indicate your postgraduate qualifications by ticking the appropriate box and completing the title:

Post-Graduate Diploma in _____

Honours in _____

Master of _____

PhD/ Doctorate in _____

Please state any other academic qualifications or training you have attained:

3. Australian Psychological Society College Membership

Clinical Neuropsychologists

Forensic Psychologists

Clinical Psychologists

Counselling Psychologists

Organisational Psychologists

Educational and Developmental Psychologists

Community Psychologists

Sports Psychologists

4. Geographical Location

 W.A. N.T. Q.L.D. S.A. Vic. A.C.T. N.S.W. Tas.

5. On how many occasions have you *testified* in court as an *expert witness* over the last 5 years ?

 (please state figure in box provided)

6. Have you ever evaluated a defendant for whom the issue of fitness to stand trial has been raised?

 YES NO (go to question 7)

(a) If YES, how many fitness to stand trial evaluations have you done?

 (please state figure in box provided)

(b) How many of these defendants, in your view, were *not fit* to stand trial?

7. For how many years have you been practising as a psychologist?

Appendix B

SECTION 1

Please tick the box that corresponds to the appropriate response.

1. Gender

Male

Female

2. Please indicate your postgraduate qualifications.

College of Psychiatrists Training (5 years)

Diploma of Psychological Medicine

Master of Psychological Medicine

Please state any other academic qualifications or training you have attained:

3. Section(s) of Expertise in Psychiatry

Psychotherapy

Child and Adolescent

Alcohol and other Drugs

Forensic

Psychiatry of Old Age

Consultation-Liaison

4. Geographical Location

W.A

N.T.

Q.L.D.

S.A.

Vic.

A.C.T.

N.S.W.

Tas.

5. On how many occasions have you *testified* in court as an *expert witness* over the last 5 years ?

(please state figure in box provided)

6. Have you ever evaluated a defendant for whom the issue of fitness to stand trial has been raised?

YES

NO (go to question 7)

6(a) If YES, how many fitness to stand trial evaluations have you done?

(please state figure in box provided)

6(b) How many of these defendants, in your view, were *not fit* to stand trial?

7. For how many years have you been practising as a psychiatrist?

Appendix C

SECTION 2

Please answer the following questions.

1. **What do you understand by the term *fitness to stand trial* ?**

2. **How do you establish the fitness to stand trial of an *intellectually disabled* person ?**

3. **Please state *why* you establish the fitness of an intellectually disabled person in the way you described in (2) above.**

4. **How do you establish the fitness to stand trial of a *mentally* *disordered* person ?**

5. Please state *why* you would establish the fitness of a mentally disordered person in the way you described in (4) above ?

Please state any additional comments that you would like to make:

**Your participation is greatly appreciated,
Miranda.**



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Appendix D

Dear Clinician,

On the basis of your Membership of the Clinical Neuropsychology, Clinical, or Forensic Colleges of the APS, your assistance in completing the enclosed material would be greatly appreciated.

The information gathered will form the basis of research I am currently undertaking at Edith Cowan University in association with Professor Don Thomson. Your participation in this investigation is essential to fulfil the requirements of my post-graduate study in Psychology. Upon completion, the material will contain *no identifying information* and will take a maximum of 15 minutes. Access to the results of your participation will be made available through their intended journal publication. Information about the journal and issue concerned will be made available by contacting myself directly via telephone or facsimile.

The material is comprised of two sections and is a brief inquiry into clinician experience and knowledge of the *fitness to stand trial* construct. It is not expected that all clinicians will be familiar nor active within this area of practice. However, the validity of the inquiry is dependent upon your participation in completing and returning both sections of the material.

If you have any questions regarding the material, please do not hesitate to contact me at the above address. Alternatively, I can be contacted directly on (09) 400 5864 or via facsimile on (09) 400 5834.

Your time in completing and returning the material via post or facsimile is greatly appreciated,

Yours faithfully,

Miranda P. Hogg

Post Graduate Student in Psychology.

Dr. Francis Lobo

Head

School of Community Studies



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Dear Clinician,

On the basis of your membership as a Fellow of the Forensic, or Psychotherapy sections of the RANZCP, your assistance in completing the enclosed material would be greatly appreciated.

The information gathered will form the basis of research I am currently undertaking at Edith Cowan University in association with Professor Don Thomson. Your participation in this investigation is essential to fulfil the requirements of my post-graduate study in Psychology. Upon completion, the material will contain *no identifying information* and will take a maximum of 15 minutes. Access to the results of your participation will be made available through their intended journal publication. Information about the journal and issue concerned will be made available by contacting myself directly via telephone or facsimile.

The material is comprised of two sections and is a brief inquiry into clinician experience and knowledge of the *fitness to stand trial* construct. It is not expected that all clinicians will be familiar nor active within this area of practice. However, the validity of the inquiry is dependent upon your participation in completing and returning *both* sections of the material.

If you have any questions regarding the material, please do not hesitate to contact me at the above address. Alternatively, I can be contacted directly on (09) 400 5864 or via facsimile on (09) 400 5834.

Your time in completing and returning the material via post or facsimile is greatly appreciated,

Yours faithfully,



Miranda P. Hogg

Post Graduate Student in Psychology.



Dr. Francis Lobo

Head
School of Community Studies

Summary tables of Analyses of Variance.

Appendix E: Summary of the analysis of profession on the number of Presser criteria identified.

	df	Sum of Squares	Mean Squares	F-test	P value
Between groups	1	114.4424	114.4424	31.4780	0.0000
Within groups	321	1157.1118	3.0647		
Total	322	1271.5542			

Appendix F: Summary of the analysis of profession and FST evaluation experience on the number of Presser criteria identified.

	df	Sum of Squares	Mean Squares	F-test	P value
Profession (A)	1	48.203	48.203	17.418	0.000
Experience (B)	1	266.065	266.065	96.142	0.000
AB	1	8.24	8.24	2.977	0.085
Residual	319	882.807	2.767		
Total	322	1271.554	3.949		

Appendix G: Summary of the analysis of A.P.S. College membership on the number of Presser criteria identified by psychologists.

	df	Sum of Squares	Mean Squares	F-test	P value
Between groups	2	53.4814	26.7407	9.6923	0.0000
Within groups	195	537.9984	2.759		
Total	197	591.4798			

Appendix H: Summary of the analysis of R.A.N.Z.C.P. Section Fellowship on the number of Presser criteria identified by psychiatrists.

	df	Sum of Squares	Mean Squares	F-test	P value
Between groups	2	149.8644	74.9322	21.2858	0.0000
Within groups	116	408.3541	3.5203		
Total	118	558.2185			

THE ROYAL AUSTRALIAN AND NEW ZEALAND COLLEGE OF PSYCHIATRISTS

COMMITTEE FOR TRAINING

CERTIFICATION OF COMPLETION OF ROTATION

(For 1987 and 1992 By-law trainees)

To be completed at the end of a rotation and submitted either to your local Coordinator of Training or the College Secretariat in Melbourne* within one month of completion of the relevant rotation.

* This depends on whether your training program has been delegated by the Committee for Training with the responsibility for accrediting basic clinical training. Please check with your local Coordinator of Training or the College Secretariat if you are unclear about this.

NAME _____

ADDRESS _____

Any change of address?

Yes/No

STATEMENT BY TRAINEE

The following is a true and accurate record:

- I have completed training in this rotation in accordance with the RANZCP requirements for Fellowship Yes/No
 - During this rotation there has been a clear line of responsibility to a consultant Yes/No
 - I have received continuous feedback on my training progress during this rotation Yes/No
 - During this rotation I have received at least 4 hours clinical supervision per week of which 1 hour per week has been individual supervision* Yes/No
 - During this rotation I have received at least one hour of supervision devoted specifically to supervision of psychological and/or social aspects of treatment of patients (not necessary for each year of training)* Yes/No
- * Or proportional time for part-time training

SIGNATURE _____

DATE _____

DETAILS OF ROTATION

HOSPITAL _____

DATE OF COMMENCEMENT/...../.....

DATE OF COMPLETION/...../.....

SUPERVISORS

Name

Qualifications

Signature

Name	Qualifications	Signature
_____	_____	_____
_____	_____	_____

HOURS WORKED PER WEEK

FULL TIME/HALF TIME/THREE QUARTER TIME (Delete Where Appropriate)

TRAINING COMPLETED IN (delete areas not covered and if more than one, state in months/weeks full time equivalent)

MONTHS/WEEKS
FULL TIME EQUIVALENT

ADULT GENERAL PSYCHIATRY -

INTEGRATED []
INPATIENT (NO COMMUNITY) []
COMMUNITY ONLY []

CHILD/ADOLESCENT []

CONSULTATION LIAISON []

SUBSPECIALTY -

PSYCHOGERIATRICS []
FORENSIC []
DRUG AND ALCOHOL []
REHABILITATION []
OTHER []
(Please state which one)

* See guidelines for definition of integrated services at Appendix 4 in your Log Book

DECLARATION BY PRINCIPAL SUPERVISOR

* The Principal Supervisor is required to make a statement about the following:

- whether views of other supervisors have been taken into account;
- whether or not the trainee has completed training in accordance with the RANZCP requirements for Fellowship;
- standard of the trainee's clinical, professional and academic work and ethical standards (whether satisfactory or otherwise);
- whether the trainee should proceed to the next stage of training.

NAME (printed)

SIGNATURE

DATE

DECLARATION BY CO-ORDINATOR OF TRAINING (HOSPITAL/SERVICE)

I have read the abovementioned statements and, as Co-ordinator of Training in this Hospital/Service, agree. Also, the details completed by the trainee on this form have been checked and are correct.

NAME (printed)

SIGNATURE

DATE

For 1992 By-law trainees only

To be completed by trainee if appropriate for this rotation.

CASE HISTORY

RELATED CASE HISTORY

YES/NO

If the answer is "YES" has this case history been satisfactorily completed

YES/NO

COMMENTS

gal/LIST.FORMS/FORMC.3
October 1996

DRAFT GUIDELINES FOR COURSE ACCREDITATION OF THE COLLEGE OF FORENSIC PSYCHOLOGISTS

Introduction

Forensic psychology is the application of psychological knowledge, concepts and skills to the understanding and functioning of the legal and criminal justice system. Forensic psychology embraces psychology and the law, the psychology of police and policing, corrections, probation and parole, victim services, addiction services, family services and the full range of activities related to law enforcement, and the evaluation and treatment of offenders.

This document sets out general guidelines for the evaluation of university post graduate training courses in Forensic psychology and outlines the route by which psychologists may satisfy the criteria for College membership.

The training of a Forensic psychologist is available via three possible routes.

First, it can be achieved through the completion of an accredited APS Forensic psychology masters/doctoral degree programme.

Second, it can be achieved through the completion of a recognised APS accredited psychology masters/doctoral degree programme (eg Clinical psychology, Clinical Neuropsychological) with the addition of a specialist Forensic psychology post-graduate training programme that provides teaching in a range of defined core areas of Forensic psychology.

Third, it may be achieved through research by the completion of a Ph.D in an area of Forensic Psychology.

Details associated with these three routes are as follows:

A. Specialist Forensic Psychology Training (Masters/Doctorate in Forensic Psychology)

1. Teaching

Courses will be expected to provide teaching in the following areas:

- The criminal justice and legal systems and awareness of issues relating to psychologists working in forensic areas.
- Knowledge of psychological theory and research relevant to the forensic area skills in the evaluation and application of such knowledge into forensic settings.
- Research and evaluation and its application to forensic populations.
- Professional ethics.

2. Placement

The completion of a supervised placement in a recognised forensic setting or working with forensic populations. Suggested placement settings include: corrections, family court, child protection services, sexual offender treatment services, domestic violence programmes, forensic psychiatry units. Supervisors should be members of the College of Forensic Psychology.

3. Thesis

The completion of an original piece of research in the forensic psychology area.

B. Masters/Doctoral Psychology Graduate + Post Graduate Specialist Forensic Psychology Course

Post-graduate programme for students who have completed (or are in the process of completing) an APS college accredited applied psychology programme (eg Clinical, Clinical Neuropsychology, Educational) and wish to specialise in the forensic area. Students will be able to credit previous forensic experience/training gained in these programmes.

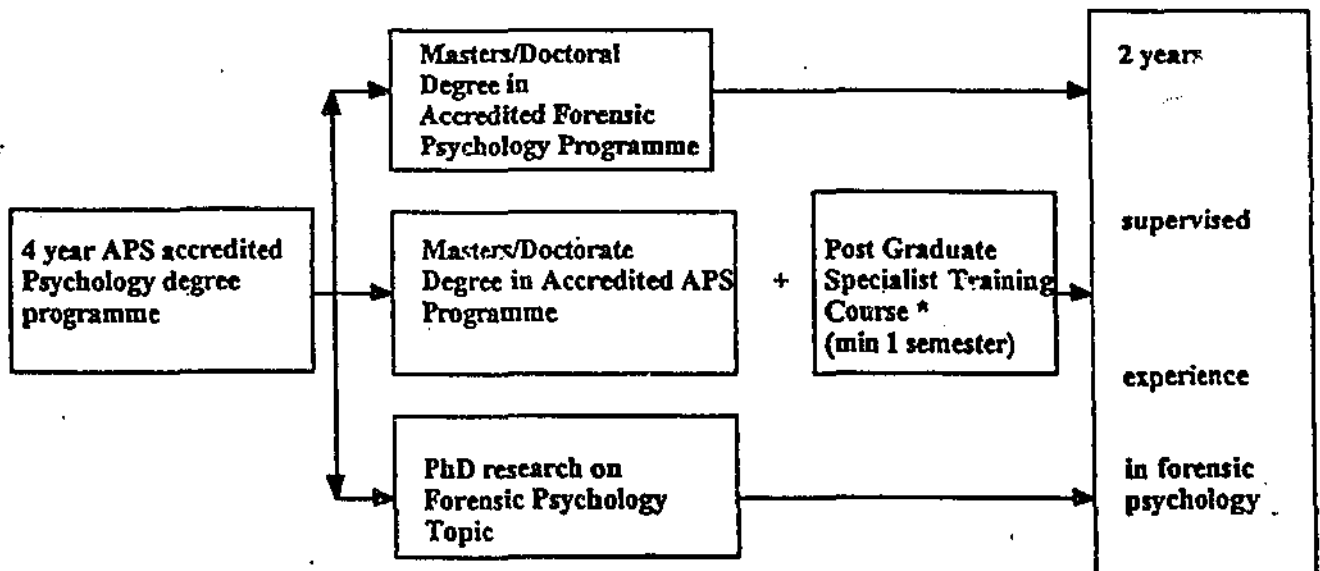
Core areas in the teaching within the Post graduate specialist training course should include a component of legal training [civil, criminal and family law]; topics associated with particular forensic 'client' groups (eg sex offenders, violent offenders, drug and alcohol abusers, severe personality disorders); and training associated with the court system (including appearing in court and preparing psychological reports for the court). Optional teaching areas may include topics related to police psychology, criminology, correctional psychology, criminal profiling, witness studies, jury behaviour etc.

C. PhD Research on a Forensic Psychology Topic

Individuals who successfully complete a research Ph.D in an area of Forensic Psychology are recognised by the college as Forensic Psychologists. Depending on other training criteria, such individuals may or may not be eligible to practise as psychologists.

For membership of the College of Forensic Psychologists, individuals will have completed either A, B or C and have been supervised for a period of no less than two years by a member of the college.

ROUTE OF ENTRY TO THE COLLEGE OF FORENSIC PSYCHOLOGISTS



*Core areas in the teaching of the Post graduate specialist training course should include a component of legal training [civil, criminal and family law]; work with particular forensic 'client' groups (eg sex offenders, violent offenders, drug and alcohol abusers, severe personality disorders); and training associated with the court system (including appearing in court and preparing Psychological Reports for the court). Optional teaching areas may include topics related to police psychology, criminology, correctional psychology, criminal profiling, witness studies, jury behaviour etc.



Appendix K

Facsimile Transmission Form

From the APS, fax number (03) 9663 6177

Date: 13 November 1996 **Time:** 12:44 PM
Attention: Miranda Hogg
Fax Number: (09) 400 5834
Address: C/- Edith Cowen University
From: Jean Polites
Total Pages: (Including this Page) One

If all pages are not received - please telephone the APS immediately on (03) 9663 6166.

PO BOX 126
CARLTON SOUTH VIC 3053

1 GRATTAN STREET
CARLTON VIC 3053

Miranda

Sorry for the delay in answering your query, I have been away ill

1. Number of full Membership of the APS College of Forensic Psychologists with the designation "CLIN" in their recorded "Degrees Awarded".
Note most of these degrees are masters. 17
2. Number of full Membership of the APS College of Forensic Psychologists 157
3. Number of full Memberships of the APS College of Forensic Psychologists with the designation "FORENSIC" in their recorded "Degrees Awarded". Nil

If you have any further queries please do not hesitate to call me.

Regards

Jean Polites

This document and any following pages are intended solely for the names addressee, and may contain confidential or legally privileged information. If you have received this document in error, we apologise for the inconvenience and request that you contact the APS immediately.