

Western Australia

Mental Health Legislation Amendment Act 2014

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No. 25 of 2014

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Mental Health Legislation Amendment Act 2014

(No. 25 of 2014)

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Western Australia

Mental Health Legislation Amendment Act 2014

No. 25 of 2014

An Act —

- to amend the *Mental Health Act 1996* to address certain matters relating to the Chief Psychiatrist's powers pending the commencement of the *Mental Health Act 2014*; and
- to amend the *Mental Health Act 2014* by inserting Parts 28 and 29 for the purposes of repealing the *Mental Health Act 1996*, the *Mental Health (Consequential Provisions) Act 1996* and certain subsidiary legislation made under those Acts and making certain transitional arrangements; and
- to amend the *Criminal Law (Mentally Impaired Accused) Act 1996*, the *Guardianship and Administration Act 1990*, the *Hospitals and Health Services Act 1927* and certain other Acts.

[Assented to 3 November 2014]

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary matters

1. Short title

This is the *Mental Health Legislation Amendment Act 2014*.

2. Commencement

This Act comes into operation as follows —

- (a) Parts 1 and 2 — on the day on which this Act receives the Royal Assent;
- (b) the rest of the Act — on a day fixed by proclamation, and different days may be fixed for different provisions.

Part 2 — *Mental Health Act 1996* amended

3. Act amended

This Part amends the *Mental Health Act 1996*.

4. Section 16A inserted

After section 15 insert:

16A. Acting Chief Psychiatrist

- (1) The CEO may appoint a psychiatrist to act in the office of the Chief Psychiatrist referred to in section 8 —
 - (a) during a vacancy in the office, whether or not an appointment has previously been made to the office; or
 - (b) during a period, or during all periods, when the person holding the office or a person acting in the office under an appointment under this subsection is on leave or is otherwise unable to perform the functions of the office.
- (2) An appointment under subsection (1) may be expressed to have effect only in the circumstances specified in the instrument of appointment.
- (3) The CEO may —
 - (a) determine the terms and conditions of an appointment under subsection (1), including as to remuneration; and
 - (b) terminate an appointment under subsection (1) at any time.
- (4) The validity of anything done by or in relation to a person purporting to act under an appointment under subsection (1) is not to be called into question on any of these grounds —
 - (a) the occasion for the appointment had not arisen;

s. 5

- (b) there is a defect or irregularity in the appointment;
 - (c) the appointment had ceased to have effect;
 - (d) the occasion for the person to act had not arisen or had ceased.
- (5) A person cannot act under an appointment under subsection (1) for a continuous period exceeding 12 months.

5. Section 16 amended

In section 16 delete “psychiatrist in the department,” and insert:

psychiatrist,

6. Section 17 inserted

At the end of Part 2 Division 2 insert:

17. Application of *Health Legislation Administration Act 1984* section 9

For the purposes of the *Health Legislation Administration Act 1984* section 9, this Act is an Act to which the *Health Legislation Administration Act 1984* applies.

7. Sections 217 to 219 inserted

At the end of Part 10 Division 6 insert:

217. Validation of acts and omissions of psychiatrists acting as Chief Psychiatrist

- (1) In this section —
act includes an omission;
validation period means the period —
- (a) beginning on 13 November 1997; and
 - (b) ending on the day before the day on which the *Mental Health Legislation Amendment Act 2014* section 4 commences.
- (2) Any act done, or purportedly done, at any time during the validation period by or in relation to a psychiatrist appointed, or purportedly appointed, to act temporarily in the office of the Chief Psychiatrist referred to in section 8 is, and is taken always to have been, as valid as the act would have been if the psychiatrist had been appointed under section 16A to act temporarily in that office when the act was done or purportedly done.

218. Validations relating to certain delegations made under Health Legislation Administration Act 1984

- (1) In this section —
act includes an omission;
mental health delegation means an instrument delegating, or purporting to delegate, a power or duty under the *Mental Health Act 1996*;
validation period means the period —
- (a) beginning on 23 September 2008; and

- (b) ending on the day before the day on which the *Mental Health Legislation Amendment Act 2014* section 6 commences.
- (2) Any act done, or purportedly done, at any time during the validation period by or in relation to a delegate acting, or purportedly acting, under a mental health delegation made under the *Health Legislation Administration Act 1984* section 9 before 23 September 2008 is, and is taken always to have been, as valid as the act would have been if the amendments effected by the *Mental Health Legislation Amendment Act 2014* section 6 had been in force when the act was done or purportedly done.
- (3) A mental health delegation made, or purportedly made, under the *Health Legislation Administration Act 1984* section 9 at any time during the validation period is, and is taken always to have been, as validly made as the delegation would have been if the amendments effected by the *Mental Health Legislation Amendment Act 2014* section 6 had been in force when the delegation was made or purportedly made.

219. Validation of certain acts and omissions of medical practitioners

- (1) In this section —
 - act* includes an omission;
 - medical practitioner* means an individual who was a medical practitioner (as defined from time to time in section 3) at any time during the relevant validation period;
 - validation period* —
 - (a) in subsection (2), means the period —
 - (i) beginning on 13 November 1997; and
 - (ii) ending on 25 October 2013;

- (b) in subsections (3) and (4), means the period —
- (i) beginning on 13 November 1997; and
 - (ii) ending on 19 July 2013.
- (2) Any act done, or purportedly done, at any time during the validation period by a medical practitioner for the purpose of confirming a community treatment order under section 69(1)(b) is, and is taken always to have been, as valid as the act would have been if the medical practitioner had been authorised under section 69(3)(a) for the purposes of section 69 when the act was done or purportedly done.
- (3) A request made, or purportedly made, under section 77(1) at any time during the validation period is, and is taken always to have been, as valid as the request would have been if the medical practitioner of whom the request was made or purportedly made had been designated under section 18(1)(a) as an authorised medical practitioner for the purposes of section 77 when the request was made or purportedly made.
- (4) Any act done, or purportedly done, at any time during or after the validation period by a medical practitioner for the purpose of complying with a request to which subsection (3) applies is, and is taken always to have been, as valid as the act would have been if the medical practitioner had been designated under section 18(1)(a) as an authorised medical practitioner for the purposes of section 77 when the act was done or purportedly done.

Note: The heading to section 216 is to read:

Validation of certain acts and omissions of psychiatrists

Part 3 — *Mental Health Act 2014* amended

8. Act amended

This Part amends the *Mental Health Act 2014*.

9. Parts 28 and 29 inserted

After Part 27 insert:

Part 28 — Repeals

588. Acts repealed

These Acts are repealed:

- (a) the *Mental Health Act 1996*;
- (b) the *Mental Health (Consequential Provisions) Act 1996*.

589. Regulations repealed

These regulations are repealed:

- (a) the *Mental Health Regulations 1997*;
- (b) the *Mental Health (Transitional) Regulations 1997*.

Part 29 — Transitional matters for *Mental Health Act 2014*

Division 1 — Preliminary matters

590. Terms used

In this Part —

1996 Act means the *Mental Health Act 1996* repealed by section 588;

commencement day means the day on which Part 28 comes into operation;

continued community treatment order —

- (a) means a community treatment order to which section 606(3), 611(3), 616(3), 617(1), 621(3), 622(3) or 623(1) applies; and
- (b) includes a community treatment order referred to in paragraph (a) as extended by an extension to which section 628(1) applies or as varied by a variation to which section 630(1), (2) or (3) applies;

continued inpatient treatment order means —

- (a) an order that a person be admitted to, and detained at, an authorised hospital to which section 606(1), 611(1) or 625(1) applies; or
- (b) an order that a person continue to be detained at an authorised hospital to which section 616(1) applies;

continued involuntary treatment order means —

- (a) a continued community treatment order; or
- (b) a continued inpatient treatment order.

Division 2 — Administrative provisions

Subdivision 1 — Chief Psychiatrist

591. First Chief Psychiatrist (1996 Act s. 8)

- (1) The person who, immediately before commencement day, held under the *Public Sector Management Act 1994* Part 3 the office of the Chief Psychiatrist referred to in the 1996 Act section 8 is taken to be appointed under section 508(1) as the Chief Psychiatrist.

- (2) The person holds office for the period, beginning on commencement day, that is equal to the balance of the person's term of office that remained under the *Public Sector Management Act 1994* Part 3 immediately before commencement day.
- (3) Except as otherwise agreed by the person, the operation of subsection (1) does not —
 - (a) affect the person's pay, as that term is defined in the *Public Sector Management (Redeployment and Redundancy) Regulations 1994* regulation 3(1); or
 - (b) affect the person's existing or accruing rights in respect of annual leave, long service leave, sick leave or any other leave; or
 - (c) affect any rights under a superannuation scheme.
- (4) If the person ceases to be the Chief Psychiatrist and becomes a public service officer, the person's service as the Chief Psychiatrist is to be regarded as service in the Public Service for the purposes of determining the person's rights as a public service officer and, if applicable, for the purposes of the *Superannuation and Family Benefits Act 1938*.

592. Review of psychiatrists' decisions about involuntary patients (1996 Act s. 12)

- (1) An instruction that was in force under the 1996 Act section 12(2) immediately before commencement day is taken to be a direction given under section 520(4)(b), but a psychiatrist who does not comply with an instruction to which this subsection applies does not commit an offence under section 520(5).
- (2) A review under the 1996 Act section 12(1) that was started but not completed before commencement day

must be dealt with as if the 1996 Act section 12 were still in force, but an instruction given under the 1996 Act section 12(2) as a result of the review is taken to be a direction given under section 520(4)(b).

593. Inspections of relevant premises (1996 Act s. 13)

- (1) Any information obtained by the Chief Psychiatrist in the course of a visit to the premises of a psychiatric health service under the 1996 Act section 13(2) (whether or not the visit was completed before commencement day) is taken to be information obtained by the Chief Psychiatrist in the course of a visit to a mental health service under section 521(1).
- (2) A visit to the premises of a psychiatric health service by the Chief Psychiatrist under the 1996 Act section 13(2) that was started but not completed before commencement day can be completed by the Chief Psychiatrist under section 521(1) as a visit to a mental health service.

594. Records of Chief Psychiatrist

The records of the office of the Chief Psychiatrist referred to in the 1996 Act section 8 are taken to be the records of the office of the Chief Psychiatrist referred to in section 508(1).

Subdivision 2 — Authorised practitioners

595. Authorised mental health practitioners (1996 Act s. 20)

- (1) This section applies in relation to a person —
 - (a) in respect of whom an order under the 1996 Act section 20 was in force immediately before commencement day; and

- (b) who is a mental health practitioner as defined in section 4.
- (2) The person is taken to be an authorised mental health practitioner as defined in section 4 —
 - (a) who is designated as such by the order to which subsection (3) applies; and
 - (b) who, in performing the functions of an authorised mental health practitioner, is subject to the limits to which subsection (3) applies.
- (3) The order referred to in subsection (1)(a) is taken to be an order made under section 539 specifying as the limits within which the functions of an authorised mental health practitioner can be performed by the person the limits that were specified under the 1996 Act section 20 immediately before commencement day as the limits within which the person could have performed the functions of an authorised mental health practitioner under that Act.

Subdivision 3 — Authorised hospitals

596. Authorisation of public hospitals (1996 Act s. 21)

- (1) This section applies in relation to a public hospital, or part of a public hospital, in respect of which an order under the 1996 Act section 21 was in force immediately before commencement day.
- (2) The hospital or part of the hospital is taken to be an authorised hospital as defined in section 4 that is authorised by the order to which subsection (3) applies.
- (3) The order referred to in subsection (1) is taken to be an order made under section 542.

Subdivision 4 — Registrar and staff of Mental Health Review Board

597. Registrar (1996 Act s. 22(a))

- (1) This section applies to the person who, immediately before commencement day, held for the purposes of the 1996 Act section 22(a) an appointment under the *Public Sector Management Act 1994* Part 3 as Registrar of the Mental Health Review Board.
- (2) For the purposes of section 483, the person is taken to be appointed under the *Public Sector Management Act 1994* Part 3 as the registrar of the Mental Health Tribunal on the terms and conditions that were applicable to the appointment referred to in subsection (1) immediately before commencement day.

598. Other staff (1996 Act s. 22(b))

- (1) This section applies to a person who, immediately before commencement day, held for the purposes of the 1996 Act section 22(b) an appointment under the *Public Sector Management Act 1994* Part 3 as an officer to assist with the performance of the functions of the Registrar of the Mental Health Review Board under the 1996 Act.
- (2) For the purposes of section 486, the person is taken to be appointed under the *Public Sector Management Act 1994* Part 3 as an officer to assist the registrar of the Mental Health Tribunal in performing his or her functions under this Act or another written law on the terms and conditions that were applicable to the appointment referred to in subsection (1) immediately before commencement day.

Division 3 — Involuntary patients

Subdivision 1 — Referral for examination

599. Referral for examination of person (1996 Act s. 29)

- (1) A referral that was in force under the 1996 Act section 29(1) and (2)(a) immediately before commencement day is taken to be a referral made under section 26(2) for an examination to be conducted by a psychiatrist at an authorised hospital.
- (2) The person who is under the referral is taken to be a person who is referred under section 26(2).
- (3) A referral that was in force under the 1996 Act section 29(1) and (2)(b) immediately before commencement day is taken to be a referral made under section 26(3)(a) for an examination to be conducted by a psychiatrist at a place that is not an authorised hospital.
- (4) The person who is under the referral is taken to be a person who is referred under section 26(3)(a).
- (5) Despite sections 44 and 45 —
 - (a) the period for which a referral to which this section applies can remain in force expires 7 days after the day on which it was made under the 1996 Act section 29(1); and
 - (b) the referral cannot be extended.

600. Referral for examination of voluntary inpatient (1996 Act s. 30)

- (1) A referral that was in force under the 1996 Act section 29(1), as applied by section 30(1) of that Act, immediately before commencement day is taken to be a referral made under section 36(2).

- (2) The voluntary inpatient who is under the referral is taken to be a person who is referred under section 36(2).
- (3) An order made under the 1996 Act section 30(3) that was in force immediately before commencement day is taken to be an order made under section 34(1).
- (4) The voluntary inpatient who is under the order is taken to be detained at the authorised hospital under the order.
- (5) The period for which the voluntary inpatient who is under the order can be detained under the order expires 6 hours after the time when the order was made under the 1996 Act section 30(3).

601. Personal examination for referral (1996 Act s. 31 and 32)

- (1) This section applies if, immediately before commencement day, a medical practitioner or authorised mental health practitioner had completed an examination in accordance with the 1996 Act section 31 but had not done anything under section 29 of that Act, or under section 29 of that Act as applied by section 30(1) of that Act, as a result of the examination.
- (2) The examination is taken to be an assessment conducted in accordance with Part 6 Division 2 Subdivision 4 for the purposes of Part 6 Division 2 Subdivision 3.
- (3) The medical practitioner or authorised mental health practitioner can make a referral under section 26(2) or (3)(a) or 36(2) on the basis of the examination, but the referral cannot be made more than 48 hours after the time when the examination was completed under the 1996 Act section 31.

**602. Transport to authorised hospital or other place
(1996 Act s. 34)**

- (1) A transport order made under the 1996 Act section 34(1) in respect of a person who is under a referral to which section 599(1) or (3) applies that was in force immediately before commencement day is taken to be a transport order made under section 29(1).
- (2) Despite sections 150 and 151 —
 - (a) the period for which the transport order can remain in force expires when the first of these things occurs —
 - (i) the relevant period under subsection (3) ends; or
 - (ii) the period of 7 days after the day on which the referral was made under the 1996 Act section 29(1) ends;
 - and
 - (b) the transport order cannot be extended.
- (3) For subsection (2)(a)(i), the relevant period is —
 - (a) if the person is under a referral to which section 599(1) applies — 72 hours after the transport order was made under the 1996 Act section 34(1); or
 - (b) if the person is under a referral to which section 599(3) applies — 24 hours after the transport order was made under the 1996 Act section 34(1).

Subdivision 2 — Examination at authorised hospital

603. Detention of person who is referred at authorised hospital (1996 Act s. 36)

- (1) This section applies in relation to a person who is under a referral to which section 599(1) applies.
- (2) Subject to this section, Part 6 Division 3 Subdivision 1 applies in relation to the person.
- (3) The person cannot be received into the authorised hospital on or after commencement day if the referral has expired because of section 599(5)(a).
- (4) If the person was detained at the authorised hospital under the 1996 Act section 36(1)(b) immediately before commencement day, the person is taken to be detained at the authorised hospital under section 52(1)(b).
- (5) The period for which the person can be detained under section 52(1)(b) expires 24 hours after the time when the person was received into the authorised hospital under the 1996 Act section 36(1)(a).

604. Detention of voluntary inpatient admitted to authorised hospital

- (1) This section applies in relation to a voluntary inpatient who is under a referral to which section 600(1) applies.
- (2) Subject to this section, Part 6 Division 3 Subdivision 1 applies in relation to the voluntary inpatient.
- (3) The voluntary inpatient is taken to be detained under section 53(1)(a).

- (4) The period for which the voluntary inpatient can be detained under section 53(1)(a) expires at —
 - (a) if an order to which section 600(3) applies is in force in respect of the voluntary inpatient — the end of 24 hours after the time at which the order was made under the 1996 Act section 30(3); or
 - (b) otherwise — the end of 24 hours after the time at which the referral was made under the 1996 Act section 29(1) as applied by section 30(1) of that Act.

605. Examination of person who is referred (1996 Act s. 37 including as applied by s. 30(5))

- (1) This section applies if, immediately before commencement day, a psychiatrist had completed an examination for the purposes of the 1996 Act section 37, or that section as applied by section 30(5) of that Act, but had not done anything under that section as a result of the examination.
- (2) The examination is taken to be an examination conducted in accordance with Part 6 Division 3 Subdivision 6 for the purposes of section 54.
- (3) If the psychiatrist makes an order under section 55(1)(c), for the purposes of section 55(3), the maximum period that the person who is under the order can be detained under the order expires at —
 - (a) if the person is under a referral to which section 599(1) applies — the end of 72 hours after the person was received into the authorised hospital under the 1996 Act section 36(1)(a); or
 - (b) if the person is a voluntary inpatient who is under a referral to which section 600(1)

applies — the end of 72 hours after the referral was made under the 1996 Act section 29(1) as applied by section 30(1) of that Act.

606. Order made in respect of person who is referred (1996 Act s. 37 including as applied by s. 30(5))

- (1) An order made under the 1996 Act section 43(2)(a) for the purposes of section 37(1)(a) of that Act, or section 37(1)(a) of that Act as applied by section 30(5) of that Act, that was in force immediately before commencement day is taken to be an inpatient treatment order made under section 55(1)(a).
- (2) The person who is under the order is taken to be an involuntary inpatient.
- (3) A community treatment order made under the 1996 Act section 43(2)(b) for the purposes of section 37(1)(a) of that Act, or section 37(1)(a) of that Act as applied by section 30(5) of that Act, that was in force immediately before commencement day is taken to be a community treatment order made under section 55(1)(b).
- (4) The person who is under the community treatment order is taken to be an involuntary community patient.
- (5) An order made under the 1996 Act section 37(1)(b) that was in force immediately before commencement day is taken to be an order made under section 55(1)(c).
- (6) The period for which the person can be detained under the order expires as specified in the order under the 1996 Act section 37(2).

Subdivision 3 — Examination at place other than authorised hospital

607. Receipt of person at place other than authorised hospital

- (1) This section applies in relation to a person who is under a referral to which section 599(3) applies.
- (2) Subject to this section, Part 6 Division 3 Subdivision 2 applies in relation to the person.
- (3) The person cannot be received into the place on or after commencement day if the referral has expired because of section 599(5)(a).
- (4) If the person was received at the place before commencement day, the person is taken to be detained at the place under section 58(1)(b).
- (5) The period for which the person can be detained under section 58(1)(b) expires at the end of 72 hours after the time when the person was received at the place under the 1996 Act.

608. Examination for purposes of referral made under 1996 Act s. 29(2)(b)

- (1) This section applies if, immediately before commencement day, a psychiatrist had completed an examination for the purposes of a referral made under the 1996 Act section 29(2)(b) but had not done anything under section 39(1) of that Act as a result of the examination.
- (2) The examination is taken to be an examination conducted in accordance with Part 6 Division 3 Subdivision 6 for the purposes of section 60.
- (3) The psychiatrist can make an order under section 61(1)(c) on the basis of the examination, but

the order cannot be made more than 72 hours after the time when the person who was examined was received at the place where the examination was conducted.

609. Detention of person for assessment at authorised hospital (1996 Act s. 39 and 40)

- (1) This section applies in relation to a person —
 - (a) who is under a referral to which section 599(3) applies; and
 - (b) in respect of whom an order made under the 1996 Act section 39(1) was in force immediately before commencement day.
- (2) The order referred to in subsection (1)(b) is taken to be an order made under section 61(1)(c).
- (3) Subject to this section, Part 6 Division 3 Subdivision 4 applies in relation to the person.
- (4) The person cannot be received into the authorised hospital on or after commencement day if the referral has expired because of section 599(5)(a).
- (5) If the person was detained at the authorised hospital under the 1996 Act section 40(1) immediately before commencement day, the person is taken to be detained at the authorised hospital under section 70(1)(b).
- (6) The period for which the person can be detained under section 70(1)(b) expires at the end of 72 hours after the time when the person was received into the authorised hospital under the 1996 Act section 40(1).

610. Assessment because of order made under 1996 Act s. 39(1)

- (1) This section applies if, immediately before commencement day, a psychiatrist had completed an assessment conducted because of an order made under

the 1996 Act section 39(1) but had not done anything under the 1996 Act as a result of the assessment.

- (2) The assessment is taken to be an examination conducted in accordance with Part 6 Division 3 Subdivision 6 for the purposes of section 71.
- (3) The psychiatrist can make an order under section 72(1) on the basis of the assessment, but the order cannot be made more than 72 hours after the time when the person was received into the authorised hospital under the 1996 Act section 40(1).

611. Order made in respect of person detained for assessment (1996 Act s. 40(1)(b))

- (1) An order made under the 1996 Act section 43(2)(a) for the purposes of section 40(1)(b) of that Act that was in force immediately before commencement day is taken to be an inpatient treatment order made under section 72(1)(a).
- (2) The person who is under the order is taken to be an involuntary inpatient.
- (3) A community treatment order made under the 1996 Act section 43(2)(b) for the purposes of section 40(1)(b) of that Act that was in force immediately before commencement day is taken to be a community treatment order made under section 72(1)(b).
- (4) The person who is under the community treatment order is taken to be an involuntary community patient.

612. Transport to authorised hospital (1996 Act s. 41)

- (1) A transport order made under the 1996 Act section 41(1) in respect of a person who is under an order to which section 609(2) applies that was in force

immediately before commencement day is taken to be a transport order made under section 63(1).

- (2) Despite sections 150 and 152 —
 - (a) the period for which the transport order can remain in force expires at the end of 72 hours after the time when the transport order was made under the 1996 Act section 41(1); and
 - (b) the transport order cannot be extended.

Subdivision 4 — Detention in authorised hospital

613. Transfer to another authorised hospital (1996 Act s. 46)

An order made under the 1996 Act section 46 in respect of an involuntary inpatient that was in force immediately before commencement day is taken to be a transfer order made under section 91(2).

614. Period of detention specified in order (1996 Act s. 48)

Despite section 87, a continued inpatient treatment order to which section 606(1), 611(1) or 625(1) applies authorises the detention of the person who is under the order for the period ending on the day specified in the order.

615. Examination of patient within detention period (1996 Act s. 49(1) and 50(1))

- (1) This section applies if, immediately before commencement day, a psychiatrist had completed, for the purposes of the 1996 Act section 49(1) or 50(1), an examination of an involuntary inpatient who is under a continued inpatient treatment order but had not done anything under section 49(2) or (3) of that Act, or

under section 49(2) or (3) of that Act as applied by section 50(2) of that Act, as a result of the examination.

- (2) The examination is taken to be an examination under section 89(1) if the examination was completed within 7 days before the continued involuntary treatment order expires under section 614.

616. Order made on examination within detention period (1996 Act s. 49(3) including as applied by s. 50(2))

- (1) An order made under the 1996 Act section 49(3)(a), or section 49(3)(a) of that Act as applied by section 50(2) of that Act, that was in force immediately before commencement day is taken to be a continuation order made under section 89(2)(a).
- (2) An order to which subsection (1) applies authorises the detention of the person who is under the order for the period ending —
 - (a) if, immediately before commencement day, the order had been in force under the 1996 Act for at least 5 months — on the day specified in the order; or
 - (b) if, immediately before commencement day, the order had been in force under the 1996 Act for less than 5 months but more than 3 months, on the earlier of —
 - (i) the day specified in the order; and
 - (ii) the day that is one month after commencement day;

or

 - (c) if, immediately before commencement day, the order had been in force under the 1996 Act for 3 months or less, on the earlier of —
 - (i) the day specified in the order; and

- (ii) the day that is 2 months after commencement day.
- (3) A community treatment order made under the 1996 Act section 49(3)(b), or section 49(3)(b) of that Act as applied by section 50(2) of that Act, that was in force immediately before commencement day is taken to be a community treatment order made under section 89(2)(b).
- (4) The person who is under the community treatment order is taken to be an involuntary community patient.

617. Order made at any time (1996 Act s. 52)

- (1) A community treatment order made under the 1996 Act section 52(b) that was in force immediately before commencement day is taken to be a community treatment order made under section 90(1)(a).
- (2) The person who is under the community treatment order is taken to be an involuntary community patient.

Subdivision 5 — Absence without leave and leave of absence

618. Absence without leave (1996 Act s. 57)

A person who is absent without leave under the 1996 Act section 57 immediately before commencement day is taken to be absent without leave under section 97.

619. Apprehension of person absent without leave (1996 Act s. 58)

- (1) This section applies if, immediately before commencement day, a person who had been apprehended under the 1996 Act section 58(1) had not been returned in accordance with section 58(2) of that Act to the authorised hospital from which the person is absent.

- (2) The police officer or other person who is detaining the person apprehended must ensure that that person is taken, as soon as practicable and, in any event, on or within 14 days after commencement day to —
 - (a) the authorised hospital from which the person is absent without leave; or
 - (b) another authorised hospital or another place by arrangement with a medical practitioner or authorised mental health practitioner at that other authorised hospital or place.
- (3) Anything seized under the 1996 Act section 58(3)(b) from the person apprehended that had not been dealt with under section 199 of that Act before commencement day must be dealt with under section 166 as if it had been seized under section 159(2)(c).

620. Grant of leave (1996 Act s. 59)

An involuntary inpatient who, immediately before commencement day, is on leave of absence from an authorised hospital granted under the 1996 Act section 59(1) or extended under section 59(3) of that Act is taken to be on leave of absence from the authorised hospital granted under section 105(1) for the period specified in the grant or extension.

621. Monitoring of involuntary inpatient on leave (1996 Act s. 62)

- (1) Subsection (2) applies in relation to an involuntary inpatient who is away from an authorised hospital on leave of absence because of section 620.
- (2) For the purposes of section 108, the period for which the involuntary inpatient is away from the authorised hospital on leave of absence includes the period for which the involuntary inpatient was away from the

authorised hospital on leave of absence immediately before commencement day.

- (3) A community treatment order made under the 1996 Act section 62(2)(b) that was in force immediately before commencement day is taken to be a community treatment order made under section 90(1)(a).
- (4) The person who is under the community treatment order is taken to be an involuntary community patient.

622. Release of involuntary inpatient while on leave (1996 Act s. 63)

- (1) This section applies in relation to an involuntary inpatient under a continuing inpatient treatment order who is on leave of absence from an authorised hospital because of section 620.
- (2) If, immediately before commencement day, the involuntary inpatient's treating psychiatrist had received a written opinion from another medical practitioner or an authorised mental health practitioner to the effect described in the 1996 Act section 63(1)(b) but had not done anything under section 63(2) of that Act as a result of the opinion, the written opinion is taken to be a written opinion received by the treating psychiatrist under section 109.
- (3) A community treatment order made under the 1996 Act section 63(2)(b) that was in force immediately before commencement day is taken to be a community treatment order made under section 90(1)(a).
- (4) The person who is under the community treatment order is taken to be an involuntary community patient.

Subdivision 6 — Treatment of involuntary patient in community

623. Community treatment order made under general power (1996 Act s. 67)

- (1) A community treatment order made under the 1996 Act section 67(1) that was in force immediately before commencement day is taken to be a community treatment order made under section 75(1).
- (2) The person who is under the community treatment order is taken to be an involuntary community patient.

624. Confirmation of community treatment order (1996 Act s. 69)

- (1) This section applies if, immediately before commencement day, a continued community treatment order to which section 623(1) applies had not been confirmed under the 1996 Act section 69(1).
- (2) For the purposes of section 76, the period within which the continued community treatment order must be confirmed under section 76 expires at the end of 72 hours after the continued community treatment order was made under the 1996 Act section 67(1).

625. Order made on revocation of community treatment order (1966 Act s. 70)

- (1) An order made under the 1996 Act section 70(1) that a person be admitted to, and detained, in an authorised hospital that was in force immediately before commencement day is taken to be an inpatient treatment order made under section 123(1)(a).
- (2) The person who is under the order is taken to be an involuntary inpatient.

626. Transport to authorised hospital (1996 Act s. 71)

- (1) A transport order made under the 1996 Act section 71(1) in respect of a person who is under a continued inpatient treatment order to which section 625(1) applies that was in force immediately before commencement day is taken to be a transport order made under section 133(1).
- (2) Despite sections 150 and 152 —
 - (a) the period for which the transport order can remain in force expires at the end of 72 hours after the time when the transport order was made under the 1996 Act section 71(1); and
 - (b) the transport order cannot be extended.

627. Review by supervising psychiatrist (1996 Act s. 75)

- (1) For a continued community treatment order in respect of an involuntary community patient who, immediately before commencement day, had not been examined under the 1996 Act section 75, the first treatment period under section 118 is the period —
 - (a) beginning on the day on which the order was made under the 1996 Act; and
 - (b) ending on the day on which the order expires as specified in the order under the 1996 Act section 68(1)(d).
- (2) An examination of the involuntary community patient under a continued community treatment order that was conducted for the purposes of the 1996 Act section 75 before commencement day is taken to be an examination of the involuntary community patient conducted for the purposes of section 118.

628. Extension of community treatment order (1996 Act s. 76)

- (1) Any extension of a continued community treatment order made under the 1996 Act section 76(1) that was in force immediately before commencement day is taken to be a continuation order made under section 121(1).
- (2) If, immediately before commencement day, an involuntary community patient under a continued community treatment order extended under the 1996 Act section 76(1) had requested a second opinion under section 76(3) of that Act but the second opinion had not been obtained, the request is taken to have been made under section 121(5) on the day on which it was made under the 1996 Act section 76(3).

629. Examination and report by authorised medical practitioner (1996 Act s. 77)

- (1) For the purposes of section 627(2), an examination conducted for the purposes of the 1996 Act section 75 includes an examination taken to have been conducted for those purposes because of section 77 of that Act.
- (2) If, immediately before commencement day, the supervising psychiatrist under a continued community treatment order had, for the purposes of the 1996 Act section 75, requested under the 1996 Act section 77(1) the examination of, and a report about, the involuntary community patient under the order but had not been provided with the report, the request is taken to be a request made under section 119(1).
- (3) If, immediately before commencement day, the supervising psychiatrist under a continued community treatment order had, for the purposes of the 1996 Act section 75, been provided by an authorised medical

practitioner with a report requested under the 1996 Act section 77(1) about the involuntary community patient under the order but had not as a result of the authorised medical practitioner's report prepared a report about the patient under section 77(3) of that Act —

- (a) the examination on which the authorised medical practitioner's report is based is taken to be an examination conducted under section 118(2)(b)(ii); and
- (b) the authorised medical practitioner's report is taken to have been provided to the supervising psychiatrist under section 118(5).

630. Variation of community treatment order (1996 Act s. 79)

- (1) Any transfer of responsibility as the treating practitioner under a continued community treatment order that was in force under the 1996 Act section 79(1)(a) immediately before commencement day is taken to be a transfer of that responsibility under section 137(a).
- (2) Any variation of the terms of a continued community treatment order that was in force under the 1996 Act section 79(1)(b) immediately before commencement day and had the effect of transferring responsibility as the supervising psychiatrist under the order is taken to be a transfer of that responsibility under section 135(1)(a).
- (3) Any other variation of the terms of a continued community treatment order that was in force under the 1996 Act section 79(1)(b) immediately before commencement day is taken to be an order varying the terms of the continued community treatment order made under section 122(1).

631. Notice of breach (1996 Act s. 81)

Notice of a breach of a continued community treatment order that was given under the 1996 Act section 81(1)(b) before commencement day is taken to be notice of the breach given under section 127(2)(b).

632. Order to attend if breach continues (1996 Act s. 82)

- (1) An order to attend that was in force under the 1996 Act section 82(1) immediately before commencement day is taken to be an order to attend made under section 128(1).
- (2) If an order to attend to which subsection (1) applies and a written warning to the effect described in the 1996 Act section 82(4) were given under the 1996 Act section 82(3) and (4) to the involuntary community patient under a continued community treatment order before commencement day, a copy of the order is taken to have been given to the patient under section 128(5).

633. Order for police assistance (1996 Act s. 84)

- (1) An order made under the 1996 Act section 84(1) that was in force immediately before commencement day is taken to be a transport order made under section 129(2).
- (2) Despite sections 150 and 152 —
 - (a) the period for which the order can remain in force expires at the end of 72 hours after the time when the order was made under the 1996 Act section 84(1); and
 - (b) the order cannot be extended.

Division 4 — Treatment of patients

634. Informed consent (1996 Act Pt. 5 Div. 2)

If, immediately before commencement day, informed consent had been given in accordance with the 1996 Act Part 5 Division 2 for the provision of treatment but the treatment had not been provided, the informed consent is taken to be informed consent given in accordance with Part 5 Division 2 for the provision of that treatment.

635. Psychosurgery: approval already given (1996 Act s. 101)

If, immediately before commencement day, psychosurgery for which an approval had been given for the purposes of the 1996 Act section 101(1)(b) had not been performed, the approval is taken to be an approval for the purposes of section 208(2)(b).

636. Psychosurgery: application for approval pending (1996 Act s. 102)

An application made under the 1996 Act section 102 for approval for psychosurgery to be performed that was pending immediately before commencement day is taken to be an application made under section 417.

637. Electroconvulsive therapy: course of treatment commenced before commencement day

A person who performs electroconvulsive therapy on another person does not commit an offence under section 193 if the person performs the electroconvulsive therapy in accordance with the 1996 Act Part 5 Division 5 on or within one month after commencement day for the purpose of completing a course of electroconvulsive therapy started before commencement day.

638. Electroconvulsive therapy: recommendation referred to Mental Health Review Board (1996 Act s. 106)

Any proceeding of the Mental Health Review Board in respect of a recommendation that electroconvulsive therapy be performed on a person that had been referred to the Board under the 1996 Act section 106(1) but had not been disposed of before commencement day is discontinued.

639. Other medical treatment that is not psychiatric treatment (1996 Act s. 110)

If, immediately before commencement day, medical treatment for which approval had been given by the Chief Psychiatrist under the 1996 Act section 110(1) had not been provided, the medical treatment can be provided in accordance with the approval.

640. Second opinion requested (1996 Act s. 111)

- (1) This section applies in relation to a patient to whom Part 13 Division 2 applies.
- (2) If, immediately before commencement day, a patient had requested a second opinion under the 1996 Act section 111(2)(a) but the second opinion had not been obtained, the request is taken to have been made to the patient's psychiatrist under section 182(2).
- (3) If, immediately before commencement day, a patient had requested a second opinion under the 1996 Act section 111(2)(b) but the second opinion had not been obtained, the request is taken to have been made to the Chief Psychiatrist under section 182(2).
- (4) If, immediately before commencement day, a patient's psychiatrist had obtained a second opinion in response to a request made under the 1996 Act section 111(2)(a)

but had not done anything in relation to the opinion, the opinion is taken to have been obtained by the patient's psychiatrist under section 182.

- (5) If, immediately before commencement day, the Chief Psychiatrist had obtained a second opinion in response to a request made under the 1996 Act section 111(2)(b) but had not done anything in relation to the opinion, the opinion is taken to have been obtained by the Chief Psychiatrist under section 182.

641. Dissatisfaction with second opinion (1996 Act s. 112)

- (1) This section applies if, before commencement day —
- (a) an opinion to the effect described in the 1996 Act section 112(1)(a) had been obtained under section 111 of that Act in respect of a patient to whom Part 13 Division 2 applies; and
 - (b) the Chief Psychiatrist had become aware, because of oral or written advice given to the Chief Psychiatrist by the patient, of the patient's continued dissatisfaction with treatment being provided to the patient.
- (2) If, immediately before commencement day, the Chief Psychiatrist had not done anything under the 1996 Act section 112(2) as a result of the advice, the advice is taken to be advice given to the Chief Psychiatrist by the patient under section 184(1).
- (3) If, immediately before commencement day, the Chief Psychiatrist had referred a matter to the Mental Health Review Board under the 1996 Act section 112(2)(b) but the Board had not made a decision on the matter under section 112(3) of that Act, any proceeding before the Board in respect of the matter is discontinued.

642. Seclusion (1996 Act s. 119)

- (1) An authorisation to keep a patient in seclusion that was in force under the 1996 Act section 119 immediately before commencement day is taken to be a seclusion order made under section 215(1).
- (2) Notification of a medical practitioner under the 1996 Act section 119(3) of an authorisation to which subsection (1) applies is taken to be notification of a medical practitioner under section 215(4).

643. Mechanical bodily restraint (1996 Act s. 123)

- (1) An authorisation to use mechanical bodily restraint that was in force under the 1996 Act section 123 immediately before commencement day is taken to be a bodily restraint order made under section 231(1).
- (2) Notification of a medical practitioner under the 1996 Act section 123(3) of an authorisation to which subsection (1) applies is taken to be notification of a medical practitioner under section 231(4).

Division 5 — Mental Health Review Board

Subdivision 1 — President and other members of Board

644. Appointment to Mental Health Tribunal (1996 Act s. 126 and Sch. 1)

- (1) The person who, immediately before commencement day, held office under the 1996 Act section 126(1)(a) as the President of the Mental Health Review Board is taken to be appointed under section 475 as the President of the Mental Health Tribunal.
- (2) A person who, immediately before commencement day, held office under the 1996 Act section 126(1)(b) as a member of the Mental Health Review Board is

taken to be appointed under section 476(1) as a member of the Mental Health Tribunal.

- (3) A person to whom subsection (1) or (2) applies holds office under this Act —
 - (a) for the period, beginning on commencement day, that is equal to the balance of the person's term of office under the 1996 Act that remained immediately before commencement day; and
 - (b) otherwise on the same terms and conditions (including as to remuneration) as those on which the person held office under the 1996 Act immediately before commencement day.

Subdivision 2 — Reviews and inquiries

645. Initial review after commencement day (1996 Act s. 138)

- (1) In this section —

initial order means —

 - (a) a continued inpatient treatment order to which section 606(1), 611(1) or 625(1) applies; or
 - (b) a continued community treatment order to which section 606(3), 611(3), 616(3), 617(1), 621(3), 622(3) or 623(1) applies.
- (2) This section applies to an initial order that, immediately before commencement day, had not been reviewed under the 1996 Act section 138.
- (3) If, on the day on which the initial order was made, the involuntary patient under the order was an adult, the initial review period under section 386 is taken to be —
 - (a) if, immediately before commencement day, the initial order had been in force under the 1996

- Act for not more than 7 days — the period of 35 days from commencement day; or
- (b) if, immediately before commencement day, the initial order had been in force under the 1996 Act for more than 7 days but not more than 21 days — the period of 28 days from commencement day; or
 - (c) if, immediately before commencement day, the initial order had been in force under the 1996 Act for more than 21 days — the period of 14 days from commencement day.
- (4) If, on the day on which the initial order was made, the involuntary patient under the order was a child, the initial review period under section 386 is taken to be —
- (a) if, immediately before commencement day, the initial order had been in force under the 1996 Act for not more than 7 days — the period of 21 days from commencement day; or
 - (b) if, immediately before commencement day, the initial order had been in force under the 1996 Act for more than 7 days but not more than 21 days — the period of 14 days from commencement day; or
 - (c) if, immediately before commencement day, the initial order had been in force under the 1996 Act for more than 21 days — the period of 5 days from commencement day.

646. First periodic review after commencement day (1996 Act s. 139)

- (1) This section applies in relation to a continued involuntary treatment order that had been reviewed under the 1996 Act section 138 or 139 before commencement day.

- (2) In this section —
last review day, for the continued involuntary treatment order, means the day on which the last review of the order was completed under the 1996 Act section 138 or 139.
- (3) If, on the last review day, the involuntary patient under the continued involuntary treatment order was an adult, the first periodic review period under section 387 is taken to be —
- (a) if the last review day was not more than one month before commencement day — the period of 3 months from commencement day; or
 - (b) if the last review day was more than one month but not more than 3 months before commencement day — the period of 2 months from commencement day; or
 - (c) if the last review day was more than 3 months before commencement day — the period of one month from commencement day.
- (4) If, on the last review day, the involuntary patient under the continued involuntary treatment order was a child, the first periodic review period under section 387 is taken to be —
- (a) if the last review day was not more than one month before commencement day — the period of 28 days from commencement day; or
 - (b) if the last review day was more than one month but not more than 3 months before commencement day — the period of 21 days from commencement day; or
 - (c) if the last review day was more than 3 months before commencement day — the period of 14 days from commencement day.

647. Application for review pending before commencement day (1996 Act s. 142)

An application made under the 1996 Act section 142(1) for a review of a matter specified in that subsection that was pending immediately before commencement day is taken to be an application made under section 390(1) for a review of that matter.

648. Suspension of order or restraint of action pending review (1996 Act s. 143)

- (1) Subsection (2) applies in relation to an order made under the 1996 Act section 143 that was in force immediately before commencement day.
- (2) The order is taken to be an order made under section 392(1).
- (3) An application made under the 1996 Act section 143 that was pending immediately before commencement day is taken to be an application made under section 392(2).

649. Board initiated review (1996 Act s. 144)

A review that, immediately before commencement day, had been initiated by the Mental Health Review Board under the 1996 Act section 144 but had not been disposed of is taken to be a review initiated by the Mental Health Tribunal under section 391.

650. Order that community treatment order be made (1996 Act s. 145(2)(b))

An order made under the 1996 Act section 145(2)(b) that was in force immediately before commencement day is taken to be a direction given under section 395(2)(b).

651. Complaints to Board (1996 Act s. 146)

If, immediately before commencement day, a complaint had been made under the 1996 Act section 146 but the enquiry had not been completed, the complaint is taken to be an application made under section 424 or 434(1), as directed by the President of the Mental Health Tribunal.

652. Enquiries directed by Minister (1996 Act s. 147)

- (1) This section applies if, immediately before commencement day, the Minister had directed the Mental Health Review Board to enquire into a matter under the 1996 Act section 147 but the enquiry had not been completed.
- (2) Despite the repeal of the 1996 Act —
 - (a) the enquiry must be completed as soon as practicable; and
 - (b) the responsible former Board member under subsection (3) must complete the enquiry.
- (3) For subsection (2)(b), the responsible former Board member is —
 - (a) a person —
 - (i) to whom section 644(2) applies; and
 - (ii) who is nominated by the person referred to in paragraph (b) to complete the enquiry;
 - or
 - (b) if no-one is nominated under paragraph (a)(ii) — the person to whom section 644(1) applies.

653. Final report about activities of Mental Health Review Board (1996 Act s. 148)

Despite the repeal of the 1996 Act, the person to whom section 644(1) applies must make a report under section 148 of that Act about the activities of the Board for the period beginning on 1 July before commencement day and ending on the day before commencement day.

654. Records and proceedings of Mental Health Review Board

- (1) The records of the Mental Health Review Board are taken to be the records of the Mental Health Tribunal.
- (2) The Mental Health Tribunal can have regard to any record of any proceeding of the Mental Health Review Board that is continued under this Part as a proceeding of the Tribunal.

Subdivision 3 — Applications to State Administrative Tribunal

655. Applications for review or determination of questions of law (1996 Act Pt. 6 Div. 2A)

- (1) This section applies in relation to —
 - (a) an application for a review or leave to apply for a review that, immediately before commencement day, had been made under the 1996 Act section 148A but had not been disposed of; or
 - (b) an application for a determination of a question of law that, immediately before commencement day, had been made under the 1996 Act section 148E but had not been disposed of.

- (2) Despite the repeal of the 1996 Act, an application can be dealt with as if the 1996 Act Part 6 Division 2A and Schedule 2A were still in force.
- (3) In dealing with an application under subsection (2), the State Administrative Tribunal can make any order in relation to the operation of this Act that the Tribunal considers appropriate.

Subdivision 4 — Appeals from State Administrative Tribunal

656. Appeals to Supreme Court (1996 Act Pt. 6 Div. 3)

- (1) Despite the repeal of the 1996 Act, an appeal or an application for leave to appeal that, immediately before commencement day, had been made under the 1996 Act section 149 but had not been disposed of can be dealt with as if the 1996 Act Part 6 Division 3 were still in force.
- (2) In dealing with an appeal or application under subsection (1), the Supreme Court can make any order in relation to the operation of this Act that the Court considers appropriate.

Division 6 — Protection of patient's rights

657. Interview with psychiatrist requested by patient (1996 Act s. 164)

- (1) This section applies in relation to a patient to whom Part 16 Division 2 Subdivision 2 applies.
- (2) If, immediately before commencement day, a patient had requested an interview with a psychiatrist under the 1996 Act section 164(3) but the interview had not occurred, the request is taken to have been made under section 260(1).

**658. Personal possessions left at authorised hospital
(1996 Act s. 165(3))**

Section 259(6) applies in relation to any personal possessions of a patient who was discharged from an authorised hospital before commencement day that were still at the hospital immediately before commencement day.

**659. Order restricting or denying patient's rights
(1996 Act s. 169)**

An order made under the 1996 Act section 169(1) that was in force immediately before commencement day is taken to be an order made under section 262(1).

**660. Application for review of order restricting or
denying patient's right (1996 Act s. 170)**

An application made under the 1996 Act section 170 that was pending immediately before commencement day is taken to be an application made under section 434(1).

Division 7 — Community support services

661. Funding and services agreements (1996 Act s. 174)

Despite the repeal of the 1996 Act, a funding and services agreement entered into under the 1996 Act section 174(1) that was in effect immediately before commencement day continues to have effect according to its terms on and after that day as if the 1996 Act section 174 were still in force.

Division 8 — Council of Official Visitors

662. Matters generally

- (1) This section applies in relation to any matter that, immediately before commencement day, was being dealt with under the 1996 Act by any of these persons or bodies —
 - (a) the Council of Official Visitors;
 - (b) the Head of the Council of Official Visitors;
 - (c) an official visitor;
 - (d) a panel appointed under section 187 of that Act;
 - (e) the executive officer of the Council of Official Visitors.
- (2) The matter may continue being dealt with under this Act by —
 - (a) the Chief Mental Health Advocate; or
 - (b) a mental health advocate or a member of the advocacy services staff referred to in section 375, as directed by the Chief Mental Health Advocate.

663. Request for visit by official visitor (1996 Act s. 189)

A request made under the 1996 Act section 189(1)(a) or (b) for an official visitor to visit a person that, immediately before commencement day, had not been dealt with under that Act is taken to be a request made under section 356(2)(a) or (b), as the case requires, for a mental health advocate to contact or otherwise visit the person.

664. Exercise of powers by official visitors and panels (1996 Act s. 190)

- (1) Any information obtained by an official visitor or a panel in the course of a visit to a place under the 1996 Act section 190(2) (whether or not the visit was completed before commencement day) is taken to be information obtained by a mental health advocate in the course of a visit to a mental health service under section 359(1)(a).
- (2) A visit to a place by an official visitor or a panel under the 1996 Act section 190(2) that was started but not completed before commencement day can be completed by a mental health advocate under section 359(1)(a) as a visit to a mental health service.

665. Reports requested by Minister (1996 Act s. 192(2))

- (1) This section applies if, immediately before commencement day, the Minister had requested a report about a matter under the 1996 Act section 192(2) but no report about the matter had been made to the Minister.
- (2) Despite the repeal of the 1996 Act —
 - (a) the report must be made to the Minister under the 1996 Act section 192(2) as soon as practicable; and
 - (b) the responsible COV office holder under subsection (3) continues to hold office, and is entitled to receive from the Chief Mental Health Advocate such assistance as the responsible COV office holder reasonably requires, for the purpose of making the report.

- (3) For subsection (2)(b), the responsible COV office holder is —
- (a) a person —
 - (i) who, immediately before commencement day, held office under the 1996 Act as an official visitor or a person on a panel; and
 - (ii) who is nominated by the person referred to in paragraph (b) to make the report;
 - or
 - (b) if no-one is nominated under paragraph (a)(ii) — the person who, immediately before commencement day, held office under the 1996 Act as the Head of the Council of Official Visitors.

666. Final report about activities of official visitors (1996 Act s. 192(3))

Despite the repeal of the 1996 Act —

- (a) the person who, immediately before commencement day, held office as the Head of the Council of Official Visitors must make a report under section 192(3) of that Act for the period beginning on 1 July before commencement day and ending on the day before commencement day; and
- (b) that person continues to hold office, and is entitled to receive from the Chief Mental Health Advocate such assistance as that person reasonably requires, for the purpose of making the report; and
- (c) the Minister must cause a copy of the report to be laid before each House of Parliament under the 1996 Act section 192(4).

667. Records of Council of Official Visitors

The records of the Council of Official Visitors are taken to be the records of the office of the Chief Mental Health Advocate.

Division 9 — Other matters under 1996 Act

668. Person taken into protective custody (1996 Act s. 195)

- (1) If, immediately before commencement day, a person had been apprehended under the 1996 Act section 195(1) but no arrangement to have the person examined had been made under section 195(2) of that Act, the person is taken to have been apprehended under section 156(1).
- (2) If, immediately before commencement day, an arrangement to have a person examined had been made under the 1996 Act section 195(2) but the person had not been examined in accordance with that arrangement, the arrangement is taken to be an arrangement to have the person assessed under section 156(3)(a) and the person can be detained under section 156(3)(b).

669. Examination of person arrested (1996 Act s. 196)

If, immediately before commencement day, an arrangement to have a person examined had been made under the 1996 Act section 196(1) but the person had not been examined in accordance with that arrangement, the arrangement is taken to be an arrangement to have the person assessed under section 157(2).

670. Things seized by police officer (1996 Act s. 197)

Anything seized under the 1996 Act section 197(c) from a person apprehended under section 34, 71 or 195 of that Act that had not been dealt with under section 199 of that Act before commencement day must be dealt with under section 166 as if it had been seized under section 159(2)(c).

671. Review of determination of capacity to vote (1996 Act s. 203)

Any proceeding of the Mental Health Review Board in respect of an application made under the 1996 Act section 203 that had not been disposed of before commencement day is discontinued.

672. Records of patients (1996 Act s. 204)

A record kept by an authorised hospital or other place in accordance with the 1996 Act section 204 is taken to be a record kept by a mental health service in accordance with section 582.

673. Request for information about patient or person detained (1996 Act s. 205)

If, immediately before commencement day, the Chief Psychiatrist had received a request under the 1996 Act section 205(1) but had not done anything in relation to the request, the request is taken to be a request made under section 535(1).

674. Inquiries (1996 Act Pt. 10 Div. 5)

Despite the repeal of the 1996 Act —

- (a) the 1996 Act Part 10 Division 5 continues to apply in relation to an inquiry that, immediately before commencement day, had not been completed and reported on to the Minister

under the 1996 Act section 207 until the inquiry is completed and reported on under that section; and

- (b) the person appointed under the 1996 Act section 207 to conduct an inquiry to which paragraph (a) applies continues to hold office for the purpose of completing and reporting on the inquiry; and
- (c) the Minister must ensure that the person to whom paragraph (b) applies receives such assistance as that person reasonably requires for the purpose of completing and reporting on the inquiry.

675. Rectification of referrals and orders (1996 Act s. 212)

Section 581 applies in relation to a referral or order that could have been, but was not, rectified under the 1996 Act section 212 before commencement day.

Division 10 — Miscellaneous matters

676. Transitional regulations

- (1) In this section —

publication day, for regulations made under subsection (2), means the day on which those regulations are published in the *Gazette*;

specified means specified or described in regulations made under subsection (2);

transitional matter —

- (a) means a matter that needs to be dealt with for the purpose of effecting the transition from the provisions of the written laws repealed by Part 28 to the provisions of this Act; and

- (b) includes a saving or application matter.
- (2) If there is no sufficient provision in this Part for dealing with a transitional matter, the Governor may make regulations prescribing matters —
 - (a) required to be prescribed for the purpose of dealing with the transitional matter; or
 - (b) necessary or convenient to be prescribed for the purpose of dealing with the transitional matter.
- (3) Regulations made under subsection (2) may provide that specified provisions of this Act —
 - (a) do not apply to or in relation to a specified matter; or
 - (b) apply with specified modifications to or in relation to a specified matter.
- (4) If regulations made under subsection (2) provide that a specified state of affairs is taken to have existed, or not to have existed, on and from a day that is earlier than the publication day for those regulations but not earlier than commencement day, the regulations have effect according to their terms.
- (5) If regulations made under subsection (2) contain a provision referred to in subsection (4), the provision does not operate so as —
 - (a) to affect in a manner prejudicial to a person other than the State or an authority of the State the rights of that person existing before the publication day for those regulations; or
 - (b) to impose liabilities on a person other than the State or an authority of the State in respect of an act done or omission made before the publication day for those regulations.

- (6) Regulations can only be made under subsection (2) within 12 months after commencement day.

677. *Interpretation Act 1984* not affected

Except to the extent this Part or regulations made under section 676(2) expressly provide differently, the *Interpretation Act 1984* applies in relation to the repeal of the written laws referred to in Part 28.

Part 4 — Amendments to other Acts

Division 1 — *Criminal Law (Mentally Impaired Accused) Act 1996* amended

10. Act amended

This Division amends the *Criminal Law (Mentally Impaired Accused) Act 1996*.

11. Section 3 amended

- (1) In section 3 delete the definitions of:

involuntary patient

psychiatrist

psychologist

- (2) In section 3 insert in alphabetical order:

authorised hospital has the meaning given in the *Mental Health Act 2014* section 4;

involuntary inpatient has the meaning given in the *Mental Health Act 2014* section 4;

involuntary patient has the meaning given in the *Mental Health Act 2014* section 4;

mental illness has the meaning given in the *Mental Health Act 2014* section 4;

psychiatrist has the meaning given in the *Mental Health Act 2014* section 4;

psychologist has the meaning given in the *Mental Health Act 2014* section 4;

12. Section 5 amended

- (1) Delete section 5(2) and insert:
 - (2) The judicial officer may make a hospital order in respect of the accused if the officer reasonably suspects —
 - (a) that the accused has a mental illness for which the accused is in need of treatment; and
 - (b) that, because of the mental illness, there is —
 - (i) a significant risk to the health or safety of the accused or to the safety of another person; or
 - (ii) a significant risk of serious harm to the accused or to another person;and
 - (c) that the accused does not have the capacity to consent to treatment.
- (2) In section 5(3)(a) delete “involuntary patient,” and insert:

involuntary inpatient,
- (3) Delete section 5(4) and insert:
 - (4) Subject to this section, a hospital order has effect as if the accused had been referred under the *Mental Health Act 2014* section 26(2) for an examination by a psychiatrist at an authorised hospital and that Act applies accordingly.

- (4) In section 5(5) delete “involuntary patient.” and insert:

involuntary inpatient.

13. Section 6 amended

- (1) In section 6(1) delete “*Mental Health Act 1996*” and insert:

Mental Health Act 2014

- (2) In section 6(2) delete “*Mental Health Act 1996* —” and insert:

Mental Health Act 2014 —

Note: The heading to amended section 6 is to read:

Relationship to *Mental Health Act 2014*

14. Section 23 amended

In section 23 delete the definitions of:

authorised hospital
mental illness

15. Section 24 amended

Delete section 24(3)(b) and (c) and insert:

- (b) that, because of the mental illness, there is —
- (i) a significant risk to the health or safety of the accused or to the safety of another person; or
 - (ii) a significant risk of serious harm to the accused or to another person;
- and

Mental Health Legislation Amendment Act 2014

Part 4 Amendments to other Acts

Division 1 Criminal Law (Mentally Impaired Accused) Act 1996
amended

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- (c) the accused does not have the capacity to consent to treatment; and

16. Section 25 amended

- (1) In section 25(2)(a) delete “involuntary patient” and insert:

involuntary inpatient

- (2) Delete section 25(3)(a) and insert:

- (a) if admitted to the authorised hospital as an involuntary inpatient — is not entitled to be released from the hospital under the *Mental Health Act 2014* Part 7 Division 4 or to be granted leave of absence under Part 7 Division 6 of that Act; or

17. Section 31 amended

In section 31(1)(a) delete “having being given” and insert:

having been given

18. Section 32 amended

Delete section 32(1) and insert:

- (1) The *Mental Health Act 2014* Part 7 Divisions 5 and 6 do not apply in relation to the absence from an authorised hospital of a mentally impaired accused.

**Division 2 — *Guardianship and Administration Act 1990*
amended**

19. Act amended

This Division amends the *Guardianship and Administration Act 1990*.

20. Section 3 amended

Delete section 3(2) and insert:

- (2) A reference in a written law to the committee of the person of a person is to be read as a reference to the guardian of that person.

21. Section 110ZH amended

In section 110ZH in the definition of *urgent treatment* delete “but does not include the sterilisation of the patient.” and insert:

but does not include —

- (d) psychiatric treatment, which is treatment as defined in the *Mental Health Act 2014* section 4; or
- (e) the sterilisation of the patient.

22. Schedule 5 Division 1 heading inserted

At the beginning of Schedule 5 insert:

Division 1 — Transitional matters for *Guardianship and Administration Act 1990*

23. Schedule 5 clause 1A inserted

Before Schedule 5 clause 1 insert:

1A. Application of this Division

This Division does not apply in relation to the estate of a person to whom Division 2 applies.

24. Schedule 5 Division 2 inserted

At the end of Schedule 5 insert:

Division 2 — Transitional matters in connection with *Mental Health Act 2014*

7. Estates being managed by Public Trustee under Division 1

- (1) Subclause (2) applies to a person whose estate was, immediately before the day on which the *Mental Health Legislation Amendment Act 2014* section 24 commences (the *prescribed day*) —
 - (a) under the care and management of the Public Trustee as provided by clause 1; or
 - (b) being managed by the Public Trustee as provided by clause 2 or because of clause 5.
- (2) The person is taken to be under an administration order appointing the Public Trustee as the administrator of the person's estate.
- (3) Despite any other provision of this Act or any provision of the *Public Trustee Act 1941*, the Public Trustee has the same functions, duties and powers in relation to the person's estate that the Public Trustee had immediately before the prescribed day.

- (4) An administration order referred to in subclause (2) must be reviewed under section 84 on or within 3 years after the prescribed day.
- (5) The Public Trustee must, on or as soon as practicable after the prescribed day, give to the Public Advocate and the State Administrative Tribunal a list of the persons to whom subclause (2) applies.

Division 3 — *Hospitals and Health Services Act 1927* amended

25. Act amended

This Division amends the *Hospitals and Health Services Act 1927*.

26. Section 2 amended

- (1) In section 2(1) insert in alphabetical order:

Chief Psychiatrist has the meaning given in the *Mental Health Act 2014* section 4;

- (2) Delete section 2(1a) and insert:

- (1A) In the definition of *hospital* in subsection (1), illness includes mental illness (as defined in the *Mental Health Act 2014* section 4) but this subsection does not affect any requirement under that Act that a person be detained at an authorised hospital (as defined in section 4 of that Act) or at another place.

27. Section 4 amended

In section 4 delete “*Mental Health Act 1996*,” and insert:

Mental Health Act 2014,

28. Section 26DA amended

- (1) In section 26DA(2) delete “*Mental Health Act 1996*” and insert:

Mental Health Act 2014

- (2) After section 26DA(2) insert:

- (3A) The CEO cannot endorse a licence unless the Chief Psychiatrist recommends the endorsement.

29. Section 26FA amended

- (1) In section 26FA(1)(b)(i) delete “*Mental Health Act 1996*; or” and insert:

Mental Health Act 2014; or

- (2) After section 26FA(1) insert:

- (2A) The CEO must consult the Chief Psychiatrist before deciding whether or not to cancel an endorsement.

30. Section 26P amended

In section 26P delete the definition of *mental illness* and insert:

mental illness has the meaning given in the *Mental Health Act 2014* section 4;

31. Section 26Q amended

In section 26Q(2)(d)(ii) delete “Chief Psychiatrist referred to in section 8 of the *Mental Health Act 1996*.” and insert:

Chief Psychiatrist.

Division 4 — Other Acts amended

Subdivision 1 — *Anatomy Act 1930* amended

32. Act amended

This Subdivision amends the *Anatomy Act 1930*.

33. Section 8 amended

In section 8:

- (a) delete “the inspector general of the insane,”;
- (b) delete “hospitals for the insane.” and insert:

an authorised hospital as defined in the *Mental Health Act 2014* section 4.

Subdivision 2 — *Bail Act 1982* amended

34. Act amended

This Subdivision amends the *Bail Act 1982*.

35. Schedule 1 Part D clause 2 amended

(1) In Schedule 1 Part D clause 2(3a):

- (a) before “examined” (1st and 2nd occurrences) insert:

assessed or

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Part 4 Amendments to other Acts

Division 4 Other Acts amended

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(b) delete paragraph (a) and insert:

(a) that the accused be assessed, either by a medical practitioner or by an authorised mental health practitioner as defined in the *Mental Health Act 2014* section 4, for the purpose of deciding whether to make a referral under section 26 of that Act;

(c) in paragraph (b) delete “*Mental Health Act 1996*);” and insert:

Mental Health Act 2014 section 4);

(2) In Schedule 1 Part D clause 2(5) delete “counsel or examine” and insert:

counsel, assess or examine

(3) In Schedule 1 Part D clause 2(7) delete the definition of *psychiatrist* and insert:

psychiatrist has the meaning given in the *Mental Health Act 2014* section 4.

Subdivision 3 — *Carers Recognition Act 2004* amended

36. Act amended

This Subdivision amends the *Carers Recognition Act 2004*.

37. Section 5 amended

In section 5(1)(b) delete “*Mental Health Act 1996* section 3; or” and insert:

Mental Health Act 2014 section 4; or

Subdivision 4 — *Constitution Acts Amendment Act 1899* amended

38. Act amended

This Subdivision amends the *Constitution Acts Amendment Act 1899*.

39. Schedule V Part 1 Division 1 amended

In Schedule V Part 1 Division 1 delete the item relating to the Mental Health Review Board and insert:

Member of the Mental Health Tribunal established by the *Mental Health Act 2014*.

40. Schedule V Part 3 amended

In Schedule V Part 3 delete the item relating to the Council of Official Visitors.

Subdivision 5 — *Coroners Act 1996* amended

41. Act amended

This Subdivision amends the *Coroners Act 1996*.

42. Section 3 amended

In section 3 in the definition of *person held in care* delete paragraph (c) and insert:

- (c) a person —
 - (i) who is an involuntary patient under the *Mental Health Act 2014*; or
 - (ii) who is apprehended or detained under that Act; or
 - (iii) who is absent without leave from a hospital or other place under section 97 of that Act;
- or

Subdivision 6 — *Court Security and Custodial Services Act 1999* amended

43. Act amended

This Subdivision amends the *Court Security and Custodial Services Act 1999*.

44. Section 3 amended

- (1) In section 3 delete the definition of *medical treatment* and insert:

medical treatment includes —

- (a) psychiatric treatment, which is treatment as defined in the *Mental Health Act 2014* section 4; and
- (b) dental treatment;

(2) In section 3 in the definition of *person in custody* delete paragraph (b) and insert:

- (b) a person who is detained under the *Mental Health Act 2014* unless the person has been apprehended by a police officer —
 - (i) under section 99 of that Act pursuant to an apprehension and return order made under section 98 of that Act; or
 - (ii) under section 149 of that Act pursuant to a transport order made under that Act; or
 - (iii) under section 156 of that Act, and is placed in a lock-up while arrangements are being made by a police officer to take the person to a place as required under that Act;

45. Section 4 amended

In section 4(2) delete “under an order made under section 34, 41, 71, 84 or 195 of the *Mental Health Act 1996*.” and insert:

by a police officer —

- (a) under section 99 of the *Mental Health Act 2014* pursuant to an apprehension and return order made under section 98 of that Act; or
- (b) under section 149 of that Act pursuant to a transport order made under that Act; or
- (c) under section 156 of that Act.

46. Section 76 amended

In section 76 delete “under the *Mental Health Act 1996*.” and insert:

as required under the *Mental Health Act 2014*.

Subdivision 7 — *The Criminal Code* amended

47. Act amended

This Subdivision amends *The Criminal Code*.

48. Section 149 amended

In section 149:

- (a) in paragraph (a) delete “*Mental Health Act 1996*” and insert:

Mental Health Act 2014

- (b) in paragraph (b)(ii) delete “*Mental Health Act 1996*” and insert:

Mental Health Act 2014 section 97

49. Section 336 amended

In section 336 delete “*Mental Health Act 1996*” and insert:

Mental Health Act 2014 section 4)

50. Section 337 amended

In section 337 delete “*Mental Health Act 1996*” and insert:

Mental Health Act 2014 section 4)

Subdivision 8 — *Criminal Investigation Act 2006* amended

51. Act amended

This Subdivision amends the *Criminal Investigation Act 2006*.

52. Section 142 amended

(1) Delete section 142(7)(a)(ii) and insert:

(ii) under the *Mental Health Act 2014*
section 157;

(2) Delete section 142(8)(c)(ii) and insert:

(ii) the *Mental Health Act 2014* section 157;
or

Subdivision 9 — *Cross-border Justice Act 2008* amended

53. Act amended

This Subdivision amends the *Cross-border Justice Act 2008*.

54. Section 95 amended

In section 95 in the definition of ***State authorised hospital***
delete “*Mental Health Act 1996* section 3;” and insert:

Mental Health Act 2014 section 4;

Subdivision 10 — *Dangerous Sexual Offenders Act 2006* amended

55. Act amended

This Subdivision amends the *Dangerous Sexual Offenders Act 2006*.

56. Section 3 amended

In section 3(1) delete the definition of *psychiatrist* and insert:

psychiatrist has the meaning given in the *Mental Health Act 2014* section 4;

Subdivision 11 — *Electoral Act 1907* amended

57. Act amended

This Subdivision amends the *Electoral Act 1907*.

58. Section 40 amended

Delete section 40(1)(b)(i) and insert:

- (i) who, from information supplied by the Registrar of Births, Deaths and Marriages, appear to be dead; or
- (ii) who, from information supplied by the chief executive officer (as defined in the *Prisons Act 1981* section 3(1)) appear to be disqualified; or

59. Section 51A amended

Delete section 51A(4) and insert:

- (4A) A person's name is taken to have been removed from a roll pursuant to this section if, immediately before the

day on which the *Mental Health Legislation Amendment Act 2014* Part 4 Division 4 Subdivision 11 commences, the person's name did not appear on the roll because it had been removed from the roll under section 51AA(1a) of this Act as in force before that day.

- (4) The power of removal conferred on the Electoral Commissioner by subsection (1) does not extend to a person in respect of whom a guardianship or administration order is in force under the *Guardianship and Administration Act 1990*.

60. Section 51AA amended

- (1) Delete section 51AA(1a).
- (2) In section 51AA(2) delete “subsection (1), or a determination referred to in subsection (1a),” and insert:

subsection (1)

Subdivision 12 — *Gaming and Wagering Commission Act 1987* amended

61. Act amended

This Subdivision amends the *Gaming and Wagering Commission Act 1987*.

62. Section 12 amended

Delete section 12(11)(a).

Subdivision 13 — *Health and Disability Services (Complaints) Act 1995* amended

63. Act amended

This Subdivision amends the *Health and Disability Services (Complaints) Act 1995*.

64. Section 3A replaced

Delete section 3A and insert:

3A. Act to be read with other legislation about health and disability complaints

This Act is to be read with the following —

- (a) the *Disability Services Act 1993* Part 6;
- (b) the *Mental Health Act 2014* Part 19 Divisions 3 and 4.

Subdivision 14 — *Health Legislation Administration Act 1984* amended

65. Act amended

This Subdivision amends the *Health Legislation Administration Act 1984*.

66. Section 3 amended

In section 3 in the definition of *prescribed officer* delete “section 6(1)(b), (c) or (d)” and insert:

section 6(1)(b) or (c)

67. Section 6 amended

- (1) In section 6(1):
- (a) in paragraph (c) delete “Services;” and insert:

Services,
 - (b) delete paragraph (d).
- (2) Delete section 6(4) and insert:
- (4) A person cannot be appointed to hold or act in an office referred to in subsection (1)(b) or (c) unless the person is registered under the *Health Practitioner Regulation National Law (Western Australia)* in the medical profession.

Subdivision 15 — *Juries Act 1957* amended

68. Act amended

This Subdivision amends the *Juries Act 1957*.

69. Section 5 amended

Delete section 5(3)(d)(i) and insert:

- (i) an involuntary patient as defined in the *Mental Health Act 2014* section 4;

Subdivision 16 — *Land Administration Act 1997* amended

70. Act amended

This Subdivision amends the *Land Administration Act 1997*.

71. Section 21 amended

In section 21(2)(b) delete “is suffering from a mental disorder or mental illness, or is an intellectually handicapped person, within the meaning of the *Mental Health Act 1962*,” and insert:

has a mental disability as defined in the *Guardianship and Administration Act 1990* section 3(1),

Subdivision 17 — *National Health Funding Pool Act 2012* amended

72. Act amended

This Subdivision amends the *National Health Funding Pool Act 2012*.

73. Section 16 amended

In section 16(1)(b) delete “*Mental Health Act 1996*.” and insert:

Mental Health Act 2014.

Subdivision 18 — *Parliamentary Commissioner Act 1971* amended

74. Act amended

This Subdivision amends the *Parliamentary Commissioner Act 1971*.

75. Section 17A amended

In section 17A(4) delete “the Director, Psychiatric Services appointed under section 6(1)(d) of the *Health Legislation Administration Act 1984*” and insert:

the CEO as defined in the *Health Legislation Administration Act 1984* section 3

Subdivision 19 — *Perth Theatre Trust Act 1979* amended

76. Act amended

This Subdivision amends the *Perth Theatre Trust Act 1979*.

77. Section 6 amended

Delete section 6(1)(e).

Subdivision 20 — *Protective Custody Act 2000* amended

78. Act amended

This Subdivision amends the *Protective Custody Act 2000*.

79. Section 4 amended

In section 4(2) delete “section 195 of the *Mental Health Act 1996*.” and insert:

the *Mental Health Act 2014* section 156.

80. Section 10 amended

Delete section 10(2)(a) and insert:

- (a) the apprehended person is referred under the *Mental Health Act 2014* section 26(2) or (3)(a) for an examination by a psychiatrist at an authorised hospital or another place; or

Subdivision 21 — *Public Trustee Act 1941* amended

81. Act amended

This Subdivision amends the *Public Trustee Act 1941*.

82. Section 12 amended

In section 12(8) delete “idiot, or lunatic, or of unsound mind or” and insert:

has a mental disability as defined in the *Guardianship and Administration Act 1990* section 3(1) or is

83. Section 49 amended

In section 49(2) delete “clause 1(1) or (2) or 2(1) or (2)” and insert:

clause 1(1) or (2) or 2(1) or (2) or 7(2)

84. Section 54 amended

In section 54(2) delete “any insane patient, insane person, or represented person,” and insert:

a person who has a mental illness (as defined in the *Mental Health Act 2014* section 4) or represented person

Subdivision 22 — *Spent Convictions Act 1988* amended

85. Act amended

This Subdivision amends the *Spent Convictions Act 1988*.

86. Schedule 3 clause 1 amended

In Schedule 3 clause 1(7) delete the Table and insert:

Table

1. A person who is employed in or seconded to, or who is being considered for employment in or secondment to, the Department of Health or the Mental Health Commission under any of the following —
 - (a) the *Health Act 1911*;
 - (b) the *Hospitals and Health Services Act 1927*;
 - (c) the *Mental Health Act 2014*;
 - (d) the *Alcohol and Drug Authority Act 1974*.
2. A person who is placed, or who is being considered for placement, as a student undertaking a practicum or in an unpaid capacity in the Department of Health or the Mental Health Commission.

Subdivision 23 — *University Medical School, Teaching Hospitals, Act 1955* amended

87. Act amended

This Subdivision amends the *University Medical School, Teaching Hospitals, Act 1955*.

88. Section 5 amended

In section 5(2):

- (a) delete paragraph (c) and insert:
 - (c) the Chief Psychiatrist (as defined in the *Mental Health Act 2014* section 4) or a person nominated by the Chief Psychiatrist; and

- (b) in paragraph (d) delete “*Mental Health Act 1996.*” and insert:

Mental Health Act 2014.

Subdivision 24 — *Young Offenders Act 1994* amended

89. Act amended

This Subdivision amends the *Young Offenders Act 1994*.

90. Section 179 amended

In section 179(1) delete the definition of ***medical treatment*** and insert:

medical treatment includes psychiatric treatment, which is treatment as defined in the *Mental Health Act 2014* section 4.

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