



Western Australia

Criminal Law (Mental Impairment) Act 2023

Criminal Law (Mental Impairment) Act 2023

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Defined terms

Western Australia

Criminal Law (Mental Impairment) Act 2023

An Act —

- **to make provision in relation to criminal proceedings involving persons with mental impairment; and**
- **to provide for special criminal proceedings for persons who are unfit to stand trial; and**
- **to provide for the supervision of persons who, in special criminal proceedings, are found to have committed an offence; and**
- **to provide for the supervision of persons acquitted on account of mental impairment; and**
- **to provide for the safe reintegration into the community of persons supervised under this Act; and**
- **to repeal the *Criminal Law (Mentally Impaired Accused) Act 1996* and the *Criminal Law (Mentally Impaired Accused) Regulations 1997*; and**
- **for related purposes.**

Part 1 — Preliminary

Division 1 — Introduction

1. Short title

This is the *Criminal Law (Mental Impairment) Act 2023*.

2. Commencement

This Act comes into operation as follows —

- (a) Part 1 — 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.

Division 2 — General overview

3. Overview of Act

- (1) This Part provides for preliminary matters, including —
 - (a) the objects of this Act and the principles and considerations to which persons performing functions under this Act must have regard; and
 - (b) the interpretation of terms and expressions used in this Act.
- (2) Part 2 provides for certain general matters appropriately dealt with at the beginning of this Act, including provisions that —
 - (a) address matters that can take place in the initial stages of criminal proceedings; or
 - (b) have a bearing on many of the provisions that follow including, importantly, aspects of the interaction of this Act with the *Mental Health Act 2014*.

- (3) Part 3 provides for —
- (a) raising and deciding the question of whether an accused is fit to stand trial; and
 - (b) the court procedures, including special proceedings, for dealing with an unfit accused.

- (4) If a person is acquitted on account of mental impairment in an ordinary criminal proceeding or is so acquitted on appeal, and therefore must be dealt with under this Act, Part 4 provides that the court must deal with the accused under Part 5 of this Act.

Note for this subsection:

The *Criminal Procedure Act 2004* section 149(1) and the *Criminal Appeals Act 2004* sections 30(5), 32(7) and 32A(6) set out the requirement to deal with such acquitted accused under this Act.

- (5) Part 5 provides for the orders that can be made by a court in relation to an accused who —
- (a) has been acquitted on account of mental impairment; or
 - (b) although not fit to stand trial, has been found to have committed an offence.

Note for this subsection:

The court can release the person unconditionally (in some circumstances), or impose a community supervision order or custody order.

- (6) Part 6 provides for the administration, by the Mental Impairment Review Tribunal, of the orders to which supervised persons are subject.

Note for this subsection:

A supervised person is a person subject to a supervision order made under this Act.

- (7) Part 7 provides, in effect, for the extension of custody and community supervision orders by the Supreme Court if the court is satisfied that it is necessary on grounds that relate to the protection of the community.

- (8) Part 8 provides for mental health advocacy services for unfit accused and supervised persons, unless those services can be provided under the *Mental Health Act 2014* or the *Declared Places (Mental Impairment) Act 2015*.
- (9) Part 9 provides for victim impact statements and victim submissions to be given or made to a relevant court or the Mental Impairment Review Tribunal.
- (10) Part 10 provides for the Mental Impairment Review Tribunal, its jurisdiction, membership, procedures and related matters.
- (11) Part 11 provides for —
 - (a) the transfer of supervised persons to another State or Territory in which a corresponding law is in force; and
 - (b) the transfer to the State and disposition of persons subject to an interstate supervision order; and
 - (c) the interaction between that Part and other transfer related laws.
- (12) Part 12 provides for appeals to the Court of Appeal against certain decisions of courts other than courts of summary jurisdiction.
- (13) Part 13 includes provisions relating to electronic monitoring of supervised persons, the protection and sharing of information, interactions between supervision orders and sentences, and other provisions of general application.
- (14) Part 14 repeals the *Criminal Law (Mentally Impaired Accused) Act 1996* and provides for the transition from the repealed Act to this Act.

4. Overview: supervision orders

- (1) Supervision orders are —
 - (a) custody and community supervision orders made under Part 5;

- (b) custody orders made under Part 6 in the course of the administration of a supervision order under that Part; see section 89(1);
 - (c) interim and extended custody and community supervision orders made under Part 7;
 - (d) community supervision orders made under Part 7 in the course of the review of an extended custody order under that Part; see section 110(4) or 121(3);
 - (e) interim dispositions made under Part 11 for a person subject to an interstate supervision order who is transferred to the State;
 - (f) custody and community supervision orders made under Part 11 on review by the Supreme Court of an interim disposition; see section 206(3)(a) and (b).
- (2) Other than interim dispositions, which are made by the Minister, supervision orders are made by a court.
- (3) The custody and community supervision orders referred to in subsection (1)(a) can be made following —
- (a) an ordinary criminal proceeding in which the accused is acquitted on account of mental impairment; or
 - (b) an appeal under the *Criminal Appeals Act 2004* in which the offender is acquitted on account of mental impairment; or
 - (c) a special proceeding under Part 3 Division 3.
- (4) Although custody and community supervision orders referred to in subsection (1)(b), (d) and (f) are not made under Part 5, Part 5 (to the extent relevant) applies to their making; see sections 89(5), 110(5), 121(4) and 206(5).
- (5) Although interim and extended custody and community supervision orders, and interim dispositions, are not custody or community supervision orders as defined, Part 6 (to the extent

relevant) applies to the administration of them; see sections 107(4), 108(4), 109(2), 113(2) and 205(4) and (5).

5. Overview: appeals and internal review

- (1) Relevant decisions, findings and orders of courts in ordinary criminal proceedings and in proceedings under Parts 3 and 5 are appealable under the *Criminal Appeals Act 2004*.
- (2) The results of those appeals can include that the accused must be dealt with under this Act; see Part 4.
- (3) Part 6 Division 7 provides for —
 - (a) internal review of decisions of the Tribunal in the administration of supervision orders under Part 6; and
 - (b) appeals to the Supreme Court against decisions of courts of summary jurisdiction relating to making, cancelling or confirming custody orders and community supervision orders; and
 - (c) appeals to the Supreme Court against some initial decisions of the Tribunal and most internal review decisions of the Tribunal.
- (4) Part 12 provides for appeals to the Court of Appeal against certain decisions of courts other than courts of summary jurisdiction.

6. Overviews are guide only

The overviews in this Division and the overviews in other Parts of this Act are intended only as a guide to the general scheme and effect of this Act, and do not limit or otherwise affect the other provisions of this Act.

Division 3 — Objects, principles and paramount consideration

7. Objects and principles

- (1) The objects of this Act are as follows —
- (a) to ensure the protection of the community;
 - (b) to ensure persons with mental impairment who are charged with an offence —
 - (i) are identified early in their contact with the justice system; and
 - (ii) are given a reasonable opportunity to become fit to stand trial; and
 - (iii) are given a fair hearing even if they are unfit to stand trial in accordance with ordinary procedures; and
 - (iv) are not found to have committed the offence unless, on the evidence available, it can be proved to the ordinary criminal standard of proof that the person committed the offence; and
 - (v) are subject to the least possible interference with their rights and dignity;
 - (c) to ensure that persons who are subject to supervision orders —
 - (i) are afforded procedural fairness in relation to the administration and management of those orders; and
 - (ii) are reintegrated into the community in a safe manner.
- (2) A person performing a function under this Act (including when constituting or a member of a court or tribunal) must have regard to the following principles —

Criminal Law (Mental Impairment) Act 2023

Part 1 Preliminary

Division 3 Objects, principles and paramount consideration

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- (a) that persons with mental impairment should be subject to the least possible restriction on their freedom consistent with the protection of the community;
- (b) that persons with mental impairment in the justice system should have access to advocacy services;
- (c) that persons with mental impairment in the justice system should be provided with the best possible treatment, care and support;
- (d) that persons with mental impairment in the justice system should be dealt with in a manner that is culturally appropriate;
- (e) that persons with mental impairment in the justice system should not be subject to outcomes under this Act that restrict their freedom more severely than if they had been convicted of the offence that they have been found to have, or are alleged to have, committed;
- (f) that there should be special provision to ensure the fair treatment of children with mental impairment who have been found to have, or are alleged to have, committed offences;
- (g) that detaining a child with mental impairment for an offence, whether before or after the child is found to have committed the offence, should only be used as a last resort and, if required, should only be used for as short a time as is necessary;
- (h) that the detention of a child, if required, should be in a facility that is for, and suitable for, children;
- (i) that if a child who has not reached the age of 16 years is detained in a facility in which an adult is detained, the child should not be exposed to contact with an adult detained in the facility;

- (j) that if a child who has reached the age of 16 years is detained in a facility in which an adult is detained, the child should not share living quarters with an adult detained in the facility;
- (k) that victims of offences committed by persons with mental impairment should have the opportunity to be acknowledged and heard;
- (l) that the role of carers and families in the treatment, care and support of persons with mental impairment should be recognised.

8. Paramount consideration

The paramount consideration of a person when performing a function under this Act (including when constituting or a member of a court or tribunal) is the protection of the community.

Division 4 — Interpretation

9. Terms used

- (1) In this Act —

accused means a person charged with an offence, and includes a person —

- (a) acquitted on account of mental impairment or in respect of whom a finding under section 41(2)(c) has been made; but
- (b) in respect of whom no order has yet been made under section 46;

administrator means —

- (a) an administrator as defined in the *Guardianship and Administration Act 1990* section 3(1); and
- (b) a donee of an enduring power of attorney as those terms are defined in the *Guardianship and Administration Act 1990* section 102;

advocacy services officer has the meaning given in the *Mental Health Act 2014* section 374(1);

audio link has the meaning given in the *Criminal Procedure Act 2004* section 3(1);

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

carer has the meaning given in the *Carers Recognition Act 2004* section 5;

CEO means the chief executive officer of the Department;

CEO (Corrections) means the chief executive officer of the department of the Public Service principally assisting in the administration of the *Sentence Administration Act 2003* Part 8;

CEO (Young Offenders) means the chief executive officer of the department of the Public Service principally assisting in the administration of the *Young Offenders Act 1994*;

charge has the meaning given in the *Criminal Procedure Act 2004* section 3(1);

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

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

child means a person who is under 18 years of age;

child-specific considerations means the considerations set out in section 10;

close family member has the meaning given in the *Mental Health Act 2014* section 281;

community has a meaning affected by subsection (3);

community corrections officer has the meaning given in the *Sentence Administration Act 2003* section 4(2);

Community Services Department means the department of the Public Service principally assisting in the administration of the *Children and Community Services Act 2004*;

community supervision order (CSO) means an order of a kind referred to in section 52 made under —

- (a) section 46(1)(b); or
- (b) section 110(4); or
- (c) section 121(3); or
- (d) section 206(3)(b);

custody order (CO) means an order of a kind referred to in section 49 made under —

- (a) section 46(1)(a); or
- (b) section 89(1); or
- (c) section 206(3)(a);

declared place means a place to which a declaration under section 60 applies;

Department means the department of the Public Service principally assisting in the administration of this Act;

Deputy President means a Deputy President of the Tribunal;

detention centre has the meaning given in the *Young Offenders Act 1994* section 3;

Disability Services Commission means the Disability Services Commission referred to in the *Disability Services Act 1993* section 6;

DSC declared place means a declared place that is controlled and managed by or on behalf of the Disability Services Commission under the *Declared Places (Mental Impairment) Act 2015*;

enduring guardian has the meaning given in the *Guardianship and Administration Act 1990* section 3(1);

experienced lawyer has the meaning given in section 155;

extended community supervision order means an order made under section 114(1);

extended custody order means an order made under section 110(1);

extended order means an extended community supervision order or an extended custody order;

guardian means —

- (a) a guardian as defined in the *Guardianship and Administration Act 1990* section 3(1); and
- (b) an enduring guardian;

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

hospital order means an order made under section 19;

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

interim community supervision order means an order made under section 108(2);

interim custody order means an order made under section 107(2);

interim disposition has the meaning given in section 200;

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;

leave of absence order has the meaning given in section 77(1);

limiting term —

- (a) for a custody order — means the term set under section 50(2); and
- (b) for an extended custody order — means the term set under section 110(1);

member means a member of the Tribunal;

mental health advocate 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;

mental impairment means any of, or a combination of, the following —

- (a) an intellectual disability;
- (b) a mental illness as defined in *The Criminal Code* section 1(1);
- (c) an acquired brain injury;
- (d) dementia;

Minister for Corrective Services means the Minister to whom the administration of the *Prisons Act 1981* is committed;

parent, in relation to a child, includes any person who has parental responsibility (as defined in the *Family Court Act 1997* section 68) for the child;

personal information means information or an opinion, whether true or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion;

prescribed means prescribed by regulations made under this Act;

President means the President of the Tribunal;

prison has the meaning given in the *Prisons Act 1981* section 3(1);

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;

Public Advocate has the meaning given in the *Guardianship and Administration Act 1990* section 3(1);

remuneration has the meaning given in the *Salaries and Allowances Act 1975* section 4(1);

representative, of a supervised person, means any of the following —

- (a) a guardian of the person;
- (b) a person recognised by the Tribunal under section 58 as a representative of the supervised person;

safety of the community has a meaning affected by subsection (4);

serious offence means an offence listed in Schedule 1;

special proceeding means a proceeding under Part 3 Division 3 Subdivision 3;

specified, in relation to an order, instrument or other document made under or referred to in this Act, means specified in that order, instrument or document;

statutory penalty has the meaning given in the *Sentencing Act 1995* section 4(1);

supervised person means a person subject to a supervision order;

supervising officer, for a supervised person, means a person designated under section 99 for the supervised person and, where relevant, includes a person referred to in section 54(2)(a);

supervision order means any of the following —

- (a) a community supervision order;
- (b) a custody order;
- (c) an extended community supervision order;
- (d) an extended custody order;
- (e) an interim community supervision order;
- (f) an interim custody order;
- (g) an interim disposition;

supporting agency has the meaning given in section 219;

support measure means any measure that may facilitate participation of an accused or supervised person in proceedings before a court or the Tribunal, including (without limitation) any of the following —

- (a) that the accused or supervised person, while before the court or Tribunal, have near them a person approved by the court or Tribunal who may provide them with support;
- (b) that the accused or supervised person have a communication partner (as defined in section 21) while communicating with the court or Tribunal;
- (c) that the accused or supervised person communicate with the court or Tribunal through the use of any device (for example, a communication board) approved by the court or Tribunal;

trial does not include —

- (a) a proceeding in relation to bail; or
- (b) a sentencing proceeding; or
- (c) a special proceeding;

Tribunal means the Mental Impairment Review Tribunal established by section 156;

underlying custody order, in relation to a leave of absence order, means the custody order in respect of which the leave of absence order is made;

unfit accused means an accused who is currently unfit to stand trial or in respect of whom the question of fitness to stand trial has been raised but has yet to be resolved;

victim, of an offence, has the meaning given in section 142;

video link has the meaning given in the *Criminal Procedure Act 2004* section 3(1);

working day means a day other than a Saturday, a Sunday or a public holiday.

- (2) A reference to varying conditions of an order includes a reference to —
 - (a) imposing new conditions on the order; and
 - (b) cancelling 1 or more, but not all, conditions of the order.
- (3) A reference to the community includes any community and is not limited to the community of Western Australia or Australia.
- (4) A reference to the safety of the community includes a reference to the safety of an individual in the community.

10. Child-specific considerations

For the purposes of this Act, the child-specific considerations are —

- (a) the age and level of maturity of the child;
- (b) the availability of a responsible person (as defined in the *Bail Act 1982* Schedule 1 Part C clause 2) to care for the child;
- (c) any requirement that the child attend school or educational or vocational training;
- (d) the availability of accommodation for the child;
- (e) any involvement in relation to the child of the Community Services Department;
- (f) the best interests of the child.

11. Commission of offence: persons who have been acquitted on account of mental impairment

- (1) A reference in this Act to the commission of an offence includes, in relation to a person who has been acquitted of the offence on account of mental impairment, a reference to the doing of the act or the making of the omission that would have constituted the offence of which the person was acquitted.

Part 2 — General provisions

Division 1 — Courts' procedures

14. Application of *Criminal Procedure Act 2004* to proceedings under Pt. 3 and 5

- (1) The *Criminal Procedure Act 2004* applies, with the necessary modifications, to and in relation to proceedings under Parts 3 and 5 and a court may, for the purposes of particular proceedings, modify the application of that Act to and in relation to the proceedings.
- (2) Without limiting subsection (1), the definition of **prosecution** in the *Criminal Procedure Act 2004* section 3(1) is to be read as including proceedings under Part 3.
- (3) Regulations may modify the application of the *Criminal Procedure Act 2004* to and in relation to proceedings under Parts 3 and 5.
- (4) To the extent of any inconsistency between this Act and the *Criminal Procedure Act 2004*, this Act prevails.

15. Adjournments

- (1) A court has a general power to adjourn proceedings under this Act at any time.
- (2) A court that adjourns proceedings under this Act in respect of a person may —
 - (a) remand the person in custody subject to the *Bail Act 1982*; or
 - (b) grant the person bail in accordance with the *Bail Act 1982*; or
 - (c) make a hospital order; or

- (d) if the person is an involuntary inpatient — order that the person be returned to the hospital at which they are detained.

Division 2 — Interaction with *Mental Health Act 2014*

16. Criminal law applies to involuntary patients

Except to the extent that this Act provides otherwise, the fact that a person is an involuntary patient under the *Mental Health Act 2014* does not affect the operation of this Act, or the operation of the criminal law, in respect of the person.

17. Person in custody may be made involuntary patient

- (1) In this section —
custodial order means any of the following —
 - (a) an order remanding an accused in custody;
 - (b) a hospital order under which a person is in custody in accordance with section 19(3)(c)(ii);
 - (c) a custody order;
 - (d) an interim or extended custody order;
 - (e) an interim disposition under section 205(1)(a).
- (2) This Act does not prevent a person who is in custody under a custodial order from being made an involuntary patient.
- (3) If an inpatient treatment order is made in respect of a person who is in custody under a custodial order, the person must be detained at a hospital in accordance with the *Mental Health Act 2014*.
- (4) If a person to whom subsection (3) applies is released from the hospital, the person must be detained in custody in accordance with the custodial order.

- (5) Subsection (3) does not apply to a supervised person required to be detained at an authorised hospital under —
- (a) a custody order; or
 - (b) an interim or extended custody order; or
 - (c) an interim disposition under section 205(1)(a).

Note for this subsection:

The detention, leave of absence and release of such a person is governed by this Act and not the *Mental Health Act 2014* Part 7; see section 82 of that Act.

18. Supervised person in community may be made involuntary patient

This Act does not prevent a person living in the community under 1 of the following from being made an involuntary patient —

- (a) a community supervision order;
- (b) an interim or extended community supervision order;
- (c) a leave of absence order;
- (d) an interim disposition under section 205(1)(b).

19. Court may make hospital order in respect of accused

- (1) This section applies if an accused has been refused bail under the *Bail Act 1982*.
- (2) A judicial officer (as defined in the *Bail Act 1982* section 3(1)) may make an order under this section (a ***hospital order***) in respect of the accused if the judicial officer reasonably suspects that —
- (a) the accused has a mental illness for which the accused is in need of treatment; and
 - (b) 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) the accused does not have the capacity to consent to treatment.
- (3) A hospital order is an order that the accused —
- (a) must be taken to and detained at an authorised hospital; and
 - (b) must be examined by a psychiatrist; and
 - (c) following the examination, must, until brought before the court in accordance with subsection (4), be detained —
 - (i) if, as a result of the examination, an inpatient treatment order is made in respect of the accused — at a hospital;
 - (ii) in any other case — in custody.
- (4) A hospital order must specify a day, that is not more than 7 days after the day on which the order is made, for the accused to be brought before the court specified in the order.
- (5) 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, subject to subsections (3) and (4), that Act applies accordingly.
- (6) An accused who, while required to be detained at an authorised hospital under a hospital order, is away from the hospital without lawful authority, may be apprehended and returned, either under an order under the *Mental Health Act 2014* Part 7 Division 5 or on the basis that they have escaped lawful custody.
- (7) A hospital order must not be made if the accused is subject to an inpatient treatment order.

Division 3 — Communication with accused and supervised persons

20. Communication and support measures

- (1) For the purposes of this section, communication with a person includes the provision to a person of any advice, explanation, information, notification or reasons.
- (2) Communication with an accused or supervised person under this Act must be in a language, form of communication and terms that the person is likely to understand using any means of communication that is practicable and using an interpreter if necessary and practicable.
- (3) For the purposes of proceedings before a court or the Tribunal, the court or Tribunal may order that an accused or supervised person be provided with any support measure that is reasonably available.

21. Appointment of communication partner for accused or supervised person

- (1) If, during proceedings before a court or the Tribunal, an accused or supervised person is to give evidence or otherwise communicate with the court or Tribunal, the court or Tribunal may appoint a person (a *communication partner*) to perform the function described in subsection (2).
- (2) The function of a communication partner is, when requested by the court or Tribunal, to —
 - (a) communicate and explain to the accused or supervised person, any questions put to the accused or supervised person; and
 - (b) communicate and explain to the court or Tribunal, the information given by the accused or supervised person.

- (3) The court or Tribunal can only appoint a person as a communication partner if it considers that the person is suitable and competent.
- (4) A communication partner must take an oath or make a declaration, in a form that the court or Tribunal considers appropriate, that they will faithfully perform their function under subsection (2).
- (5) A communication partner who, while performing or purportedly performing a function under subsection (2), makes a statement to the accused or supervised person or to the court or Tribunal that the person knows is false or misleading in a material particular commits a crime.
Penalty for this subsection: imprisonment for 5 years.
Summary conviction penalty for this subsection: imprisonment for 2 years and a fine of \$24 000.
- (6) The regulations may provide for matters relating to communication partners, including the kinds of qualifications and experience that a court or the Tribunal must have regard to when considering whether to appoint a communication partner.

Division 4 — Submissions by close family members and carers

22. Submission by close family members and carers

- (1) This section applies in relation to proceedings before a court or the Tribunal under Part 5, 6, 7 or 11.
- (2) A close family member or carer of the accused or supervised person may make a submission to the court or Tribunal in relation to the treatment, care and support of the person.
- (3) A submission must be in writing.
- (4) A submission may include suggestions about the conditions that should apply to the accused or supervised person.

- (5) A court may rule as inadmissible the whole or any part of a submission.
- (6) The Tribunal must establish procedures for the giving of submissions.
- (7) In exercising its jurisdiction, the Tribunal may have regard to a submission received by it and may give the submission such weight as it sees fit.

Division 5 — Reports under this Act

23. Reports to include information about treatment, training or other measures

If, under this Act, a person is required to make an assessment of, or report on, the mental state of an accused or a supervised person, the person must include in the report the following information —

- (a) the nature of any treatment, training or other measures provided in relation to the person's condition;
- (b) the reasons for the treatment, training or other measures;
- (c) the response to the treatment, training or other measures;
- (d) the prescribed information.

**Division 2 — Raising and deciding question of fitness
of accused**

26. Accused who is unfit to stand trial

An accused is unfit to stand trial on a charge of an offence if the accused, because of mental impairment, is unable to do 1 or more of the following —

- (a) understand the nature of the charge;
- (b) give instructions to a legal practitioner representing the accused;
- (c) understand the requirement to plead to the charge or the effect of a plea;
- (d) understand the purpose of a trial;
- (e) understand or exercise the right to challenge jurors;
- (f) follow the course of the trial;
- (g) understand the substantial effect of evidence presented by the prosecution in the trial;
- (h) decide whether to give evidence, or to give evidence if they wish to do so;
- (i) properly defend the charge.

27. Presumptions as to fitness to stand trial

- (1) An accused is presumed to be fit to stand trial until the contrary is found under this Division.
- (2) An accused found under this Division to be unfit to stand trial is presumed to remain unfit until the contrary is found under this Division.

28. When the question of fitness to stand trial may be raised

- (1) The question of whether an accused is unfit to stand trial may be raised at any time before or during a trial.

- (2) The question may be raised by the defence, the prosecution or the court on its own initiative.
- (3) The question may be raised more than once but, if the question is raised a second or subsequent time, it need not be considered unless the court is satisfied that new facts have been discovered, new circumstances have arisen or the circumstances have changed since the question was last raised.

29. Deciding question of fitness to stand trial

- (1) The question of whether an accused is unfit to stand trial is to be decided on the balance of probabilities by a court constituted by a magistrate or judge sitting alone.
- (2) The court deciding the question may inquire into the question and inform itself in any way that it considers appropriate.
- (3) For the purpose of the inquiry the court may do any of the following —
 - (a) order that the accused be examined by a psychiatrist, psychologist or other appropriate expert;
 - (b) order that a report about the accused by an expert be submitted to the court;
 - (c) adjourn the proceedings and, if there is a jury, discharge it;
 - (d) make any other order the court considers appropriate.
- (4) The court may make a report about the accused available to the prosecutor and to the accused, on any conditions the court considers appropriate.
- (5) In deciding the question, the court may have regard to the extent to which support measures that are, in the court's opinion, reasonably available would enable the accused to be fit to stand trial.

30. Chief Mental Health Advocate to be notified

If proceedings are adjourned under section 29(3)(c), the court must immediately notify, and give the prescribed information to, the Chief Mental Health Advocate.

31. Determining question of fitness if charge to be dealt with on indictment

- (1) Subsection (2) applies if the question of whether an accused is unfit to stand trial is raised in 1 of the following circumstances —
- (a) the accused is before the Magistrates Court and —
 - (i) the accused is charged with an indictable offence; and
 - (ii) the charge is to be dealt with on indictment by the District Court or the Supreme Court;
 - (b) the accused is before the Children’s Court and —
 - (i) the accused is charged with an indictable offence; and
 - (ii) the charge is, because of the *Children’s Court of Western Australia Act 1988* section 19B(1) or 19C(1), to be dealt with on indictment by the District Court or the Supreme Court;
 - (c) the accused is before the Children’s Court and —
 - (i) the accused is charged with an indictable offence; and
 - (ii) the charge is, because of the *Children’s Court of Western Australia Act 1988* section 19D, to be dealt with by the Magistrates Court.
- (2) If this subsection applies the court must reserve the question for determination by the court that is to deal with the charge.

32. Fit to stand trial with support measures

If a court finds that an accused is fit to stand trial while the accused has access to support measures, those support measures, to the extent that they remain necessary for the person to be fit, must be made available to the accused throughout the trial.

Division 3 — Procedure following finding of unfitness

Subdivision 1 — Application of Division

33. Division applies to accused found unfit

This Division applies when a court finds an accused to be unfit to stand trial.

34. Application of *Young Offenders Act 1994*

Nothing in this Division prevents an accused who is a young person (as defined in the *Young Offenders Act 1994* section 3) from being dealt with under Part 5 of that Act unless a finding has been made under section 41(2) of this Act.

Subdivision 2 — General procedure

35. Opportunity for accused to become fit to stand trial

- (1) If, after making the finding that the accused is unfit to stand trial (the *finding of unfitness*), the court is satisfied on the balance of probabilities that the accused will not become fit to stand trial within 6 months, the court must make an order under section 37.
- (2) If the court is not satisfied under subsection (1), the court must adjourn the proceedings in order to see whether the accused will become fit to stand trial.

- (3) The court may adjourn proceedings under subsection (2) for any period or periods that the court considers appropriate, but not beyond the period of —
 - (a) 6 months after the finding of unfitness; or
 - (b) if the court is satisfied that there are exceptional circumstances that justify a longer period or periods of adjournment — 12 months after the finding of unfitness.
- (4) If, at any time after adjourning the proceedings under subsection (2), the court becomes satisfied on the balance of probabilities that the accused will not become fit to stand trial within the period of 6 months after the finding of unfitness, or any period of adjournment extending beyond the 6 months, the court must make an order under section 37.
- (5) If the accused has not become fit at the end of the period of 6 months after the finding of unfitness, or any period of adjournment extending beyond the 6 months, the court must make an order under section 37.

36. Chief Mental Health Advocate to be notified

If proceedings are adjourned under section 35(2), the court must immediately notify, and give the prescribed information to, the Chief Mental Health Advocate.

37. Court to make orders as to how charge against unfit accused to be dealt with

- (1) This section applies if the court must, under section 35, make an order under this section.
- (2) In the case of a charge of a simple offence or an indictable offence that was to be dealt with summarily, the court must either —
 - (a) discharge the accused from the charge; or
 - (b) order that a special proceeding take place under Subdivision 3.

- (3) In any other case, the court must order that a special proceeding take place under Subdivision 3.
- (4) If the accused is discharged under subsection (2)(a), the accused cannot be charged with or tried for an offence which, on the charge, the accused might have been found to have committed.

38. Legal representation of unfit accused

- (1) If it appears to the court that the accused should have legal representation, the court may (on application or its own initiative) adjourn proceedings until the accused is represented by a legal practitioner.
- (2) If the accused is unable to instruct their legal practitioner, the legal practitioner may exercise an independent discretion and, in doing so, must act in a way that they reasonably believe to be in the accused's best interests.
- (3) If there is a question as to the extent to which the accused is able to instruct a legal practitioner or is able to make admissions, the question must be determined by the court.

39. Procedure for deciding if accused has become fit to stand trial

Sections 28 and 29 apply, with the necessary modifications, in relation to the question of whether the accused has become fit to stand trial.

40. Trial to continue if accused found fit to stand trial

If, after finding that the accused is unfit to stand trial, the court finds that the accused is fit to stand trial, the trial must be resumed in accordance with ordinary procedures.

Subdivision 3 — Special proceedings

41. Nature of special proceedings

- (1) The purpose of a special proceeding is for the court, constituted by a magistrate or judge sitting alone, to decide the charge against the accused, on the evidence available.
- (2) In deciding the charge the court may find that the accused —
 - (a) is not guilty (other than as described in paragraph (b)); or
 - (b) is not guilty on account of mental impairment under *The Criminal Code* section 27; or
 - (c) committed the offence charged or another offence which, on the charge, the accused might be found to have committed.
- (3) To find that the accused committed an offence, the court must be satisfied beyond a reasonable doubt.
- (4) The decision of the court must include the reasons for its decision but the validity of a decision is not affected by a failure to comply with this subsection.

42. Conduct of special proceedings

- (1) A special proceeding may be conducted in the manner that the court considers appropriate in the circumstances of the case, including without holding a hearing.
- (2) However, the court must, to the extent practicable, endeavour to conduct the proceeding as if it were an ordinary criminal proceeding.
- (3) In determining the manner in which a special proceeding is to be conducted, the court must confer with the parties to the proceeding.

- (4) Without limiting subsection (1), for the purposes of a special proceeding —
- (a) the accused is taken to plead not guilty; and
 - (b) the accused may raise any defence that the accused could raise at a trial; and
 - (c) the rules of evidence apply, subject to any modifications determined by the court; and
 - (d) the accused may give evidence.
- (5) Subsection (4)(d) does not imply that the court must hold a hearing.

43. Effect of findings

- (1) If a finding is made under section 41(2)(a), the accused is taken for all purposes to have been found not guilty at a criminal trial.
- (2) If a finding is made under section 41(2)(b), the accused is taken for all purposes to have been found not guilty on account of mental impairment under *The Criminal Code* section 27 at a criminal trial.
- (3) If a finding is made under section 41(2)(c) —
- (a) the court must not enter a judgment of conviction; and
 - (b) in relation to a simple offence or an indictable offence that was to be dealt with summarily — the accused cannot be charged with or tried for an offence which, on the charge, the accused might have been found to have committed; and
 - (c) in relation to an indictable offence other than an offence that was to be dealt with summarily — the finding does not prevent the accused from being charged with and tried for an offence which, on the charge, the accused might have been found to have committed.

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- (4) If a finding is made under section 41(2)(a) or (b), the court must enter judgment accordingly.
- (5) If a finding is made under section 41(2)(b) or (c), the court must make an order under Part 5 in respect of the accused.

Part 4 — Persons required to be dealt with under this Act

44. **Persons acquitted on account of mental impairment or found to have committed offence**

- (1) If a court must deal with a person under this Act because of the *Criminal Procedure Act 2004* section 149(1), the court must make an order under Part 5 in respect of the accused.
- (2) If a court must deal with a person under this Act because of the *Criminal Appeals Act 2004* section 30(5), 32(7) or 32A(6) (including as referred to in section 14 of that Act), the court must make an order under Part 5 in respect of the accused.

Note for this section:

This section applies when —

- (a) a person is acquitted on account of mental impairment, either at trial or on appeal; and
- (b) on appeal, a person is found under section 41(2)(c) to have committed an offence.

Part 5 — Court-ordered dispositions

Division 1 — Overview of Part

45. Overview of Part

- (1) This Part provides for the orders that can be made by a court in relation to —
 - (a) an accused who has been acquitted on account of mental impairment, whether in a trial or in a special proceeding under Part 3 Division 3 for unfit accused; and
 - (b) an accused who, in a special proceeding under Part 3 Division 3 for unfit accused, has been found to have committed an offence.
- (2) Three types of orders can be made —
 - (a) a CO;
 - (b) a CSO;
 - (c) an order that the accused be released unconditionally.
- (3) An accused subject to a CO or a CSO is a supervised person.
- (4) Under this Part, the court, if it does not release the accused unconditionally, determines what type of order the accused will be subject to, the term of the order and, for a CSO, may impose conditions. Under Part 6 the Tribunal then administers the order including, for a CO, determining the place of custody.
- (5) This Part (to the extent relevant) also applies to the making of COs and CSOs under Parts 6, 7 and 11 as if these orders were made under this Part; see sections 89(5), 110(5), 121(4) and 206(5).
- (6) A CO ceases to have effect in accordance with section 51, and a CSO in accordance with section 56.

- (7) This Part includes a requirement, under section 48, to notify the Chief Mental Health Advocate of the making of a CO or CSO.

Division 2 — Orders that may be made by court

46. Orders that may be made

- (1) If a court must make an order under this Part in respect of an accused, it must —
- (a) make a custody order; or
 - (b) make a community supervision order; or
 - (c) order that the person be released unconditionally.
- (2) Subject to subsection (3), a custody order must be made in respect of a person if the offence that the person is found to have committed was a serious offence, unless —
- (a) the court is satisfied on the balance of probabilities that any risk that the person appears to present to the safety of the community can be adequately managed under a community supervision order; or
 - (b) the person was, at the time of the commission of the offence, a child and the court is satisfied that there are exceptional circumstances.
- (3) A custody order must not be made in respect of a person unless the statutory penalty for the offence is or includes imprisonment.
- (4) An order that the person be released unconditionally cannot be made in respect of a person if the offence that the person is found to have committed was a serious offence unless the person was, at the time of the commission of the offence, a child and the court is satisfied that there are exceptional circumstances.

47. Orders that may be made: considerations

- (1) When making an order under this Part, the court must have regard to the following —
 - (a) the protection of the community;
 - (b) the nature of the offence and the circumstances of its commission;
 - (c) the person’s character, antecedents, age and health;
 - (d) the nature of the person’s mental impairment;
 - (e) the relationship between the mental impairment and the offending conduct;
 - (f) the degree of risk that the person appears to present to themselves or the safety of the community because of their mental impairment;
 - (g) the extent to which adequate resources are available for the treatment, care and support of the person in the community;
 - (h) if the person is a child — the child-specific considerations;
 - (i) if the person was a child at the time of the commission of the offence — the general principles of juvenile justice set out in the *Young Offenders Act 1994* section 7.
- (2) Subsection (1) does not limit the matters to which the court may have regard.
- (3) The court may require a prosecutor to provide copies of documents relevant to the factors to be considered under subsection (1)(b) and (c).
- (4) The court may order that a report by a psychiatrist, psychologist or other appropriate expert about any of the matters referred to in subsection (1) be submitted to the court.

48. Court to notify Tribunal and Chief Mental Health Advocate of orders

If a court makes a custody order or a community supervision order, the court must immediately —

- (a) notify the Tribunal and the Chief Mental Health Advocate that the order has been made; and
- (b) give the Tribunal and the Chief Mental Health Advocate a copy of the order and the prescribed information.

Division 3 — Custody orders

49. Custody orders

A custody order is an order that, subject to this Act, a person be detained in custody at a place determined from time to time by the Tribunal under Part 6 Division 3 for the protection of the community.

50. Limiting term for custody order

- (1) In this section —

term of detention means a term of detention under the *Young Offenders Act 1994*;

term of imprisonment means term as defined in the *Sentencing Act 1995* section 85(1).

- (2) If a court makes a custody order, the court must set a limiting term for the order, being the best estimate of the term of imprisonment or term of detention that the court would, in all the circumstances, have imposed if —
- (a) the court were sentencing the person for the offence; and
 - (b) any mental impairment of the person were not taken into account.

- (3) For the purposes of subsection (2), the court must assume that —
- (a) the person had pleaded guilty to the charge at the earliest opportunity; and
 - (b) there is no other option but to impose a term of imprisonment or term of detention.
- (4) The limiting term commences on the day on which the order is made unless the court, after taking into account any time that the person has already spent in custody in relation to the offence, orders that the term be taken to have commenced on an earlier day.

51. When custody order ceases to have effect

A custody order has effect until the earliest of the following —

- (a) its limiting term expires;
- (b) it is cancelled under section 74;
- (c) if a leave of absence order applies to the person subject to the custody order — an order of the Tribunal under section 73(1)(d)(iii) cancelling all of the conditions of the leave of absence order comes into effect.

Division 4 — Community supervision orders

52. Community supervision orders

A community supervision order is an order that a person, while residing in the community, must comply with the conditions of the order for the protection of the community.

53. Term of community supervision order

- (1) The term of a community supervision order must be set by the court and must not be more than 5 years.

- (2) The term of a community supervision order begins on the day on which the order is made.

54. Conditions of community supervision order: statutory conditions

- (1) It is a condition of a community supervision order that the supervised person be under the supervision of a supervising officer designated for the person, which includes complying with the lawful directions of the officer.
- (2) It is a condition of a community supervision order that the supervised person must —
- (a) on the next working day after the day on which the order is made, report to a community corrections officer or, if the person is a child, an officer of the Department (as defined in the *Young Offenders Act 1994* section 3) assigned by the CEO (Young Offenders) for the child; and
 - (b) be under the supervision of the officer; and
 - (c) comply with the lawful directions of the officer until a supervising officer is designated for the person.
- (3) The powers of an officer referred to in subsection (2) are, when performing functions under that subsection, those of a supervising officer under this Act.

55. Conditions of community supervision order: court imposed conditions

- (1) A court making a community supervision order may impose any conditions on the order that it considers are necessary to protect the community.
- (2) Without limiting subsection (1), if the supervised person is a child the court must have regard to the child-specific considerations.

- (3) Without limiting subsection (1), the kinds of conditions that may be imposed include the following —
- (a) that the person undergo treatment, training or other measures that may alleviate, or prevent the deterioration of, the person's condition;
 - (b) that the person reside at a specified place;
 - (c) that the person notify the supervising officer of any change to the person's name or place of residence within a specified number of days after the change;
 - (d) that the person not leave the State except with, and in accordance with, the permission of the supervising officer;
 - (e) that the person be subject to electronic monitoring under section 221 or a curfew under section 222 or both;
 - (f) that the person comply with a specified requirement relating to the protection of a victim of an offence committed by the person;
 - (g) if the person is a child — conditions relevant to the child-specific considerations.

Example for paragraph (f):

A requirement preventing the person from coming into contact with the victim.

- (4) A condition subjecting a person to electronic monitoring —
- (a) cannot be imposed unless the court has received a report from the CEO (Corrections) about the suitability of electronic monitoring in relation to the person; and
 - (b) cannot be imposed on a person who is a child.

56. When community supervision order ceases to have effect

A community supervision order has effect until the earliest of the following —

- (a) its term expires;
- (b) it is cancelled under section 74 or 89(1);
- (c) an order of the Tribunal under section 73(1)(c)(ii) cancelling all of the conditions of the community supervision order comes into effect.

Part 6 — Administration of supervision orders by Tribunal

Division 1 — Preliminary matters

57. Overview of Part

- (1) Under this Part, the Tribunal administers the orders to which supervised persons are subject.
- (2) Supervision orders are —
 - (a) COs and CSOs made under Part 5;
 - (b) COs made under this Part; see section 89(1);
 - (c) CSOs made under Part 7; see section 110(4) and 121(3);
 - (d) interim and extended COs and CSOs made under Part 7;
 - (e) interim dispositions made under Part 11;
 - (f) COs and CSOs made under Part 11; see section 206(3)(a) and (b).
- (3) Under Division 3, the Tribunal determines the place of custody of a person subject to a CO, an interim or extended CO or a relevant interim disposition.
- (4) Under Division 4, the Tribunal must review COs, CSOs and leave of absence orders and, on review, can —
 - (a) for a person subject to a CO — make or cancel a leave of absence order or vary or cancel all of the conditions of a leave of absence order; and
 - (b) for a person subject to a CSO — vary or cancel all of the conditions of the CSO.
- (5) If the Tribunal cancels all of the conditions of a leave of absence order or CSO —
 - (a) in the case of a leave of absence order — the underlying CO ceases; see section 51(c);

- (b) in the case of a CSO — the CSO ceases; see section 56(c).

Notes for this subsection:

1. The Tribunal cannot cancel all of the conditions in the initial period of an order (see section 73(3)) but under section 74 an application may instead be made to the original court.
 2. The Tribunal cannot cancel all of the conditions of a leave of absence order applying in respect of a person subject to an extended CO; see section 109(3).
- (6) If the Tribunal cancels a leave of absence order, the supervised person must again be detained under the underlying CO.
- (7) In the case of a breach of a CSO, the court that made the CSO can make a CO that replaces a CSO if satisfied of the matters in section 89(3). Part 5 (to the extent relevant) applies to the making of the order; see section 89(5).
- (8) Division 7 provides for —
- (a) internal review of decisions of the Tribunal in the administration of supervision orders under this Part; and
 - (b) appeals to the Supreme Court against decisions of courts of summary jurisdiction relating to making, cancelling or confirming COs or CSOs (including for breach of a CSO); and
 - (c) appeals to the Supreme Court against some initial decisions of the Tribunal and most internal review decisions of the Tribunal.
- (9) Although interim and extended orders and interim dispositions are not COs or CSOs as defined, this Part applies (to the extent relevant) to such orders and dispositions; see sections 107(4), 108(4), 109(2), 113(2) and 205(4) and (5).

58. Representative of supervised person

- (1) The Tribunal may recognise as the representative of a supervised person —
- (a) a person chosen by the supervised person; or
 - (b) another person if, in the opinion of the Tribunal —
 - (i) the supervised person is unable to choose a person to be their representative; and
 - (ii) the prospective representative is a person who has a sufficient interest in the person.

Examples for this subsection:

- 1. A carer of the person.
- 2. A family member of the person.

- (2) The Tribunal cannot recognise a person as the representative of a supervised person unless satisfied that the prospective representative is acting without remuneration.
- (3) Remuneration or similar payment as part of the following is disregarded for the purposes of subsection (2) —
- (a) appointment as the Public Advocate;
 - (b) appointment under the *Guardianship and Administration Act 1990* section 94;
 - (c) appointment as the Chief Mental Health Advocate;
 - (d) engagement as a mental health advocate under the *Mental Health Act 2014* section 350.

59. Non-compliance with conditions of orders

For the purposes of this Part, a reference to a condition of a leave of absence order or a community supervision order not having been complied with is not limited to a failure to comply that arises because of an act or omission of the person to whom the order applies.

Division 2 — Declared places

60. Minister may make order as to declared places

The Minister may, by order published in the *Gazette*, declare that a place has appropriate facilities for the assessment, detention, treatment, care and protection of persons subject to a custody order.

Division 3 — Custody orders: places of custody

61. Place of custody to be determined

- (1) Within 5 working days after the day on which a custody order is made, the Tribunal must determine the place where the supervised person is to be detained.
- (2) Subsection (1) has effect subject to section 62.
- (3) Until the Tribunal determines the place where the supervised person is to be detained, the supervised person must be detained —
 - (a) if, when the custody order is made, the person is detained at a hospital (whether under an inpatient treatment order or otherwise) — at a hospital; or
 - (b) in any other case — in a prison or detention centre.

62. Limitations on place of custody

- (1) The Tribunal must not determine that a supervised person is to be detained in a prison or detention centre unless satisfied that there is no available alternative place of custody that would be suitable.
- (2) The Tribunal must not determine that a supervised person is to be detained in a DSC declared place unless —
 - (a) the Tribunal is satisfied that the person is a person with a disability (as defined in the *Disability Services*

- Act 1993* section 3) the predominant reason for which is not mental illness; and
- (b) the Tribunal is satisfied that the person has reached 16 years of age; and
 - (c) the Tribunal has regard to the degree of risk that the person's detention in the declared place appears to present to the safety of the community; and
 - (d) the constitution of the Tribunal includes a member referred to in section 171(1)(f).
- (3) The Tribunal must not determine that a supervised person is to be detained at an authorised hospital unless satisfied that the person has a mental illness that is capable of being treated.
- (4) The Tribunal should not determine that a supervised person is to be detained at an authorised hospital unless —
- (a) the Tribunal is satisfied that the person has a mental illness requiring treatment; and
 - (b) the Tribunal is satisfied that because of the mental illness, there is —
 - (i) a significant risk to the health or safety of the person or to the safety of another person; or
 - (ii) a significant risk of serious harm to the person or to another person;
- and
- (c) the Tribunal is satisfied that the treatment can only be provided satisfactorily at an authorised hospital; and
 - (d) the constitution of the Tribunal includes a member who is a psychiatrist.
- (5) A failure to comply with subsection (4) does not affect the lawfulness of the detention of a person.

63. Tribunal to notify determination of place of custody

- (1) The Tribunal must, within 24 hours of determining a place where a supervised person is to be detained, notify the Chief Mental Health Advocate of the determination.
- (2) If the Tribunal determines that a supervised person is to be detained in a DSC declared place, the Tribunal must, within 5 working days after the day on which the determination is made, notify the Minister to whom the administration of the *Declared Places (Mental Impairment) Act 2015* is committed.

64. Place of custody may be changed

- (1) The Tribunal may change its determination as to the place where a supervised person is to be detained.
- (2) The Tribunal must, as soon as practicable after a supervised person reaches the age of 18 years, consider whether to change its determination as to the place where the person is to be detained.
- (3) Subsection (1) has effect subject to section 62.

Division 4 — Tribunal to review orders

65. Terms used

- (1) In this Division —
CEO (Community Services) means the chief executive officer of the Community Services Department;
reviewable order means —
 - (a) a custody order;
 - (b) a community supervision order;
 - (c) a leave of absence order.

- (2) A reference in this Division to a child in the care of the CEO (Community Services) is a reference to a child who, under the *Children and Community Services Act 2004* section 30(a) or (b), is in the CEO's care.

66. Initial and periodic review

- (1) The Tribunal must carry out a review of a reviewable order —
- (a) in the case of a leave of absence order applying to a supervised person who is a child — not later than 3 months after the order is made; and
 - (b) in the case of a leave of absence order applying to a supervised person who is not a child — not later than 12 months after the order is made; and
 - (c) in any other case — as soon as practicable, but no later than 4 weeks after the order is made.
- (2) The Tribunal must carry out a review of the order —
- (a) if the supervised person is a child — not later than 3 months after the previous review of the order under this Part; or
 - (b) if the supervised person is not a child — not later than 12 months after the previous review of the order under this Part.
- (3) A reference in subsection (2) to a previous review includes a reference to —
- (a) review by the Tribunal under Division 7 of a reviewable decision relating to the order; and
 - (b) an appeal to the Supreme Court under Division 7 against a decision relating to the order.

67. Application for review by supervised person, representative or legal practitioner

- (1) A supervised person, their representative or their legal practitioner may, in writing, make an application to the Tribunal for review of a reviewable order to which the person is subject.
- (2) An application may be made at any time other than within 28 days after the Tribunal makes a decision the making of which involved a consideration of substantially the same issue as would be raised by the proposed application.
- (3) The Tribunal must carry out the review within a reasonable period of time after receiving an application.
- (4) However, the Tribunal may reject an application if the Tribunal is satisfied that the application is vexatious or frivolous.

68. Review by Tribunal on its own initiative

The Tribunal may, at any time, carry out a review of a reviewable order if the Tribunal considers that there are circumstances that justify it doing so.

69. Review at request of Minister

- (1) The Minister may, at any time, request the Tribunal to carry out a review of a reviewable order and report to the Minister on the outcome of that review.
- (2) The Tribunal must carry out the review within a reasonable period of time after receiving the request.
- (3) A request must be in writing.

70. Time of review may be extended in certain cases

- (1) In this section —
relevant decision, in relation to a review, means a decision the making of which involves a consideration of substantially the same issues as would be raised by the review.

- (2) If, within 28 days before the time by which the Tribunal is required under section 66 to carry out a review, the Tribunal has made a relevant decision, the Tribunal may extend the time by which the review is required to not later than 28 days after the decision was made.

71. Notice to supervised persons and CEO of review proceedings

- (1) The Tribunal must, before commencing review proceedings under this Division in relation to a supervised person, give the supervised person, their representative and their legal practitioner —
- (a) adequate notice of the impending proceedings, including the date, time and place of any hearing; and
 - (b) a copy of any reports about the supervised person to which the Tribunal intends to have regard when making a decision under section 73.
- (2) The Tribunal must also give notice of the proceedings to the CEO.
- (3) If the supervised person is a child, the Tribunal must also —
- (a) give notice and copies of reports to a parent of the child and any guardian of the child; and
 - (b) if the child is in the care of the CEO (Community Services) — give notice and copies of reports to that CEO.
- (4) Subsection (1) is subject to any restriction on access to information or documents under section 169 or the *Mental Health Act 2014* section 249.
- (5) Notice and reports under subsection (1) need not be given when the Tribunal is constituted in accordance with section 75(1).
- (6) The validity of a decision of the Tribunal is not affected by a failure to notify in accordance with this section.

72. Matters to be considered on review

- (1) In reviewing a reviewable order, the Tribunal must have regard to the following —
- (a) the degree of risk that the release or unconditional release of the supervised person appears to present to the safety of the community;
 - (b) in the case of a custody order —
 - (i) the likelihood that, if released on conditions under a leave of absence order, the supervised person would be able to comply with those conditions; and
 - (ii) the likelihood that, if so released, the supervised person would be able to take care of their day-to-day needs and, where relevant, obtain appropriate treatment; and
 - (iii) whether there are facilities or services in the community for the treatment, care and support of the supervised person;
 - (c) in the case of a community supervision order or a leave of absence order —
 - (i) the supervised person's ability to comply with the conditions of the order; and
 - (ii) the supervised person's ability to take care of their day-to-day needs and, where relevant, obtain appropriate treatment;
 - (d) the extent to which the supervised person's mental impairment might benefit from, or is benefitting from, particular treatment, training or other measures;
 - (e) the principle of imposing the least possible restriction on the freedom of the supervised person that is consistent with the need to protect the community;
 - (f) any statement received from or on behalf of the supervised person;

- (g) a victim impact statement or a victim's submission under Part 9 that was given or made in respect of the supervised person;
 - (h) any advice from a person with knowledge of issues relating to persons of the cultural background of the supervised person;
 - (i) any information received by the Tribunal under section 48, 122 or 204(4);
 - (j) in the case of a supervised person who is a child — the child-specific considerations;
 - (k) in the case of a supervised person who is a child in the care of the CEO (Community Services) — any submission made by that CEO for the purposes of the review.
- (2) Subsection (1) does not limit the matters to which the Tribunal may have regard.

Note for this section:

The Tribunal may, under section 22, have regard to a submission by a close family member or carer of a supervised person in relation to the treatment, care and support of the supervised person.

73. Orders the Tribunal may make after carrying out review

- (1) After carrying out a review under this Division, the Tribunal may do any of the following —
- (a) confirm the reviewable order and any conditions imposed on it;
 - (b) if the supervised person is subject to a custody order — make, in accordance with section 78, a leave of absence order;

- (c) if the supervised person is subject to a community supervision order —
 - (i) vary, in accordance with section 86, the conditions of the order (other than the conditions referred to in section 54); or
 - (ii) cancel all of the conditions of the order (including the conditions referred to in section 54);
- (d) if a leave of absence order applies to the supervised person —
 - (i) cancel the order; or
 - (ii) vary, in accordance with section 78, the conditions of the order (other than the condition referred to in section 78(2)); or
 - (iii) cancel all of the conditions of the order (including the condition referred to in section 78(2)).

Notes for this subsection:

1. If all of the conditions of a community supervision order are cancelled, the order ceases to have effect; see section 56(c).
 2. If a leave of absence order is cancelled, the supervised person must be detained under the underlying custody order; see section 82.
 3. If all of the conditions of a leave of absence order are cancelled, the underlying custody order ceases to have effect; see section 51(c).
 4. However, despite paragraph (d)(iii), the Tribunal cannot cancel all of the conditions of a leave of absence order —
 - (a) in the initial period of the order; see subsection (3); or
 - (b) if the underlying order is an extended custody order; see section 109(3).
- (2) The Tribunal cannot make an order under subsection (1)(c)(ii) or (1)(d)(iii) unless the Tribunal is satisfied that it is no longer necessary, for the protection of the community, for the supervised person to be subject to the order.

- (3) The Tribunal cannot make an order under subsection (1)(c)(ii) or (1)(d)(iii) within —
- (a) if the term of the community supervision order or custody order underlying the leave of absence order is 2 years or more — the first 12 months of the term of the order; or
 - (b) if the term of the community supervision order or custody order underlying the leave of absence order is less than 2 years — the first half of the term of the order.

74. Court may cancel certain orders

- (1) If the Tribunal cannot make an order under section 73(1)(c)(ii) or (d)(iii) because of section 73(3), the Tribunal may —
- (a) in the case of an order under section 73(1)(c)(ii) — apply to the court that made the community supervision order to cancel the community supervision order; or
 - (b) in the case of an order under section 73(1)(d)(iii) — apply to the court that made the custody order underlying the leave of absence order to cancel the custody order.
- (2) The court may cancel the community supervision order or custody order if satisfied that the order is no longer necessary for the protection of the community, otherwise the court must confirm the order.
- (3) The supervised person and the Minister are also parties to proceedings under this section.

75. Truncated review in serious and urgent cases

- (1) For the purposes of this Division, the Tribunal may be constituted by the President or a Deputy President if the President or Deputy is satisfied that the seriousness and urgency of the circumstances require that the Tribunal's jurisdiction under section 73 be exercised at a time before it is practicable to constitute the Tribunal in accordance with section 158.

- (2) The Tribunal, when constituted in accordance with subsection (1) —
- (a) need only have regard to those matters that are immediately relevant, despite section 72; and
 - (b) cannot cancel all conditions of a community supervision order or leave of absence order, despite section 73.

76. Copy of order and reasons for decision to be given to certain persons

- (1) As soon as practicable after making an order under section 73, the Tribunal must give a copy of the order and the reasons for its decision to each of the following —
- (a) the supervised person;
 - (b) if the supervised person has a guardian or an administrator — the guardian or administrator;
 - (c) if the supervised person is represented by a legal practitioner — the legal practitioner;
 - (d) if the supervised person has a representative — the representative;
 - (e) if the supervised person is a child — a parent of the child;
 - (f) if the supervised person is a child in the care of the CEO (Community Services) — that CEO;
 - (g) the Minister.
- (2) As soon as practicable after making an order under section 73 of a particular type, the Tribunal must give a copy of the order and the reasons for its decision to a person prescribed in relation to orders of that type, unless the regulations provide otherwise.

Division 5 — Custody orders: leave of absence

77. Leave of absence orders

- (1) A *leave of absence order* is an order that a supervised person be released from a place of custody —
 - (a) for a period or periods specified by the Tribunal; and
 - (b) for a purpose or purposes specified by the Tribunal; and
 - (c) on conditions specified by the Tribunal.
- (2) Without limiting subsection (1)(b), the purposes that may be specified include —
 - (a) receiving medical or dental treatment;
 - (b) cultural or compassionate purposes;
 - (c) reintegration into the community.
- (3) A period specified should not, to the extent practicable, exceed that which is necessary for the purpose or purposes specified.
- (4) A leave of absence order does not have effect after the limiting term for the custody order expires.

78. Tribunal making or varying leave of absence orders

- (1) The Tribunal may, when making a leave of absence order under section 73(1)(b), impose any conditions on the order that it considers are necessary to protect the community.
- (2) It is a condition of a leave of absence order that the supervised person be under the supervision of a supervising officer designated for the person, which includes complying with the lawful directions of the officer.
- (3) The Tribunal must, under section 99, designate a person as the supervising officer for the supervised person.
- (4) The Tribunal may, when varying the conditions of a leave of absence order under section 73(1)(d)(ii), impose further

conditions on the order that it considers are necessary to protect the community.

- (5) Without limiting subsection (1) or (4), the kinds of conditions that may be imposed include the following —
- (a) that the person undergo treatment, training or other measures that may alleviate, or prevent the deterioration of, the person's condition;
 - (b) that the person reside at a specified place;
 - (c) that the person notify the supervising officer of any change to the person's name or place of residence within a specified number of days after the change;
 - (d) that the person not leave the State except with, and in accordance with, the permission of the supervising officer;
 - (e) that the person be subject to electronic monitoring under section 221 or a curfew under section 222 or both;
 - (f) that the person comply with a specified requirement relating to the protection of a victim of an offence committed by the person;
 - (g) if the person is a child — conditions relevant to the child-specific considerations.

Example for paragraph (f):

A requirement preventing the person from coming into contact with the victim.

- (6) A condition subjecting a person to electronic monitoring —
- (a) cannot be imposed unless the Tribunal has received a report from the CEO (Corrections) about the suitability of electronic monitoring in relation to the person; and
 - (b) cannot be imposed on a person who is a child.

79. Effect of certain leave of absence orders

- (1) This section applies to a supervised person to whom a leave of absence order applies unless the person is required by the underlying custody order to be detained at an authorised hospital.
- (2) If the leave of absence order does not require that the person return to a place of custody at the end of the period of leave, the person is not to be regarded as a person who is required by the underlying custody order to be detained at a place of custody.

80. Notifying Tribunal about breach of leave of absence order

- (1) This section applies to the following —
 - (a) a person who is a supervising officer;
 - (b) a person within a class of person prescribed for the purposes of this section.
- (2) A person to whom this section applies must advise the Tribunal as soon as practicable after forming a reasonable suspicion that a condition of a leave of absence order has not been complied with.

81. Breach of conditions of leave of absence order

- (1) This section applies if the Tribunal reasonably suspects that a condition of a leave of absence order has not been complied with.
- (2) The Tribunal may review the order under Division 4.
- (3) The Tribunal may cancel the order without first carrying out a review under Division 4 if satisfied that the seriousness and urgency of the circumstances require that it do so.
- (4) For the purposes of this section, the Tribunal may be constituted by the President or a Deputy President if the President or Deputy is satisfied that the seriousness and urgency of the circumstances require that the Tribunal's jurisdiction under this

section be exercised at a time before it is practicable to constitute the Tribunal in accordance with section 158.

82. Cancelled leave of absence order

- (1) If a leave of absence order is cancelled under section 73(1)(d)(i) or 81(3) —
 - (a) the Tribunal must issue a warrant for the arrest of the supervised person; and
 - (b) the supervised person to whom the leave of absence order applied must be arrested and detained under the custody order to which the person is subject; and
 - (c) if necessary, the person's place of custody must be determined under Division 3.
- (2) Subsection (1) need not be complied with to the extent that it is not relevant.

83. Absence without leave from place of custody

- (1) A supervised person is absent without leave if the person —
 - (a) is away from a place at which the person is required to be detained, without lawful authority; or
 - (b) having been away from such a place with lawful authority, fails to return to the place, or another place at which the person is required to be detained, when the authority to be absent ceases.
- (2) A supervised person who is absent without leave may be apprehended by any of the following —
 - (a) a person who —
 - (i) is employed at the place of custody from which the person is absent; and
 - (ii) has the prescribed qualifications;

- (b) a person who —
 - (i) although not employed at the place of custody, is authorised by a person referred to in paragraph (a); and
 - (ii) has the prescribed qualifications;
 - (c) a police officer.
- (3) A person apprehending a supervised person under subsection (2) must, as soon as practicable, take the supervised person to the place from which the supervised person is absent.

84. Relationship of Division to other Acts

- (1) The *Prisons Act 1981* Part VIII does not apply to authorise the absence of a supervised person from a prison unless the reason for the absence is —
 - (a) the facilitation of the provision of medical or health services to the person; or
 - (b) the furthering of the interests of justice.
- (2) The *Young Offenders Act 1994* section 188(4) does not apply to authorise the absence of a supervised person from a detention centre unless the reason for the absence is to attend, or travel to or from, a court, medical or dental practitioner or a hospital.

Note for this section:

Under the *Mental Health Act 2014* section 82, Part 7 of that Act (which deals with detention at, release from and leave from authorised hospitals and other places) does not apply in relation to a supervised person required to be detained at an authorised hospital under this Act.

Division 6 — Community supervision orders

85. Tribunal to designate supervising officer

Within 5 working days after the day on which a court makes a community supervision order, the Tribunal must, under section 99, designate a person as a supervising officer for the supervised person.

86. Tribunal varying conditions on community supervision order

- (1) The Tribunal may, when varying the conditions of a community supervision order under section 73(1)(c)(i) —
 - (a) vary conditions imposed under section 55; and
 - (b) impose conditions of a kind described in section 55(3).
- (2) When considering varying the conditions of a community supervision order, the Tribunal must have regard to the following —
 - (a) the supervised person’s rehabilitation, retraining or resocialisation requirements;
 - (b) the ways in which any risk that the supervised person appears to present to the safety of the community could be further reduced;
 - (c) measures that could be implemented to improve the supervised person’s mental or physical health;
 - (d) whether there are facilities or services in the community for the treatment, care and support of the supervised person;
 - (e) in the case of a supervised person who is a child — the child-specific considerations.
- (3) A condition subjecting a person to electronic monitoring —
 - (a) cannot be imposed unless the Tribunal has received a report from the CEO (Corrections) about the suitability of electronic monitoring in relation to the person; and
 - (b) cannot be imposed on a person who is a child.

87. Notifying Tribunal about breach of conditions of community supervision order

- (1) This section applies to the following —
 - (a) a person who is a supervising officer;

(b) a person within a class of person prescribed for the purposes of this section.

(2) A person to whom this section applies must advise the Tribunal as soon as practicable after forming a reasonable suspicion that a condition of a community supervision order has not been complied with.

88. Breach of conditions of community supervision order

(1) This section applies if the Tribunal reasonably suspects that a condition of a community supervision order has not been complied with.

(2) The Tribunal may review the order under Division 4.

(3) The Tribunal must apply to the court that made the community supervision order (the *relevant court*) for an order under section 89 if —

(a) it reasonably suspects that there is a significant risk to the health or safety of a person; and

(b) the statutory penalty for the offence in respect of which the community supervision order was made is or includes imprisonment; and

(c) it is satisfied that a custody order should be sought in relation to the supervised person.

(4) If the Tribunal makes an application it must, as soon as practicable, give notice of the application, together with the prescribed details, to the supervised person, their representative and their legal practitioner.

(5) If the Tribunal makes an application, the Tribunal may issue a warrant to have the supervised person arrested for the purposes of bringing the person before the relevant court.

89. Court's powers to deal with breach of conditions of community supervision order

- (1) If, on application under section 88, the relevant court is satisfied of the matters in subsection (3), it must cancel the community supervision order and make a custody order in relation to the supervised person and the offence in relation to which the community supervision order was made.
- (2) However, if the court is not so satisfied, it must confirm the community supervision order.
- (3) The matters, for the purposes of subsection (1), are —
 - (a) that a condition of the community supervision order has not been complied with; and
 - (b) the failure to comply indicates a significant risk to the health or safety of a person; and
 - (c) that the risk cannot be adequately managed under the community supervision order.
- (4) When considering the matter in subsection (3)(b), the relevant court must have regard to the extent to which the supervised person has complied with the conditions of the community supervision order.
- (5) Part 5, to the extent relevant, applies to the making of a custody order under this section as if the order were being made under Part 5.
- (6) When determining, under section 50, when the limiting term for the custody order commences, the relevant court must take into account any time the supervised person has already spent in custody in relation to the failure to comply with the conditions of the community supervision order.
- (7) Confirmation of a community supervision order under subsection (2) does not prevent the Tribunal from exercising its jurisdiction under Division 4 in relation to the order.

- (8) Proceedings under this section are civil proceedings.
- (9) The supervised person and the Minister are also parties to proceedings under this section.
- (10) The relevant court may issue a warrant for the arrest of the person subject to the community supervision order if the person fails to appear at the hearing of an application under section 88.

Division 7 — Review of and appeals against certain decisions

Subdivision 1 — Internal review by Tribunal

90. Term used: reviewable decision

In this Subdivision —

reviewable decision means a decision of the Tribunal under section 73.

91. Internal review of Tribunal decision

- (1) If a reviewable decision is made about a supervised person, the person, their representative or their legal practitioner may, within 28 days after the day on which the decision is made, request the Tribunal to review the decision.
- (2) A request for review must —
 - (a) be in writing; and
 - (b) state the grounds for the request; and
 - (c) include any submissions that the applicant wants to make to the Tribunal about the decision.
- (3) Application may be made to the Tribunal for an extension of the period referred to in subsection (1) (whether before or after its expiry), and the Tribunal may grant the extension if there is sufficient reason to do so.

- (4) Once a request for review is made, the Tribunal must —
 - (a) consider any submissions included with the request; and
 - (b) review the decision within 28 days after the day on which the request is made; and
 - (c) do 1 of the following —
 - (i) confirm the decision;
 - (ii) vary the decision;
 - (iii) cancel the decision and make another decision;
 - (iv) cancel the decision and refer the matter to the Tribunal that made the decision for further consideration.
- (5) The Tribunal must, when exercising its jurisdiction under this Subdivision, be constituted by the President or a Deputy President who is an experienced lawyer.
- (6) On review, the Tribunal must give the applicant written notice of the decision, with reasons for the decision.

92. Nature of review proceedings

- (1) The review of a reviewable decision is to be by way of a hearing de novo, and it is not confined to matters that were before the Tribunal when making the reviewable decision but may involve the consideration of new material whether or not it existed at the time the reviewable decision was made.
- (2) The purpose of the review is to produce the correct and preferable decision at the time of the review.
- (3) The reasons for the reviewable decision, or any grounds for review set out in the application, do not limit the Tribunal in conducting the review of the reviewable decision.

Subdivision 2 — Appeals to Supreme Court

93. Appeals against certain decisions

- (1) A supervised person may, with the leave of the court, appeal to the Supreme Court against the following —
 - (a) a decision of a court of summary jurisdiction to confirm a custody order or community supervision order under section 74;
 - (b) a decision of a court of summary jurisdiction under section 89 —
 - (i) to make a custody order; or
 - (ii) determining the limiting term for a custody order;
 - (c) a decision of the Tribunal under section 91, other than a decision under that section on a decision of the Tribunal under section 73(1)(c)(i) or (d)(ii).
- (2) The Minister may, with the leave of the court, appeal to the Supreme Court against the following —
 - (a) a decision of a court of summary jurisdiction to cancel a custody order or community supervision order under section 74;
 - (b) a decision of a court of summary jurisdiction under section 89 to confirm a community supervision order;
 - (c) a decision of the Tribunal under any of the following —
 - (i) section 73(1)(b);
 - (ii) section 73(1)(c)(ii);
 - (iii) section 73(1)(d)(iii);
 - (iv) section 91, other than a decision under that section on a decision of the Tribunal under section 73(1)(c)(i) or (d)(ii).

- (3) An appeal is commenced by lodging with the Supreme Court an application for leave to appeal that sets out the grounds of the appeal.
- (4) An appeal against a decision cannot be commenced later than 21 days after the day on which the decision is made.
- (5) The Supreme Court may decide whether or not to give leave to appeal —
 - (a) with or without written or oral submissions from the parties to the appeal; and
 - (b) before or at the hearing of, or when giving judgment on, the appeal.
- (6) The Supreme Court may extend the time limit in subsection (4) in a particular case, and the extension may be given even though the time limit has passed.
- (7) A party commencing an appeal must notify the Tribunal.

94. Arrest of person subject to custody order

- (1) Subsection (2) applies if the Minister commences an appeal under section 93 against —
 - (a) a decision of a court to cancel a custody order; or
 - (b) a decision of the Tribunal under section 73(1)(b) to make a leave of absence order; or
 - (c) a decision of the Tribunal under section 91 to make, or confirm the making of, a leave of absence order.
- (2) The Supreme Court may issue a warrant for the arrest of the person who was subject to the custody order, or to whom the leave of absence order applies, if satisfied that it is necessary to do so because of the risk that the person appears to present to the safety of the community.

- (3) A person arrested under a warrant under subsection (2) must, as soon as practicable, be returned to their place of custody under the custody order.

95. Grounds of appeal

The grounds of an appeal are —

- (a) that the court or Tribunal —
- (i) made an error of law or of fact, or of both law and fact; or
 - (ii) acted without jurisdiction or in excess of its jurisdiction;
- or
- (b) that there is another sufficient reason for hearing an appeal against the decision.

96. Dealing with appeal

- (1) An appeal is by way of rehearing.
- (2) When dealing with an appeal, the Supreme Court may make any order it considers appropriate.
- (3) The Supreme Court, in deciding an appeal, may do 1 of the following —
- (a) confirm the decision;
 - (b) vary the decision;
 - (c) set aside the decision and make any decision that the court or Tribunal could have made in the proceedings;
 - (d) set aside the decision and send the matter back to the court or Tribunal for reconsideration, either with or without the hearing of further evidence, in accordance with any directions or recommendations that it considers appropriate.

- (4) If the Supreme Court sends the matter back to the court or Tribunal, it may give directions as to the constitution of the court or Tribunal.

97. Effect of appeal on decision appealed against

- (1) An appeal against a decision does not affect the operation of the decision or prevent the taking of action to implement the decision unless the Supreme Court orders otherwise.
- (2) Without limiting subsection (1), the Supreme Court may, by order, stay the operation of a decision pending the determination of an application for leave to appeal against the decision and of any appeal.

Subdivision 3 — Effect of decisions made on, or as a consequence of, review or appeal

98. Effect of decisions made on, or as a consequence of, review or appeal

- (1) The fact that a decision is made on reconsideration as required under section 91(4)(c)(iv) or 96(3)(d) does not prevent the decision from being open to review or appeal under this Division.
- (2) The rest of this section applies to and in relation to a decision (the *original decision*) described in section 90 or 93(1) or (2).
- (3) The original decision as confirmed or varied by the Tribunal or the Supreme Court under this Division, or a decision of the Tribunal or the Supreme Court substituted under this Division for the original decision —
- (a) is to be regarded as, and has effect as, a decision of the original decision maker; and
 - (b) unless the Tribunal or Supreme Court (as is relevant) orders otherwise — is to be regarded as having effect, or having had effect, from the time when the original decision would have, or would have had, effect.

- (4) Despite subsection (3)(a), the decision as confirmed, varied or substituted is not again open to review or appeal under this Division.

Division 8 — Supervising officers

99. Supervising officers

- (1) When designating, for the purposes of section 78(3) or 85, a person as a supervising officer for a supervised person, the Tribunal must be satisfied that the person to be designated is suitably qualified and experienced.
- (2) The functions of the supervising officer in relation to the supervised person include —
- (a) assisting in the determination of appropriate conditions for the supervised person; and
 - (b) supervising, at the direction of the Tribunal, the supervised person, which includes giving lawful directions to the supervised person; and
 - (c) reporting to the Tribunal about the supervised person in accordance with the directions of the Tribunal.
- (3) If the supervised person dies, the supervising officer must, upon being informed of that, immediately notify the Tribunal of the death.
- (4) The President may make arrangements with any person or a department of the Public Service or any statutory authority (as defined in the *Financial Management Act 2006* section 3) for the purpose of, or in connection with, designating a person as a supervising officer.
- (5) A person may be designated as a supervising officer for a supervised person for a fixed or unspecified period.
- (6) The Tribunal may at any time cancel the designation of a person as a supervising officer either generally or in relation to a supervised person.

Part 7 — Extended custody and community supervision orders

Division 1 — Preliminary matters

100. Overview of Part

- (1) This Part provides for extended COs or CSOs to replace existing COs, CSOs or extended orders.
- (2) The Tribunal must, before a CO, CSO or extended order expires, consider and report to the Minister on the need for an extended order to replace the existing order; see Division 2.
- (3) The Supreme Court may, on application by the Minister, make an extended CO or CSO if satisfied that it is necessary on grounds that relate to the protection of the community; see Divisions 5 and 6.
- (4) The Supreme Court may make an interim CO or CSO pending the resolution of an application for an extended CO or CSO; see Division 4.
- (5) An extended CO must be periodically reviewed by the Supreme Court, which must either confirm the order or cancel it; see Division 7.
- (6) If, on an initial application or on review, the Supreme Court is not satisfied that an extended CO is necessary, it may make a CSO instead; see sections 110 and 121.

Note for this subsection:

Such a CSO is not an extended CSO, and Part 5 (to the extent relevant) applies to the making of the CSO; see sections 110(5) and 121(4).

- (7) Although interim and extended orders are not COs or CSOs as defined, Part 6 applies (to the extent relevant) to such orders; see sections 107(4), 108(4), 109(2) and 113(2).

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Part 7 Extended custody and community supervision orders

Division 2 Tribunal to consider and report on need for extended orders

s. 101

- (8) Part 12 provides for appeals to the Court of Appeal against the making of extended orders and the term of extended COs.
- (9) A person subject to an interim or extended CO or CSO is a supervised person.

101. Nature of court proceedings under Part

Proceedings in the Supreme Court under this Part are civil proceedings.

102. References to orders include extended orders

In this Part, unless the contrary intention appears —

- (a) a reference to a custody order includes a reference to an extended custody order; and
- (b) a reference to a community supervision order includes a reference to an extended community supervision order.

Division 2 — Tribunal to consider and report on need for extended orders

103. Tribunal to consider and report on need for extended custody orders

- (1) If a supervised person is subject to a custody order with a limiting term of 12 months or more, the Tribunal must, no later than 6 months before the expiry of the order, consider the need for an extended custody order in respect of the person.
- (2) If a supervised person is subject to a custody order with a limiting term of less than 12 months, the Tribunal must, before the supervised person has been subject to the order for half of the limiting term, consider the need for an extended custody order in respect of the person.
- (3) The Tribunal must, as soon as practicable, report to the Minister on the need for an extended custody order in respect of the supervised person.

- (4) If the Tribunal is satisfied that it is necessary that an extended custody order be made in respect of the supervised person so as to ensure the adequate protection of the community against an unacceptable risk that the person will commit a serious offence, the Tribunal must recommend in its report that the Minister apply for an extended custody order in respect of the person.

104. Tribunal to consider and report on need for extended community supervision orders

- (1) The Tribunal must, no later than 3 months before the expiry of a community supervision order, consider the need for an extended community supervision order in respect of the supervised person.
- (2) The Tribunal must, as soon as practicable, report to the Minister on the need for an extended community supervision order in respect of the supervised person.
- (3) If the Tribunal is satisfied that after the expiry of the current community supervision order the supervised person should, to ensure the adequate protection of the community, remain under supervision due to the person's rehabilitation, retraining or resocialisation requirements, the Tribunal must recommend in its report that the Minister apply for an extended community supervision order in respect of the person.

Division 3 — Applications for extended orders

105. Minister may apply for extended order

- (1) The Minister may, after having regard to a report under section 103, apply to the Supreme Court for an extended custody order in respect of the supervised person.
- (2) The Minister may, after having regard to a report under section 104, apply to the Supreme Court for an extended community supervision order in respect of the supervised person.

- (3) If the Minister makes an application under this section, the Minister must notify the Tribunal.

106. Report to be prepared for application

- (1) If an application is made for an extended order in respect of a supervised person, the court —
- (a) must order that the person be examined by a psychiatrist, psychologist or other appropriate expert and that a report be prepared and submitted to the court; and
 - (b) may make any related orders it considers appropriate.
- (2) The Minister must arrange for the examination and report.
- (3) A report under subsection (2) must set out —
- (a) in relation to an application for an extended custody order — the expert's assessment of the likelihood that the supervised person will commit a serious offence if not subject to an extended custody order; and
 - (b) the expert's assessment of the supervised person's rehabilitation, retraining or resocialisation requirements; and
 - (c) the reasons for the expert's assessment.
- (4) Subsection (2) does not prevent —
- (a) the supervised person from arranging for an examination and report; or
 - (b) the court from considering the report.

Division 4 — Interim orders pending determination of applications

107. Interim custody orders

- (1) If, after an application for an extended custody order is made but before the application is determined, the current custody

order will or is likely to expire, the Minister may apply to the Supreme Court for an interim custody order in respect of the supervised person.

- (2) If the court is satisfied that, to ensure the adequate protection of the community, it is desirable that the supervised person continue to be subject to a custody order while the application for an extended custody order is yet to be determined, it may make an interim custody order in respect of the person, which has effect until the application for the extended order is determined.
- (3) If, immediately before the current custody order is replaced by an interim custody order, a leave of absence order applies to the supervised person, the leave of absence order continues in effect, according to its terms, to the extent not inconsistent with the interim order.
- (4) Part 6, to the extent relevant, applies to and in relation to an interim custody order as if it were a custody order, and to any leave of absence order continued under subsection (3).
- (5) Despite subsection (4), the Tribunal —
 - (a) need not comply with a review requirement under Part 6 Division 4, including when exercising a power under section 73; and
 - (b) cannot make a leave of absence order in respect of the interim custody order other than for a short term purpose (for example, receiving medical or dental treatment or cultural or compassionate purposes); and
 - (c) cannot cancel all conditions of a leave of absence order continued under subsection (3) in relation to the interim custody order.

108. Interim community supervision orders

- (1) If, after an application for an extended community supervision order is made but before the application is determined, the

current community supervision order will or is likely to expire, the Minister may apply to the Supreme Court for an interim community supervision order in respect of the supervised person.

- (2) If the court is satisfied that, to ensure the adequate protection of the community, it is desirable that the supervised person continue to be subject to a community supervision order while the application for an extended community supervision order is yet to be determined, it may make an interim community supervision order in respect of the person, which has effect until the application for the extended order is determined.
- (3) The conditions of the interim community supervision order are those of the community supervision order that it replaces, to the extent not inconsistent with the interim order.
- (4) Part 6, to the extent relevant, applies to and in relation to an interim community supervision order as if it were a community supervision order.
- (5) Despite subsection (4), the Tribunal —
 - (a) need not comply with a review requirement under Part 6 Division 4, including when exercising a power under section 73; and
 - (b) cannot vary the conditions of the order referred to in section 54; and
 - (c) cannot cancel all conditions of the order.

Division 5 — Making extended custody orders

109. Extended custody orders

- (1) An extended custody order is an order that, subject to this Act, a supervised person be detained in custody at a place determined from time to time by the Tribunal under Part 6 Division 3 for the protection of the community.

- (2) Part 6, to the extent relevant, applies to and in relation to an extended custody order as if it were a custody order.
- (3) Despite subsection (2), the Tribunal cannot cancel all conditions of a leave of absence order applying to the supervised person.

110. Supreme Court may make extended custody order

- (1) The Supreme Court may, on application under section 105(1), make an extended custody order in respect of the supervised person that is to have effect for the term set by the court.
- (2) The term set for the order is its limiting term.
- (3) Before making an extended custody order, the court must be satisfied, by acceptable and cogent evidence and to a high degree of probability, that, to ensure the adequate protection of the community against an unacceptable risk that the supervised person will commit a serious offence, it is necessary to make an extended custody order in respect of the supervised person.
- (4) If the court is not satisfied as to the matter in subsection (3), but is satisfied as to the matter in section 114(2), it may make a community supervision order in respect of the supervised person.
- (5) Part 5, to the extent relevant, applies to the making of a community supervision order under subsection (4) as if the order were being made under Part 5.
- (6) For the purposes of subsection (3), a reference to the commission of a serious offence includes a reference to —
 - (a) the doing of an act or the making of an omission in any State or Territory that, if done within this State, would constitute a serious offence; and
 - (b) the doing of an act or the making of an omission outside Australia that, if done within this State, would constitute a serious offence.

- (7) For the purposes of this section, it makes no difference whether a person doing an act or making an omission referred to in subsection (6) —
- (a) would be likely to be charged with an offence; or
 - (b) would, if charged with an offence, be found fit to stand trial; or
 - (c) would, if tried for an offence, be convicted.

111. Leave of absence orders and conditions carried over

- (1) If, immediately before a custody order or an interim custody order is replaced by an extended custody order, a leave of absence order is in effect in relation to the custody order or interim custody order, the leave of absence order continues in effect, according to its terms, in relation to the extended order, to the extent not inconsistent with the extended order.
- (2) Subsection (1) does not prevent the leave of absence order being cancelled or its conditions being varied.

112. When extended custody order has effect

- (1) An extended custody order in respect of a supervised person takes effect on the later of the following —
- (a) the expiration of the current custody order;
 - (b) the day on which the extended order is made.
- (2) An extended custody order has effect until the earlier of the following —
- (a) its limiting term expires;
 - (b) it is cancelled by an order of the Supreme Court under section 121(2).

Division 6 — Making extended community supervision orders

113. Extended community supervision orders

- (1) An extended community supervision order is an order that a supervised person, while residing in the community, must comply with the conditions of the order for the protection of the community.
- (2) Part 6, to the extent relevant, applies to and in relation to an extended community supervision order as if it were a community supervision order.

114. Supreme Court may make extended community supervision order

- (1) The Supreme Court may, on application under section 105(2), make an extended community supervision order in respect of the supervised person that is to have effect for the term set by the court.
- (2) Before making an extended community supervision order, the court must be satisfied that, to ensure the adequate protection of the community, the supervised person should remain under supervision due to the person's rehabilitation, retraining or resocialisation requirements.

115. Conditions carried over

- (1) The conditions of the extended community supervision order are those of the community supervision order or interim community supervision order that it replaces, to the extent not inconsistent with the extended order.
- (2) Subsection (1) does not prevent the Tribunal varying, or cancelling all of, the conditions of the order.

116. When extended community supervision order has effect

- (1) An extended community supervision order in respect of a supervised person takes effect on the later of the following —
 - (a) the expiration of the current community supervision order;
 - (b) the day on which the extended order is made.
- (2) An extended community supervision order has effect until the earliest of the following —
 - (a) its term expires;
 - (b) it is cancelled under section 74 or 89(1);
 - (c) an order of the Tribunal under section 73(1)(c)(ii) cancelling all of the conditions of the extended community supervision order comes into effect.

Division 7 — Review of extended custody orders

117. Periodic review on application by Minister

- (1) While a supervised person is subject to an extended custody order, the Minister may at any time apply to the Supreme Court for review of the order.
- (2) The Minister must apply for review of the order so as to ensure that reviews are carried out —
 - (a) as soon as practicable after the end of the period of 1 year commencing on the day on which the order is made; and
 - (b) as soon as practicable after the end of the period of 1 year commencing on the day on which the order was most recently reviewed under this Division.

118. Application by supervised person for review

- (1) A supervised person who is subject to an extended custody order may, with the leave of the court, apply to the Supreme Court for review of the order.
- (2) Before granting leave the court must be satisfied that there are exceptional circumstances.
- (3) The court may decide whether or not to give leave —
 - (a) with or without written or oral submissions from the parties to the application; and
 - (b) before or at the hearing of, or when determining, the application for review.
- (4) If a supervised person makes an application for review under subsection (1), the court must immediately give a copy of the application to the Minister and the Tribunal.

119. Dealing with application for review

- (1) As soon as practicable after an application is made for review of an extended custody order, the court must give directions for the hearing of the application.
- (2) The application must be heard, and the review must be carried out, as soon as practicable, in accordance with any directions given by the court.
- (3) However, the court may adjourn the hearing of the application, and the carrying out of the review, if there is sufficient reason to do so.

120. Report to be prepared for review

- (1) If an application is made for review of an extended custody order, the court —
 - (a) must order that the person be examined by a psychiatrist, psychologist or other appropriate expert

and that a report be prepared and submitted to the court;
and

- (b) may make any related order it considers appropriate.
- (2) The Minister must arrange for the examination and report.
- (3) A report under subsection (2) must set out —
- (a) the expert’s assessment of the likelihood that the supervised person will commit a serious offence if not subject to the extended custody order; and
 - (b) the expert’s assessment of the supervised person’s rehabilitation, retraining or resocialisation requirements; and
 - (c) the reasons for the expert’s assessment.
- (4) Subsection (2) does not prevent —
- (a) the supervised person from arranging for an examination and report; or
 - (b) the court from considering the report.

121. Court’s powers on review of extended custody order

- (1) If, on review of a supervised person’s extended custody order, the court is satisfied that there remains an unacceptable risk that the person would commit a serious offence if not subject to the extended order, it must confirm the order.
- (2) However, if the court is not so satisfied, it must cancel the order.
- (3) If the court cancels an extended custody order in respect of a supervised person under subsection (2), it may, if satisfied as to the matter in section 114(2), make a community supervision order in respect of the person.
- (4) Part 5, to the extent relevant, applies to the making of a community supervision order under subsection (3) as if the order were being made under Part 5.

Division 8 — General

122. Court to notify Tribunal of orders

If the Supreme Court makes an interim or extended order or a community supervision order under this Part, the court must immediately —

- (a) notify the Tribunal that the order has been made; and
- (b) give the Tribunal a copy of the order and the prescribed information.

123. Evidence in extended order proceedings

- (1) In this section —

relevant proceeding, in relation to a supervised person, means any proceeding of a court —

- (a) relating to an offence with which the person was charged; and
 - (b) that the Supreme Court considers relevant, having regard to the matter to be determined under this Part by the court.
- (2) Before the Supreme Court determines an application under this Part it must, if the evidence is admissible, hear evidence given or called by the parties to the application.
- (3) Except as modified by subsection (4), the ordinary rules of evidence apply to evidence given or called under subsection (2).
- (4) Things that the court may receive in evidence for the purpose of determining the application include the following —
- (a) any document relevant to the supervised person's antecedents or criminal record;
 - (b) anything relevant contained in the official transcript of any relevant proceeding against the person;

- (c) any relevant material that was tendered to the court, or that informed the court, in a relevant proceeding against the person;
- (d) any report that a psychiatrist, psychologist or other appropriate expert prepares under this Part and the extent to which the person cooperated when the expert examined the person;
- (e) any other medical, psychiatric, psychological or other assessment relating to the person;
- (f) information indicating whether or not the person has a propensity to engage in conduct that could constitute a serious offence in the future;
- (g) information indicating whether or not there is any pattern of offending behaviour on the part of the person.

Note for this section:

The court may receive a victim's submission made under Part 9 Division 4; see section 148.

124. Court may give directions

The Supreme Court may, on its own initiative or on the application of a party to proceedings under this Part, give directions in relation to the conduct of the proceedings, including with respect to evidence received or to be received under section 123.

125. Appearance at hearings

- (1) A supervised person is entitled to appear at the hearing of —
 - (a) an application for an extended order in relation to that person; or
 - (b) an application for review of the person's extended custody order.
- (2) The court may direct that a supervised person is to appear by means of an audio or video link.

Part 8 — Mental health advocacy services for unfit accused and supervised persons

Division 1 — Preliminary matters

126. Overview of Part

- (1) This Part provides for mental health advocacy services for unfit accused and supervised persons, unless those services can be provided under the *Mental Health Act 2014* Part 20 or the *Declared Places (Mental Impairment) Act 2015* Part 10.

Note for this subsection:

See the definitions of —

- (a) **CLMI identified person** in section 127 of this Act; and
 - (b) **identified person** in the *Mental Health Act 2014* section 348; and
 - (c) **resident** in the *Declared Places (Mental Impairment) Act 2015* section 3.
- (2) Division 2 provides for access to mental health advocacy and for the right of an unfit accused or supervised person to be visited or contacted by a mental health advocate.
- (3) Division 3 provides for the functions and powers of the Chief Mental Health Advocate and of mental health advocates.
- (4) The functions and powers under this Part are similar to, but not the same as, those under the *Mental Health Act 2014* or the *Declared Places (Mental Impairment) Act 2015* since mental health advocacy under this Part is provided, amongst others, to persons who are detained in a prison or detention centre.

127. Terms used

In this Part —

CLMI identified person means an unfit accused or a supervised person, other than a person who is —

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- (a) an identified person as defined in the *Mental Health Act 2014* section 348; or
- (b) a resident as defined in the *Declared Places (Mental Impairment) Act 2015* section 3;

mandatory service means a service in relation to an unfit accused or a supervised person that is required by, or necessary for compliance with, conditions of a grant of bail to the person, a community supervision order to which the person is subject or a leave of absence order applying to the person;

medical practitioner means a person registered under the *Health Practitioner Regulation National Law (Western Australia)* in the medical profession;

mental health practitioner has the meaning given in the *Mental Health Act 2014* section 4.

Division 2 — Access to mental health advocacy services

128. Access to mental health advocacy services

- (1) Within 3 working days after the day on which the Chief Mental Health Advocate is first notified under section 30 or 36 of an adjournment of proceedings in respect of a person, the Chief Mental Health Advocate must ensure that the person is informed of —
 - (a) their right, under section 129, to request that they be contacted by a mental health advocate; and
 - (b) the functions of a mental health advocate under this Act.
- (2) Within 3 working days after the day on which the Chief Mental Health Advocate is notified under section 48 or 204(4) that a custody order, community supervision order or interim disposition has been made in respect of a person, the Chief Mental Health Advocate must ensure that the person is informed of —
 - (a) their right, under section 129, to request that they be contacted by a mental health advocate; and

- (b) the functions of a mental health advocate under this Act.
- (3) If a person in respect of whom subsection (1) or (2) applies is a child, the subsection must be complied with within 24 hours of the Chief Mental Health Advocate being notified.

129. Request for CLMI identified person to be contacted

- (1) A request for a CLMI identified person to be contacted by a mental health advocate may be made by —
 - (a) the person, their representative or their legal practitioner; or
 - (b) a psychiatrist or psychologist; or
 - (c) if the person is detained at a place — the person in charge of the place; or
 - (d) any other person who has a sufficient interest in the person.
- (2) A request may be made to —
 - (a) the Chief Mental Health Advocate; or
 - (b) if the request relates to a person detained at a place — the person in charge of the place.
- (3) If a request is made as described in subsection (2)(b), the person in charge of the place must ensure that the Chief Mental Health Advocate is notified of the request as soon as practicable but no later than 24 hours after the request is made.
- (4) The person in charge of a place at which a CLMI identified person is detained must ensure that the person is given the means and opportunity to exercise their right under this section.

130. Duty to contact CLMI identified person

- (1) A CLMI identified person detained under this Act must be visited or otherwise contacted by a mental health advocate within 3 working days after the day on which the Chief Mental

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Health Advocate is notified under this Act that the person is detained.

- (2) A CLMI identified person must be visited or otherwise contacted by a mental health advocate within 3 working days after the day on which the Chief Mental Health Advocate receives or is notified of a request under section 129.
- (3) If a CLMI identified person in respect of whom subsection (1) or (2) applies is a child, the subsection must be complied with within 24 hours of the Chief Mental Health Advocate being notified of the detention or receiving or being notified of the request.
- (4) In addition to any requirement under this section to visit or otherwise contact a CLMI identified person, a mental health advocate may, subject to any direction of the Chief Mental Health Advocate, visit or otherwise contact a CLMI identified person on their own initiative.

Division 3 — Functions and powers of mental health advocates

131. Functions of Chief Mental Health Advocate

- (1) The functions of the Chief Mental Health Advocate are —
 - (a) ensuring that CLMI identified persons are visited or otherwise contacted in accordance with section 130;
 - (b) promoting compliance with the principles in section 7(2)(a) to (j);
 - (c) preparing and publishing information about the role of mental health advocates and how to contact the Chief Mental Health Advocate;
 - (d) promoting the role of mental health advocates;
 - (e) developing standards and protocols for the performance by mental health advocates of their functions under this Act, including a conflict of interest policy;

- (f) ensuring that mental health advocates receive adequate training in relation to the performance of their functions under this Act;
 - (g) providing advice, assistance, control and direction to mental health advocates in relation to the performance of their functions under this Act;
 - (h) any other functions conferred on the Chief Mental Health Advocate under this Act.
- (2) The function of the Chief Mental Health Advocate under subsection (1)(c) does not include the publication of personal information about a CLMI identified person.
- (3) The functions of the Chief Mental Health Advocate under this Act are in addition to, and do not limit, the functions of the Chief Mental Health Advocate under any other written law.

132. Directions to Chief Mental Health Advocate about general matters

- (1) The Minister may, after consultation with the Chief Mental Health Advocate, issue written directions about the general policy to be followed by the Chief Mental Health Advocate in performing functions under this Act.
- (2) The Chief Mental Health Advocate may request the Minister to issue a direction under subsection (1).
- (3) A direction cannot be issued under this section in respect of —
- (a) a particular CLMI identified person; or
 - (b) a particular place at which a CLMI identified person is detained or receives mandatory services; or
 - (c) any other particular person or body.
- (4) The Chief Mental Health Advocate must comply with a direction issued under this section.

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- (5) The power to issue a direction under this section includes the power to amend, replace or revoke the direction and that power is exercisable in the same manner, and is subject to the same conditions, as the power to issue the direction.
- (6) The Minister must cause the text of a direction under this section to be laid before each House of Parliament within 12 sitting days of the House after the day on which a direction is issued under this section.
- (7) The text of a direction issued under this section must be included in the Chief Mental Health Advocate's annual report under section 140(2).

133. Delegation by Chief Mental Health Advocate

- (1) The Chief Mental Health Advocate may delegate to another mental health advocate or an advocacy services officer any power or duty of the Chief Mental Health Advocate under another provision of this Act.
- (2) The delegation must be in writing signed by the Chief Mental Health Advocate.
- (3) Despite subsection (1), the Chief Mental Health Advocate cannot delegate to an advocacy services officer a power or duty of the Chief Mental Health Advocate as a representative of a supervised person.
- (4) A person to whom a power or duty is delegated under this section cannot delegate that power or duty.
- (5) A person exercising a power or performing a duty that has been delegated to the person under this section is taken to do so in accordance with the terms of the delegation unless the contrary is shown.
- (6) This section does not limit the ability of the Chief Mental Health Advocate to perform a function through an officer or agent.

134. Functions of mental health advocates

- (1) The functions of a mental health advocate are to assist and advocate for CLMI identified persons, including (without limitation) —
- (a) visiting or otherwise contacting CLMI identified persons in accordance with section 130;
 - (b) inquiring into or investigating any matter relating to the conditions of a place at which a CLMI identified person is detained, or receives mandatory services, that is adversely affecting, or is likely to adversely affect, the health, safety or wellbeing of the person;
 - (c) inquiring into or investigating the extent to which —
 - (i) CLMI identified persons have been informed of their right, under section 129, to request that they be contacted by a mental health advocate; and
 - (ii) CLMI identified persons who are detained have been given the means and opportunity to exercise that right; and
 - (iii) CLMI identified persons have been visited or otherwise contacted in accordance with section 130;
 - (d) inquiring into and seeking to resolve complaints about —
 - (i) the treatment, care and support provided to a CLMI identified person at a place at which the person is detained or receives mandatory services; or
 - (ii) the provision of mandatory services to a CLMI identified person;
 - (e) inquiring into or investigating the provision of mandatory services;

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- (f) referring any issues arising out of the performance of a mental health advocate's functions under paragraphs (b) to (e) to the Chief Mental Health Advocate;
 - (g) assisting CLMI identified persons in relation to proceedings under this Act before a court;
 - (h) assisting and representing supervised persons in and in relation to proceedings under this Act before the Tribunal;
 - (i) liaising with the guardians and administrators of CLMI identified persons;
 - (j) assisting CLMI identified persons to access legal services;
 - (k) in consultation with the medical practitioners, mental health practitioners, other health professionals and representatives responsible for the treatment, care and support of CLMI identified persons, advocating for and facilitating access by CLMI identified persons to other services;
 - (l) any other functions conferred on a mental health advocate under this Act.
- (2) The functions of a mental health advocate are to be performed in relation to particular CLMI identified persons.
- (3) For the purposes of subsection (1)(d), a complaint may be made to a mental health advocate by a person who has a sufficient interest in the CLMI identified person concerned.
- (4) In performing functions under this Act, mental health advocates are subject to the general direction and control of the Chief Mental Health Advocate.
- (5) The functions of mental health advocates under this Act are in addition to, and do not limit, the functions of mental health advocates under any other written law.

135. Powers of mental health advocates relating to CLMI identified persons

- (1) The powers of a mental health advocate, when performing a function under this Act, are —
- (a) visiting a place at which a CLMI identified person is detained or receives mandatory services;
 - (b) inspecting any part of a place visited under paragraph (a);
 - (c) seeing and speaking with a CLMI identified person unless the person objects to the advocate doing so;
 - (d) asking a person who works at a place visited under paragraph (a) questions about —
 - (i) the welfare, health, care, training, safety, management or security of any CLMI identified person who is detained, or receives mandatory services, at the place; and
 - (ii) the operation, control, management, security and good order of the place, but only to the extent to which the matter is relevant to a matter mentioned in subparagraph (i);
 - (e) asking a person who is involved in the provision of a mandatory service in relation to a CLMI identified person questions about the provision of the service;
 - (f) inspecting and taking a copy of the whole or any part of any document about a CLMI identified person that is held at a place at which the person is detained, or receives mandatory services, unless the person objects to the advocate doing so;
 - (g) doing anything else necessary or convenient for the performance of the functions conferred on the mental health advocate under this Act.
- (2) The exercise of the powers of a mental health advocate under subsection (1) in relation to a CLMI identified person who is

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detained at, or who receives mandatory services at, a place is subject to —

- (a) the direction of the person in charge of the place; and
 - (b) rules under the *Prisons Act 1981* section 35 or the *Young Offenders Act 1994* section 181, as is relevant.
- (3) However, the powers to direct and to make rules referred to in subsection (2) —
- (a) must be exercised having regard to the principle in section 7(2)(b); and
 - (b) cannot be exercised so as to limit the exercise of a mental health advocate's powers under subsection (1) except for the purposes of —
 - (i) ensuring the safety of persons; or
 - (ii) maintaining the security of a prison or detention centre.
- (4) A mental health advocate may require a person who works at a place at which a CLMI identified person is detained, or receives mandatory services, to give reasonable assistance to the mental health advocate for the purpose of the performance of the mental health advocate's functions under this Act.
- (5) A person who, without reasonable excuse (proof of which is on the person), does not give reasonable assistance when required under subsection (4) commits an offence.

Penalty for this subsection: a fine of \$6 000.

136. Issues arising out of inquiries and investigations

- (1) A mental health advocate may attempt to resolve any issue that arises in the course of an inquiry into or investigation of a matter referred to in section 134(1)(b) or (c) by dealing directly with persons who work at the place at which the CLMI identified person is detained or receives mandatory services.

- (2) A mental health advocate must refer an issue to the Chief Mental Health Advocate if the mental health advocate cannot resolve the issue or considers it appropriate to do so.
- (3) The Chief Mental Health Advocate may give a report about an issue referred under subsection (2) to the person in charge of the place in relation to which the issue arose.
- (4) The Chief Mental Health Advocate may also give a copy of a report given under subsection (3) to 1 or more of the following —
 - (a) the Minister;
 - (b) the Minister for Corrective Services;
 - (c) the Minister to whom the administration of the *Young Offenders Act 1994* is committed;
 - (d) the CEO (Corrections);
 - (e) the CEO (Young Offenders).
- (5) A person to whom a copy of a report about an issue is given under subsection (4) must —
 - (a) advise the Chief Mental Health Advocate whether or not the person considers further inquiry into or investigation of the issue is warranted; and
 - (b) if there is an inquiry or investigation — advise the Chief Mental Health Advocate of its outcome, including any recommendations made, directions given or other action taken.
- (6) This section does not limit the powers that a mental health advocate has for dealing with any issue that arises in the course of an inquiry into or investigation of a matter.

137. Documents to which access is restricted

- (1) This section applies if a CLMI identified person who is detained, or who receives mandatory services, is not entitled

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under the *Mental Health Act 2014* section 249 to have access to a document.

- (2) The person in charge of a place at which the CLMI identified person is detained, or receives mandatory services, must ensure that, before a person who works at that place makes the document available to a mental health advocate under section 135, the mental health advocate is advised —
 - (a) that the CLMI identified person is not entitled to have access to the document; and
 - (b) that it is an offence under section 138 for the mental health advocate to disclose any information in the document to the CLMI identified person.
- (3) The person in charge of a place at which the CLMI identified person is detained, or receives mandatory services, must ensure that a record of any advice given to a mental health advocate under subsection (2) about the matters referred to in that subsection is recorded in any record of information kept in respect of the CLMI identified person.

138. Disclosure by mental health advocate

A mental health advocate who under section 135 inspects, or takes a copy of the whole or any part of, a document must not disclose any information in the document if —

- (a) the CLMI identified person to whom the document relates is not entitled under the *Mental Health Act 2014* section 249 to have access to the document; and
- (b) before the document was made available to the mental health advocate under section 135, the mental health advocate was advised of the matters referred to in section 137(2).

Penalty: a fine of \$5 000.

Division 4 — Interaction with *Mental Health Act 2014*

139. Interaction with *Mental Health Act 2014*

- (1) The purpose of this section is to ensure continuity of the provision of advocacy services under this Act and the *Mental Health Act 2014*, where appropriate.
- (2) In this section —
MHA identified person means an identified person as defined in the *Mental Health Act 2014* section 348.
- (3) Subsection (4) applies if —
 - (a) a CLMI identified person becomes an MHA identified person; and
 - (b) a person (the ***responsible person***) had a power or duty under a provision of this Part in relation to the identified person; and
 - (c) there is a provision of the *Mental Health Act 2014* Part 20 that —
 - (i) corresponds to the provision under this Part referred to in paragraph (b); and
 - (ii) provides for a corresponding power or duty.
- (4) The responsible person has the corresponding power or duty in relation to the identified person.
- (5) Subsection (6) applies if —
 - (a) an MHA identified person becomes a CLMI identified person; and
 - (b) a person (the ***responsible person***) had a power or duty under a provision of the *Mental Health Act 2014* Part 20 in relation to the identified person; and

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- (c) there is a provision of this Part that —
 - (i) corresponds to the provision of the *Mental Health Act 2014* Part 20 referred to in paragraph (b); and
 - (ii) provides for a corresponding power or duty.
- (6) The responsible person has the corresponding power or duty in relation to the identified person.
- (7) If a mental health advocate has a power or duty under subsection (4) or (6) in relation to an identified person but it is not practicable for them to exercise the power or perform the duty, another mental health advocate may do so.
- (8) Regulations may modify the effect of subsections (4) and (6).

Division 5 — Reporting in relation to mental health advocacy services

140. Annual reports

- (1) In this section —

contractor means a person who is a contractor under the *Court Security and Custodial Services Act 1999*, the *Declared Places (Mental Impairment) Act 2015* or the *Prisons Act 1981*.
- (2) Before 1 October in each year, the Chief Mental Health Advocate must report to the following on the activities of all mental health advocates under this Act during the previous financial year —
 - (a) the Minister;
 - (b) the Minister for Corrective Services;
 - (c) the Minister to whom the administration of the *Young Offenders Act 1994* is committed.
- (3) Personal information relating to a CLMI identified person must not be included in a report unless, on their views being sought, they do not object to the disclosure.

- (4) The Minister must cause a copy of a report to be laid before each House of Parliament within 12 sitting days of the House after receiving it.
- (5) The Chief Mental Health Advocate must not, in a report, disclose information or make a statement setting out an opinion that is, either expressly or impliedly, critical of the following unless the Chief Mental Health Advocate has complied with subsection (6) in relation to the matter —
- (a) the department of the Public Service principally assisting in the administration of the *Prisons Act 1981*;
 - (b) the department of the Public Service principally assisting in the administration of the *Young Offenders Act 1994*;
 - (c) a contractor;
 - (d) any other person who performs functions under this Act or provides mandatory services.
- (6) Before disclosing information or making a statement as described in subsection (5), the Chief Mental Health Advocate must give the following the opportunity to make written submissions in relation to the matter —
- (a) if the opinion relates to a department referred to in subsection (5) — the chief executive officer of the department;
 - (b) if the opinion relates to a contractor — the contractor;
 - (c) if the opinion relates to a person referred to in subsection (5)(d) — the person.
- (7) If the Chief Mental Health Advocate is not able to comply with subsection (2) in a year, the Chief Mental Health Advocate must inform each House of Parliament of the inability to do so, and the reasons for that inability, by 1 October in that year or the 1st sitting day of each House after that.

Part 9 — Victim considerations

Division 1 — Preliminary matters

141. Overview of Part

This Part provides for —

- (a) victim impact statements to be given to a court considering whether to make a supervision order; and
- (b) victim submissions to be made to the Tribunal generally in respect of a supervised person; and
- (c) victim submissions to be made —
 - (i) to a court in relation to an application to cancel a CO or CSO under section 74; and
 - (ii) to the Supreme Court in relation to an application for an extended order under Part 7.

142. Terms used

- (1) In this Part —

member of the immediate family of the deceased means —

- (a) the deceased's spouse; and
- (b) the deceased's de facto partner; and
- (c) a person to whom the deceased was engaged to be married; and
- (d) a parent, grandparent, guardian, step-parent or step-grandparent of the deceased; and
- (e) a child, grandchild, step-child or step-grandchild of the deceased or some other child for whom the deceased is the guardian; and
- (f) a brother, sister, half-brother, half-sister, step-brother or step-sister of the deceased; and

- (g) a person regarded under Aboriginal or Torres Strait Islander customary law and culture as a member of the extended family or kinship group of the deceased;

victim, of an offence, means —

- (a) a person who has suffered injury, loss or damage as a direct result of the offence, whether or not that injury, loss or damage was reasonably foreseeable by the person found to have committed the offence; and
- (b) if the offence resulted in a death, a member of the immediate family of the deceased; and
- (c) a person protected by a family violence restraining order under the *Restraining Orders Act 1997* to which the person found to have committed the offence is or was a respondent; and
- (d) a person who can demonstrate, to the satisfaction of the CEO, that —
 - (i) the person is the victim of a violent personal offence previously committed by the person found to have committed the offence; and
 - (ii) the violent personal offence occurred in the context of a family relationship (as defined in the *Restraining Orders Act 1997* section 4) with the person found to have committed the offence;

violent personal offence means —

- (a) an offence specified in the *Restraining Orders Act 1997* section 63(4AA)(a); or
- (b) a violent personal offence as defined in the *Restraining Orders Act 1997* section 63A(1A).

- (2) For the purposes of paragraph (c) of the definition of **victim** in subsection (1), it is irrelevant that the family violence restraining order is unrelated to the offence referred to in that definition.

Division 2 — Victim impact statements may be given to court

143. Term used

In this Division —

victim impact statement, in relation to a victim of an offence, means a statement containing particulars of any bodily harm or psychological or psychiatric harm suffered by the victim as a result of the offence.

144. Victim impact statements may be given to court

- (1) A victim of an offence in respect of which a court must make an order under Part 5 may give a victim impact statement to the court to assist the court in determining what order to make.
- (2) If an application for an order under section 89 is made in relation to a supervised person, a victim of an offence committed by the supervised person may give a victim impact statement to the court.
- (3) If because of age, disability or any other reason a victim is incapable of giving a victim impact statement, another person may give it on the victim's behalf if the court is satisfied that it is appropriate for the other person to do so.
- (4) A court may rule as inadmissible the whole or any part of a victim impact statement.

145. Content of victim impact statements

- (1) A victim impact statement must not address the way in which or the extent to which the person found to have committed the offence is to be dealt with under this Act.
- (2) A victim impact statement may be accompanied by a report by any person who has treated the victim in connection with the offence.

146. Availability of victim impact statements

- (1) A court may make a written victim impact statement available to another person on the conditions it considers appropriate.
- (2) If a court makes a victim impact statement available under subsection (1), it must notify the victim of this as soon as practicable.
- (3) A court must, after making an order under Part 5 or section 89, make available to the Tribunal a copy of any victim impact statement given to the court under section 144.

Division 3 — Victim submissions may be made to Tribunal

147. Victim submissions may be made to Tribunal

- (1) A victim of the offence in relation to which a custody order or community supervision order was made may make a submission to the Tribunal that —
 - (a) if the supervised person is subject to a custody order —
 - (i) states the victim’s opinion of the effect on the victim of the release of the supervised person; and
 - (ii) includes suggestions about the conditions that should apply to the supervised person if released;
 - or
 - (b) if the supervised person is subject to a community supervision order, or a leave of absence order applies to the person —
 - (i) states the victim’s opinion of the effect on the victim of the cancellation of the conditions of the order; and
 - (ii) includes suggestions about the conditions that should apply to the supervised person.
- (2) The submission must be in writing.

- (3) If because of age, disability or any other reason a victim is incapable of giving a submission, another person may give it on the victim's behalf if the Tribunal is satisfied that it is appropriate for the other person to do so.
- (4) The Tribunal must establish procedures for the giving of victims' submissions.
- (5) In exercising its jurisdiction, the Tribunal may have regard to a victim's submission received by it in accordance with the procedures and is to give the submission such weight as it sees fit.
- (6) The Tribunal may make a victim's submission available to another person on the conditions it considers appropriate.
- (7) If the Tribunal makes a victim's submission available under subsection (6), it must notify the victim of this as soon as practicable.

Division 4 — Victim submissions may be made to court

148. Victim submissions may be made to court

- (1) If an application for the cancellation of a custody order or community supervision order is made under section 74, a victim of an offence committed by the supervised person may make a submission to the court that made the order in relation to the need to ensure adequate protection of the victim.
- (2) If an application for an extended order or the review of an extended order is made under Part 7 in relation to a supervised person, a victim of an offence committed by the supervised person may make a submission to the Supreme Court in relation to the need to ensure adequate protection of the victim.
- (3) A submission must be in writing.

- (4) If because of age, disability or any other reason a victim is incapable of making a submission, another person may make it on the victim's behalf if the court is satisfied that it is appropriate for the other person to do so.
- (5) A court may rule as inadmissible the whole or any part of a victim's submission.

149. Content of victim's submission

A victim's submission may —

- (a) if the application under section 148 is in relation to a custody order — state the victim's opinion of the effect on the victim of the release of the supervised person; or
- (b) if the application under section 148 is in relation to a community supervision order —
 - (i) state the victim's opinion of the effect on the victim of the supervised person no longer being under supervision; and
 - (ii) include suggestions about the conditions that should apply to the supervised person.

150. Availability of victim's submissions

- (1) A court may make a victim's submission available to another person on the conditions it considers appropriate.
- (2) If a court makes a victim's submission available under subsection (1), it must notify the victim of this as soon as practicable.
- (3) A court must, after confirming a custody order or community supervision order under section 74(2) or making an extended order under Part 7, make available to the Tribunal a copy of any victim's submission given to the court under section 148.

Division 5 — Notice of Tribunal review given to victims

151. Notice to victims of review proceedings

- (1) As soon as practicable after receiving notice (under section 71) of review proceedings under Part 6 Division 4 in relation to a supervision order, the CEO must give written notice to each victim of the offence in relation to which the order was made who has notified the CEO that they wish to receive notice of review proceedings in relation to the supervised person.
- (2) A victim may nominate a person to receive notice on their behalf.
- (3) Notice to a victim who is a child must be given to a parent of the child and any guardian of the child.
- (4) Notice must include the following —
 - (a) if the supervised person is subject to a custody order — whether or not a leave of absence order applies to the person;
 - (b) if the supervised person is subject to a community supervision order, or a leave of absence order applies to the person — the person's current level of supervision.
- (5) Notice under this section need not be given —
 - (a) in relation to review proceedings solely for the purpose of varying conditions of a leave of absence order; or
 - (b) to a person whose whereabouts have not, after reasonable enquiry, been ascertained; or
 - (c) when the Tribunal is constituted in accordance with section 75(1).
- (6) The validity of a decision of the Tribunal is not affected by a failure to notify each victim in accordance with this section.

152. Delegation by CEO

- (1) The CEO may delegate to a person any power or duty the CEO has under this Division.
- (2) The delegation must be in writing signed by the CEO.
- (3) A person to whom a power or duty is delegated under this section cannot delegate that power or duty.
- (4) A person exercising a power or performing a duty that has been delegated to the person under this section is taken to do so in accordance with the terms of the delegation unless the contrary is shown.
- (5) This section does not limit the ability of the CEO to perform a function through an officer or an agent.

Division 6 — Miscellaneous

153. Disclosing information to victims

The CEO may, in relation to an offence committed by a supervised person, disclose information of a prescribed kind regarding the supervised person to a victim of the offence or a person acting on the victim's behalf.

Part 10 — Mental Impairment Review Tribunal

Division 1 — Preliminary matters

154. Overview of Part

- (1) The principal function of the Tribunal is, under Part 6, to administer the orders to which supervised persons are subject.
- (2) The Tribunal's other functions include —
 - (a) conducting internal reviews of decisions of the Tribunal; see section 91;
 - (b) considering and reporting on the need for extended COs and CSOs; see section 103;
 - (c) advising the Minister about appropriate interim dispositions of persons to be transferred to the State; see section 205(2);
 - (d) its functions under this Part.
- (3) Division 2 establishes the Tribunal and provides for its jurisdiction and constitution.
- (4) Division 3 makes provision in relation to proceedings of the Tribunal.
- (5) Division 4 provides for the membership of the Tribunal.
- (6) Divisions 5 to 7 provide for —
 - (a) the general powers of the Tribunal; and
 - (b) the registrar and staff of the Tribunal; and
 - (c) miscellaneous matters.

155. Terms used

In this Part —

community member means a member of the Tribunal appointed under section 171(1)(c);

experienced lawyer means a lawyer with at least 5 years' legal experience;

member of staff, of the Tribunal, means an officer of the Department made available to assist the Tribunal under section 188(5);

proceedings means proceedings of the Tribunal under this Act and includes part of a proceeding;

public service member means a member of the Tribunal appointed under section 171(1)(f), (g) or (h);

question of law means a question of law arising in proceedings for decision by the Tribunal and includes a question of mixed law and fact;

registrar means the registrar of the Tribunal under section 188(1).

Division 2 — Mental Impairment Review Tribunal

156. Tribunal established

The Mental Impairment Review Tribunal is established.

157. Tribunal's jurisdiction

The Tribunal has the jurisdiction conferred on it by this Act.

158. Constitution of Tribunal

- (1) When exercising its jurisdiction, the Tribunal must be constituted by —
 - (a) the President or a Deputy President; and
 - (b) at least 2 other members, as specified by the President.
- (2) If a matter before the Tribunal relates to an Aboriginal supervised person, the President must, to the extent practicable, ensure that the Tribunal is constituted so as to include a community member who has knowledge and understanding of Aboriginal culture local to the State.

- (3) If a matter before the Tribunal relates to a supervised person who is a child, the President must, to the extent practicable, ensure that the Tribunal is constituted so as to include a psychiatrist, or psychologist, who specialises in child and adolescent treatment.
- (4) If a matter before the Tribunal relates to a supervised person who has a mental illness, the President must, to the extent practicable, ensure that the Tribunal is constituted so as to include a psychiatrist.
- (5) If a matter before the Tribunal relates to a supervised person who has a disability (as defined in the *Disability Services Act 1993* section 3) the predominant reason for which is not mental illness, the President must, to the extent practicable, ensure that the Tribunal is constituted so as to include a member referred to in section 171(1)(f).
- (6) The President may alter who is to constitute the Tribunal for the purpose of dealing with a matter, or anything relating to a matter, and the Tribunal as constituted after the alteration may have regard to any record of the proceedings of the Tribunal in relation to the matter before the alteration or any evidence taken in the proceedings before the alteration.
- (7) Subsections (1) to (5) have effect subject to the provisions of this Act that expressly provide otherwise.

Note for this subsection:

Those provisions are sections 75(1), 81(4) and 91(5).

159. Contemporaneous exercise of jurisdiction

The Tribunal constituted by particular members may exercise its jurisdiction even if the Tribunal differently constituted is exercising its jurisdiction at the same time.

Division 3 — Proceedings of Tribunal

160. Conduct of proceedings

- (1) Proceedings must be conducted with as little formality and technicality, and as speedily, as a proper consideration of the matter before the Tribunal permits.
- (2) In proceedings, the Tribunal is bound by the rules of natural justice.
- (3) If the presiding member considers it appropriate, they may allow a member of the Tribunal to participate in a proceeding (including a hearing) by means of an audio or video link, or any other means of instantaneous communication.
- (4) If the presiding member considers it appropriate, they may allow a party to proceedings, a representative and any witness to participate in a hearing in proceedings by means of an audio or video link, or any other means of instantaneous communication.
- (5) Subject to this Part, the practice and procedure of the Tribunal in proceedings is —
 - (a) as provided for in the practice notes under section 195; or
 - (b) if no relevant provision is made in the practice notes — as determined by the Tribunal.

161. Who presides

- (1) The most senior of the members constituting the Tribunal must preside at proceedings.
- (2) The seniority of members is determined by the President.

162. Decision of Tribunal

- (1) A question that the Tribunal is required to decide is decided according to the opinion of the majority.

- (2) However, if opinions on a question are equally divided, the question is to be resolved according to the opinion of the presiding member.
- (3) This section has effect subject to section 163.

163. Questions of law

- (1) If a question of law arises in proceedings and the presiding member is the President or a Deputy President who is an experienced lawyer, the question is decided by the Tribunal according to the opinion of the presiding member.
- (2) The presiding member referred to in subsection (1) may, if the question is not a question of mixed law and fact, refer the question to the Supreme Court for decision by the court.
- (3) If a question of law arises in proceedings and the presiding member is neither the President nor a Deputy President who is an experienced lawyer, the Tribunal must refer the question to the President or a Deputy President who is an experienced lawyer.
- (4) If a question referred to the President or a Deputy President is not a question of mixed law and fact, the President or Deputy President may refer the question to the Supreme Court for decision by the court.
- (5) If a question of law is referred to the President or a Deputy President, and is not then referred to the Supreme Court, the question is taken to have been decided by the Tribunal according to the opinion of the President or Deputy President.
- (6) A question of law referred to the Supreme Court under subsection (2) or (4) is taken to have been decided by the Tribunal according to the decision of the court.

164. Evidence generally

- (1) In proceedings, the Tribunal —
 - (a) is not bound by the rules of evidence; and
 - (b) may inform itself in such manner as it considers appropriate; and
 - (c) may, on its own initiative, call any person to give evidence; and
 - (d) may examine or cross-examine any witness to the extent the Tribunal considers appropriate for the purposes of the proceedings.
- (2) Evidence in proceedings may be given orally or in writing.
- (3) The Tribunal may require evidence in proceedings to be given on oath or by affidavit.
- (4) The presiding member may direct a person appearing as a witness in proceedings —
 - (a) to answer a question relevant to the proceedings; or
 - (b) to produce a document relevant to the proceedings.
- (5) Subject to section 168, a person appearing as a witness has the same protection and immunity as a witness has in proceedings in the Supreme Court.

165. Appearance in review proceedings

- (1) In proceedings under Part 6 Division 4, the supervised person —
 - (a) may appear before the Tribunal, unless the Tribunal considers that it is not safe or practicable for the person to do so; and
 - (b) may be accompanied by a representative of the person; and
 - (c) may be represented by a legal practitioner or a representative of the person.

- (2) Even though a supervised person is represented in proceedings, the person is entitled to express in person their views about any matter arising in the course of the proceedings that may affect them.
- (3) The President may order that a person's appearance before the Tribunal be by means of an audio or video link, or any other means of instantaneous communication.

166. Summons to give evidence or produce documents

- (1) The Tribunal may, by issuing a summons and giving it to the person to whom it is addressed, require the person to attend before the Tribunal at the time and place specified in the summons to do 1 or both of the following —
 - (a) give evidence in proceedings;
 - (b) produce a specified document relevant to proceedings in the person's custody or control.
- (2) The power of the Tribunal to issue a summons is exercisable by a member or the registrar.
- (3) A summons must be signed by the person issuing it.

167. Power to examine on oath

The following persons may administer an oath or affirmation to any person appearing as a witness in proceedings before the Tribunal —

- (a) a member;
- (b) the registrar;
- (c) a member of staff of the Tribunal.

168. Privilege against self-incrimination

- (1) A person is not excused from complying with a direction under section 164(4), or with a summons under section 166, on the ground that the answer to a question or the production of a

document might tend to incriminate the person or expose the person to a criminal penalty.

- (2) However, any answer given or document produced by the person, or the fact of the person having answered the question or produced the document, in compliance with the direction or summons is not admissible in evidence in any criminal proceedings against the person other than proceedings for perjury or an offence under section 189.

169. Confidentiality orders

- (1) The Tribunal may, by order (a *confidentiality order*), prohibit or restrict the disclosure of any of the following to a supervised person —
- (a) information given in proceedings relating to the person;
 - (b) matters contained in documents received by it relating to the person;
 - (c) the reasons for its decisions in proceedings relating to the person.
- (2) The Tribunal must not make a confidentiality order in respect of a supervised person unless it is satisfied that the disclosure would create a risk to the health or safety of the supervised person or to the safety of another person.
- (3) If the Tribunal makes a confidentiality order in respect of a supervised person, the Tribunal must —
- (a) disclose to a representative of the supervised person, or a legal practitioner representing the person, the information or matters mentioned in subsection (1) to which the order relates; and
 - (b) give the representative or legal practitioner a copy of the order and written reasons for the order.

- (4) A person who, without reasonable excuse, contravenes a confidentiality order where the person knew or ought reasonably to have known about the order commits an offence. Penalty for this subsection: a fine of \$10 000.
- (5) This section has effect despite any other provision of this Act.

170. Publication of names

A person must not, except with the consent of the Tribunal, publish or broadcast in relation to proceedings of the Tribunal —

- (a) the name of any supervised person or any witness or other person appearing in or mentioned in proceedings; or
- (b) any other information, picture or material that identifies or is likely to lead to the identification of such a person.

Penalty: a fine of \$10 000.

Division 4 — Membership of Tribunal

171. Tribunal members

- (1) The members of the Tribunal are —
 - (a) the President, appointed by the Governor on the nomination of the Minister; and
 - (b) 1 or more Deputy Presidents, appointed by the Minister; and
 - (c) as many community members as are necessary to deal with the workload of the Tribunal, appointed by the Minister; and
 - (d) 1 or more psychiatrists, appointed by the Minister; and
 - (e) 1 or more psychologists, appointed by the Minister; and

- (f) 1 or more persons who —
 - (i) are appointed or employed under the *Disability Services Act 1993* section 9 or made available under section 10 of that Act; and
 - (ii) are appointed by the Minister on the nomination of the Minister to whom the administration of the *Disability Services Act 1993* is committed;and
 - (g) 1 or more persons who —
 - (i) are employed in the department of the Public Service principally assisting in the administration of the *Prisons Act 1981*; and
 - (ii) are appointed by the Minister on the nomination of the Minister for Corrective Services;and
 - (h) 1 or more persons who —
 - (i) are employed in the department of the Public Service principally assisting in the administration of the *Young Offenders Act 1994*; and
 - (ii) are appointed by the Minister on the nomination of the Minister to whom the administration of the *Young Offenders Act 1994* is committed.
- (2) A member may be appointed on a full-time, part-time or sessional basis.

172. Qualifications of certain members

- (1) The Minister must not nominate a person as the President unless —
 - (a) the person has served as, or is qualified for appointment as, a judge of the District Court of Western Australia, the Supreme Court of Western Australia or another State

or Territory, the High Court of Australia or the Federal Court of Australia; and

- (b) if the person holds judicial office, the person has consented in writing to be nominated.
- (2) A person holding a judicial office must retire upon being nominated as the President.
 - (3) The Minister must not appoint a person as Deputy President unless the Minister is satisfied that the person has extensive or special knowledge of matters involved in the performance of the Tribunal's functions.
 - (4) The Minister must ensure that the Deputy President, or at least 1 of the Deputy Presidents, is an experienced lawyer.
 - (5) The Minister must not appoint a person as a community member unless satisfied that —
 - (a) the person is able to make an objective and reasonable assessment of the degree of risk that a supervised person would appear to present to the safety of the community; and
 - (b) the person has 1 or more of the following attributes —
 - (i) knowledge and understanding of forensic mental health and disability;
 - (ii) knowledge and understanding of victims' interests and concerns;
 - (iii) knowledge and understanding of Aboriginal culture local to the State;
 - (iv) knowledge and understanding of a range of cultures among Australians;
 - (v) knowledge and understanding of the criminal justice system;
 - (vi) broad experience in a range of issues such as issues relating to employment, substance abuse,

physical or mental illness or disability, or lack of housing, education or training.

- (6) In nominating persons as community members the Minister must ensure that at all times at least one community member has the attribute mentioned in subsection (5)(b)(ii) and at least one community member is an Aboriginal person who has the attribute mentioned in subsection (5)(b)(iii).

173. Terms and conditions of appointment

- (1) A member holds office for the period, not exceeding 5 years, specified in the member's instrument of appointment.
- (2) A member is eligible for reappointment.
- (3) Subject to this Division, a member holds office on the terms and conditions of appointment determined by the Minister or, in the case of the President, by the Governor.

174. Remuneration

- (1) A member is entitled to the remuneration determined from time to time —
- (a) in the case of the President — by the Governor on the recommendation of the Minister; and
- (b) in any other case — by the Minister.
- (2) The Minister's recommendation as to, or determination of, remuneration under subsection (1) is to be on the recommendation of the Public Sector Commissioner.
- (3) Any remuneration paid to a member who is a retired judge does not affect the member's entitlements under the *Judges' Salaries and Pensions Act 1950*.
- (4) Despite subsection (1), a member is not entitled to remuneration under this section if the member holds a full-time office or position that is remunerated out of funds appropriated by Parliament.

175. Deputy President acting as President

- (1) In this section —
unable to act includes that the President is on leave, whether extended or not and whether for illness or not.
- (2) If there is a vacancy in the office of President or the President is unable to act, the Deputy President, or the most senior Deputy President, is to perform the functions of the President.
- (3) The President may resolve any question as to the seniority of Deputy Presidents.
- (4) Despite subsection (2), a Deputy President who is not an experienced lawyer cannot decide a question of law.
- (5) An act or omission of a Deputy President acting in the President's place cannot be questioned on the ground that the occasion to act had not arisen or had ceased.

176. Leave of absence from office

- (1) The Minister may, on terms and conditions the Minister considers appropriate, grant the President leave to be absent from office.
- (2) The President may, on terms and conditions the President considers appropriate, grant a member leave to be absent from office.

177. Vacating office prematurely

A member ceases to be a member before the end of their term of appointment if —

- (a) they resign under section 179; or
- (b) their appointment is terminated under section 180.

178. Conditions for public service members

- (1) A member appointed under section 171(1)(f) is a member only while the person is appointed, employed or made available as described in section 171(1)(f)(i).
- (2) A member appointed under section 171(1)(g) or (h) is a member only while the person is an employee of the department referred to in that paragraph.

179. Resignation of members

- (1) A member may resign by giving the Minister a signed letter of resignation.
- (2) A resignation takes effect on the later of receipt by the Minister and the day specified in the resignation.

180. Terminating appointment of members

- (1) Grounds to terminate the appointment of a member exist if the member —
 - (a) has been convicted of an indictable offence or an offence committed under the law of another jurisdiction that would, if it had been committed in this State, be an indictable offence; or
 - (b) is incapable of performing the functions of a member; or
 - (c) has neglected without reasonable cause to perform the functions of a member; or
 - (d) is incompetent; or
 - (e) is unfit to be a member due to misconduct; or
 - (f) ceases to have a particular status if the person was appointed to that office on the basis of having that status.
- (2) The Governor may terminate the appointment of the President if grounds to terminate the appointment exist.

- (3) The Minister may terminate the appointment of a member, other than the President, if grounds to terminate the appointment exist.
- (4) The termination of the appointment of a public service member does not, of itself, affect the person's employment as a public service officer.

181. Training of members

- (1) The President and each Deputy President are responsible for directing the education, training and professional development of members.
- (2) The Minister must ensure that appropriate provision is made for the education, training and professional development of members.

Division 5 — General powers of Tribunal

182. Exercise and performance of Tribunal's administrative powers and duties

- (1) A power or duty of the Tribunal that is of an administrative nature may be exercised or performed, under an authorisation given under subsection (2), by —
 - (a) a member; or
 - (b) the registrar; or
 - (c) a member of staff of the Tribunal.
- (2) The power to give an authorisation is exercisable by —
 - (a) the President or a Deputy President; and
 - (b) 2 other members.
- (3) An authorisation under this section must be in writing signed by each person exercising the power to authorise.

- (4) A person authorised to exercise a power or perform a duty under this section cannot delegate that power or duty.
- (5) A person exercising a power or performing a duty under an authorisation under this section is taken to do so in accordance with the terms of the authorisation unless the contrary is shown.

183. Tribunal may use experts

The Tribunal may appoint a person with relevant knowledge or experience to assist the Tribunal in performing its functions by providing a report, advice or professional services or by giving evidence in proceedings.

184. Tribunal may require examination of supervised person

- (1) For the purposes of performing its functions, the Tribunal may do any of the following —
 - (a) require a supervised person to be examined by a psychiatrist, psychologist or other appropriate expert;
 - (b) require a psychiatrist, psychologist or other appropriate expert to prepare and submit a report to the Tribunal;
 - (c) require a supervised person to appear before the Tribunal.
- (2) For the purposes of subsection (1)(c), the Tribunal may issue a warrant to have the person arrested and brought before the Tribunal.

185. Issue of warrants by Tribunal

- (1) The power of the Tribunal to issue a warrant for the arrest of a person is exercisable by the President or a Deputy President.
- (2) A warrant must be signed by the person issuing it.

186. Power to obtain information and records

- (1) For the purposes of performing its functions, the Tribunal may, by written notice given to a person, require the person to do 1 or both of the following —
 - (a) provide the Tribunal with a statement of information specified in the notice;
 - (b) produce any record of information (however compiled, recorded or stored) specified in the notice.
- (2) A notice under subsection (1) must fix a time and date by which the information must be provided or produced.
- (3) The Tribunal may do either of the following in relation to a record that is produced in accordance with a notice under subsection (1) —
 - (a) take possession of and retain the record for the period that is reasonably necessary for the performance of its functions;
 - (b) inspect, and take a copy of the whole or any part of, the record.

187. Extension of time in which to give report or other information

- (1) This section applies to a person who is required, under this Act, to do 1 of the following within a specified time period or before a certain time or event —
 - (a) give a report, record or other document to the Tribunal;
 - (b) otherwise give information to the Tribunal, other than at a hearing.
- (2) The Tribunal may grant the person an extension of time, including after the time period has expired or the time or event has passed.

Division 6 — Registrar, staff and facilities of Tribunal

188. Registrar, staff and facilities to be made available

- (1) There must be a registrar of the Tribunal.
- (2) The registrar's functions include assisting the Tribunal generally in the performance of its functions.
- (3) The registrar performs their functions under the direction of the President.
- (4) The CEO must make an officer of the Department available to perform the functions of the registrar.
- (5) The CEO must make other officers of the Department available to assist, under the direction of the registrar, the Tribunal in the performance of its functions.
- (6) The services and facilities of the Department may be used for the purposes of the Tribunal on the terms agreed to by the President and the CEO.

Division 7 — Miscellaneous

189. Offences relating to information and records

- (1) A person commits an offence if the person, without reasonable excuse (proof of which is on the person), does not swear an oath or make an affirmation when required to under section 164(3).
Penalty for this subsection: a fine of \$6 000.
- (2) A person commits an offence if the person, without reasonable excuse (proof of which is on the person), does not answer a question the person is required to answer under section 164(4).
Penalty for this subsection: a fine of \$6 000.

- (3) A person commits an offence if the person, without reasonable excuse (proof of which is on the person), does not comply with a summons under section 166.

Penalty for this subsection: a fine of \$6 000.

- (4) A person commits an offence if the person, without reasonable excuse (proof of which is on the person), does not comply with a notice under section 186(1).

Penalty for this subsection: a fine of \$6 000.

- (5) A person commits an offence if, in proceedings, the person gives the Tribunal information that the person knows is false or misleading in a material particular.

Penalty for this subsection: a fine of \$6 000.

- (6) A person commits an offence if the person, in purporting to comply with a requirement under this Part to produce a document or comply with a notice under section 186(1) to provide or produce information, produces or provides a document or other information that the person knows is false or misleading in a material particular —

- (a) without indicating that it is false or misleading and, to the extent the person can, how it is false or misleading; and
- (b) if the person has or can reasonably obtain the correct information — without providing the correct information.

Penalty for this subsection: a fine of \$6 000.

- (7) It is enough for a prosecution notice lodged against a person for an offence under subsection (5) or (6) to state that the answer, document or other information was false or misleading to the person's knowledge without stating which.

190. Tribunal to notify Public Advocate of orders

- (1) Within 2 working days after the Tribunal is notified, under section 48 or 204(4), of the making of a custody order, a community supervision order or an interim disposition, the Tribunal must notify the Public Advocate of that, and give them —
 - (a) the prescribed information; and
 - (b) any other information that the Tribunal and the Public Advocate agree, from time to time, is to be given under this section.
- (2) As soon as practicable after exercising a power under section 61(1), 78(3) or 85 in respect of a supervised person, the Tribunal must give the Public Advocate any information within its possession that it considers the Public Advocate may need in order to carry out their functions under the *Guardianship and Administration Act 1990* section 97(1)(a) to (e) or 98.

191. Tribunal to report death of supervised person to coroner

The Tribunal must, upon being notified of the death of a supervised person, immediately report the death to a coroner.

192. Tribunal may request information from SAT about supervised person's guardian or administrator

- (1) The Tribunal may, for the purposes of the performance of its functions, request the State Administrative Tribunal for —
 - (a) information as to whether a guardianship or administration order applies in respect of a supervised person; and
 - (b) the name and contact details of a supervised person's guardian or administrator; and
 - (c) a copy of a guardianship or administration order in respect of a supervised person.

- (2) The State Administrative Tribunal may comply with a request under subsection (1) despite any other law.

193. Seal

The Tribunal must have a seal.

194. Orders

An order of the Tribunal must be authenticated in accordance with the regulations.

195. President may issue practice notes

The President may from time to time issue, amend or revoke practice notes for regulating the Tribunal's practice and procedures.

196. Delegation by President

- (1) The President may delegate to another member, the registrar or a member of staff of the Tribunal any power or duty of the President (other than under this section or section 182) that is of an administrative nature.
- (2) A delegation under this section must be in writing signed by the President.
- (3) A person to whom a power or duty is delegated under this section cannot delegate that power or duty.
- (4) A person exercising a power or performing a duty that has been delegated to the person under this section is taken to do so in accordance with the terms of the delegation unless the contrary is shown.
- (5) This section does not limit the ability of the President to perform a function through an officer or agent.

197. Judicial notice and evidence of certain matters

- (1) A court or person or body acting judicially must take judicial notice of the following —
 - (a) the fact that a person is or was a member or the registrar;
 - (b) the official signature of a person who is or was a member or the registrar;
 - (c) a seal of the Tribunal affixed to a document.
- (2) A court or person or body acting judicially must presume that the seal of the Tribunal affixed to a document was properly affixed unless the contrary is proved.
- (3) Evidence of an order of the Tribunal may be given by producing a copy of the order certified by the registrar to be a true copy.

198. Annual report

- (1) Before 1 October in each year, the President must give a written report to the Minister on —
 - (a) the performance of the Tribunal's functions during the previous financial year; and
 - (b) matters relating to supervised persons; and
 - (c) the operation of this Act so far as it relates to supervised persons.
- (2) The Minister must cause a copy of the report to be laid before each House of Parliament within 12 sitting days of the House after receiving it.

Part 11 — Transfer into and out of the State

Division 1 — Preliminary matters

199. Overview of Part

- (1) This Part provides for the transfer of persons subject to a supervision order or an interstate supervision order from or to the State.
- (2) Division 2 provides for the transfer of supervised persons to another State or Territory in which a corresponding law is in force.
- (3) Division 3 provides for —
 - (a) the transfer to the State of persons subject to an interstate supervision order; and
 - (b) the interim disposition of such persons under a determination of the Minister; and
 - (c) the subsequent determination of the appropriate disposition of such persons by the Supreme Court.
- (4) Division 4 deals with the interaction between this Part and other transfer related laws.

200. Terms used

In this Part —

corresponding law means a law of another State or a Territory that is prescribed as a corresponding law for the purposes of this Part;

identified person has the meaning given in the *Mental Health Act 2014* section 348;

interim disposition, in relation to a person, means an interim disposition determined by the Minister under section 205(1) for the person;

interstate supervision order means an order made under a corresponding law that corresponds or substantially corresponds to a supervision order;

participating jurisdiction means another State or a Territory in which a corresponding law is in force.

201. Informed consent

For the purposes of this Part, a person gives informed consent to a transfer only if the person gives written consent to the transfer after —

- (a) the person has been given an explanation of the process involved in the transfer, the reasons for the transfer and sufficient information to enable the person to make a balanced judgment; and
- (b) any relevant questions asked by the person have been answered and the person has understood the answers.

202. Nature of proceedings under this Part

Proceedings in the Supreme Court under this Part are civil proceedings.

Division 2 — Transfer of persons from Western Australia

203. Transfer of persons from Western Australia to a participating jurisdiction

- (1) A supervised person may be transferred to a participating jurisdiction if —
 - (a) the transfer is permitted under a corresponding law of the participating jurisdiction; and
 - (b) the Minister makes an order under subsection (2) authorising the transfer.

- (2) The Minister may make an order authorising the transfer if —
 - (a) a relevant expert has certified that the transfer is for the benefit of the supervised person; and
 - (b) the Minister is satisfied that the person or the person’s guardian has given informed consent to the transfer.
- (3) For the purposes of subsection (2)(a), a relevant expert is either of the following —
 - (a) in the case of an identified person — the Chief Psychiatrist;
 - (b) in any other case — a psychiatrist, psychologist or other appropriate expert.
- (4) The effect of the supervision order to which the person is subject is suspended while the person is subject to an interstate supervision order.

Division 3 — Transfer of persons to Western Australia

204. Transfer of persons from a participating jurisdiction to Western Australia

- (1) A person who is subject to an interstate supervision order may be transferred to the State if —
 - (a) the transfer is permitted under a corresponding law of the participating jurisdiction in which the interstate supervision order was made; and
 - (b) the Minister —
 - (i) agrees to the transfer; and
 - (ii) determines an interim disposition for the person.
- (2) The Minister must not agree to the transfer of a person, or determine an interim disposition for the person, unless —
 - (a) a relevant expert has certified that the transfer is for the benefit of the supervised person; and

- (b) the Minister is satisfied that there are facilities or services available for the custody, treatment, care and support of the person in the State; and
 - (c) the Minister is satisfied that the transfer is necessary for the maintenance or re-establishment of family relationships or relationships with people who can assist in supporting the person; and
 - (d) the Minister is satisfied that the person or the person's guardian has given informed consent to the transfer.
- (3) For the purposes of subsection (2)(a), a relevant expert is either of the following —
- (a) in the case of a person who, in the opinion of the Chief Psychiatrist, would be likely to become an identified person if the person were transferred to the State — the Chief Psychiatrist;
 - (b) in any other case — a psychiatrist, psychologist or other appropriate expert.
- (4) If the Minister determines an interim disposition, the Minister must immediately —
- (a) notify the Tribunal and the Chief Mental Health Advocate that the interim disposition has been determined; and
 - (b) give the Tribunal and the Chief Mental Health Advocate a copy of the interim disposition and the prescribed information.
- (5) Nothing in this section is to be taken to require the Minister to agree to a transfer of a person to the State.
- (6) The reference in subsection (2)(d) to the guardian of a person subject to an interstate supervision order includes a reference to a person who is acting or appointed under a law of the participating jurisdiction as the person's guardian.

205. Interim dispositions for persons transferred to Western Australia

- (1) The interim disposition that the Minister may determine for a person, for the purposes of section 204(1)(b)(ii), is that —
 - (a) the person be detained at a place of custody as if the person were subject to a custody order; or
 - (b) the person be released on conditions determined by the Minister as if the person were subject to a community supervision order.
- (2) Before determining an interim disposition for the person, the Minister must seek the Tribunal's advice about the most appropriate interim disposition for the person.
- (3) The Minister must not determine an interim disposition under subsection (1)(a) for the person unless, immediately prior to their transfer to the State, the interstate supervision order requires the person to be detained in custody, regardless of whether they are permitted to be on leave (however described) at the time.
- (4) If the interim disposition is that the person be detained then, on the transfer of the person to the State —
 - (a) the person must be so detained; and
 - (b) Part 6, to the extent relevant, applies to and in relation to the interim disposition as if it were a custody order.
- (5) If the interim disposition is that the person be released subject to conditions then, on the transfer of the person to the State —
 - (a) the person must be released subject to those conditions; and
 - (b) Part 6, to the extent relevant, applies to and in relation to the interim disposition as if it were a community supervision order.

- (6) Despite the application of Part 6 to and in relation to an interim disposition —
- (a) the Tribunal need not comply with a review requirement under Part 6 Division 4 in relation to the interim disposition, including when exercising a power under section 73; and
 - (b) the Tribunal cannot cancel all conditions of the interim disposition or a leave of absence order in respect of the interim disposition.

206. Review of persons transferred to Western Australia

- (1) Within 6 months after a person is transferred to the State under this Division, the Minister must apply to the Supreme Court for review of the interim disposition in respect of the person.
- (2) The purpose of the review is to determine the appropriate disposition for the person.
- (3) The court must make 1 of the following orders in respect of the person —
 - (a) a custody order;
 - (b) a community supervision order;
 - (c) an order that the person be released unconditionally.
- (4) The court cannot make an order under subsection (3) that is more restrictive on the person's freedom than the interstate supervision order to which the person was subject unless satisfied, by acceptable and cogent evidence and to a high degree of probability, that it is necessary to do so to ensure the adequate protection of the community against an unacceptable risk that the supervised person will commit a serious offence.
- (5) Part 5, to the extent relevant, applies to the making of a custody order or community supervision order under this section as if the order were being made under Part 5.

- (6) For the purposes of subsection (4), a reference to the commission of a serious offence includes a reference to —
- (a) the doing of an act or the making of an omission in any State or Territory that, if done within this State, would constitute a serious offence; and
 - (b) the doing of an act or the making of an omission outside Australia that, if done within this State, would constitute a serious offence.
- (7) For the purposes of this section, it makes no difference whether a person doing an act or making an omission referred to in subsection (6) —
- (a) would be likely to be charged with an offence; or
 - (b) would, if charged with an offence, be found fit to stand trial; or
 - (c) would, if tried for an offence, be convicted.

207. Limiting term for custody order

- (1) This section applies if the Supreme Court makes a custody order under section 206(3).
- (2) When the court sets a limiting term for the custody order under section 50, it is to do so as if —
- (a) the offence that led to the interstate supervision order being made in respect of the person had been committed in the State; and
 - (b) the maximum penalty for that offence were the maximum penalty attaching to that offence at the date of the person's transfer to the State.
- (3) If the offence referred to in subsection (2) no longer exists at the date of the person's transfer to the State, the court must —
- (a) determine whether there is an existing offence, as at that date, with which the person could have been charged had it existed at the time of the original charge; and

- (b) either —
 - (i) if there is such an offence — determine the limiting term by reference to the maximum penalty for that offence as at the date of the person’s transfer to the State; or
 - (ii) if there is no such offence — determine the limiting term as 5 years.
- (4) If there is not, and was not, an equivalent offence in the State to the offence that led to the interstate supervision order being made in respect of the person, the court must set the limiting term for the custody order as 5 years.
- (5) The limiting term is taken to have commenced when the interstate supervision order was made unless the court, after taking into account any time that the person had spent in custody in relation to the offence before the order was made, orders that the term be taken to have commenced on an earlier day.

208. Court to make orders if person has been in custody longer than limiting term

- (1) This section applies to a person in respect of whom the Supreme Court determines a limiting term under section 207.
- (2) If the person has been subject to the interstate supervision order and the interim disposition for a cumulative period equal to or longer than the limiting term, the court must —
 - (a) make an order discharging the person from the custody order; or
 - (b) make an order under Part 7 Division 5.
- (3) The court must adjourn proceedings under subsection (2) until the Minister —
 - (a) applies to the court for an extended custody order under Part 7 Division 5; or

- (b) informs the court that such an application will not be made.
- (4) The Minister may, for the purposes of subsection (3), require the Tribunal to report, under section 103, on the need for an extended custody order in respect of the person.
- (5) The interim disposition in respect of the person continues until an order is made under subsection (2).

Division 4 — Interaction with other transfer related laws

209. Interaction with *Mental Health Act 2014*

- (1) Effect may be given to an order under section 203(2) or an agreement under section 204(1)(b) whether or not an authorisation or approval is needed or given under the *Mental Health Act 2014* Part 24.
- (2) A supervised person or a person subject to an interstate supervision order cannot be transferred from or to the State under the *Mental Health Act 2014* Part 24 without the necessary agreement or order under this Part.
- (3) Subsections (1) and (2) have effect despite the *Mental Health Act 2014*.

210. Interaction with *Prisoners (Interstate Transfer) Act 1983*

- (1) A supervised person or a person subject to an interstate supervision order cannot be transferred from or to the State under the *Prisoners (Interstate Transfer) Act 1983* without the necessary agreement or order under this Part.
- (2) Subsection (1) has effect despite the *Prisoners (Interstate Transfer) Act 1983*.

211. Persons subject to international supervision orders

- (1) The purpose of this section is to ensure that a person subject to an international supervision order who is transferred to the State can be appropriately dealt with under this Act.
- (2) In this section —
foreign jurisdiction means a jurisdiction outside Australia;
international supervision order means an order under a law of a foreign jurisdiction determined under the regulations to correspond, or sufficiently correspond, to a supervision order.
- (3) The regulations may deal with the transfer to the State of persons subject to an international supervision order, including by —
 - (a) providing for the determination that an order under a law of a foreign jurisdiction corresponds, or sufficiently corresponds, to a supervision order;
 - (b) modifying this Part for the purposes of this section.
- (4) This Part has effect with any other modifications necessary or convenient to give effect to this section.

Part 12 — Appeals to Court of Appeal

Division 1 — Preliminary matters

212. Overview of Part

This Part provides for appeals to the Court of Appeal against decisions of a court (other than a court of summary jurisdiction) relating to —

- (a) making, cancelling or confirming a CO or CSO under section 74 or 89; or
- (b) making, reviewing, cancelling or confirming an extended CO or CSO under Part 7; or
- (c) determining the appropriate disposition of a person transferred to the State under Part 11.

213. Term used: deciding court

In this Part —

deciding court means the court that made the decision against which the appeal is made.

Division 2 — Appeals to Court of Appeal

214. Appeals against certain decisions

- (1) A supervised person may, with the leave of the Court of Appeal, appeal to the court against the following —
 - (a) a decision of a court (other than a court of summary jurisdiction) to confirm a custody order or community supervision order under section 74;
 - (b) a decision of a court (other than a court of summary jurisdiction) under section 89 —
 - (i) to make a custody order; or
 - (ii) determining the limiting term for a custody order;

- (c) a decision under Part 7 —
 - (i) to make an extended order; or
 - (ii) determining the limiting term for an extended custody order;
 - (d) a decision on an application for an extended custody order under section 110 to make a community supervision order;
 - (e) a decision on review of an extended custody order under section 121 —
 - (i) to confirm the order; or
 - (ii) to make a community supervision order;
 - (f) a decision under Part 11 —
 - (i) to make a custody order; or
 - (ii) determining the limiting term for a custody order; or
 - (iii) to make a community supervision order.
- (2) The Minister may, with the leave of the Court of Appeal, appeal to the court against the following —
- (a) a decision of a court (other than a court of summary jurisdiction) to cancel a custody order or community supervision order under section 74;
 - (b) a decision of a court (other than a court of summary jurisdiction) under section 89 to confirm a community supervision order;
 - (c) a decision under Part 7 —
 - (i) to refuse to make an extended order; or
 - (ii) determining the limiting term for an extended custody order;
 - (d) a decision on an application for an extended custody order under section 110 to make a community supervision order;

- (e) a decision on review of an extended custody order under section 121 to —
 - (i) cancel the order; or
 - (ii) make a community supervision order;
- (f) a decision under Part 11 —
 - (i) determining the limiting term for a custody order; or
 - (ii) to make a community supervision order; or
 - (iii) that a person be released unconditionally or discharged from a custody order.
- (3) Unless the Court of Appeal orders otherwise, an appeal against a decision cannot be commenced later than 21 days after the day on which the decision is made.
- (4) An appeal is commenced by lodging with the Court of Appeal an application for leave to appeal that sets out the grounds of the appeal.
- (5) The Court of Appeal may decide whether or not to give leave to appeal —
 - (a) with or without written or oral submissions from the parties to the appeal; and
 - (b) before or at the hearing of, or when giving judgment on, the appeal.

215. Grounds of appeal

The grounds of an appeal are that the deciding court —

- (a) made an error of law or of fact, or of both law and fact; or
- (b) acted without jurisdiction or in excess of its jurisdiction.

216. Dealing with appeal

- (1) An appeal is by way of rehearing.
- (2) The Court of Appeal —
 - (a) has all the powers and duties of the deciding court; and
 - (b) may draw inferences of fact, not inconsistent with the findings of the deciding court; and
 - (c) may, on special grounds, receive further evidence as to questions of fact, either orally in court, by affidavit, or in another way.
- (3) When dealing with an appeal, the Court of Appeal may make any order the court considers appropriate.
- (4) The Court of Appeal, in deciding an appeal, may do 1 of the following —
 - (a) confirm the decision;
 - (b) vary the decision;
 - (c) set aside the decision and make any decision that the deciding court could have made in the proceeding;
 - (d) set aside the decision and send the matter back to the deciding court for reconsideration, either with or without the hearing of further evidence, in accordance with any directions or recommendations that the court considers appropriate.
- (5) If the Court of Appeal sends the matter back to the deciding court, it may give directions as to the constitution of the deciding court.

217. Appeal does not stay decision

- (1) An appeal against a decision does not affect the operation of the decision or prevent the taking of action to implement the decision unless the Court of Appeal orders otherwise.

- (2) Without limiting subsection (1), the Court of Appeal may do either or both of the following —
- (a) by order, stay the operation of a decision pending the determination of an application for leave to appeal against the decision and of any appeal;
 - (b) if the final determination of the appeal might result in an order that a supervised person be detained in custody — order that the person be detained in custody until the determination of the appeal.

218. Effect of decisions made on, or as a consequence of, appeal

- (1) The fact that a decision is made on reconsideration as required under section 216(4)(d) does not prevent the decision from being open to appeal under this Part.
- (2) The rest of this section applies to, or in relation to, a decision (the *original decision*) described in section 214(1) or (2).
- (3) The original decision as confirmed or varied by the Court of Appeal under this Part, or a decision of the Court of Appeal substituted under this Part for the original decision —
 - (a) is to be regarded as, and has effect as, a decision of the deciding court; and
 - (b) unless the Court of Appeal orders otherwise, is to be regarded as having effect, or having had effect, from the time when the original decision would have, or would have had, effect.
- (4) Despite subsection (3)(a), the decision as confirmed, varied or substituted is not again open to appeal under this Part.

Part 13 — Miscellaneous

Division 1 — Preliminary matters

219. Terms used

In this Part —

officer, of a supporting agency, means —

- (a) an officer or employee in or of the agency; or
- (b) if the agency is the Police Force of Western Australia — a police officer; or
- (c) if the agency is the police force of a participating jurisdiction — a member of that police force;

participating jurisdiction has the meaning given in section 200;

person covered by this Act means a person who is —

- (a) an accused required to be detained at an authorised hospital under a hospital order; or
- (b) an unfit accused; or
- (c) a supervised person;

public sector body has the meaning given in the *Public Sector Management Act 1994* section 3(1);

relevant function means a function under a written law that —

- (a) is concerned with the assessment or management of, and provision of services to or in relation to, persons covered by this Act; or
- (b) is necessary for, or otherwise supports, the performance of a function referred to in paragraph (a);

supporting agency means any of the following —

- (a) the Minister;
- (b) the Department;
- (c) the Office of the Director of Public Prosecutions;
- (d) the Chief Mental Health Advocate;

- (e) the Chief Psychiatrist;
- (f) the Public Advocate;
- (g) the Public Trustee;
- (h) the Tribunal;
- (i) the Mental Health Tribunal established under the *Mental Health Act 2014*;
- (j) the Community Services Department;
- (k) the department of the Public Service principally assisting in the administration of the *Disability Services Act 1993*;
- (l) the department of the Public Service principally assisting in the administration of the *Health Services Act 2016*;
- (m) the department of the Public Service principally assisting in the administration of the *Housing Act 1980*;
- (n) the department of the Public Service principally assisting in the administration of the *Mental Health Act 2014*;
- (o) the department of the Public Service principally assisting in the administration of the *Police Act 1892*;
- (p) the Police Force of Western Australia provided for by the *Police Act 1892*;
- (q) the department of the Public Service principally assisting in the administration of the *Prisons Act 1981*;
- (r) the department of the Public Service principally assisting in the administration of the *Victims of Crime Act 1994*;
- (s) the department of the Public Service principally assisting in the administration of the *Young Offenders Act 1994*;

- (t) a public sector body, or public office, prescribed for the purposes of this definition;
- (u) a body or public office of the Commonwealth, or of a participating jurisdiction, prescribed for the purposes of this definition.

Division 2 — Electronic monitoring and curfew

220. Term used: approved electronic monitoring device

In this Division —

approved electronic monitoring device means —

- (a) an electronic monitoring device that has been approved by the CEO (Corrections) for the purposes of this section; and
- (b) any equipment, wires or other items associated with such a device.

221. Electronic monitoring

- (1) The purpose of electronic monitoring of a supervised person is to enable the location of the person to be monitored.
- (2) If a supervised person is subject to electronic monitoring, a community corrections officer may do any of the following —
 - (a) direct the person to wear an approved electronic monitoring device;
 - (b) direct the person to permit the installation of an approved electronic monitoring device at the place where the person resides or, if the person does not have a place of residence, at any other place specified by the community corrections officer;
 - (c) give any other reasonable direction to the person necessary for the proper administration of the electronic monitoring of the person.

222. Curfew

- (1) In this section —
specified means specified by a supervising officer from time to time.
- (2) The purpose of a curfew is to allow for the movements of a supervised person to be restricted for the protection of the community.
- (3) The curfew is a requirement that the supervised person must remain at a specified place for specified periods, except as provided in subsection (5).
- (4) The supervised person cannot be required by the curfew to remain at the specified place for periods that amount to less than 2 or more than 12 hours in any 1 day.
- (5) The supervised person may leave the specified place during a specified period only —
 - (a) to obtain urgent medical or dental treatment for the person; or
 - (b) for the purpose of averting or minimising a serious risk of death or injury to the person or to another person; or
 - (c) to obey an order issued under a written law (such as a summons) requiring the person's presence elsewhere; or
 - (d) for a purpose approved of by a supervising officer; or
 - (e) at the direction of a supervising officer.
- (6) A supervising officer may give any reasonable direction to the person necessary for the proper administration of the curfew requirement.
- (7) Without limiting subsection (6), if the supervised person is authorised under subsection (5) to leave the specified place, a supervising officer may give directions as to any of the following —
 - (a) when the person may leave;

- (b) the period of the authorised absence;
- (c) when the person must return;
- (d) the route and method of travel to be used by the person during the absence;
- (e) the manner in which the person must report their whereabouts.

223. Enforcement of electronic monitoring and curfew

- (1) A community corrections officer may —
 - (a) direct the occupier of a place where an approved electronic monitoring device has been installed to give the device to a community corrections officer within a time specified by the officer; and
 - (b) at any time, enter a place where an approved electronic monitoring device has been installed and retrieve the device.
- (2) A person must not, without reasonable excuse, remove, or interfere with, or interfere with the operation of, an approved electronic monitoring device required to be worn or installed under section 221(2) in such a way as to prevent or impede monitoring of the person's location.

Penalty for this subsection: imprisonment for 12 months or a fine of \$12 000.
- (3) To ascertain whether or not a supervised person who is subject to a curfew is complying with the curfew, a supervising officer may, at any time —
 - (a) enter or telephone a place specified under section 222(3) in relation to the person; and
 - (b) enter or telephone the person's place of employment or any other place where the person is authorised or required to attend; and

- (c) question any person at any place referred to in paragraph (a) or (b).
- (4) A person must not —
 - (a) fail to comply with a direction under subsection (1)(a); or
 - (b) hinder a community corrections officer or supervising officer exercising powers under subsection (1)(b) or (3); or
 - (c) fail to answer a question put under subsection (3)(c); or
 - (d) give an answer to a question put under subsection (3)(c) that the person knows is false or misleading in a material particular.

Penalty for this subsection: imprisonment for 12 months or a fine of \$12 000.

- (5) An act or omission of a supervised person subject to electronic monitoring or a curfew that is a contravention of subsection (2) or (4) —
 - (a) does not constitute an offence under this section; but
 - (b) is, for the purposes of this Act, taken to be a failure to comply with a condition of the supervision order under which the electronic monitoring or curfew is imposed (if it is not otherwise).

Division 3 — Protection of information

224. Protection of information about persons covered by this Act

- (1) A person must not, directly or indirectly, record, use or disclose information that relates to a person covered by this Act that was obtained by the person when performing a function under this Act, unless permitted to do so under subsection (2) or (4).

Penalty for this subsection: a fine of \$2 500.

- (2) The person may record, use or disclose the information —
- (a) for the purpose of performing a function that the person has under this Act; or
 - (b) as required or allowed under this Act or another written law; or
 - (c) to assist a court in a proceeding involving or about a person covered by this Act; or
 - (d) under the order of a court or person or body acting judicially; or
 - (e) for the purposes of proceedings of the State Administrative Tribunal commenced under the *Guardianship and Administration Act 1990*; or
 - (f) for the purposes of proceedings of the Mental Health Tribunal under the *Mental Health Act 2014*; or
 - (g) for the purpose of giving information to a law enforcement body in connection with an offence allegedly committed by or against a person covered by this Act; or
 - (h) for the purposes of the investigation of a suspected offence or disciplinary matter or the conduct of proceedings against a person for an offence or disciplinary matter; or
 - (i) to protect the safety of an individual; or
 - (j) if the information is personal information — with the consent of the person to whom it relates; or
 - (k) in prescribed circumstances.
- (3) Subsection (1) does not apply to the recording, disclosure or use of statistical or other information that could not reasonably be expected to lead to the identification of a person to whom it relates.
- (4) If a supporting agency obtains information that relates to a person covered by this Act when performing a relevant function

in relation to the person, the agency may record, use or disclose the information for the purposes of the performance of another relevant function the agency has in relation to the person, including a relevant function under another written law.

Division 4 — Cooperation and sharing of information between supporting agencies

225. Cooperation between supporting agencies

- (1) A supporting agency must cooperate with other supporting agencies —
 - (a) in the performance of its own relevant functions; and
 - (b) in their performance of their relevant functions.
- (2) The duty to cooperate includes a duty to provide reasonable assistance and support to other supporting agencies in connection with the exercise of their relevant functions.
- (3) Cooperation between supporting agencies in the performance of relevant functions may include —
 - (a) the development of multi-agency management plans for persons covered by this Act; and
 - (b) providing assistance and support to persons covered by this Act through joint programs.

226. Disclosure of information between supporting agencies

- (1) For the purpose of cooperating under section 225, a supporting agency (the *disclosing agency*) may disclose to another supporting agency (the *recipient agency*) information about a person covered by this Act in the possession or control of the disclosing agency if the disclosure is, or could reasonably be expected to be, necessary or conducive to the performance of a relevant function of either agency in relation to the person.

- (2) If an officer of a supporting agency discloses information in good faith under subsection (1) —
- (a) no civil or criminal liability is incurred in respect of the disclosure; and
 - (b) the disclosure is not to be regarded as a breach of any duty of confidentiality or secrecy imposed by law; and
 - (c) the disclosure is not to be regarded as a breach of professional ethics or standards or as unprofessional conduct.
- (3) Information disclosed under this section must be treated as confidential by the recipient agency.
- (4) An officer of the recipient agency must not, directly or indirectly, record, use or disclose information disclosed to the agency under this section other than —
- (a) for the purposes of the performance of the relevant function in relation to the person covered by this Act; or
 - (b) as required under a written law.
- Penalty for this subsection: a fine of \$2 500.
- (5) Subsections (3) and (4) do not apply to the recording, disclosure or use of statistical or other information that could not reasonably be expected to lead to the identification of a person to whom it relates.

Division 5 — Interactions between supervision orders and sentences

227. Interactions between supervision orders and sentences

- (1) In this section —
- custodial sentence*** means a sentence that requires that the person subject to it be detained, other than where a parole order, or a supervised release order, that is not suspended has effect in relation to the person;

sentence means —

- (a) a sentence imposed by a court of the State (including an indefinite sentence imposed under the *Sentencing Act 1995* section 98(1)) or a sentence, direction or order referred to in the definition of **Governor's pleasure detainee** in the *Sentence Administration Act 2003* section 4(2); and
- (b) a translated sentence as defined in the *Prisoners (Interstate Transfer) Act 1983* section 3(1); and
- (c) a sentence of detention under the *Young Offenders Act 1994*; and
- (d) a restriction order or an interim supervision order under the *High Risk Serious Offenders Act 2020*;

supervised release order has the meaning given in the *Young Offenders Act 1994* section 3.

- (2) If a supervised person is subject to a sentence —
 - (a) the supervision order and the sentence have effect concurrently; and
 - (b) subject to paragraph (c), the supervision order prevails over the sentence to the extent of any inconsistency; and
 - (c) in the case of a custodial sentence — the more restrictive of the supervision order and the sentence prevails to the extent of any inconsistency, unless a court orders otherwise.
- (3) For the purposes of subsection (2)(a), a court or the Tribunal may disregard that the person is under a sentence when required to be satisfied as to a matter or to take a matter into account in relation to the person for the purposes of Part 6 or 7.

228. Interactions between supervision orders and Commonwealth sentences

- (1) If a supervised person is subject to a sentence imposed under a law of the Commonwealth, the supervision order has effect

concurrently with the sentence to the extent not inconsistent with the sentence or the law of the Commonwealth under which it was imposed.

- (2) For the purposes of subsection (1), a court or the Tribunal may disregard that the person is under a Commonwealth sentence when required to be satisfied as to a matter or to take a matter into account in relation to the person for the purposes of Part 6 or 7.

Division 6 — General

229. Giving notice, information, summonses and other documents

- (1) In this section —
electronic means includes an electronic database or document system or the use of any other means by which a document can be accessed electronically.
- (2) The regulations may make provision for and in relation to the following —
- (a) the giving of notice or information or a summons or other document required or permitted to be given under this Act (including giving by electronic means);
 - (b) the time at which the notice, information, summons or document is taken to have been given;
 - (c) means of satisfying a requirement under this Act in relation to a document in writing (for example, a requirement that the original of a document be given or that a document be signed) if the document is given by electronic means.

230. Issue and execution of warrants

- (1) A warrant issued under this Act —
- (a) must be in the prescribed form; and

- (b) has effect according to its terms.
- (2) In the absence of evidence to the contrary, it is to be presumed that —
 - (a) the person who issued the warrant is empowered to do so; and
 - (b) the signature on the warrant is that of the person who issued it.
- (3) A person to whom the warrant is directed must give effect to it as soon as practicable.
- (4) The warrant itself is sufficient authority for the person to whom it is directed to arrest the person concerned and to hold that person in custody for the purposes of taking them, as soon as practicable, to the place specified in the warrant.
- (5) For the purposes of arresting a person under the warrant, the person to whom it is directed —
 - (a) may stop any aircraft, train, vehicle or vessel in which the person is or is reasonably suspected to be by the person to whom the warrant is directed; and
 - (b) may enter any place where the person is or is reasonably suspected to be by the person to whom the warrant is directed.

231. Protection from liability

- (1) An action in tort does not lie against a person for anything that the person has done, in good faith —
 - (a) in the performance or purported performance of a function under this Act; or
 - (b) in assisting another person in the performance or purported performance of a function under this Act.
- (2) Despite subsection (1), the State is not relieved of any liability that it might otherwise have had for another person having done anything described in that subsection.

- (3) The protection given by subsection (1) applies even though the thing done as described in that subsection may have been capable of being done whether or not this Act had been enacted.
- (4) In this section, a reference to the doing of anything includes a reference to the omission to do anything.

232. Regulations

The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed, or are necessary or convenient to be prescribed for giving effect to the purposes of this Act.

233. Rules of court

A court may make rules of court in relation to any matter necessary or convenient for giving effect to this Act.

234. Review of Act

- (1) The Minister must review the operation and effectiveness of this Act, and prepare a report based on the review, as soon as practicable after the 5th anniversary of the day on which this section comes into operation.
- (2) The Minister must cause the report to be laid before each House of Parliament as soon as practicable after it is prepared.

Part 14 — Repeals and transitional provisions

Division 1 — Repeals

235. Criminal Law (Mentally Impaired Accused) Act 1996 repealed

The *Criminal Law (Mentally Impaired Accused) Act 1996* is repealed.

236. Criminal Law (Mentally Impaired Accused) Regulations 1997 repealed

The *Criminal Law (Mentally Impaired Accused) Regulations 1997* are repealed.

Division 2 — Transitional provisions for *Criminal Law (Mental Impairment) Act 2023*

Subdivision 1 — Preliminary matters

237. Terms used

In this Division —

Board means the Mentally Impaired Accused Review Board established under the repealed Act section 41;

commencement day means the day on which Part 2 comes into operation;

existing custody order has the meaning given in section 254(1);

new provision means a provision of this Act;

old provision means a provision of the repealed Act;

repealed Act means the *Criminal Law (Mentally Impaired Accused) Act 1996*.

238. Interpretation Act 1984 not affected

Except to the extent that this Division or regulations made for the purposes of this Division provide differently, the

Interpretation Act 1984 applies to and in relation to the repeals effected by sections 235 and 236.

Subdivision 2 — General provisions

239. Completion of things commenced before commencement day

Anything commenced by a person under or for the purposes of an old provision before commencement day may, if there is a new provision that corresponds to the old provision in relation to that thing, be continued by the person on and after commencement day under the new provision.

240. Continuing effect of things done before commencement day

- (1) This section applies to an act, matter or thing done or omitted to be done under or for the purposes of an old provision before commencement day by a person, to the extent to which that act, matter or thing has any force or significance on and after commencement day.
- (2) The act, matter or thing is, if there is a new provision that corresponds to the old provision in relation to that act, matter or thing, taken, on and after commencement day, to have been done or omitted by the person under or for the purposes of the new provision.

241. Continuation of duties of Board or registrar

A duty under a written law to do a thing that the Board or the registrar of the Board had immediately before commencement day becomes, on commencement day, a duty of the Tribunal or the registrar of the Tribunal (as is relevant).

242. References to repealed Act and old provisions

- (1) Unless the contrary intention appears, a reference in a written law or other document or instrument to the repealed Act includes a reference to this Act.

- (2) Unless the contrary intention appears, a reference in a written law or other document or instrument to an old provision includes, if there is a new provision that corresponds to the old provision in relation to a matter or thing, a reference to the new provision.

243. Relationship of this Subdivision to other transitional provisions

The provisions of Subdivisions 3 to 7 and of regulations made for the purposes of this Division prevail over the provisions of this Subdivision to the extent of any inconsistency.

Subdivision 3 — Court proceedings

244. Proceedings generally

- (1) This section applies to proceedings or a step in proceedings before a court, under or for the purposes of an old provision, immediately before commencement day.
- (2) The proceedings or step may, if there is a new provision that corresponds to the old provision in relation to the proceedings or step, be continued under or for the purposes of the new provision.
- (3) The other provisions of this Subdivision and the provisions of Subdivisions 4 and 5 and of regulations made for the purposes of this Division prevail over this section to the extent of any inconsistency.

245. Question of fitness raised under repealed Act s. 11

- (1) This section applies if the question of whether a person is not mentally fit to stand trial was raised under the repealed Act section 11 but had not been decided before commencement day.
- (2) The question is taken to have been raised under section 28.

246. Inquiries and appeals under repealed Act s. 12

- (1) This section applies to an inquiry by a judicial officer under the repealed Act section 12 into the question of whether a person is not mentally fit to stand trial if the inquiry was not completed before commencement day.
- (2) The inquiry may be continued as if it were an inquiry under section 29.
- (3) An order of a particular kind or an adjournment by the judicial officer under the repealed Act section 12(2) has effect as if it were an order of that kind or an adjournment under section 29(3).
- (4) For the purposes of section 30, the proceedings are taken to have been adjourned on commencement day.
- (5) If an appeal under the repealed Act section 12(4) against a judicial officer's decision that a person is not mentally fit to stand trial was commenced but not completed before commencement day, the appeal may be completed as if it were an appeal against a decision made by a court under section 29.

247. Adjournments and other matters under repealed Act s. 16 or s. 19

- (1) Subsections (2) and (3) apply to proceedings adjourned under the repealed Act section 16(2)(b) or 19(1)(b) if no order under the repealed Act section 16(5) or 19(4) (as is relevant) had been made before commencement day.
- (2) The proceedings are taken to have been adjourned under section 35(2).
- (3) For the purposes of section 36, the proceedings are taken to have been adjourned on commencement day.
- (4) Subsection (5) applies if a court or judge was, immediately before commencement day, required under the repealed Act

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section 16(2) or (4) or 19(1) or (3) to make an order in relation to a person.

- (5) The court or judge must make an order under section 37 in relation to the person.
- (6) Subsection (7) applies to a requirement under the repealed Act section 16(7) or 19(6) that had not been fully complied with before commencement day.
- (7) The requirement, to the extent relevant and not fully complied with, has effect as a requirement under section 47(3).

248. Previous finding of unfitness

- (1) This section applies to an accused found, under the repealed Act, not mentally fit to stand trial.
- (2) The accused is taken to have been found unfit to stand trial under Part 3 Division 2.

249. Requirement to make order under repealed Act s. 22

- (1) This section applies if —
 - (a) before commencement day —
 - (i) under the repealed Act section 20 a person was found not guilty of an offence on account of unsoundness of mind; or
 - (ii) under the repealed Act section 21 a person was acquitted of an offence on account of unsoundness of mind;
 - and
 - (b) the court had not made an order under the repealed Act section 22 in respect of the person before commencement day.
- (2) The court must make an order in respect of the person under Part 5.

Subdivision 4 — Orders and other things to continue

250. Purpose of Subdivision

The purpose of this Subdivision is to ensure that orders and other things to which it applies continue, subject to this Act, to have effect on and after commencement day to the extent necessary.

251. Hospital orders

- (1) This section applies to a hospital order under the repealed Act section 5 in effect immediately before commencement day.
- (2) The hospital order has effect, according to its terms, as if it were a hospital order made under section 19.

252. Bail and custody under repealed Act s. 14

- (1) This section applies to a grant of bail, or the remanding of a person in custody, under the repealed Act section 14 in effect immediately before commencement day.
- (2) The grant or remand has effect, according to its terms, as if it were a grant or remand made under section 15.

253. Existing community orders

- (1) In this section —
community order means a community based order, conditional release order or intensive supervision order under the *Sentencing Act 1995*.
- (2) This section applies to and in relation to a community order under the repealed Act (the *existing community order*) in effect immediately before commencement day.
- (3) The existing community order has effect, according to its terms, as if it were a community supervision order made under Part 5,

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and section 54 has effect as if the order were made on commencement day.

- (4) As soon as practicable after commencement day —
 - (a) the court that made the existing community order must comply with section 48 in respect of the order; and
 - (b) the Tribunal must review the existing community order under Part 6 Division 4 and provide a report as if the review had been requested by the Minister under section 69(1).
- (5) If the existing community order will expire within 3 months after commencement day, the Tribunal must, under section 104, consider and report to the Minister as soon as practicable on the need for an extended community supervision order in respect of the person.

254. Existing custody orders

- (1) This section applies to and in relation to a custody order under the repealed Act (the *existing custody order*) in effect immediately before commencement day.
- (2) The existing custody order has effect as if it were a custody order made under Part 5.
- (3) The Tribunal must, as soon as practicable after commencement day —
 - (a) review the order under Part 6 Division 4 and provide a report as if the review had been requested by the Minister under section 69(1); and
 - (b) consider the need for an extended custody order in respect of the person subject to the existing custody order, unless they are a person described in section 262(1).
- (4) Section 103(3) and (4) apply for the purposes of subsection (3)(b).

- (5) A report under the repealed Act section 33 in relation to a person who was, immediately before commencement day, subject to an existing custody order has no effect on and after commencement day.

255. Leave of absence orders

- (1) This section applies to and in relation to a leave of absence order (the *existing leave of absence order*) under the repealed Act section 28 in effect immediately before commencement day.
- (2) If the existing leave of absence order provides for a continuous period of absence of at least 7 days it —
- (a) has effect, according to its terms, as a leave of absence order under section 73(1)(b); and
 - (b) has effect, on and after commencement day, until the earliest of the following —
 - (i) the Tribunal replaces the order with a leave of absence order under section 73(1)(b);
 - (ii) the Tribunal cancels the order under section 73(1)(d)(i);
 - (iii) the existing custody order underlying the order ceases to have effect under section 265;
 - (iv) the expiry of the period of 2 months beginning on commencement day.
- (3) If the existing leave of absence order is covered by subsection (2), the Tribunal must, as soon as practicable —
- (a) designate a person under section 99 as the supervising officer for the supervised person; and
 - (b) review the order, under Part 6 Division 4, and provide a report as if the review had been requested by the Minister under section 69(1).

- (4) If the existing leave of absence order is not covered by subsection (2), it —
- (a) has effect, according to its terms, as a leave of absence order under section 73(1)(b); and
 - (b) has effect, on and after commencement day, until the earliest of the following —
 - (i) the existing custody order underlying the order ceases to have effect under section 265;
 - (ii) the order ceases to have effect according to its terms;
 - (iii) the expiry of the period of 2 months beginning on commencement day.

256. Absence without leave

A person who was apprehended under the repealed Act section 31(3) before commencement day, but who, by the end of the day before commencement day, had not been taken to the place from which the person was absent, must be dealt with under section 83(3).

257. Release orders

- (1) This section applies to and in relation to a release order under the repealed Act section 35 in effect immediately before commencement day.
- (2) If the release order is an order that the person be released unconditionally on a day (the *release day*) that is or is after commencement day, the person is, on release day, discharged from the existing custody order.
- (3) If the release order is an order that the person be released on conditions on a day (the *release day*) that is or is after commencement day, the order has effect, according to its terms, on and after release day, as a leave of absence order under section 73(1)(b).

- (4) If the release order is an order that the person be released on conditions on a day that was before commencement day, the order has effect, according to its terms, on and after commencement day, as a leave of absence order under section 73(1)(b).
- (5) If the release order has effect under this section as a leave of absence order, the Tribunal must, as soon as practicable —
 - (a) designate a person under section 99 as the supervising officer for the supervised person; and
 - (b) review the order, under Part 6 Division 4, and provide a report as if the review had been requested by the Minister under section 69(1).
- (6) If, immediately before commencement day, the Board was required under the repealed Act section 36 to give a copy of a release order to a person, the Tribunal must, as soon as practicable after commencement day, give a copy of the order to each person referred to in section 76.

258. Breaches of conditions of release orders

- (1) Subsection (2) applies if —
 - (a) before commencement day a person is suspected of breaching a condition of a release order under the repealed Act section 35; and
 - (b) the Board had not dealt with the suspected breach under the repealed Act section 37 before commencement day; and
 - (c) the release order has effect under section 257 as a leave of absence order.
- (2) The Tribunal must deal with the suspected breach under section 81.

259. Warrants

- (1) This section applies to a warrant under the repealed Act section 37(2)(b) or 40(2) in effect (that is, a power under it may or must be exercised) immediately before commencement day.
- (2) The warrant has effect as if it were a warrant issued by the Tribunal under section 82(1)(a) or 184(2) (as is relevant).

Subdivision 5 — Setting limiting term for existing custody orders

260. Application of this Subdivision

This Subdivision applies to and in relation to an existing custody order.

261. Application to set limiting term

- (1) As soon as practicable after commencement day, the Director of Public Prosecutions must apply to the court that made the existing custody order for the court to set a limiting term for the order.
- (2) The court must hear and determine the application as soon as practicable.
- (3) The Director of Public Prosecutions need not comply with subsection (1) while the person subject to the existing custody order is not a resident of the State.
- (4) This section does not apply if section 262 applies to the existing custody order.

262. Limiting term in cases of murder and manslaughter

- (1) If the person subject to the existing custody order is subject to it because they were acquitted, on account of unsoundness of mind, of murder or manslaughter, the limiting term for the order is the duration of the life of the person, and that term has effect as if set by a court under section 50.

- (2) The person or the Director of Public Prosecutions may apply to the court that made the existing custody order for the court to set a limiting term for the order.

263. Procedural matters

- (1) If an application is made under section 261 or 262, the court must give the person subject to the existing custody order, the Director of Public Prosecutions, the CEO and the Tribunal —
- (a) a copy of the application; and
 - (b) written notice of the date, time and place of the hearing of the application.
- (2) If the person subject to the existing custody order or the Director of Public Prosecutions is given notice under subsection (1)(b) but does not attend the hearing, the court may, as it considers appropriate —
- (a) proceed with the hearing; or
 - (b) adjourn the hearing.
- (3) As soon as practicable after receiving notice under subsection (1), the CEO must give written notice of the application to each victim of the offence in respect of which the existing custody order was made (the *offence*) who has notified the CEO that they wish to receive notice of such applications or review proceedings in relation to the person subject to the existing custody order.
- (4) A victim may nominate a person to receive notice on their behalf.
- (5) Notice to a victim who is a child must be given to a parent of the child and any guardian of the child.
- (6) A victim of the offence may do 1 or both of the following —
- (a) give a victim impact statement to the court of the kind described in Part 9 Division 2;

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- (b) make a submission to the court of the kind described in Part 9 Division 4.
- (7) Part 9, with the necessary modifications, applies, for the purposes of proceedings under this Division, to a statement or submission under subsection (6).
- (8) A close family member or carer of the person subject to the existing custody order may make a submission to the court in relation to the treatment, care and support of the person, and section 22(3) to (5) apply in relation to the submission as if it were made under that section.
- (9) The validity of a decision of a court is not affected by a failure to notify a victim in accordance with this section.

264. Court to set limiting term

- (1) If an application is made under section 261, the court must set a limiting term for the existing custody order under section 50.
- (2) If an application is made under section 262, the court may set a limiting term for the existing custody order under section 50 that is not the duration of the life of the person if satisfied that —
 - (a) a life term would be clearly unjust given the circumstances of the offence and the person; and
 - (b) the person is unlikely to be a threat to the safety of the community when released from custody.
- (3) The limiting term is taken to have commenced on the day on which the existing custody order was made unless the court, after taking into account any time that the person had spent in custody in relation to the offence before the order was made, orders that the term be taken to have commenced on an earlier day.

265. Where person subject to existing custody order has been, or soon will have been, in custody longer than limiting term

- (1) This section applies to and in relation to an existing custody order for which a limiting term is set under section 264 if the limiting term —
 - (a) expires on or before the day on which the limiting term is set; or
 - (b) will expire within 6 months after the day on which the limiting term is set.
- (2) If the limiting term of the existing custody order expires on a day that is earlier than the day on which the limiting term is set, the existing custody order continues, on and after the day on which the limiting term expires (whether that day is before, or is or is after commencement day), until an order is made under subsection (4)(a) or (6).
- (3) If the limiting term of the existing custody order expires on the day on which the limiting term is set, or after that day but before an order is made under subsection (4)(a) or (6), the existing custody order continues, on and after the day on which the limiting term expires, until an order is made under subsection (4)(a) or (6).
- (4) If the proceedings under section 264 are in a court other than the Supreme Court, the court must —
 - (a) make an order discharging the person from the existing custody order; or
 - (b) make an order referring the matter to the Supreme Court to be dealt with under subsection (6).
- (5) The court must adjourn proceedings under subsection (4) until the Minister informs the court that —
 - (a) the Minister intends to apply to the Supreme Court for an extended custody order under Part 7 Division 5; or
 - (b) such an application will not be made.

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- (6) If the proceedings under section 264 are in the Supreme Court, or the matter is referred to it under subsection (4), the Supreme Court must —
 - (a) make an order discharging the person from the existing custody order; or
 - (b) make an order under Part 7 Division 5.
- (7) The court must adjourn proceedings under subsection (6) until the Minister —
 - (a) applies to the court for an extended custody order under Part 7 Division 5; or
 - (b) informs the court that such an application will not be made.
- (8) The Minister may, for the purposes of subsection (7), require the Tribunal to report, under section 103, on the need for an extended custody order in respect of the person subject to the existing custody order.
- (9) An order under subsection (4)(a) or (6) has effect —
 - (a) unless paragraph (b) applies — on the day on which the order is made; or
 - (b) if the limiting term for the existing custody order expires after the day on which the order is made — when the limiting term for the existing custody order expires.
- (10) Part 12 has effect as if the list of decisions in section 214(2) included a decision under subsection (4)(a) or (6)(a) to discharge a person from an existing custody order.

266. Legal representation of person subject to existing custody order

- (1) If it appears to the court that a person subject to the existing custody order should have legal representation for the purposes of proceedings under this Subdivision, the court may (on

application or its own initiative) adjourn proceedings until the person is represented by a legal practitioner.

- (2) If the person is unable to instruct their legal practitioner, the legal practitioner may exercise an independent discretion and, in doing so, must act in a way that they reasonably believe to be in the person's best interests.
- (3) If there is a question as to the extent to which the person is able to instruct a legal practitioner or is able to make admissions, the question must be determined by the court.

267. Functions of Director of Public Prosecutions

It is a function of the Director of Public Prosecutions to make applications under this Subdivision.

Subdivision 6 — Matters relating to Board and its functions

268. Proceedings generally

- (1) This section applies to proceedings or a step in proceedings before the Board, under or for the purposes of an old provision, immediately before commencement day.
- (2) The proceedings or step may, if there is a new provision that corresponds to the old provision for the purposes of the proceedings or step, be continued before the Tribunal under or for the purposes of the new provision.
- (3) The other provisions of this Subdivision and the provisions of Subdivisions 4 and 5 and of regulations made for the purposes of this Division prevail over this section to the extent of any inconsistency.

269. Places of custody

- (1) Subsection (2) applies if, immediately before commencement day, the Board was required under the repealed Act

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section 25(1)(b) to determine the place where a person is to be detained.

- (2) The Tribunal must, within 5 working days after commencement day, determine under Part 6 Division 3 the place where the person is to be detained.
- (3) If, immediately before commencement day, a person was detained at a place under the repealed Act section 25(2), the person is taken to be detained at that place under section 61(3).
- (4) The determination of a place where a person is to be detained under the repealed Act section 25 in effect immediately before commencement day has effect as if it were a determination by the Tribunal under Part 6 Division 3.

270. Supervising officers

- (1) Subsection (2) applies to the designation of a person (the *supervising officer*) under the repealed Act section 45(1) in effect immediately before commencement day.
- (2) The designation —
 - (a) has effect as if it were a designation under section 99 until it is cancelled or replaced by a designation under section 99, or is otherwise of no effect; and
 - (b) is taken to be for each person in relation to whom the supervising officer was authorised to give directions under the repealed Act section 28(4)(c) or 35(4)(c).
- (3) Subsection (4) applies to an arrangement made by the Board under the repealed Act section 45(3) in effect immediately before commencement day.
- (4) The arrangement continues to have effect, according to its terms, as if it were an arrangement made by the Tribunal under section 99(4).

271. Examination required by Board

- (1) This section applies if a requirement of the Board under the repealed Act section 40(1) had not been fully complied with before commencement day.
- (2) The requirement, to the extent relevant and not fully complied with, has effect as if it were a requirement of the Tribunal under section 184(1).

272. Members of Board

- (1) The person who held office immediately before commencement day as the chairperson of the Board holds office as the President of the Tribunal, subject to this Act, until the earliest of the following —
 - (a) their current term of office as chairperson of the Prisoners Review Board under the *Sentence Administration Act 2003* section 103(1)(a) expires;
 - (b) they otherwise cease to hold that office;
 - (c) a person is appointed as the President of the Tribunal under section 171(1)(a).
- (2) Subject to subsection (1), the President holds office on the same terms and conditions, including as to remuneration, as those on which they held office immediately before commencement day.
- (3) The person who, immediately before commencement day, held office under the repealed Act section 42(1)(ba) as the deputy chairperson of the Board is taken to have been appointed to be a Deputy President of the Tribunal under section 171(1)(b).
- (4) The person who, immediately before commencement day, held office under the repealed Act section 42(1)(bb) as a member of the Board is taken to have been appointed to be a member of the Tribunal under section 171(1)(f).

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- (5) Subsection (6) applies to a person who, immediately before commencement day —
 - (a) held office under the repealed Act section 42(1)(c) or (d) as a member of the Board; or
 - (b) was a deputy, under the repealed Act section 42(2), of a member referred to in paragraph (a).
- (6) The person is taken to have been appointed to be a member of the Tribunal under section 171(1)(d) or (e) (as is relevant).
- (7) A person who is a member of the Tribunal under this section, other than subsection (1), holds office, subject to this Act —
 - (a) for the remainder of the person's term of office under the repealed Act; and
 - (b) otherwise on the same terms and conditions, including as to remuneration, as those on which the person held office immediately before commencement day.

273. Registrar

The person who held office immediately before commencement day as the registrar of the Board (the *existing registrar*) continues as the registrar of the Tribunal, subject to this Act, until an officer is made available under section 188(4) to perform the functions of the registrar of the Tribunal.

Subdivision 7 — Miscellaneous

274. Final annual report to Minister

Despite the repeal of the repealed Act, the person who held office immediately before commencement day as the chairperson of the Board must prepare and give the Minister a report under the repealed Act section 48 for the period beginning on the 1 July immediately before commencement day and ending on the day before commencement day.

275. Records of Board

The records of the Board become the records of the Tribunal.

276. Tribunal to provide Chief Mental Health Advocate with details of supervised persons

- (1) Within 7 working days after commencement day the Tribunal must, for each supervised person, provide the Chief Mental Health Advocate with details of —
 - (a) any order under the repealed Act or this Act that has effect in respect of the supervised person; and
 - (b) if applicable, the place where the supervised person is detained; and
 - (c) the prescribed information.
- (2) The Chief Mental Health Advocate must comply with section 128(2) as if it referred to notification under subsection (1), except in relation to a supervised person who is detained in a DSC declared place or at an authorised hospital.

277. Notice to Public Advocate

A notice that was, immediately before commencement day, required to be given under the *Guardianship and Administration Act 1990* section 98 (as in force before commencement day) must be given to the Public Advocate by the Tribunal within 5 working days after commencement day, and when given is taken to have been given under section 190(1) of this Act.

278. Declared places

- (1) This section applies to a place that, immediately before commencement day, was a DSC declared place as defined in the repealed Act section 24(5A).
- (2) A declaration is taken to have been made under section 60, on commencement day, in relation to the place and the declaration is taken to specify that the place is to be controlled and managed

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by or on behalf of the Disability Services Commission under the *Declared Places (Mental Impairment) Act 2015*.

Subdivision 8 — Transitional regulations

279. Transitional regulations

- (1) The regulations may deal with all matters of a savings or transitional nature arising as a result of the enactment of this Act.
- (2) Regulations made for the purposes of this section may —
 - (a) clarify or vary the application of the provisions of this Division; and
 - (b) be expressed to have effect despite another written law; and
 - (c) provide that a specified provision of a written law does not apply, or applies with specified modifications, to or in relation to a matter.
- (3) Regulations made for the purposes of this section may provide that a specified state of affairs is taken to have existed, or not to have existed, on and after a day that is earlier than the day on which the regulations are published in the *Gazette*.
- (4) The provisions of the regulations made for the purposes of this section prevail over the provisions of Subdivisions 3 to 7 to the extent of any inconsistency.
- (5) If the regulations contain a provision referred to in subsection (3), the provision does not operate so as to —
 - (a) affect in a manner prejudicial to any person (other than the State or a public authority), the rights of that person existing before the day of publication of those regulations; or

- (b) impose liabilities on any person (other than the State or a public authority) in respect of anything done or omitted to be done before the day of publication of those regulations.
- (6) Regulations made for the purposes of this section must be made within the period that is reasonably necessary to deal with the savings and transitional matters that arise as a result of the enactment of this Act.

Part 15 — Consequential amendments to other Acts

Division 1 — *Bail Act 1982* amended

280. *Bail Act 1982* amended

This Division amends the *Bail Act 1982*.

281. **Schedule 1 Part C amended**

- (1) In Schedule 1 Part C clause 3B(4)(b) delete “to refuse bail and make a hospital order under section 5 of the *Criminal Law (Mentally Impaired Accused) Act 1996*; and” and insert:

for bail to be refused and a hospital order under the *Criminal Law (Mental Impairment) Act 2023* section 19 to be made; and

- (2) In Schedule 1 Part C clause 3D(4)(b) delete “to refuse bail and make a hospital order under the *Criminal Law (Mentally Impaired Accused) Act 1996* section 5; and” and insert:

for bail to be refused and a hospital order under the *Criminal Law (Mental Impairment) Act 2023* section 19 to be made; and

- (3) In Schedule 1 Part C clause 3E(3)(c) delete “to refuse bail and make a hospital order under the *Criminal Law (Mentally Impaired Accused) Act 1996* section 5; and” and insert:

for bail to be refused and a hospital order under the *Criminal Law (Mental Impairment) Act 2023* section 19 to be made; and

**Division 2 — *Children's Court of Western Australia Act 1988*
amended**

282. *Children's Court of Western Australia Act 1988* amended

This Division amends the *Children's Court of Western Australia Act 1988*.

283. Section 21 amended

(1) In section 21(4):

(a) in paragraph (b) delete “protection.” and insert:

protection; or

(b) after paragraph (b) insert:

(c) exercise jurisdiction under the *Criminal Law (Mental Impairment) Act 2023*.

(2) After section 21(4) insert:

(4A) If the question of whether the accused is unfit to stand trial is raised during criminal proceedings before the Court when constituted by JPs only, the Court must refer the question to the Court constituted by a judge or magistrate.

(4B) Subsection (4A) has effect subject to the *Criminal Law (Mental Impairment) Act 2023* section 31.

**Division 3 — Community Protection (Offender Reporting)
Act 2004 amended**

**284. Community Protection (Offender Reporting) Act 2004
amended**

This Division amends the *Community Protection (Offender Reporting) Act 2004*.

285. Section 3 amended

- (1) In section 3 delete the definition of *mentally impaired accused*.
- (2) In section 3 insert in alphabetical order:

detainee under the CLMI Act means a person subject to a custody order or an interim or extended custody order under the *Criminal Law (Mental Impairment) Act 2023*, or an interim disposition under section 205(1)(a) of that Act;

- (3) In section 3 in the definition of *community order*:
 - (a) in paragraph (b) delete “1994;” and insert:

1994; or

- (b) after paragraph (b) insert:

(c) a community supervision order or an interim or extended community supervision order under the *Criminal Law (Mental Impairment) Act 2023*, or an interim disposition under section 205(1)(b) of that Act;

(4) In section 3 in the definition of ***government custody*** delete paragraph (a) and insert:

(a) custody as a prisoner, detainee or detainee under the CLMI Act; or

(5) In section 3 in the definition of ***sentence*** delete paragraph (d) and insert:

(d) a custody order or an interim or extended custody order under the *Criminal Law (Mental Impairment) Act 2023*, or an interim disposition under section 205(1)(a) of that Act; and

(6) In section 3 in the definition of ***strict government custody*** delete “mentally impaired accused,” and insert:

detainee under the CLMI Act,

286. Section 4 amended

After section 4(1)(c) insert:

(ca) a finding under the *Criminal Law (Mental Impairment) Act 2023* section 41(2)(c) or an equivalent finding under provisions of the laws of a foreign jurisdiction;

287. Section 70 amended

Delete section 70(1)(c) and insert:

- (c) ceases to be subject to a custody order or an interim or extended custody order under the *Criminal Law (Mental Impairment) Act 2023*, or an interim disposition under section 205(1)(a) of that Act, and is not immediately made subject to another of those orders; or

288. Section 85A amended

In section 85A in the definition of *serious sexual offence*:

- (a) in paragraph (d) delete “paragraph (a) or (c).” and insert:
paragraph (a) or (c); or
- (b) in paragraph (e) delete “(c) the offence” and insert:
 - (iii) the offence

Division 4 — *Coroners Act 1996* amended

289. *Coroners Act 1996* amended

This Division amends the *Coroners Act 1996*.

290. Section 3 amended

In section 3 in the definition of *person held in care*:

- (a) in paragraph (ca) delete “section 3;” and insert:
section 3; or

(b) in paragraph (d) delete “1994;” and insert:

1994; or

(c) after paragraph (d) insert:

(e) a person subject to a hospital order under the
Criminal Law (Mental Impairment) Act 2023;
or

(f) a person subject to a supervision order under
the *Criminal Law (Mental Impairment)*
Act 2023;

**Division 5 — *Court Security and Custodial Services Act 1999*
amended**

291. *Court Security and Custodial Services Act 1999* amended

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

292. **Section 3 amended**

In section 3 in the definition of *custodial place* in paragraph (f) delete “section 23 of the *Criminal Law (Mentally Impaired Accused) Act 1996*,” and insert:

the *Criminal Law (Mental Impairment) Act 2023* section 9;

293. Section 4 amended

In section 4(1) delete “section 23 of the *Criminal Law (Mentally Impaired Accused) Act 1996*.” and insert:

the *Criminal Law (Mental Impairment) Act 2023* section 9.

294. Section 16 amended

In section 16(2)(b) delete “*Criminal Law (Mentally Impaired Accused) Act 1996*, the *Declared Places (Mentally Impaired Accused) Act 2015*” and insert:

Criminal Law (Mental Impairment) Act 2023, the *Declared Places (Mental Impairment) Act 2015*

295. Section 96 amended

In section 96(1) delete “*Declared Places (Mentally Impaired Accused) Act 2015*” and insert:

Declared Places (Mental Impairment) Act 2015

296. Schedule 2 amended

In Schedule 2 Division 1 clause 5 delete “hospital order or a custody order under the *Criminal Law (Mentally Impaired Accused) Act 1996*” and insert:

hospital order, custody order, interim custody order or extended custody order under the *Criminal Law (Mental Impairment) Act 2023*, or an interim disposition under section 205(1)(a) of that Act,

Note: The heading to amended Schedule 2 Division 1 clause 5 is to read:

Power to move persons with mental impairment

Division 6 — *Criminal Appeals Act 2004* amended

297. *Criminal Appeals Act 2004* amended

This Division amends the *Criminal Appeals Act 2004*.

298. Section 4 amended

In section 4(2) insert in alphabetical order —

limiting term has the meaning given in the *Criminal Law (Mental Impairment) Act 2023* section 9(1);

299. Section 6 amended

In section 6 in the definition of *decision* after paragraph (e) insert:

- (ea) a decision under the *Criminal Law (Mental Impairment) Act 2023* section 29 that an accused is fit, or unfit, to stand trial;
- (eb) an order under the *Criminal Law (Mental Impairment) Act 2023* section 37(2)(a) discharging an accused from a charge or a refusal to make such an order;
- (ec) a finding under the *Criminal Law (Mental Impairment) Act 2023* section 41(2)(c);
- (ed) an order under the *Criminal Law (Mental Impairment) Act 2023* Part 5 or a refusal to make such an order;

- (ee) the setting of a limiting term under the *Criminal Law (Mental Impairment) Act 2023* section 50(2);

300. Section 8 amended

In section 8(1)(a)(iii) delete “sentence” and insert:

sentence, or set a limiting term,

301. Section 11 amended

In section 11(6):

- (a) in paragraph (c) delete “forfeiture.” and insert:

forfeiture; and

- (b) after paragraph (c) insert:

- (d) a custody order or a community supervision order under the *Criminal Law (Mental Impairment) Act 2023*.

302. Section 12 amended

After section 12(5) insert:

- (5A) Despite subsections (1) and (2), if an appellant or respondent is subject to a custody order or community supervision order under the *Criminal Law (Mental Impairment) Act 2023*, the order must not be suspended under this section.

303. Section 14 amended

In section 14(1):

- (a) in paragraph (g) delete “unsoundness of mind or to make or refuse to make an order under *Criminal Law (Mentally Impaired Accused) Act 1996*, exercise” and insert:

mental impairment — exercise

- (b) after paragraph (g) insert:

- (ga) if the appeal is against a decision or finding referred to in section 6(ea) or (ec) — exercise any power that the Court of Appeal may exercise under section 32A;
- (gb) if the appeal is against an order, refusal or decision referred to in section 6(ed) or (ee) — exercise any power that the Court of Appeal may exercise under section 32B;

304. Section 24 amended

In section 24(2):

- (a) in paragraph (da) delete “(other than a judgment of acquittal on account of unsoundness of mind)” and insert:

(other than on account of mental impairment)

- (b) in paragraph (e) delete “(other than a judgment of acquittal on account of unsoundness of mind) — ” and insert:

(other than on account of mental impairment) —

305. Section 25 amended

- (1) Delete section 25(2) and insert:
- (2) The accused may appeal to the Court of Appeal against the acquittal.
- (2) In section 25(3):
- (a) delete “any or all of the following decisions — ” and insert:
- the acquittal if —
- (b) in paragraphs (a) and (aa) delete “the acquittal if”;
- (c) delete paragraphs (b) and (c) and insert:
- (b) it was entered after a finding under the *Criminal Law (Mental Impairment) Act 2023* section 41(2)(b).

- (3) In section 25(3) after each of paragraphs (a) and (aa) insert:

or

Note: The heading to amended section 25 is to read:

Rights of appeal if acquittal on account of mental impairment

306. Section 25A inserted

After section 25 insert:

25A. Rights of appeal relating to *Criminal Law (Mental Impairment) Act 2023*

An accused or the prosecutor may appeal to the Court of Appeal against 1 or more of the following decisions by a judge of a superior court in relation to a charge of an indictable offence —

- (a) a decision under the *Criminal Law (Mental Impairment) Act 2023* section 29 that the accused is fit, or unfit, to stand trial;
- (b) a finding under the *Criminal Law (Mental Impairment) Act 2023* section 41(2)(c);
- (c) an order under the *Criminal Law (Mental Impairment) Act 2023* Part 5 or a refusal to make such an order;
- (d) the setting of a limiting term under the *Criminal Law (Mental Impairment) Act 2023* section 50(2).

307. Section 30 amended

In section 30(5):

- (a) in paragraph (d) delete “*Criminal Law (Mentally Impaired Accused) Act 1996*; or” and insert:

Criminal Law (Mental Impairment) Act 2023; or

- (b) in paragraph (e) delete “*Criminal Law (Mentally Impaired Accused) Act 1996.*” and insert:

Criminal Law (Mental Impairment) Act 2023.

308. Section 31 amended

- (1) In section 31(4)(a) delete “imposed; or” and insert:

imposed or a different order made; or

- (2) In section 31(5):

- (a) delete “sentence and —” and insert:

sentence or order and —

- (b) in paragraph (a) delete “severe; or” and insert:

severe or make a new order; or

- (c) in paragraph (b) after “sentence” insert:

or made the order

Note: The heading to amended section 31 is to read:

Decision on appeal against sentence or order

309. Section 32 amended

- (1) In section 32(1) delete “unsoundness of mind under *The Criminal Code* section 27.” and insert:

mental impairment.

- (2) In section 32(2):
- (a) in paragraph (b) delete “(the *section 27 finding*); or” and insert:

(the *mental impairment finding*); or
 - (b) in paragraph (c) delete “section 27 finding,” and insert:

mental impairment finding,
- (3) In section 32(4) delete “section 27 finding” and insert:

mental impairment finding
- (4) In section 32(6):
- (a) delete “section 27 finding” and insert:

mental impairment finding
 - (b) in paragraph (c) delete “offender” (each occurrence) and insert:

accused
- (5) In section 32(7):
- (a) delete “section 27 finding” and insert:

mental impairment finding

Criminal Law (Mental Impairment) Act 2023

Part 15 Consequential amendments to other Acts

Division 6 Criminal Appeals Act 2004 amended

s. 310

- (b) in paragraph (c) delete “offender” (each occurrence) and insert:

accused

- (c) in paragraph (c) delete “*Criminal Law (Mentally Impaired Accused) Act 1996.*” and insert:

Criminal Law (Mental Impairment) Act 2023.

- (6) In section 32(8):

- (a) delete “section 27 finding” and insert:

mental impairment finding

- (b) in paragraph (a) delete “section 27 finding,” and insert:

mental impairment finding,

- (7) Delete section 32(9).

310. Sections 32A and 32B inserted

After section 32 insert:

32A. Decision on appeal under s. 25A(a) or (b)

- (1) This section applies in the case of an appeal commenced under section 25A against a decision or finding referred to in paragraph (a) or (b) of that section.

- (2) Unless under subsection (3) the Court of Appeal allows the appeal, it must dismiss the appeal.
- (3) The Court of Appeal may allow the appeal if, in its opinion —
 - (a) the decision or finding should be set aside because, having regard to the evidence, it is unreasonable or cannot be supported; or
 - (b) the decision or finding should be set aside because of a wrong decision on a question of law by the judge; or
 - (c) there was a miscarriage of justice.
- (4) Despite subsection (3), even if a ground of appeal might be decided in favour of the appellant, the Court of Appeal may dismiss an appeal if it considers that no substantial miscarriage of justice has occurred.
- (5) If an appeal against a decision referred to in section 25A(a) is allowed, the Court of Appeal must set aside the decision as to fitness and must do 1 or more of the following —
 - (a) order that the question of fitness be dealt with again by the court that made the decision, with or without orders to that court —
 - (i) as to how or by whom it is to be constituted; and
 - (ii) as to how it must deal with the question;
 - (b) decide the question of fitness;
 - (c) order a trial or a new trial;
 - (d) order that a special proceeding take place under the *Criminal Law (Mental Impairment) Act 2023* Part 3 Division 3.

- (6) If an appeal against a finding referred to in section 25A(b) is allowed, the Court of Appeal must set aside the finding that the accused committed the offence (**offence A**) and must —
- (a) enter a judgment of acquittal (other than on account of mental impairment) of offence A; or
 - (b) order that a special proceeding take place under the *Criminal Law (Mental Impairment) Act 2023* Part 3 Division 3; or
 - (c) if —
 - (i) the accused could have been found to have committed some other offence (**offence B**) instead of offence A; and
 - (ii) the court is satisfied that the judge must have been satisfied, on the evidence available, of facts that prove the accused did the acts or made the omissions that constitute offence B,make a finding under the *Criminal Law (Mental Impairment) Act 2023* section 41(2)(c) that the accused committed offence B and deal with the accused under the *Criminal Law (Mental Impairment) Act 2023*; or
 - (d) if the court is satisfied that the accused should have been found not guilty of offence A on account of mental impairment — enter a judgment of acquittal of offence A on account of mental impairment and deal with the accused under the *Criminal Law (Mental Impairment) Act 2023*; or
 - (e) if —
 - (i) the accused could have been found to have committed some other offence (**offence B**) instead of offence A; and

- (ii) the court is satisfied that the judge must have been satisfied, on the evidence available, of facts that prove the accused did the acts or made the omissions that constitute offence B; and
- (iii) the court is satisfied that the accused should have been found not guilty of offence B on account of mental impairment,

enter a judgment of acquittal of offence B on account of mental impairment and deal with the accused under the *Criminal Law (Mental Impairment) Act 2023*.

32B. Decision on appeal under s. 25A(c) or (d)

- (1) This section applies in the case of an appeal commenced under section 25A against —
 - (a) an order or decision referred to in paragraph (c) or (d) of that section; or
 - (b) a refusal referred to in paragraph (c) of that section.
- (2) Unless under subsection (3) the Court of Appeal allows the appeal, it must dismiss the appeal.
- (3) The Court of Appeal may allow the appeal if, in its opinion —
 - (a) in the case of an appeal referred to in subsection (1)(a), a different order should have been made or a different limiting term set; or
 - (b) in the case of an appeal referred to in subsection (1)(b), an order should have been made.

- (4) If the Court of Appeal allows an appeal referred to in subsection (1)(a), it must set aside the order or limiting term and —
 - (a) may instead make a new order, or set a new limiting term that is either longer or shorter than the term set aside; or
 - (b) may send the charge back to the court that made the order or set the limiting term to be dealt with further.
- (5) If the Court of Appeal allows an appeal referred to in subsection (1)(b), it —
 - (a) may make any order that should have been made; or
 - (b) may send the charge back to the court that refused to make the order to be dealt with further.

311. Section 41A inserted

After section 41 insert:

41A. Custody orders under *Criminal Law (Mental Impairment) Act 2023*

- (1) In this section —
 - custody order*** means a custody order under the *Criminal Law (Mental Impairment) Act 2023*;
 - Tribunal*** means the Mental Impairment Review Tribunal under the *Criminal Law (Mental Impairment) Act 2023*.

- (2) This section applies if under this Act an appeal court decides to —
 - (a) make a custody order; or
 - (b) confirm, vary or set aside a custody order.
- (3) The appeal court must give a memorandum setting out the effect of its decision to the Tribunal.
- (4) If the appeal court sets aside a custody order in relation to a person and does not replace it with another, the person who was subject to the custody order must be released as soon as practicable after the Tribunal receives the memorandum, unless the person is required to be held in custody or detained for some other reason.
- (5) The memorandum is part of the records of the Tribunal and is evidence of the matters stated in it.

312. Section 46A amended

After section 46A(2) insert:

- (3) In this Part, unless the contrary intention appears, a reference to a conviction of, or to being convicted of, an offence includes (respectively) a reference to a finding of having committed, or to being found to have committed, the offence under the *Criminal Law (Mental Impairment) Act 2023* section 41(2)(c).

313. Various references to “unsoundness of mind” amended

In the provisions listed in the Table delete “unsoundness of mind” (each occurrence) and insert:

Criminal Law (Mental Impairment) Act 2023

Part 15 Consequential amendments to other Acts

Division 7 Criminal Injuries Compensation Act 2003 amended

s. 314

mental impairment

Table

s. 6 def. of <i>decision</i> par. (e)	s. 25(1)
s. 30(5)(d) and (e)	s. 32(2), (6), (7) and (8)
s. 46B(1)(b)	s. 46C(1) def. of <i>relevant offence</i> par. (a)
s. 46C(4)(a)(i)	s. 46J(b)

Division 7 — Criminal Injuries Compensation Act 2003 amended

314. Criminal Injuries Compensation Act 2003 amended

This Division amends the *Criminal Injuries Compensation Act 2003*.

315. Section 15 amended

In section 15(1)(b) delete “mentally”.

Note: The heading to amended section 15 is to read:

Alleged offence: accused unfit to stand trial

Division 8 — Criminal Investigation (Identifying People) Act 2002 amended

316. Criminal Investigation (Identifying People) Act 2002 amended

This Division amends the *Criminal Investigation (Identifying People) Act 2002*.

317. Section 67 amended

In section 67(3)(a) delete “not mentally fit” and insert:

unfit

Division 9 — *Criminal Procedure Act 2004* amended

318. *Criminal Procedure Act 2004* amended

This Division amends the *Criminal Procedure Act 2004*.

319. Section 126 amended

In section 126(5)(e) delete “not mentally fit” and insert:

unfit

320. Section 130 amended

In section 130 delete “mental”.

Note: The heading to amended section 130 is to read:

Fitness of accused to stand trial

Division 10 — *Cross-border Justice Act 2008* amended

321. *Cross-border Justice Act 2008* amended

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

322. Part 9 heading replaced

Delete the heading to Part 9 and insert:

Part 9 — Persons with mental impairment

Division 11 — *Declared Places (Mentally Impaired Accused) Act 2015* amended

323. *Declared Places (Mentally Impaired Accused) Act 2015* amended

This Division amends the *Declared Places (Mentally Impaired Accused) Act 2015*.

324. Long title replaced

Delete the long title and insert:

An Act to make provision for matters relating to places established by the Disability Services Commission for the detention, habilitation and rehabilitation of supervised persons required to be detained under the *Criminal Law (Mental Impairment) Act 2023*.

325. Section 1 amended

In section 1 delete “*(Mentally Impaired Accused)*” and insert:

(Mental Impairment)

326. Section 3 amended

(1) In section 3 delete the definitions of:

Board

mentally impaired accused

MIA Act

resident

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

CLMI Act means the *Criminal Law (Mental Impairment) Act 2023*;

resident means a supervised person who is required under the CLMI Act to be detained in a declared place;

supervised person has the meaning given in the CLMI Act section 9(1);

Tribunal has the meaning given in the CLMI Act section 9(1).

- (3) In section 3 in the definition of *authorised hospital* delete “MIA Act section 23;” and insert:

CLMI Act section 9(1);

- (4) In section 3 in the definition of *declared place* (1st occurrence) paragraph (a) delete “as defined in the MIA Act section 23; and” and insert:

under the CLMI Act section 60; and

- (5) In section 3 in the definition of *declared place* (2nd occurrence) delete “in which the resident is detained under a determination made by the Board under the MIA Act Part 5;” and insert:

in which the resident is required to be detained;

Criminal Law (Mental Impairment) Act 2023

Part 15 Consequential amendments to other Acts

Division 11 Declared Places (Mentally Impaired Accused) Act 2015
amended

s. 327

- (6) In section 3 in the definition of *subcontractor* delete “contracts.” and insert:

contracts;

327. Section 18 replaced

Delete section 18 and insert:

18. CEO’s functions as to residents

While a person is required under the CLMI Act to be detained in a declared place —

- (a) the person is taken to be in the custody of the CEO; and
- (b) the CEO is responsible for the person’s welfare and safe custody.

328. Section 19 amended

- (1) In section 19(2) delete “Board” and insert:

Tribunal

- (2) In section 19(3):

- (a) in paragraph (a) delete “without having been given leave of absence by the Board under the MIA Act section 28; or” and insert:

other than under a leave of absence order as defined in the CLMI Act section 9(1); or

(b) delete paragraph (b) and insert:

(b) having been away from the place under a leave of absence order, fails to return to the place or another place in which the resident is required to be detained when the leave of absence order expires or is cancelled.

329. Section 20 amended

In section 20(6) in the Table in the row relating to section 57(1), (2) delete “Board” and insert:

Tribunal

330. Section 53 amended

In section 53(1) delete “enduring guardian or guardian;” and insert:

enduring guardian, guardian or administrator (as defined in the CLMI Act section 9(1));

331. Section 57 amended

(1) In section 57(1) delete “Board” and insert:

Tribunal

Criminal Law (Mental Impairment) Act 2023

Part 15 Consequential amendments to other Acts

Division 11 Declared Places (Mentally Impaired Accused) Act 2015 amended

s. 332

- (2) In section 57(2):
- (a) delete “Board, prepare and give the Board” and insert:

Tribunal, prepare and give the Tribunal
 - (b) in paragraph (b) delete “Board has under the MIA Act Part 5” and insert:

Tribunal has under the CLMI Act

Note: The heading to amended section 57 is to read:

Provision of information about residents: Tribunal and CEO

332. Part 12 replaced

Delete Part 12 and insert:

Part 12 — Transitional provisions for *Criminal Law (Mental Impairment) Act 2023*

65. Terms used

In this Part —

Board means the Mentally Impaired Accused Review Board established under the *Criminal Law (Mentally Impaired Accused) Act 1996* section 41;

commencement day means the day on which the CLMI Act Part 2 comes into operation.

66. Provision of information about residents

- (1) Subsection (2) applies if the CEO —
- (a) was required to prepare and give a report to the Board under section 57(2) as in force before commencement day; and

- (b) did not give the report to the Board before commencement day.
- (2) The CEO must prepare and give the report to the Tribunal.

Division 12 — *Disability Services Act 1993* amended

333. *Disability Services Act 1993* amended

This Division amends the *Disability Services Act 1993*.

334. Section 3 amended

In section 3 in the definition of ***Declared Places Act*** delete “*Declared Places (Mentally Impaired Accused) Act 2015*,” and insert:

Declared Places (Mental Impairment) Act 2015;

335. Section 12 amended

In section 12(1)(m) delete “declared place, as defined in the *Criminal Law (Mentally Impaired Accused) Act 1996* section 23, that is for the detention of those mentally impaired accused who are mentioned in section 24(5A) of that Act.” and insert:

place declared under the *Criminal Law (Mental Impairment) Act 2023* section 60 to be a declared place and specified in that declaration as a place that is to be controlled and managed by or on behalf of the Disability Services Commission under the Declared Places Act.

336. Section 21 amended

In section 21(5A) delete “*Declared Places (Mentally Impaired Accused) Act 2015*” and insert:

Declared Places Act

Division 13 — Electoral Act 1907 amended

337. Electoral Act 1907 amended

This Division amends the *Electoral Act 1907*.

338. Section 18 amended

Delete section 18(1)(cd) and insert:

- (cd) is a supervised person as defined in the *Criminal Law (Mental Impairment) Act 2023* section 9(1); or

339. Section 59 amended

- (1) In section 59(1) delete the definition of ***registrar, MIARB***.
- (2) In section 59(1) insert in alphabetical order:

Mental Impairment Review Tribunal registrar means the registrar of the Mental Impairment Review Tribunal under the *Criminal Law (Mental Impairment) Act 2023* section 188(1);

supervised person has the meaning given in the *Criminal Law (Mental Impairment) Act 2023* section 9(1).

- (3) In section 59(1) in the definition of *required information* delete “sex.” and insert:

sex;

- (4) In section 59(2):

- (a) in paragraph (b) delete “registrar, MIARB” and insert:

Mental Impairment Review Tribunal registrar

- (b) in paragraph (b)(i) and (ii) delete “mentally impaired accused” and insert:

supervised person

- (5) In section 59(3):

- (a) in paragraph (b) delete “registrar, MIARB” and insert:

Mental Impairment Review Tribunal registrar

- (b) in paragraph (b)(i) and (ii) delete “mentally impaired accused” and insert:

supervised person

- (6) After section 59(4) insert:

- (5) The references in subsections (2)(b) and (3)(b) to a supervised person include a reference to a mentally impaired accused.

Criminal Law (Mental Impairment) Act 2023

Part 15 Consequential amendments to other Acts

Division 14 Evidence Act 1906 amended

s. 340

- (7) Subsections (8) and (9) of this section do not have effect until the end of the period of 1 month commencing on the day after the day on which this section comes into operation.
- (8) In section 59(1) delete the definition of *mentally impaired accused*.
- (9) Delete section 59(5).

Division 14 — *Evidence Act 1906* amended

340. *Evidence Act 1906* amended

This Division amends the *Evidence Act 1906*.

341. Section 100A amended

In section 100A(8) delete “mental impairment, as that term is defined by section 8 of the *Criminal Law (Mentally Impaired Accused) Act 1996*.” and insert:

mental impairment as defined in the *Criminal Law (Mental Impairment) Act 2023* section 9(1).

342. Section 106A amended

In section 106A in the definition of *mental impairment* delete “to that term by section 8 of the *Criminal Law (Mentally Impaired Accused) Act 1996*;” and insert:

in the *Criminal Law (Mental Impairment) Act 2023* section 9(1);

Division 15 — *Fines, Penalties and Infringement Notices Enforcement Act 1994* amended

343. *Fines, Penalties and Infringement Notices Enforcement Act 1994* amended

This Division amends the *Fines, Penalties and Infringement Notices Enforcement Act 1994*.

344. Section 52C amended

Delete section 52C(1)(f) and insert:

- (f) detained under a custody order or an interim or extended custody order under the *Criminal Law (Mental Impairment) Act 2023* or an interim disposition under section 205(1)(a) of that Act.

Division 16 — *Guardianship and Administration Act 1990* amended

345. *Guardianship and Administration Act 1990* amended

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

346. Section 98 replaced

Delete section 98 and insert:

98. Supervised persons under *Criminal Law (Mental Impairment) Act 2023*

On receipt of notice under the *Criminal Law (Mental Impairment) Act 2023* section 190, the Public Advocate must investigate whether the person the subject of the notice is in need of a guardian or an administrator and

take any other action as the Public Advocate considers appropriate.

Division 17 — High Risk Serious Offenders Act 2020 amended

347. High Risk Serious Offenders Act 2020 amended

This Division amends the *High Risk Serious Offenders Act 2020*.

348. Section 6 amended

In section 6(b) delete “not mentally fit” and insert:

unfit

349. Section 79 amended

(1) Delete section 79(1) and insert:

(1) In this section —

unfit to stand trial means found unfit to stand trial under the *Criminal Law (Mental Impairment) Act 2023*.

(2) In section 79(2):

(a) in paragraph (a) delete “not mentally fit; or” and insert:

unfit to stand trial; or

- (b) in paragraph (b) delete “not mentally fit.” and insert:

unfit to stand trial.

Note: The heading to amended section 79 is to read:

Offender unfit to stand trial

Division 18 — *Juries Act 1957* amended

350. *Juries Act 1957* amended

This Division amends the *Juries Act 1957*.

351. Section 5 amended

- (1) In section 5(1) insert in alphabetical order:

CLMI Act means the *Criminal Law (Mental Impairment) Act 2023*;

person covered by the CLMI Act means a person who is —

- (a) an accused required under the CLMI Act section 19 to be detained at an authorised hospital; or
- (b) an unfit accused, as defined in the CLMI Act section 9(1); or
- (c) a supervised person, as defined in the CLMI Act section 9(1);

- (2) Delete section 5(3)(d)(iii) and (iv) and insert:

(iii) a person covered by the CLMI Act.

Division 19 — *Magistrates Court Act 2004* amended

352. *Magistrates Court Act 2004* amended

This Division amends the *Magistrates Court Act 2004*.

353. Section 11A inserted

After section 11 insert:

11A. Limitations on exercise of certain jurisdiction

- (1) When constituted by 1 or more JPs only, the Court cannot exercise jurisdiction under the *Criminal Law (Mental Impairment) Act 2023*.
- (2) If the question of whether the accused is unfit to stand trial is raised during criminal proceedings before the Court when constituted by 1 or more JPs only, the Court must refer the question to the Court constituted by a magistrate.
- (3) Subsection (2) has effect subject to the *Criminal Law (Mental Impairment) Act 2023* section 31.

Division 20 — *Mental Health Act 2014* amended

354. *Mental Health Act 2014* amended

This Division amends the *Mental Health Act 2014*.

355. Section 4 amended

- (1) In section 4 delete the definitions of:
mentally impaired accused
Mentally Impaired Accused Review Board
MIA Act

- (2) In section 4 insert in alphabetical order:

CLMI Act means the *Criminal Law (Mental Impairment) Act 2023*;

Mental Impairment Review Tribunal means the Mental Impairment Review Tribunal established by the CLMI Act section 156;

supervised person has the meaning given in the CLMI Act section 9(1);

- (3) In section 4 in the definition of **mental health service** delete paragraph (b)(ii) and insert:

(ii) a DSC declared place as defined in the CLMI Act section 9(1);

- (4) In section 4 in the definition of **patient** delete paragraph (b) and insert:

(b) a supervised person required under the CLMI Act to be detained at an authorised hospital; or

- (5) In section 4 in the definition of **patient's psychiatrist** delete paragraph (d) and insert:

(d) if the patient is a supervised person required under the CLMI Act to be detained at an authorised hospital — the treating psychiatrist;

- (6) In section 4 in the definition of *voluntary patient* delete paragraph (b) and insert:

- (b) a supervised person required under the CLMI Act to be detained at an authorised hospital.

Note:

The note in section 4 for the definition of *voluntary patient* is to be altered by deleting paragraph (b) and inserting:

- (b) a supervised person who is released from an authorised hospital under a leave of absence order under the CLMI Act.

356. Section 82 replaced

Delete section 82 and insert:

82. Application of this Part

This Part does not apply in relation to a supervised person required under the CLMI Act to be detained at an authorised hospital, whether or not the person was required under this Act to be detained at the authorised hospital immediately before the person was required under the CLMI Act to be detained at the authorised hospital.

357. Section 105 amended

In section 105(2):

- (a) delete “these people” and insert:

the following

(b) in paragraph (e) delete “consulted.” and insert:

consulted;

(c) after paragraph (e) insert:

(f) if the involuntary inpatient is a supervised person — the Mental Impairment Review Tribunal.

358. Section 127 amended

In section 127(2):

(a) in paragraph (b) delete “patient.” and insert:

patient; and

(b) after paragraph (b) insert:

(c) if the involuntary community patient is a supervised person — give notice of the breach to the Mental Impairment Review Tribunal.

359. Section 145 amended

Delete section 145(4)(c) and insert:

(c) if the involuntary patient is a supervised person — the Mental Impairment Review Tribunal.

360. Part 9 Division 4 inserted

At the end of Part 9 insert:

**Division 4 — Notification of Mental Impairment Review
Tribunal about absence of supervised persons**

145A. Notification about absence of supervised persons

- (1) This section applies in relation to the following events —
 - (a) a supervised person is absent without leave in accordance with section 97;
 - (b) a leave of absence order is made in respect of a supervised person under section 105;
 - (c) a leave of absence order applying in relation to a supervised person is extended, or the conditions of such an order are varied, under section 106;
 - (d) a leave of absence order applying to a supervised person is cancelled under section 110.
- (2) If an event occurs, the person responsible under this Part for notification of the event must also notify the Mental Impairment Review Tribunal of the event.

361. Section 177 amended

Delete section 177(b) and insert:

- (b) a patient who is a supervised person required under the CLMI Act to be detained at an authorised hospital.

362. Section 185 amended

Delete section 185(b) and insert:

- (b) a patient who is admitted to an authorised hospital as a supervised person required under the CLMI Act to be detained at the hospital; or

363. Section 196 amended

Delete section 196(1)(b) and insert:

- (b) a patient who is a supervised person required under the CLMI Act to be detained at an authorised hospital.

Note: The heading to amended section 196 is to read:

ECT on child over 14 years who is involuntary patient or supervised person

364. Section 198 amended

Delete section 198(1)(b) and insert:

- (b) a patient who is a supervised person required under the CLMI Act to be detained at an authorised hospital.

Note: The heading to amended section 198 is to read:

ECT on adult involuntary patient or supervised person

365. Section 199 amended

Delete section 199(1)(b) and insert:

- (b) a patient who is a supervised person required under the CLMI Act to be detained at an authorised hospital.

Note: The heading to amended section 199 is to read:

Emergency ECT on adult involuntary patient or supervised person

366. Section 200 amended

- (1) Delete section 200(1) and insert:

- (1) This section applies in relation to a patient who is a supervised person required under the CLMI Act to be detained at an authorised hospital.

- (2) In section 200(2) delete “Mentally Impaired Accused Review Board.” and insert:

Mental Impairment Review Tribunal.

Note: The heading to amended section 200 is to read:

Report to Mental Impairment Review Tribunal

367. Section 201 amended

Delete section 201(3)(g) and (h) and insert:

- (g) the number of those people who were supervised persons required under the CLMI Act to be detained at an authorised hospital;

- (h) the number of those supervised persons referred to in paragraph (g) who were children;
- (ha) the number of those people who were supervised persons required to undergo treatment (as defined in section 4 of this Act) as a condition of one of the following under the CLMI Act —
 - (i) a community supervision order;
 - (ii) an interim community supervision order;
 - (iii) an extended community supervision order;
 - (iv) a leave of absence order;
 - (v) an interim disposition under the CLMI Act section 205(1)(b);
- (hb) the number of those supervised persons referred to in paragraph (ha) who were children;

368. Section 204 amended

In section 204(1)(b):

- (a) delete “these people — ” and insert:

the following —

- (b) delete subparagraph (iii) and insert:

- (iii) if the person is a supervised person —
the Mental Impairment Review
Tribunal.

369. Section 209 amended

Delete section 209(1)(b) and insert:

- (b) if the patient is a supervised person — the Mental Impairment Review Tribunal.

Note: The heading to amended section 209 is to read:

Report to Chief Psychiatrist and Mental Impairment Review Tribunal

370. Section 224 amended

Delete section 224(2)(b) and insert:

- (b) if the person is a supervised person — the Mental Impairment Review Tribunal.

Note: The heading to amended section 224 is to read:

Report to Chief Psychiatrist and Mental Impairment Review Tribunal

371. Section 240 amended

Delete section 240(2)(b) and insert:

- (b) if the person is a supervised person — the Mental Impairment Review Tribunal.

Note: The heading to amended section 240 is to read:

Report to Chief Psychiatrist and Mental Impairment Review Tribunal

372. Section 241 amended

Delete section 241(1)(a)(iii) and insert:

- (iii) by an authorised hospital as a supervised person required under the CLMI Act to be detained at the authorised hospital;

373. Section 242 amended

(1) Delete section 242(1)(b) and insert:

- (b) an accused required under the CLMI Act section 19 to be detained at an authorised hospital; or
- (c) a supervised person required under the CLMI Act to be detained at an authorised hospital.

(2) Delete section 242(3)(b) and insert:

- (b) if the patient is a supervised person — the Mental Impairment Review Tribunal.

374. Section 243 amended

Delete section 243(a)(iii) and insert:

- (iii) by an authorised hospital as a supervised person required under the CLMI Act to be detained at the authorised hospital;

375. Section 249 amended

(1) In section 249(3):

(a) delete “if the person —” and insert:

if —

(b) delete paragraph (a) and insert:

(a) the person is or was a supervised person required under the CLMI Act to be detained at an authorised hospital; and

(c) in paragraph (b) delete “1981.” and insert:

1981 or the Young Offenders Act 1994.

(2) After section 249(3) insert:

(4) If a relevant document relating to a supervised person that is in the possession or control of the person in charge of, or a staff member of, a mental health service is to be provided to the Mental Impairment Review Tribunal under the CLMI Act and the supervised person is not entitled to have access under section 248(1) to the document, the person in charge of the mental health service must ensure that the Tribunal is notified that the supervised person is not so entitled.

376. Section 258 amended

Delete section 258(c) and insert:

- (c) a supervised person required under the CLMI Act to be detained at an authorised hospital.

377. Section 288 amended

Delete section 288(1)(a)(ii) and insert:

- (ii) a supervised person required under the CLMI Act to be detained at an authorised hospital;

Note: The heading to amended section 288 is to read:

Involuntary patient or supervised person with capacity to consent

378. Section 289 amended

Delete section 289(1)(a)(ii) and insert:

- (ii) a supervised person required under the CLMI Act to be detained at an authorised hospital;

Note: The heading to amended section 289 is to read:

Involuntary patient or supervised person with no capacity to consent

379. Section 348 amended

- (1) In section 348 insert in alphabetical order:

accused has the meaning given in the CLMI Act section 9(1);

- (2) In section 348 in the definition of *identified person*:

- (a) delete paragraphs (e) to (g) and insert:

- (e) an accused required under the CLMI Act section 19 to be detained at an authorised hospital;
- (f) a supervised person required under the CLMI Act to be detained at an authorised hospital;
- (g) a supervised person required to undergo treatment (as defined in section 4 of this Act) as a condition of one of the following under the CLMI Act —
 - (i) a community supervision order;
 - (ii) an interim community supervision order;
 - (iii) an extended community supervision order;
 - (iv) a leave of absence order of the kind described in the CLMI Act section 79(2);
 - (v) an interim disposition under the CLMI Act section 205(1)(b);

- (b) in paragraph (j) delete “paragraphs (a) to (e) or paragraph (h) or (i),” and insert:

paragraph (a), (b), (c), (e), (g), (h) or (i),

Note:

In section 348 after the definition of *identified person* the following note is to be inserted:

Note for this definition:

Mental health advocacy services can also be provided under the CLMI Act Part 8. The CLMI Act section 139 provides for continuity of the provision of advocacy services between that Act and this Act.

380. Section 357 amended

- (1) In section 357(1) delete “(b) or (c)” and insert:

(b), (c) or (e)

- (2) Delete section 357(4) and (5) and insert:

- (4) An identified person under paragraph (f) of the definition of *identified person* in section 348 must be visited or otherwise contacted by a mental health advocate —
- (a) if, when detained, the person is an adult — within 7 days after the day on which the person is detained; or
 - (b) if, when detained, the person is a child — within 24 hours after the person is detained.

- (5) An identified person under paragraph (g) of the definition of *identified person* in section 348 must be visited or otherwise contacted by a mental health advocate within 7 days (or 24 hours if the person is a child) after the day on which the Chief Mental Health Advocate —
- (a) receives a request for the person to be contacted under section 356(2)(b); or
 - (b) is notified of a request for the person to be contacted under section 356(3).

- (3) In section 357(6) and (8) delete “(e), (g),”.

381. Section 409 amended

In section 409(b) and (c) delete “mentally impaired accused required under the MIA Act to be detained at an authorised hospital,” and insert:

a supervised person required under the CLMI Act to be detained at an authorised hospital,

382. Section 423 amended

In section 423(3) delete “a compliance notice with a service provider,” and insert:

a service provider with a compliance notice,

383. Section 515 amended

Delete section 515(1)(c) and insert:

- (c) all supervised persons required under the CLMI Act to be detained at an authorised hospital;
- (ca) a patient who is a person required to undergo treatment (as defined in section 4 of this Act) as a condition of one of the following under the CLMI Act —
 - (i) a community supervision order;
 - (ii) an interim community supervision order;
 - (iii) an extended community supervision order;
 - (iv) a leave of absence order;
 - (v) an interim disposition under the CLMI Act section 205(1)(b);

384. Section 520 amended

(1) Delete section 520(1)(b) and insert:

- (b) a patient who is a supervised person required under the CLMI Act to be detained at an authorised hospital; or
- (c) a patient who is a supervised person required to undergo treatment (as defined in section 4 of this Act) as a condition of one of the following under the CLMI Act —
 - (i) a community supervision order;
 - (ii) an interim community supervision order;

- (iii) an extended community supervision order;
- (iv) a leave of absence order;
- (v) an interim disposition under the CLMI Act section 205(1)(b).

(2) Delete section 520(7)(b) and insert:

- (b) a patient who is a supervised person required under the CLMI Act to be detained at an authorised hospital.

385. Section 527 amended

After section 527(1)(b)(ii) insert:

- (iia) if the incident involves a supervised person — the chief executive officer of the department of the Public Service principally assisting in the administration of the CLMI Act;
- (iib) if the incident involves a resident (as defined in the *Declared Places (Mental Impairment) Act 2015* section 3) — the chief executive officer of the department of the Public Service principally assisting in the administration of the *Disability Services Act 1993*;

386. Section 536 amended

- (1) Delete section 536(1) and insert:
- (1) The Chief Psychiatrist may request the Mental Impairment Review Tribunal in writing to give to the Chief Psychiatrist a list of —
- (a) all supervised persons required under the CLMI Act to be detained at an authorised hospital; and
- (b) all supervised persons required to undergo treatment (as defined in section 4 of this Act) as a condition of one of the following under the CLMI Act —
- (i) a community supervision order;
- (ii) an interim community supervision order;
- (iii) an extended community supervision order;
- (iv) a leave of absence order;
- (v) an interim disposition under the CLMI Act section 205(1)(b).
- (2) In section 536(2) delete “Mentally Impaired Accused Review Board” and insert:

Mental Impairment Review Tribunal

Note: The heading to amended section 536 is to read:

Request for list of certain supervised persons

387. Part 30 inserted

After section 677 insert:

Part 30 — Transitional matters for *Criminal Law (Mental Impairment) Act 2023*

678. Terms used

In this Part —

Board means the Mentally Impaired Accused Review Board established under the *Criminal Law (Mentally Impaired Accused) Act 1996* section 41;

commencement day means the day on which the CLMI Act Part 2 comes into operation.

679. Functions in respect of Board

- (1) Subsection (2) applies if a person was, immediately before commencement day, required to perform a function in respect of the Board under section 145, 200, 204, 209, 224, 240 or 242.
- (2) The person must perform the function in respect of the Mental Impairment Review Tribunal as soon as practicable after commencement day.

680. Duty to contact identified person

- (1) Subsection (2) applies if, immediately before commencement day, a person who was an identified person under paragraph (e), (f) or (g) of the definition of ***identified person*** in section 348 was required, under section 357, to be visited or otherwise contacted by a mental health advocate within a specified time.

- (2) A mental health advocate must visit or otherwise contact the identified person within that time.

388. Various headings amended

- (1) In the heading to Part 13 Division 2 delete “**mentally impaired accused**” and insert:

supervised persons

- (2) In the heading to Part 15 Division 2 delete “**mentally impaired accused**” and insert:

supervised persons

Division 21 — *National Disability Insurance Scheme (Worker Screening) Act 2020 amended*

389. *National Disability Insurance Scheme (Worker Screening) Act 2020 amended*

This Division amends the *National Disability Insurance Scheme (Worker Screening) Act 2020*.

390. Section 7 amended

In section 7(1):

- (a) in paragraph (d) delete “jurisdiction.” and insert:

jurisdiction;

Criminal Law (Mental Impairment) Act 2023

Part 15 Consequential amendments to other Acts

Division 22 Parliamentary Commissioner Act 1971 amended

s. 391

(b) after paragraph (d) insert:

(e) a finding under the *Criminal Law (Mental Impairment) Act 2023* section 41(2)(c) or an equivalent finding under a law of another jurisdiction.

Division 22 — *Parliamentary Commissioner Act 1971* amended

391. *Parliamentary Commissioner Act 1971* amended

This Division amends the *Parliamentary Commissioner Act 1971*.

392. **Section 19H amended**

In section 19H(2):

(a) in paragraph (d) delete “Commonwealth.” and insert:

Commonwealth;

(b) after paragraph (d) insert:

(e) a finding under the *Criminal Law (Mental Impairment) Act 2023* section 41(2)(c) or an equivalent finding under a law of another State, a Territory or the Commonwealth.

**Division 23 — *Prisoners (Release for Deportation) Act 1989*
amended**

393. *Prisoners (Release for Deportation) Act 1989* amended

This Division amends the *Prisoners (Release for Deportation) Act 1989*.

394. Section 6A inserted

After section 6 insert:

6A. Persons under custody orders under *Criminal Law (Mental Impairment) Act 2023*

- (1) This section applies to a person required to be detained under a custody order under the *Criminal Law (Mental Impairment) Act 2023* (a **CLMI Act person**) who is not otherwise a prisoner under this Act.
- (2) This Act has effect in relation to CLMI Act persons as if —
 - (a) a reference to a prisoner included a reference to a CLMI Act person; and
 - (b) a reference to a prison, in relation to a CLMI Act person, were a reference to the place where the person is required to be detained under the custody order; and
 - (c) a reference to the Prisoners Review Board, in relation to a CLMI Act person, were a reference to the Mental Impairment Review Tribunal established under the *Criminal Law (Mental Impairment) Act 2023*; and

- (d) a reference to detention during the Governor's pleasure, in relation to a CLMI Act person, were a reference to being required to be detained under the custody order.

Division 24 — Prisons Act 1981 amended

395. Prisons Act 1981 amended

This Division amends the *Prisons Act 1981*.

396. Section 67 amended

In section 67(1):

- (a) in paragraph (d) delete “Ombudsman,” and insert:

Ombudsman; or

- (b) after paragraph (d) insert:

- (e) the Chief Mental Health Advocate or the Mental Health Advocacy Service,

397. Section 113 amended

- (1) In section 113(1) insert in alphabetical order:

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

CLMI identified person has the meaning given in the *Criminal Law (Mental Impairment) Act 2023* section 127;

mental health advocate has the meaning given in the
Mental Health Act 2014 section 4;

- (2) After section 113(6) insert:
- (6A) The chief executive officer may disclose information regarding prisoners who are CLMI identified persons to the Chief Mental Health Advocate or a mental health advocate for the purposes of the performance of their respective functions under the *Criminal Law (Mental Impairment) Act 2023*.
- (3) In section 113(8) delete “subsection (2) or (6).” and insert:
- subsection (2), (6) or (6A).

Division 25 — *Restraining Orders Act 1997* amended

398. *Restraining Orders Act 1997* amended

This Division amends the *Restraining Orders Act 1997*.

399. Section 44E amended

In section 44E(3)(c) delete “(as defined in the *Criminal Law (Mentally Impaired Accused) Act 1996* section 8)” and insert:

(as defined in the *Criminal Law (Mental Impairment) Act 2023* section 9(1))

Criminal Law (Mental Impairment) Act 2023

Part 15 Consequential amendments to other Acts

Division 26 Security and Related Activities (Control) Act 1996
amended

s. 400

**Division 26 — *Security and Related Activities (Control) Act 1996*
amended**

400. *Security and Related Activities (Control) Act 1996* amended

This Division amends the *Security and Related Activities (Control) Act 1996*.

401. **Section 4B amended**

In section 4B(1):

(a) in paragraph (d) delete “jurisdiction.” and insert:

jurisdiction;

(b) after paragraph (d) insert:

(e) a finding under the *Criminal Law (Mental Impairment) Act 2023* section 41(2)(c) or an equivalent finding under provisions of the laws of another jurisdiction.

Division 27 — *Sentence Administration Act 2003* amended

402. *Sentence Administration Act 2003* amended

This Division amends the *Sentence Administration Act 2003*.

403. **Section 98 amended**

In section 98(1) delete “1995 and Part VIA of the *Bail Act 1982* — ” and insert:

1995, the *Criminal Law (Mental Impairment) Act 2023* and the *Bail Act 1982* Part VIA —

404. Section 119 amended

After section 119(1)(ba) insert:

- (bb) under the *Criminal Law (Mental Impairment) Act 2023* section 224(4) or 226(1); or

Division 28 — *Working with Children (Criminal Record Checking) Act 2004* amended

405. *Working with Children (Criminal Record Checking) Act 2004* amended

This Division amends the *Working with Children (Criminal Record Checking) Act 2004*.

406. Section 8 amended

In section 8(1):

- (a) in paragraph (d) delete “jurisdiction.” and insert:

jurisdiction;

- (b) after paragraph (d) insert:

- (e) a finding under the *Criminal Law (Mental Impairment) Act 2023* section 41(2)(c) or an equivalent finding under the laws of another jurisdiction.

Division 29 — Young Offenders Act 1994 amended

407. Young Offenders Act 1994 amended

This Division amends the *Young Offenders Act 1994*.

408. Section 16 amended

- (1) In section 16(1) insert in alphabetical order:

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

CLMI identified person has the meaning given in the *Criminal Law (Mental Impairment) Act 2023* section 127;

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

- (2) After section 16(5) insert:

- (5A) The chief executive officer may disclose information regarding detainees who are CLMI identified persons to the Chief Mental Health Advocate or a mental health advocate for the purposes of the performance of their respective functions under the *Criminal Law (Mental Impairment) Act 2023*.

- (3) In section 16(7) delete “subsection (5).” and insert:

subsection (5) or (5A).

Division 30 — Various Acts amended

409. Various references to *Criminal Law (Mentally Impaired Accused) Act 1996* amended

- (1) This section amends the Acts listed in the Table.
- (2) In the provisions listed in the Table delete “*Criminal Law (Mentally Impaired Accused) Act 1996*” and insert:

Criminal Law (Mental Impairment) Act 2023

Table

<i>Courts and Tribunals (Electronic Processes Facilitation) Act 2013</i>	s. 6(1)(f)
<i>Criminal Investigation (Identifying People) Act 2002</i>	s. 67(3)(a)
<i>Criminal Procedure Act 2004</i>	s. 126(5)(e) s. 130 s. 149(1)
<i>Spent Convictions Act 1988</i>	Sch. 3 cl. 1(1) Table it. 1B
<i>Young Offenders Act 1994</i>	s. 15A(3)

410. Various references to *Declared Places (Mentally Impaired Accused) Act 2015* amended

- (1) This section amends the Acts listed in the Table.

Criminal Law (Mental Impairment) Act 2023

Part 15 Consequential amendments to other Acts

Division 30 Various Acts amended

s. 410

- (2) In the provisions listed in the Table delete “*Declared Places (Mentally Impaired Accused) Act 2015*” and insert:

Declared Places (Mental Impairment) Act 2015

Table

<i>Coroners Act 1996</i>	s. 3 def. of <i>person held in care</i> par. (ca)
<i>Corruption, Crime and Misconduct Act 2003</i>	s. 3(1) def. of <i>contractor</i> s. 3(1) def. of <i>subcontractor</i> s. 31(a)
<i>Court Security and Custodial Services Act 1999</i>	s. 3 def. of <i>custodial place</i> par. (m)
<i>Freedom of Information Act 1992</i>	s. 63(3)(aa) Glossary cl. 1 def. of <i>contractor</i> Glossary cl. 1 def. of <i>subcontractor</i>
<i>Parliamentary Commissioner Act 1971</i>	s. 4 def. of <i>contractor</i> s. 4 def. of <i>responsible Minister</i> par. (b) s. 4 def. of <i>subcontractor</i> s. 17A(4) s. 19(7)(b)

<i>Prisons Act 1981</i>	s. 113(1) def. of <i>contractor</i> par. (b)
<i>Young Offenders Act 1994</i>	s. 16(1) def. of <i>contractor</i> par. (b)

411. Various references to “Mentally Impaired Accused Review Board” amended

- (1) This section amends the Acts listed in the Table.
- (2) In the provisions listed in the Table delete “Mentally Impaired Accused Review Board” and insert:

Mental Impairment Review Tribunal

Table

<i>Spent Convictions Act 1988</i>	Sch. 3 cl. 1(1) Table it. 1B
<i>Victims of Crime Act 1994</i>	s. 2 def. of <i>public officers and bodies</i> par. (fa)
<i>Young Offenders Act 1994</i>	s. 15A(3)

412. Various references to “unsoundness of mind” amended

- (1) This section amends the Acts listed in the Table.
- (2) In the provisions listed in the Table delete “unsoundness of mind” (each occurrence) and insert:

mental impairment

Criminal Law (Mental Impairment) Act 2023

Part 15 Consequential amendments to other Acts

Division 30 Various Acts amended

s. 412

Table

<i>Community Protection (Offender Reporting) Act 2004</i>	s. 4(1)(d)
<i>Criminal Injuries Compensation Act 2003</i>	s. 13(1) s. 14(1)
<i>Criminal Investigation (Identifying People) Act 2002</i>	s. 52A def. of <i>serious offender</i> par. (b) s. 67(3)(b)
<i>Criminal Procedure Act 2004</i>	s. 3(2)(b)(i) s. 93(1) s. 113(1) and (2)(b) s. 126(1)(d) s. 146 s. 147(2) and (3) s. 149(1)
<i>National Disability Insurance Scheme (Worker Screening) Act 2020</i>	s. 7(1)(d)
<i>Official Prosecutions (Accused's Costs) Act 1973</i>	s. 4(2)(a)(i)
<i>Parliamentary Commissioner Act 1971</i>	s. 19H(2)(d)
<i>Security and Related Activities (Control) Act 1996</i>	s. 4B(1)(d)

<i>The Criminal Code</i>	s. 27(1)
<i>Working with Children (Criminal Record Checking) Act 2004</i>	s. 8(1)(d)

Note: In the Acts listed in the Table, the headings to the amended sections listed in the Table are to read as set out in the Table.

Table

Amended section	Section heading
1.	<i>Criminal Injuries Compensation Act 2003</i>
s. 14	Alleged offence: acquittal due to mental impairment
2.	<i>Criminal Procedure Act 2004</i>
s. 93	Dealing with plea of not guilty on account of mental impairment
s. 146	Acquittal on account of mental impairment

Schedule 1 — Serious offences

[s. 9]

Division 1 — Offences that are serious offences in all circumstances

Subdivision 1 — Offence under *Bush Fires Act 1954*

Item	Provision	Description of offence
1.	s. 32	Lighting or attempting to light fire likely to injure

Subdivision 2 — Offence under *Children and Community Services Act 2004*

Item	Provision	Description of offence
1.	s. 192	Employing child to perform in indecent, obscene or pornographic manner

Subdivision 3 — Offences under *The Criminal Code*

Item	Provision	Description of offence
1.	s. 186	Occupier or owner allowing young person to be on premises for unlawful carnal knowledge
2.	s. 187	Facilitating sexual offence against child outside WA
3.	s. 204A	Showing offensive material to child under 16
4.	s. 204B	Using electronic communication to procure, or expose to indecent matter, child under 16
5.	s. 217	Involving child in child exploitation
6.	s. 218	Producing child exploitation material
7.	s. 219	Distributing child exploitation material

Criminal Law (Mental Impairment) Act 2023

Serious offences

Schedule 1

Offences that are serious offences in all circumstances

Division 1

Item	Provision	Description of offence
8.	s. 220	Possession of child exploitation material
9.	s. 279	Murder
10.	s. 280	Manslaughter
11.	s. 281	Unlawful assault causing death
12.	s. 283	Attempt to unlawfully kill
13.	s. 294	Act intended to cause grievous bodily harm or prevent arrest
14.	s. 297	Grievous bodily harm
14A.	s. 300(1)	Persistent family violence
15.	s. 304(2)	Act or omission causing bodily harm or danger, done with intent to harm
16.	s. 320	Sexual offence against child under 13
17.	s. 321	Sexual offence against child of or over 13 and under 16
18.	s. 321A	Persistent sexual conduct with child under 16
19.	s. 322	Sexual offence against child of or over 16 by person in authority
20.	s. 324	Aggravated indecent assault
21.	s. 325	Sexual penetration without consent
22.	s. 326	Aggravated sexual penetration without consent
23.	s. 327	Sexual coercion

Criminal Law (Mental Impairment) Act 2023**Schedule 1** Serious offences**Division 1** Offences that are serious offences in all circumstances

Item	Provision	Description of offence
24.	s. 328	Aggravated sexual coercion
25.	s. 329	Sexual offence by relative or the like
26.	s. 330	Sexual offence against incapable person
27.	s. 331B	Sexual servitude
28.	s. 331C	Conducting business involving sexual servitude
29.	s. 331D	Deceptive recruiting for commercial sexual service
30.	s. 332	Kidnapping
31.	s. 333	Deprivation of liberty
32.	s. 338E	Stalking
33.	s. 343	Child stealing
34.	s. 392	Robbery
35.	s. 393	Assault with intent to rob
36.	s. 445A	Breach of duty of person in control of ignition source or fire

[Subdivision 3 amended: No. 28 of 2024 s. 39.]

Subdivision 4 — Offences under *Prostitution Act 2000*

Item	Provision	Description of offence
1.	s. 7	Seeking to induce person to act as prostitute
2.	s. 16	Causing, permitting, or seeking to induce child to act as prostitute

Criminal Law (Mental Impairment) Act 2023

Serious offences

Schedule 1

Offences that are serious offences in all circumstances

Division 1

Item	Provision	Description of offence
3.	s. 17	Obtaining payment for prostitution by child
4.	s. 18	Agreement for prostitution by child

Criminal Law (Mental Impairment) Act 2023**Schedule 1** Serious offences**Division 2** Offences that are serious offences if committed in specified circumstances**Subdivision 5 — Offence under *Road Traffic Act 1974***

Item	Provision	Description of offence
1.	s. 59	Dangerous driving causing death or grievous bodily harm

Subdivision 6 — Offences under *Western Australian Marine Act 1982**[Heading inserted: No. 31 of 2023 s. 32.]*

Item	Provision	Description of offence
1.	s. 75B(1)	Navigation of vessel occasioning death while under influence of alcohol, a drug or alcohol and a drug
2.	s. 75B(2)	Dangerous navigation of vessel occasioning death
3.	s. 75BA(1)	Navigation of vessel occasioning grievous bodily harm while under influence of alcohol, a drug or alcohol and a drug
4.	s. 75BA(2)	Dangerous navigation of vessel occasioning grievous bodily harm

*[Subdivision 6 inserted: No. 31 of 2023 s. 32.]***Division 2 — Offences that are serious offences if committed in specified circumstances****Subdivision 1 — Offence under *The Criminal Code***

Item	Provision	Description	Circumstances in which a serious offence
1.	s. 444	Criminal damage	If within s. 444(1)(a) (criminal damage by fire)

Criminal Law (Mental Impairment) Act 2023

Serious offences

Schedule 1

Offences that are serious offences if committed in specified
circumstances

Division 2

Subdivision 2 — Offence under *Prostitution Act 2000*

Item	Provision	Description	Circumstances in which a serious offence
1.	s. 5	Seeking prostitute in or near public place	If within s. 5(2) (seeking a child)

Notes

This is a compilation of the *Criminal Law (Mental Impairment) Act 2023* and includes amendments made by other written laws¹. For provisions that have come into operation see the compilation table. For provisions that have not yet come into operation see the uncommenced provisions table.

Compilation table

Short title	Number and year	Assent	Commencement
<i>Criminal Law (Mental Impairment) Act 2023</i>	10 of 2023	13 Apr 2023	Pt. 1: 13 Apr 2023 (see s. 2(a)); Act other than Pt. 1: 1 Sep 2024 (see s. 2(b) and SL 2024/175 cl. 2)
<i>Western Australian Marine Amendment Act 2023</i> s. 32	31 of 2023	11 Dec 2023	1 Sep 2024 (see s. 2(b)(ii) and SL 2024/175 cl. 2)
<i>Family Violence Legislation Reform Act 2024</i> Pt. 4 (other than s. 38)	28 of 2024	17 Sep 2024	18 Sep 2024 (see s. 2(b)(i) and SL 2024/175 cl. 2)

Uncommenced provisions table

To view the text of the uncommenced provisions see *Acts as passed* on the WA Legislation website.

Short title	Number and year	Assent	Commencement
<i>Family Violence Legislation Reform Act 2024</i> s. 38	28 of 2024	17 Sep 2024	To be proclaimed (see s. 2(d))

Other notes

¹ The *Information Commissioner Act 2024* Pt. 7 Div. 2 will not come into operation and was deleted (see s. 2(2)).

Defined terms

[This is a list of terms defined and the provisions where they are defined.

The list is not part of the law.]

Defined term	Provision(s)
accused.....	9(1)
administrator.....	9(1)
advocacy services officer.....	9(1)
approved electronic monitoring device.....	220
audio link.....	9(1)
authorised hospital.....	9(1)
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carer.....	9(1)
CEO.....	9(1)
CEO (Community Services).....	65(1)
CEO (Corrections).....	9(1)
CEO (Young Offenders).....	9(1)
charge.....	9(1)
Chief Mental Health Advocate.....	9(1)
Chief Psychiatrist.....	9(1)
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Defined terms

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Defined terms

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