



Western Australia

## **Mental Health Act 1996**

Compare between:

[01 Oct 2010, 02-i0-03] and [18 Oct 2010, 02-j0-02]



Western Australia

## **Mental Health Act 1996**

**An Act to provide for the care, treatment, and protection of persons who have mental illnesses, and for related purposes.**

## **Part 1 — Preliminary**

### **1. Short title**

This Act may be cited as the *Mental Health Act 1996*<sup>1</sup>.

### **2. Commencement**

- (1) Subject to subsection (2), this Act comes into operation on such day as is fixed by proclamation<sup>1</sup>.
- (2) If this Act has not come into operation under subsection (1) before the first anniversary of the day on which it receives the Royal Assent, it comes into operation on that anniversary<sup>1</sup>.

### **3. Terms used in this Act**

In this Act, unless the contrary intention appears —

***authorised hospital*** means —

- (a) a public hospital, or part of a public hospital, that is for the time being authorised under section 21; and
- (b) a private hospital whose licence is endorsed under section 26DA of the *Hospitals and Health Services Act 1927*;

***authorised medical practitioner*** means a person designated under section 18 as an authorised medical practitioner;

***authorised mental health practitioner*** means a person designated under section 20 as an authorised mental health practitioner;

***Board*** means the Mental Health Review Board;

***CEO*** has the meaning given by section 3 of the *Health Legislation Administration Act 1984*;

***Chief Psychiatrist*** has the meaning given by section 8;

***community***, in relation to a person who is confined within a restricted community, is a reference to that restricted community;

**community treatment order** means an order of the kind provided for by Division 3 of Part 3;

**Council of Official Visitors** means the Council of Official Visitors established under section 176;

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

**document** includes any means of storing or recording information;

**hospital** means a public hospital or private hospital;

**inspect**, in relation to a document, includes to have the use of any process reasonably required for the purpose of viewing, hearing, or otherwise obtaining the information in the document;

**involuntary patient** means a person who is for the time being the subject of —

- (a) an order under section 43(2)(a), 49(3)(a), 50 or 70(1) for detention of the person in an authorised hospital as an involuntary patient; or
- (b) a community treatment order;

**lawyer** means an Australian lawyer within the meaning of that term in the *Legal Profession Act 2008* section 3;

**legal practitioner** means an Australian legal practitioner within the meaning of that term in the *Legal Profession Act 2008* section 3;

**medical practitioner** ~~has the meaning given to that term in the *Medical Practitioners Act 2008* section 4~~ means a person registered under the *Health Practitioner Regulation National Law (Western Australia)* in the medical profession;

**mental health practitioner** has the meaning given by section 19;

**Mental Health Review Board** means the board established by section 125;

**mental illness** has the meaning given by section 4;

**mentally impaired accused** has the same meaning as in Part 5 of the *Criminal Law (Mentally Impaired Accused) Act 1996*;

**Mentally Impaired Accused Review Board** means the Board established under Part 6 of the *Criminal Law (Mentally Impaired Accused) Act 1996*;

**official visitor** means a member of the Council of Official Visitors;

**patient** means a person receiving psychiatric treatment;

**President** means president of the Mental Health Review Board;

**prison** has the same meaning as in the *Prisons Act 1981*;

**private hospital** means premises at which a person is licensed under the *Hospitals and Health Services Act 1927* to conduct a private hospital;

**psychiatrist** means a ~~medical practitioner~~ person whose name is contained in ~~the~~ the register of ~~specialist~~ specialist psychiatrists ~~prepared and maintained under section 17~~ kept by the Medical Board of Australia under the Health Practitioner Regulation National Law (Western Australia) section 223;

**psychiatric treatment** means treatment for mental illness;

**psychologist** ~~has~~ means a person registered under the ~~meaning given to that term~~ Health Practitioner Regulation National Law (Western Australia) in section 3 of the Psychologists Act 2005 psychology profession;

**public hospital** means premises that are a public hospital as defined in the *Hospitals and Health Services Act 1927*;

**Registrar** means the Registrar of the Board appointed in accordance with section 22;

**relative** means spouse, de facto partner, parent, grandparent, child, sibling, uncle, or aunt, whether by the whole or half-blood or marriage or a relationship established by written law;

**senior mental health practitioner** means a mental health practitioner with at least 5 years experience in the treatment of persons who have mental illnesses;

**superintendent** has, in relation to a prison, the same meaning as in the *Prisons Act 1981*;

**supervising psychiatrist** means the psychiatrist responsible for supervising the carrying out of a community treatment order;

**treating practitioner** means the medical practitioner or mental health practitioner responsible for ensuring that the treatment plan specified in a community treatment order is carried out;

**treating psychiatrist**, in relation to a patient, means the psychiatrist for the time being in charge of the treatment of the patient;

**treatment in the community** means treatment other than as an in-patient of a hospital.

*[Section 3 amended by No. 28 of 2003 s. 136; No. 65 of 2003 s. 51(2); No. 84 of 2004 s. 82; No. 28 of 2005 s. 108; No. 28 of 2006 s. 274; No. 21 of 2008 s. 680(2); No. 22 of 2008 s. 162; [No. 35 of 2010 s. 110.](#)]*

#### **4. Meaning of “mental illness”**

- (1) For the purposes of this Act a person has a mental illness if the person suffers from a disturbance of thought, mood, volition, perception, orientation or memory that impairs judgment or behaviour to a significant extent.
- (2) However a person does not have a mental illness by reason only of one or more of the following, that is, that the person —
  - (a) holds, or refuses to hold, a particular religious, philosophical, or political belief or opinion;
  - (b) is sexually promiscuous, or has a particular sexual preference;
  - (c) engages in immoral or indecent conduct;
  - (d) has an intellectual disability;
  - (e) takes drugs or alcohol;
  - (f) demonstrates anti-social behaviour.

**5. Objects of Act**

The objects of this Act include —

- (a) to ensure that persons having a mental illness receive the best care and treatment with the least restriction of their freedom and the least interference with their rights and dignity;
- (b) to ensure the proper protection of patients as well as the public; and
- (c) to minimize the adverse effects of mental illness on family life.

**6. Objectives of persons performing certain functions**

(1) This section applies to —

- (a) the Minister in relation to the performance of his or her functions under this Act;
- (b) any officer of the department performing any function, under this Act or otherwise, in relation to the care or treatment of persons who have mental illnesses; and
- (c) any other person performing a function under this Act.

(2) A person to whom this section applies is to seek to ensure that the objects of this Act are achieved so far as it is relevant to the performance of his or her functions under this Act.



## **Part 2 — Administrative provisions**

### **Division 1 — The Minister**

#### **7. Functions of the Minister**

It is a function of the Minister —

- (a) to promote the development and co-ordination of services for the care and treatment of persons who have mental illnesses;
- (b) to promote the integration of, and co-operation between, health and welfare services at State, regional, and local levels;
- (c) to encourage the development within the community of services emphasizing —
  - (i) the prevention of mental illness; and
  - (ii) the early detection and treatment of mental illness;
- (d) to promote the development of voluntary and self-help groups and other community agencies for assisting persons who have mental illnesses and their families;
- (e) to encourage the carrying out of research into mental illnesses;
- (f) to ensure that the special needs and views of groups within the community are sought by consultation with particular reference to —
  - (i) persons who have or have had mental illnesses;
  - (ii) groups and agencies referred to in paragraph (d); and
  - (iii) ethnic groups;
- (g) to ensure that services for the treatment and care of persons having a mental illness are comprehensive, readily accessible, and sensitive to cultural diversity;

- (h) to promote high standards of education and training for, and accountability of, persons providing care to persons who have mental illnesses;
- (i) to ensure that information about mental health and mental illness is made available and to promote public awareness about mental health and mental illness; and
- (j) to encourage the development of advocacy services to facilitate the work of the Mental Health Review Board and the official visitors.

### **Division 2 — The Chief Psychiatrist**

#### **8. Chief Psychiatrist**

References in this Act to the Chief Psychiatrist are to the person appointed as such under section 6(1)(d) of the *Health Legislation Administration Act 1984*.

#### **9. Responsibilities of Chief Psychiatrist for psychiatric care**

- (1) The Chief Psychiatrist has responsibility for the medical care and welfare of all involuntary patients.
- (2) In respect of other patients, the Chief Psychiatrist is required to monitor the standards of psychiatric care provided throughout the State.

#### **10. Other functions of Chief Psychiatrist**

The other functions of the Chief Psychiatrist are —

- (a) to assist the CEO to prepare, keep under review, and carry out, a strategic plan for the administration of mental health services for the State;
- (b) to keep —
  - (i) a register of authorised hospitals;
  - (ii) a register of authorised medical practitioners; and

- (iii) a register of authorised mental health practitioners;
- (c) in relation to medication used in psychiatry, to ensure that there is an appropriate system in place for —
  - (i) the maintenance of satisfactory standards; and
  - (ii) the provision of information to medical practitioners about new developments including new information about adverse drug reactions;
- (d) to report to the Mental Health Review Board on matters concerning the medical care or welfare of involuntary patients; and
- (e) to advise the CEO of recommendations that the Chief Psychiatrist considers it would be appropriate for the CEO to make to the Minister.

*[Section 10 amended by No. 28 of 2006 s. 275.]*

**11. Chief Psychiatrist subject to CEO**

In performing his or her functions the Chief Psychiatrist is subject to the general direction and control of the CEO.

*[Section 11 amended by No. 28 of 2006 s. 275.]*

**12. Directions as to treatment**

- (1) The Chief Psychiatrist may at any time —
  - (a) review any decision of a psychiatrist as to the treatment of any involuntary patient; and
  - (b) vary or rescind the decision or substitute another decision for it.
- (2) A psychiatrist is to comply with any instruction given to him or her by the Chief Psychiatrist in exercise of the powers in subsection (1).
- (3) Nothing in this section —
  - (a) limits the operation of Part 5; or

- (b) takes away from any requirement under that Part or any other law for the obtaining of a person's consent to treatment.

**13. Powers of inspection**

- (1) The powers in this section may be exercised —
  - (a) in respect of relevant premises that are not an authorised hospital, only if the Chief Psychiatrist believes on reasonable grounds that proper standards of care or treatment are not being, or have not been, observed in a psychiatric health service carried on in those premises; and
  - (b) in respect of any relevant premises that are an authorised hospital, as the Chief Psychiatrist thinks appropriate.
- (2) Subject to subsection (1), the Chief Psychiatrist may at any time visit any relevant premises whether or not notice of the visit has been given.
- (3) In the course of a visit the Chief Psychiatrist may, subject to subsection (4) —
  - (a) inspect any part of the relevant premises;
  - (b) interview any person who is in the relevant premises for care or treatment;
  - (c) require persons on the relevant premises to answer questions relating to the care or treatment of persons at the premises;
  - (d) require the production of and inspect any medical record or other document relating to persons who are or have been receiving care or treatment at the relevant premises; and
  - (e) take copies of or extracts from any such record or document.

- (4) The powers in subsection (3)(b), (c), (d) and (e) may be exercised —
- (a) in relation to an involuntary patient, without restriction; but
  - (b) in relation to any other person, only with the person's consent.
- (5) A person having any official capacity at the relevant premises is to —
- (a) afford any assistance that may be requested for the purpose of exercising a power under this section; and
  - (b) answer any question that may be asked under this section by the Chief Psychiatrist.
- (6) In this section —
- psychiatric health service* means any health service that provides specialized psychiatric care or treatment to persons suffering from mental illness and does so either as its sole activity or as a significant part of its activities;
- relevant premises* means premises that are used for carrying on a psychiatric health service.

#### **14. Offences**

- (1) A person must not —
- (a) fail without reasonable excuse, proof of which lies upon that person —
    - (i) to answer any question; or
    - (ii) to produce any document,as required under section 13(3);
  - (b) in answer to any question asked under section 13(3), give any answer or other information knowing it to be false or misleading in a material particular;

- (c) fail without reasonable excuse (proof of which lies upon that person) to give any assistance as required under section 13(5); or
- (d) obstruct or hinder a person carrying out a function under section 13.

Penalty: \$2 000.

- (2) A person is not excused from answering any question, or from producing any document, as required under section 13(3) on the ground that the answer to a question or the contents of a document might tend to incriminate the person or render the person liable to a penalty.
- (3) However, the answer or the fact that the document or the thing was produced is not admissible in evidence against the person in any civil or criminal proceedings other than proceedings for perjury or for an offence under this section arising out of the false or misleading nature of the answer.

**15. Chief Psychiatrist may order that patient be allowed to be visited**

The Chief Psychiatrist may, in writing, direct the person in charge of any place where a patient is detained to allow a person specified in the direction to visit the patient, subject to such conditions, if any, as may be specified in the direction.

**16. Delegation by Chief Psychiatrist**

The Chief Psychiatrist may, by a signed instrument of delegation, delegate to another psychiatrist in the department, either generally or as otherwise provided in the instrument, any function under this Act, other than this power of delegation.

### Division 3 — Psychiatrists and authorised practitioners

**[17. Register of psychiatrists**

- ~~— (1) The Medical Board of Western Australia established under the *Medical Practitioners Act 2008* is to prepare and maintain, for the purposes of this Act, a register of psychiatrists.~~
- ~~— (2) The register is to contain the names of every medical practitioner practising in the State who —~~
  - ~~— (a) has made a special study of, or who has gained and maintained special skill in the practice of, psychiatry; and~~
  - ~~— (b) is recognized by the Medical Board as a specialist in psychiatry.~~
- ~~— (3) Where the Medical Board is of the opinion that a medical practitioner whose name is contained in the register has ceased to be a specialist in psychiatry, the Board is to remove his or her name from that register.~~
- ~~— [Section 17 amended Deleted by No. 22 35 of 2008 2010 s. 162 111.]~~

**18. Authorised medical practitioners**

- (1) The Chief Psychiatrist may, by order published in the *Gazette* —
  - (a) designate any medical practitioner as an authorised medical practitioner for the purposes of section 77; and
  - (b) revoke a person's designation as an authorised medical practitioner.
- (2) The Chief Psychiatrist is not to designate a medical practitioner under subsection (1) unless he or she is satisfied that the practitioner has the skills and experience necessary for the effective performance of the functions of an authorised medical practitioner under section 77.

**19. Mental health practitioners**

- (1) For the purposes of this Act a person is a mental health practitioner if he or she is —
- (a) a psychologist;
  - (b) a person ~~registered as~~ —
    - (i) ~~a nurse~~ registered under the ~~Nurses Health Practitioner Regulation National Law (Western Australia) in the nursing and Midwives Act 2006~~ midwifery profession; or
    - (ii) registered as an occupational therapist under the ~~Occupational Therapists Act 2005~~;
- or
- (c) a person with another recognized qualification,
- and has at least 3 years' experience in the management of persons who have mental illnesses.
- (2) The Chief Psychiatrist may from time to time determine that —
- (a) a degree awarded by an Australian university upon the completion of a course in social work; or
  - (b) another qualification considered by the Chief Psychiatrist to be at least equivalent to a degree described in paragraph (a),
- is a recognized qualification for the purposes of subsection (1)(c).
- (3) The Chief Psychiatrist may revoke or amend a determination under subsection (2).

*[Section 19 amended by No. 42 of 2005 s. 109; No. 50 of 2006 s. ~~114~~114; No. 35 of 2010 s. 112(1).]*



**20. Authorised mental health practitioners**

- (1) The Chief Psychiatrist may, by order published in the *Gazette* —
  - (a) designate as an authorised mental health practitioner any mental health practitioner who in the opinion of the Chief Psychiatrist has qualifications, training and experience appropriate for the performance of the functions vested in an authorised mental health practitioner by sections 29 and 63;
  - (b) revoke any such designation.
- (2) An order under subsection (1) may specify limits within which the person may perform the functions vested in a mental health practitioner by sections 29 and 63.
- (3) The Chief Psychiatrist may, by order published in the *Gazette*, vary any limits specified under subsection (2).
- (4) The regulations may make provision as to —
  - (a) qualifications, training, and experience that the Chief Psychiatrist is to regard as appropriate for the purposes of subsection (1)(a);
  - (b) the performance by authorised mental health practitioners of their functions;
  - (c) any notifications required to be given by authorised mental health practitioners to the Chief Psychiatrist; and
  - (d) grounds on which a person's designation as an authorised mental health practitioner may be revoked.

### **Division 4 — Authorised hospitals**

#### **21. Authorisation of hospitals**

- (1) The Governor may by order published in the *Gazette* —
  - (a) authorise a public hospital, or part of a public hospital, for —
    - (i) the reception of persons; and
    - (ii) the admission of persons as involuntary patients, under this Act; and
  - (b) revoke or amend an order so made.
- (2) If a place ceases to be an authorised hospital because an order is revoked, every person received into, or admitted as an involuntary patient to, the authorised hospital is to be transferred in accordance with the regulations to another authorised hospital.

### **Division 5 — The Registrar**

#### **22. Registrar and staff of Board**

There are to be appointed under and subject to Part 3 of the *Public Sector Management Act 1994* —

- (a) a Registrar of the Mental Health Review Board; and
- (b) such other officers as are necessary to assist with the performance of the Registrar's functions under this Act.

#### **23. President may give Registrar directions**

The President may from time to time give directions to the Registrar with respect to the performance of any of the Registrar's functions under this Act, either generally or with respect to a particular matter, and the Registrar is to give effect to any such direction.

**24. Functions of Registrar**

Without limiting any other function given or delegated to the Registrar under this Act, it is the function of the Registrar —

- (a) to keep, in accordance with the regulations, particulars of every involuntary patient;
- (b) to ensure that any review required by this Act to be carried out in respect of a person by the Board is brought before the Board at an appropriate time;
- (c) to receive any notice, report, or other thing that is to be given to the Board and arrange for it to be dealt with as soon as is practicable;
- (d) to ensure that any notice, report, or other thing that is to be given by the Board is given in accordance with this Act and as soon as is practicable;
- (e) to keep a record of applications made to, and notices given to or by, the Board;
- (f) to cause to be made, and keep, accurate minutes of proceedings at meetings of the Board;
- (g) to keep a record of decisions of the Board and keep copies of the reasons given for those decisions; and
- (h) generally to be the executive officer of the Board.

**25. Delegation to Registrar**

The Board may delegate to the Registrar, either generally or as otherwise provided in the delegation, any function under this Act that the regulations provide may be delegated under this subsection, other than this power of delegation.

## **Part 3 — Involuntary patients**

### **Division 1 — Becoming an involuntary patient**

#### **Subdivision 1 — Criteria**

#### **26. Persons who should be involuntary patients**

- (1) A person should be an involuntary patient only if —
  - (a) the person has a mental illness requiring treatment;
  - (b) the treatment can be provided through detention in an authorised hospital or through a community treatment order and is required to be so provided in order —
    - (i) to protect the health or safety of that person or any other person;
    - (ii) to protect the person from self-inflicted harm of a kind described in subsection (2); or
    - (iii) to prevent the person doing serious damage to any property;
  - (c) the person has refused or, due to the nature of the mental illness, is unable to consent to the treatment; and
  - (d) the treatment cannot be adequately provided in a way that would involve less restriction of the freedom of choice and movement of the person than would result from the person being an involuntary patient.
- (2) The kinds of self-inflicted harm from which a person may be protected by making the person an involuntary patient are —
  - (a) serious financial harm;
  - (b) lasting or irreparable harm to any important personal relationship resulting from damage to the reputation of the person among those with whom the person has such relationships; and
  - (c) serious damage to the reputation of the person.

**27. Application to mentally impaired accused**

- (1) Despite section 26, a person is not to be made an involuntary patient at any time after a custody order is made under the *Criminal Law (Mentally Impaired Accused) Act 1996* and before the person is released by the Governor under that Act.
- (2) However, a mentally impaired accused who under that Act is released by the Governor on conditions may be made an involuntary patient.

*[Section 27 amended by No. 84 of 2004 s. 82.]*

**Subdivision 2 — Referral for examination**

**28. Term used in this Subdivision**

In this Subdivision —

*referrer* means a medical practitioner or an authorised mental health practitioner who refers a person under section 29.

**29. Referral for examination by a psychiatrist**

- (1) Subject to section 194, a medical practitioner or an authorised mental health practitioner who suspects on reasonable grounds that a person should be made an involuntary patient may refer the person for examination by a psychiatrist.
- (2) The referral is to be for examination either —
  - (a) in an authorised hospital; or
  - (b) at some other place where to the knowledge of the referrer the examination can be carried out,

as determined by the referrer.

**30. Referral of voluntary patients in certain circumstances**

- (1) The application of section 29 extends to a case where a person who is a patient at an authorised hospital, other than an involuntary patient or a mentally impaired accused, seeks to be

discharged from the hospital and a psychiatrist is not available to examine the person.

- (2) Despite section 29, the referral may only be made for examination in the hospital in which the person is a patient.
- (3) If a senior mental health practitioner suspects on reasonable grounds that the person should be examined for the purposes of section 29 he or she may in writing order that the person be detained at the hospital for up to 6 hours from the time when the person seeks to be discharged.
- (4) Section 36 does not apply when a person is referred by operation of this section.
- (5) Section 37 applies when a person is referred by operation of this section as if —
  - (a) in subsection (1) the passage “received into an authorised hospital under section 36” were omitted; and
  - (b) in subsection (2) the words “after the person was received into the hospital” were replaced by the words “from the time when the referral was made”.
- (6) An examination following a referral to which this section applies is not to be made by the psychiatrist who is the treating psychiatrist of the person at the time of the referral.

*[Section 30 amended by No. 84 of 2004 s. 82.]*

**31. No referral without personal examination**

- (1) A referrer is not to refer a person under section 29 without having first personally examined the person for the purpose of forming an opinion as to whether it is suspected that the person should be made an involuntary patient.
- (2) However, facts communicated to the referrer, although not of themselves sufficient grounds for suspecting that a person should be made an involuntary patient, may be considered in forming the opinion.

**32. Time limit**

A referrer is not to refer a person under section 29 if a period of more than 48 hours has elapsed since the referrer personally examined the person.

**33. Form of referral**

A referral is to be in writing and is to —

- (a) specify the day and time when the referral was made;
- (b) specify the day and time when the person referred was personally examined as required by section 31;
- (c) certify that, having regard to section 26, the referrer suspects that the person should be made an involuntary patient;
- (d) specify —
  - (i) the authorised hospital; or
  - (ii) the other place,at which the person referred is to be examined by a psychiatrist;
- (e) specify the facts on the basis of which it is suspected that the person should be made an involuntary patient; and
- (f) distinguish from the facts known because of personal observation by the referrer, any of the facts which have been communicated to the referrer.

**34. Police assistance**

- (1) If the person is not in police custody the referrer may make a written order (*a transport order*) authorising a police officer to —
  - (a) apprehend the person; and
  - (b) take him or her to the examination.

- (2) A transport order is not to be made unless —
- (a) the condition of the person is such that assistance is required to take the person to the examination and no suitable alternative is available; and
  - (b) not more than 7 days have elapsed since the referral was made.
- (3) A transport order is to specify the day and time when it was made.

**35. Operation of transport order**

- (1) A person apprehended under a transport order is to be taken to the authorised hospital or other place specified in the referral as soon as is practicable but in any event before the order lapses under subsection (3).
- (2) The person may be detained under a transport order —
- (a) until the order lapses; or
  - (b) until the person is received into an authorised hospital under section 36,
- whichever is first.
- (3) A transport order lapses —
- (a) on the expiry of the relevant period after it was made; or
  - (b) at the end of the 7th day after the referral was made,
- whichever is sooner, regardless of whether or not the person has been taken to the examination or has been apprehended.
- (4) The relevant period for the purposes of subsection (3) is —
- (a) where section 29(2)(a) applies, 72 hours; and
  - (b) where section 29(2)(b) applies, 24 hours.



**Subdivision 3 — Examination in an authorised hospital**

**36. Detention for examination**

- (1) A person who is referred under section 29 for examination by a psychiatrist in an authorised hospital —
  - (a) is to be received into the hospital; and
  - (b) may be detained there for up to 24 hours from the time of reception.
- (2) A person is not to be so received if more than 7 days have elapsed since the referral was made.
- (3) Being received into an authorised hospital under this section is not admission to the hospital for the purposes of this Act.
- (4) If the person has not been examined by a psychiatrist within the period specified in subsection (1)(b), the person may not be detained any longer.

**37. Choices upon examination**

- (1) A psychiatrist who examines a person received into an authorised hospital under section 36 may —
  - (a) make an order under section 43;
  - (b) order that the person's detention continue for further assessment of whether an order should be made under section 43; or
  - (c) decide not to make an order under this Act.
- (2) An order under subsection (1)(b) is to specify the day and time when it was made and the end of the period during which the person may be detained, which is to be not later than 72 hours after the person was received into the hospital.
- (3) An order under subsection (1)(b) authorises the detention of the person in respect of whom it is made —
  - (a) until the end of the period specified in the order; or

- (b) until a psychiatrist who has examined the person since the order was made either makes, or decides not to make, another order in respect of the person under this Act,

whichever is first.

**Subdivision 4 — Examination otherwise than in an authorised hospital**

**38. Time limit**

An examination is not to be made by a psychiatrist for the purposes of a referral under section 29(2)(b) if more than 7 days have elapsed since the referral was made.

**39. Choices upon examination**

- (1) A psychiatrist who examines a person for the purposes of a referral under section 29(2)(b) may order that the person be received into, and detained in, an authorised hospital for assessment of whether an order should be made under section 43.
- (2) An order under subsection (1) is to specify the day and time when it is made.

**40. Reception into hospital**

- (1) A person in respect of whom an order is made under section 39 is to be received into the authorised hospital and may be detained there for —
  - (a) 72 hours after the time of reception; or
  - (b) until a psychiatrist who has examined the person since the order was made either makes, or decides not to make, another order in respect of the person under this Act,

whichever is first.

- (2) A person is not to be so received if more than 7 days have elapsed since the referral was made under section 29(2)(b).
- (3) Being received into an authorised hospital under this section is not admission to the hospital for the purposes of this Act.
- (4) If the person has not been examined by a psychiatrist within the period specified in subsection (1)(a), the person may not be detained any longer.

**41. Police assistance**

- (1) A psychiatrist who orders that a person who is not in police custody be received under section 39 into an authorised hospital may make a written order (*a transport order*) authorising a police officer to —
  - (a) apprehend the person; and
  - (b) take the person to the authorised hospital.
- (2) A transport order is not to be made unless the condition of the person is such that assistance is required to take the person to the hospital and no suitable alternative is available.
- (3) A transport order is to specify the day and time when it was made.

**42. Operation of transport order**

- (1) A person apprehended under a transport order is to be taken to the authorised hospital as soon as is practicable.
- (2) The person may be detained under the transport order —
  - (a) until the order lapses; or
  - (b) until the person is received into an authorised hospital under section 40(1),whichever is first.
- (3) A transport order lapses 72 hours after it is made.

**Subdivision 5 — Involuntary status**

**43. Order giving involuntary status**

- (1) This section applies where a psychiatrist examines a person who —
  - (a) has been received into an authorised hospital under section 36 or 40 (whether or not section 37(1)(b) applies);
  - (b) has been referred by operation of section 30; or
  - (c) is required to be examined under section 56.
- (2) The psychiatrist may if he or she believes that, having regard to section 26, the person should be made an involuntary patient, either —
  - (a) order in writing that the person —
    - (i) be detained in an authorised hospital as an involuntary patient; and
    - (ii) be admitted for that purpose;or
  - (b) make a community treatment order in respect of the person.
- (3) Subsection (2) has effect subject to sections 65 and 66.
- (4) An order in respect of a person referred for examination under section 29 can be made under this section only if it is made before the end of the 7th day after the referral was made.

**44. Mentally Impaired Accused Review Board to be notified in certain cases**

If an order is made under section 43 in respect of a mentally impaired accused who has been released by the Governor on conditions under the *Criminal Law (Mentally Impaired Accused) Act 1996*, the person making the order must as soon as

is practicable give a copy of the order to the secretary of the Mentally Impaired Accused Review Board.

*[Section 44 amended by No. 84 of 2004 s. 82.]*

## **Division 2 — Detention in authorised hospital**

### **Subdivision 1 — Place of detention**

#### **45. Hospital in which a person is to be detained**

An order that a person be received into or admitted to an authorised hospital and detained there authorises —

- (a) the reception of the person into or his or her admission to any authorised hospital that a psychiatrist considers to be suitable; and
- (b) the detention of the person at that hospital.

#### **46. Transfer**

At any time while a person is detained in an authorised hospital —

- (a) under section 36(1), 37(1)(b) or 40(1); or
- (b) as an involuntary patient,

a psychiatrist may order that the person be transferred to another authorised hospital specified in the order.

#### **47. Person in charge of hospital may decline to accept**

- (1) Where an order has been made that a person be received into, admitted to, or transferred to a specified hospital, the person in charge of the hospital may decline to accept the person if the facilities then available at the hospital are insufficient or inappropriate for accommodating or treating the person.
- (2) Where that happens, the person may be received into, admitted to, or transferred to another authorised hospital.

**Subdivision 2 — Period of detention**

**48. Initial period**

- (1) An order under section 43(2)(a) or 70(1) authorises the detention of the person for a period ending on a day specified in the order.
- (2) The day must be not later than the 28th day after the order is made.
- (3) The order authorises the detention of the person until —
  - (a) the end of the day specified in the order;
  - (b) it is ordered that the person is no longer an involuntary patient; or
  - (c) the person becomes the subject of a community treatment order,

whichever is first.

**49. Examination within 28 days**

- (1) The treating psychiatrist is to ensure that an involuntary patient is again examined by a psychiatrist before the end of the period of detention specified under section 48.
- (2) If on examining the person, and having regard to section 26, the psychiatrist does not believe that the person should continue to be an involuntary patient, the psychiatrist is to immediately order that the person is no longer an involuntary patient.
- (3) If on examining the person, and having regard to section 26, the psychiatrist believes that the person should continue to be an involuntary patient, the psychiatrist may either —
  - (a) order that the person continue to be detained as an involuntary patient for a further period ending on a day specified in the order; or
  - (b) make a community treatment order in respect of the person.

- (4) A period specified under subsection (3)(a) cannot end more than 6 months after the order is made.

**50. Subsequent examinations within 6 months**

- (1) The treating psychiatrist is to ensure that an involuntary patient who is detained is again examined by a psychiatrist before the end of the period of detention specified under section 49(3)(a).
- (2) The powers in section 49(2) and (3) are also exercisable on the occasion of that examination.
- (3) Subsections (1) and (2) apply in respect of each successive period of detention so as to ensure that —
- (a) the patient is again examined before the end of each such successive period; and
  - (b) the powers in section 49(2) and (3) are exercisable on each occasion.

**51. Effect of order continuing detention**

An order under section 49(3) or 50(2) that a person continue to be detained as an involuntary patient authorises the detention of the person in an authorised hospital until —

- (a) the end of the day specified in the order;
- (b) it is ordered that the person is no longer an involuntary patient; or
- (c) the person becomes the subject of a community treatment order,

whichever is first.

**52. Order for release may be made at any time**

At any time while a person is detained as an involuntary patient in an authorised hospital, a psychiatrist may —

- (a) if the psychiatrist believes, having regard to section 26, that the person should not continue to be an involuntary

patient, order that the person is no longer an involuntary patient; or

- (b) make a community treatment order in respect of the person.

**53. Saving**

This Subdivision has effect subject to section 25 of the *Criminal Law (Mentally Impaired Accused) Act 1996*.

*[Section 53 amended by No. 84 of 2004 s. 82.]*

**Subdivision 3 — Release from detention**

**54. Release when period of detention ends**

When a period of detention of a person under this Act in an authorised hospital ends the person —

- (a) is to be informed in writing of that fact as soon as is practicable after the period ends; and
- (b) unless the person is further detained in the hospital under this Act, is to be permitted to leave the hospital.

**55. When person to be returned to custody**

Where —

- (a) this Act requires that a person be permitted to leave an authorised hospital at the end of that person's detention; and
- (b) at the time when the person is to leave the hospital the person is subject to an order under a law of the State or the Commonwealth requiring that he or she be kept in custody,

the person is to be permitted to leave only when he or she has been delivered into that custody.



**56. Examination of prisoner about to be discharged**

- (1) This section applies to a person who —
  - (a) is a prisoner under the *Prisons Act 1981*;
  - (b) has under section 27 of that Act been removed to an authorised hospital; and
  - (c) while admitted to the hospital becomes entitled to be discharged from lawful custody.
- (2) Before the person is released from the hospital the person, if not already an involuntary patient, is to be examined by a psychiatrist to determine whether the person should be made an involuntary patient.

**Subdivision 4 — Absence without leave**

**57. Absence without leave**

A person is absent without leave if, while subject to an order for detention as an involuntary patient, he or she —

- (a) is away from an authorised hospital without having been granted leave of absence; or
- (b) having been away from an authorised hospital on leave of absence, fails to return to —
  - (i) the authorised hospital; or
  - (ii) another authorised hospital to which the person has been transferred,

when the leave expires or is cancelled.

**58. Apprehension of person absent without leave**

- (1) A person who, while subject to an order for detention as an involuntary patient, is absent without leave may be apprehended by —
  - (a) a person who is —
    - (i) qualified as prescribed by the regulations; and

- (ii) employed at the authorised hospital from which the person is absent;
    - (b) a person qualified as prescribed by the regulations who —
      - (i) is not employed at the authorised hospital; but
      - (ii) is authorised by a person qualified as so prescribed who is employed at the authorised hospital;
  - or
  - (c) a police officer.
- (2) A person who is not a police officer who apprehends a patient under subsection (1) is to take the patient to —
- (a) the authorised hospital from which the patient is absent; or
  - (b) a police officer who is to ensure that the person is taken to the authorised hospital,
- as soon as is practicable.
- (3) A person who has a power of apprehension under this section may —
- (a) for the purposes of this section, enter any premises where the person to be apprehended is reasonably suspected to be; and
  - (b) when apprehending the person seize anything that is likely to be used by the person in a way that would prejudice the health or safety of that person or any other person or would cause damage to any property.
- (4) Section 199 applies to any thing seized under this section.

**Subdivision 5 — Leave of absence**

**59. Grant of leave**

- (1) A psychiatrist may grant leave of absence to an involuntary patient who is detained in an authorised hospital if he or she is satisfied that the grant of leave —
  - (a) will —
    - (i) enable the patient to obtain surgical or medical treatment; or
    - (ii) be likely to benefit the health of the patient in some other way;
  - and
  - (b) will not be inconsistent with the objectives set out in section 26(1)(b).
- (2) When considering whether to grant a patient leave of absence, a psychiatrist is to also consider whether it would be more appropriate —
  - (a) to order that the person is no longer an involuntary patient; or
  - (b) to make a community treatment order in respect of the person.
- (3) Leave of absence may be granted in accordance with this section for such period and subject to such conditions as the psychiatrist granting it thinks appropriate.
- (4) The power given by this section to grant leave of absence includes the power to extend the period for which a person is on leave of absence.

**60. Cancellation of leave**

- (1) If a psychiatrist believes on reasonable grounds that it is inappropriate for an involuntary patient who is away from an authorised hospital on leave of absence to continue to be away

from hospital, the psychiatrist may cancel the leave by notice in writing given to the patient.

- (2) The notice is to be served personally on the patient by or on behalf of the psychiatrist.

**61. Status of patient on leave of absence**

An involuntary patient who is away from hospital on leave of absence is considered to continue to be detained in the hospital during the time while on leave, but this section does not limit the freedom of movement given by the leave of absence.

**62. Monitoring of patient on leave**

- (1) When an involuntary patient has been away from an authorised hospital on leave of absence for more than 28 consecutive days the treating psychiatrist is to make such enquiries as are necessary to assess whether the patient should continue to be detained as an involuntary patient.
- (2) If it appears appropriate to do so the treating psychiatrist is to —
- (a) order that the person is no longer an involuntary patient; or
  - (b) make a community treatment order in respect of the patient.

**63. Release on advice of practitioner while patient on leave**

- (1) Subsection (2) applies where —
- (a) an involuntary patient is away from an authorised hospital on leave of absence; and
  - (b) the treating psychiatrist is given a written opinion from another medical practitioner or an authorised mental health practitioner to the effect that the patient should not continue to be detained as an involuntary patient.

- (2) The treating psychiatrist may, on the basis of the opinion —
- (a) order that the person is no longer an involuntary patient;  
or
  - (b) make a community treatment order in respect of the patient.

**64. Saving**

This Subdivision has effect subject to section 25 of the *Criminal Law (Mentally Impaired Accused) Act 1996*.

*[Section 64 amended by No. 84 of 2004 s. 82.]*

**Division 3 — Treatment of involuntary patient in the community**

**Subdivision 1 — Making community treatment order**

**65. No detention without consideration of community treatment**

A psychiatrist is not to make an order that a person be, or continue to be, detained as an involuntary patient without having considered whether the objects of this Act would be better achieved by making a community treatment order in respect of the person.

**66. When a community treatment order may be made**

- (1) A psychiatrist is not to make a community treatment order in respect of a person unless satisfied that —
- (a) treatment in the community would not be inconsistent with the objectives set out in section 26(1)(b);
  - (b) suitable arrangements can be made for the care of the patient in the community;
  - (c) a medical practitioner or mental health practitioner who is suitably qualified and willing to do so will be available to ensure that the patient receives the treatment outlined in the order; and

(d) a psychiatrist who is willing to do so will be available to supervise the carrying out of the order.

(2) A community treatment order cannot be made in respect of an involuntary patient to whom section 25(3) of the *Criminal Law (Mentally Impaired Accused) Act 1996* applies.

*[Section 66 amended by No. 84 of 2004 s. 82.]*

**67. General power to make a community treatment order**

(1) A psychiatrist who has examined a person and believes, having regard to section 26, that the person should be made an involuntary patient may make a community treatment order in respect of the person.

(2) Subsection (1) is in addition to any other power in this Act to make a community treatment order.

**68. Terms of community treatment order**

(1) A community treatment order is to specify —

(a) a psychiatrist who will be responsible for supervising the carrying out of the order;

(b) a treatment plan outlining the treatment that the patient is to receive under the order and including details of —

(i) where and when the treatment is to be given; and

(ii) such other matters relating to the treatment as it is appropriate to specify;

(c) a medical practitioner or mental health practitioner who will be responsible for ensuring that the treatment plan is carried out; and

(d) the time when the order will lapse, being not more than 3 months after the order comes into effect.

(2) The order may include directions to the treating practitioner and to the psychiatrist who will be responsible for supervising the

carrying out of the order as to reporting on the patient's progress.

**69. Order to be confirmed**

- (1) A community treatment order does not have effect unless, within 72 hours after it is made, it is confirmed by —
  - (a) another psychiatrist; or
  - (b) if another psychiatrist is not readily available, another medical practitioner who has been authorised for the purposes of this section.
- (2) Subsection (1) does not apply where —
  - (a) the order was made under section 43; or
  - (b) the person is already detained in an authorised hospital as an involuntary patient.
- (3) The Chief Psychiatrist may, by order published in the *Gazette* —
  - (a) authorise a medical practitioner for the purposes of this section if the medical practitioner has, in the opinion of the Chief Psychiatrist, suitable experience to decide whether a person should be the subject of a community treatment order;
  - (b) revoke any such authorisation.

**70. Revocation of a community treatment order**

- (1) The supervising psychiatrist may revoke a community treatment order with or without making an order that the person be admitted to, and detained in, an authorised hospital as an involuntary patient.
- (2) An order may only be revoked —
  - (a) if the patient has failed to do anything required to be done under the order or an order to attend under section 82; or

- (b) if it no longer appears that the requirements of section 66 for the making of a community treatment order are satisfied.

**71. Police assistance**

- (1) Where under section 70 —
  - (a) a community treatment order in respect of a person is revoked; and
  - (b) an order is made that the person be admitted to, and detained in, an authorised hospital as an involuntary patient,

the supervising psychiatrist may make a written order (*a transport order*) authorising a police officer to apprehend the person and take him or her to the hospital.

- (2) A transport order is not to be made unless the condition of the person is such that assistance is required to take the person to the hospital and no suitable alternative is available.
- (3) A transport order is to specify the day and time when it was made.

**72. Carrying out of transport order**

- (1) A person apprehended under a transport order made under section 71 is to be taken to the authorised hospital as soon as is practicable.
- (2) The person may be detained under the transport order —
  - (a) until the order lapses; or
  - (b) until the person is admitted to the hospital,whichever is first.
- (3) A transport order lapses 72 hours after it is made.



**Subdivision 2 — Operation of community treatment order**

**73. Duration of community treatment order**

A community treatment order has effect until —

- (a) the order lapses either at the time specified in the order or after any further period for which it was extended;
- (b) an extension of the order ceases to have effect because a second opinion under section 76 either —
  - (i) does not confirm that the extension should have been made; or
  - (ii) has not been obtained under that section within the time required;
- (c) the order is revoked under section 70;
- (d) it is ordered under section 78 that the person who is the subject of the order is no longer an involuntary patient; or
- (e) the person is admitted to an authorised hospital as an involuntary patient.

**74. The supervising psychiatrist**

- (1) The supervising psychiatrist may be the psychiatrist who made the order or another psychiatrist.
- (2) The supervising psychiatrist may also be the treating practitioner.
- (3) The psychiatrist responsible for supervising the carrying out of the order may transfer that responsibility to another psychiatrist and, in that event, is to notify the patient in writing of the transfer.

**75. Review by supervising psychiatrist**

- (1) The supervising psychiatrist is to ensure that not more than one month passes without the patient having been examined by the supervising psychiatrist.
- (2) The examinations required by this section are to include a review of whether the person should continue to be an involuntary patient.
- (3) A record of each of the examinations is to be made in the case notes of the patient that are kept by the psychiatrist.

**76. Extension of community treatment order**

- (1) Before a community treatment order lapses the supervising psychiatrist may, if the order has not previously been extended, extend the period for which the order has effect by not more than 3 months.
- (2) The patient is to be given written notice of an extension.
- (3) The patient may, in writing, request the psychiatrist extending the order to obtain a second opinion from another psychiatrist as to whether the order should have been extended.
- (4) If the second opinion —
  - (a) has not been obtained within 14 days after the patient's request; or
  - (b) does not confirm that the extension should have been made,the extension is of no effect, or no further effect, as the case requires.
- (5) Subsection (4) does not apply if the second opinion has not been obtained because the patient failed to attend an examination.
- (6) A psychiatrist who has been requested to obtain a second opinion is to provide a copy of the request to the Mental Health Review Board before the next time that it carries out a review

under Division 2 of Part 6 of whether or not the order should continue to have effect.

**77. Supervising psychiatrist may act on authorised medical practitioner's report**

- (1) The supervising psychiatrist may request an authorised medical practitioner to examine a patient who is the subject of a community treatment order and provide the psychiatrist with a written report about the patient.
- (2) The request is to be in writing and may specify requirements for the carrying out of the examination and the preparation of the report.
- (3) If the authorised medical practitioner carries out an examination of the patient and provides the psychiatrist with a report as required, the psychiatrist may without personally examining the patient prepare a report about the patient on the basis of the authorised medical practitioner's report.
- (4) A psychiatrist who prepares a report about a patient under subsection (3) without having personally examined the patient is taken for the purposes of this Act to have examined the patient.

**78. Person may be discharged from involuntary status**

If the supervising psychiatrist on examining a person who is the subject of a community treatment order believes, having regard to section 26, that the person should not continue to be an involuntary patient, the psychiatrist is to order that the person is no longer an involuntary patient.

**79. Variation of order**

- (1) The supervising psychiatrist may —
  - (a) transfer the responsibility for ensuring that the treatment plan specified in an order is carried out from the person who is the treating practitioner to —
    - (i) another medical practitioner; or
    - (ii) a mental health practitioner,  
who in the opinion of the psychiatrist is suitably qualified and who is willing to be the treating practitioner; and
  - (b) otherwise vary the terms of the order.
- (2) A psychiatrist who transfers responsibility under subsection (1)(a) is to notify the patient in writing of the transfer as soon as is practicable.

**Subdivision 3 — Breach of community treatment order**

**80. What constitutes breach of order**

A breach of a community treatment order occurs if —

- (a) the person the subject of the order does not comply with the order in some respect; and
- (b) the supervising psychiatrist believes that —
  - (i) all reasonable steps have been taken to obtain compliance without sufficient success; and
  - (ii) a significant risk of the condition of the person deteriorating arises from the non-compliance.

**81. Action following breach**

- (1) If a breach of a community treatment order occurs, the supervising psychiatrist is to —
  - (a) make a written record of the breach stating —
    - (i) the beliefs mentioned in section 80(b);

- (ii) the facts on which the beliefs are based; and
  - (iii) the reasons for forming the beliefs;
- and
- (b) unless it is impracticable to do so, give the person the subject of the order notice of the breach.
- (2) The notice is to inform the person that continued non-compliance with the order will result in the person being required to attend at a specified place to receive treatment.

**82. Action where breach continues**

- (1) If the supervising psychiatrist, having given the person notice under section 81(1)(b), is not satisfied that since the notice was given the person has complied with the order, the psychiatrist may make an order to attend in respect of the person.
- (2) An order to attend is an order requiring the person to attend at a time and place specified in the order to receive treatment.
- (3) An order to attend is to be made in writing and given to the person to whom it is directed.
- (4) An order to attend is to be accompanied by a written warning to the person to the effect that the assistance of a police officer may be obtained to ensure that the person attends for treatment.

**83. Treatment may be given without consent**

A person may be given treatment under an order to attend whether or not the person consents to the treatment.

**84. Police assistance**

- (1) If the person has failed to comply with an order to attend the supervising psychiatrist may make a written order authorising a police officer —
  - (a) to apprehend the person; and

- (b) to take the person for treatment as specified in the order to attend.
- (2) An order is not to be made under subsection (1) if there is reasonably available a suitable alternative means of ensuring that the person attends for treatment as required by the order to attend.
- (3) A person apprehended —
  - (a) is to be given a copy of the order made under subsection (1);
  - (b) is to be taken to the place specified for treatment as close as is practicable to a time when the treatment can be given; and
  - (c) may be detained under the order until the treatment is given.

**85. Power of revocation not affected**

Nothing in this Division limits the exercise of the power to revoke a community treatment order under section 70.

## Part 4 — Interstate movements

### 86. Term used in this Part

In this Part —

**agreement** means an agreement referred to in section 87 and, if the agreement has been varied in accordance with that section, means the agreement as varied.

### 87. Agreements

- (1) The Minister may, on behalf of the State, from time to time, enter into an agreement with the Government of another State or a Territory of the Commonwealth for —
  - (a) the taking, reception, care, treatment, maintenance, burial, and payment of expenses, under the laws of that State or Territory, of persons released or discharged from any custody or status under this Act;
  - (b) the taking, reception, care, treatment, maintenance, burial, and payment of expenses, under this Act, of persons released or discharged from any custody or status under the laws of that State or Territory relating to mental disorder.
- (2) The power to enter into an agreement under this section includes a power to vary the agreement.
- (3) If the Minister enters into or varies an agreement under this section, the Minister is to cause a notice to be published in the *Gazette* of the agreement or variation setting out its terms.

### 88. Best interests of person to be considered

A person is not to be dealt with under this Part in accordance with an agreement except in a way that is in the best interests of the person.

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**89. Persons apprehended**

- (1) A police officer who apprehends a person under section 195 may, instead of dealing with the person under that section, take action under subsection (2) if he or she considers that it would be —
  - (a) in accordance with an agreement; and
  - (b) appropriate in the circumstances,to do so.
- (2) The police officer may take the person to be dealt with, in accordance with the agreement, under the laws of another State or a Territory of the Commonwealth relating to mental disorder.

**90. Referral for examination**

A practitioner referred to in section 29 may, under that section, refer for examination by a psychiatrist a person who has, in accordance with an agreement, been released or discharged from any custody or status under the laws of another State or a Territory of the Commonwealth relating to mental disorder.

**91. Transfer to another jurisdiction**

If, in accordance with an agreement, a person who is an involuntary patient is to be dealt with under the laws of another State or a Territory of the Commonwealth relating to mental disorder —

- (a) the Chief Psychiatrist may order that the person is no longer an involuntary patient; and
- (b) such things may be done as are necessary to enable the person to be dealt with in accordance with the agreement.



## **Part 5 — Treatment of patients**

### **Division 1 — General**

**92. Terms used in this Part**

In this Part —

*electroconvulsive therapy* means the application of electric current to specific areas of the head to produce a generalized seizure which is modified by general anaesthesia and the administration of a muscle relaxing agent;

*emergency psychiatric treatment* has the meaning given by section 113;

*informed consent* has the meaning given by Division 2;

*psychosurgery* has the meaning given by section 100.

**93. Treatment of persons on remand**

The treatment that may be given to a person as an involuntary patient is not affected by the fact that the person has been remanded in custody or is on bail.

**94. Mentally Impaired Accused Review Board to be notified of treatment of mentally impaired accused**

- (1) If under Division 4, 5, 7, 8 or 9 a mentally impaired accused is given treatment, the treating psychiatrist is to give a report of the treatment to the secretary of the Mentally Impaired Accused Review Board.
- (2) The report is to include all information that under those Divisions is required to be recorded.

*[Section 94 amended by No. 84 of 2004 s. 82.]*

## **Division 2 — Informed consent**

### **95. Requirements for informed consent**

- (1) For the purposes of this Division a patient gives informed consent to treatment only if —
  - (a) the requirements of this Division have been complied with; and
  - (b) the consent was freely and voluntarily given.
- (2) A failure to offer resistance to treatment does not of itself constitute consent to treatment.

### **96. Capacity to give informed consent**

A patient is incapable of giving informed consent unless he or she is capable of understanding —

- (a) the things that are required by this Division to be communicated to him or her;
- (b) the matters involved in the decision; and
- (c) the effect of giving consent.

### **97. Explanation to be given**

- (1) Before an informed consent is given the patient is to be given a clear explanation of the proposed treatment —
  - (a) containing sufficient information to enable the patient to make a balanced judgment about the treatment;
  - (b) identifying and explaining any medication or technique about which there is insufficient knowledge to justify its being recommended or to enable its effect to be reliably predicted; and
  - (c) warning the patient of any risks inherent in the treatment.
- (2) The extent of the information that a patient is required to be given under this section is limited to information that a

reasonable person in the patient's position would be likely to regard as significant unless it is, or reasonably should be, known that the patient would be likely to regard other information as significant.

- (3) The requirements of subsection (1) apply irrespective of any privilege that a person may assert.
- (4) Anything that is required by this section to be communicated to a patient is not to be considered to have been effectively communicated unless —
  - (a) it is in a language or form that is readily understood by the patient using a competent interpreter if necessary; and
  - (b) it is so expressed as to facilitate his or her understanding of what is required to be communicated.

**98. Sufficient time to be given**

Informed consent is not to be considered to have been given unless the patient has been allowed sufficient time to consider the matters involved in the decision and obtain such advice and assistance as may be desired.

**Division 3 — Prohibited treatment**

**99. Offence to administer certain treatment**

- (1) A person is not to administer to or perform on another person —
  - (a) deep sleep therapy; or
  - (b) insulin coma or sub-coma therapy.
- (2) A person who contravenes subsection (1) commits a crime.  
Penalty: Imprisonment for 5 years.

### **Division 4 — Psychosurgery**

#### **100. Meaning of “psychosurgery”**

(1) In this Division —

*psychosurgery* means —

- (a) the use of a surgical technique or procedure, or of intracerebral electrodes, to create in a person’s brain a lesion that, by itself or together with any other lesion created at the same time or any other time, is intended to permanently alter the thoughts, emotions, or certain behaviour of the person; or
  - (b) the use of intracerebral electrodes to stimulate a person’s brain, without creating a lesion, with the intent that, by itself or together with any other such stimulation at the same time or any other time, the stimulation will, temporarily, influence or alter the thoughts, emotions, or certain behaviour of the person.
- (2) The behaviour referred to in subsection (1)(a) and (b) does not include behaviour considered to be secondary to a paroxysmal cerebral dysrhythmia.

#### **101. Prerequisites to psychosurgery**

- (1) A person is not to perform psychosurgery on another person unless —
  - (a) that other person has given informed consent to it; and
  - (b) it has been approved by the Mental Health Review Board constituted as required by section 130.
- (2) A person who contravenes subsection (1) commits a crime.  
Penalty: Imprisonment for 5 years.
- (3) It is no defence to a charge of an offence against this section that the person on whom psychosurgery was performed refused to give, or was incapable of giving, informed consent.

**102. Applications for approval to perform psychosurgery**

- (1) An application for the Mental Health Review Board to approve of the performance of psychosurgery is to be made in writing.
- (2) For the purposes of proceedings before the Board to consider the application —
  - (a) the applicant and the person on whom the psychosurgery is proposed to be performed are parties to the proceedings; and
  - (b) the Board may also treat as a party any other person who the Board is satisfied has a sufficient interest in the matter.

**103. Board must satisfy itself of certain matters**

Before it approves the performing of psychosurgery on a person, the Board is to satisfy itself that —

- (a) the person has the capacity to give, and has given, informed consent to the proposed psychosurgery;
- (b) the proposed psychosurgery has clinical merit and is appropriate in the circumstances;
- (c) every available alternative to psychosurgery that could reasonably be regarded as likely to produce a sufficient and lasting benefit has been satisfactorily given without a sufficient and lasting benefit resulting;
- (d) the person who is to perform the proposed psychosurgery is suitably qualified; and
- (e) the place where it is proposed to perform the psychosurgery is a suitable place.

### **Division 5 — Electroconvulsive therapy**

#### **Subdivision 1 — Involuntary patients and mentally impaired accused**

*[Heading amended by No. 84 of 2004 s. 82.]*

#### **104. Prerequisites**

- (1) A person is not to perform electroconvulsive therapy on —
- (a) an involuntary patient; or
  - (b) a mentally impaired accused who is in an authorised hospital,
- unless —
- (c) it has been recommended by the treating psychiatrist; and
  - (d) the recommendation is approved by another psychiatrist.
- Penalty: \$10 000 and imprisonment for 2 years.
- (2) Subsection (1) does not apply if the electroconvulsive therapy is given as emergency psychiatric treatment and the requirements of Division 7 have been fulfilled.

*[Section 104 amended by No. 84 of 2004 s. 82.]*

#### **105. Matters for consideration by psychiatrist**

Before a psychiatrist approves a recommendation for the purposes of 104(1)(d), the psychiatrist is required —

- (a) to be satisfied that the proposed therapy has clinical merit and would be appropriate in the circumstances;
- (b) to decide whether or not the person concerned has the capacity to give informed consent to the proposed therapy;
- (c) if the person has the capacity —
  - (i) to ascertain whether or not that consent has been given; and

- (ii) to have regard to whether or not that consent has been given.

**106. Reference to Board**

- (1) Where the psychiatrist does not approve the recommendation that electroconvulsive therapy be performed, the psychiatrist making the recommendation is to refer the matter in writing to the Mental Health Review Board.
- (2) The Board is not authorised to substitute its decision for that of the psychiatrist withholding approval and if the psychiatrist continues to withhold approval of the recommendation the Board may —
  - (a) recommend to the treating psychiatrist an alternative treatment;
  - (b) transfer responsibility for treating the person from the treating psychiatrist to another psychiatrist; or
  - (c) in the case of an involuntary patient, order that the person is no longer an involuntary patient.

**Subdivision 2 — Other patients**

**107. Informed consent required**

- (1) A person is not to perform electroconvulsive therapy on a person who is neither —
  - (a) an involuntary patient; nor
  - (b) a mentally impaired accused who is in an authorised hospital,unless the person on whom the therapy is performed has given informed consent to it.  
Penalty: \$10 000 and imprisonment for 2 years.
- (2) Subsection (1) does not apply if the electroconvulsive therapy is given as emergency psychiatric treatment and the requirements of Division 7 have been fulfilled.

- (3) It is no defence to a charge of an offence against subsection (1) of having performed electroconvulsive therapy on a person without the person having given informed consent to it that the person refused to give, or was incapable of giving, informed consent.

*[Section 107 amended by No. 84 of 2004 s. 82.]*

**Division 6 — Other treatment, involuntary patients and mentally impaired accused**

*[Heading amended by No. 84 of 2004 s. 82.]*

**108. Meaning of “psychiatric treatment” in this Division**

References in this Division to psychiatric treatment are to psychiatric treatment that does not involve —

- (a) treatment that is prohibited by section 99;
- (b) psychosurgery; or
- (c) electroconvulsive therapy.

**109. Consent not required for psychiatric treatment**

An involuntary patient, or a mentally impaired accused who is in an authorised hospital, may be given psychiatric treatment without his or her consent.

*[Section 109 amended by No. 84 of 2004 s. 82.]*

**110. Medical treatment may be approved by the Chief Psychiatrist**

- (1) A person who is in an authorised hospital as —
- (a) an involuntary patient; or
  - (b) a mentally impaired accused,

may be given medical treatment, other than psychiatric treatment or treatment referred to in section 108, if it has been approved in writing by the Chief Psychiatrist.



- (2) Subsection (1) does not limit a power conferred by any other written law by which a person may consent to the medical treatment of another person.

*[Section 110 amended by No. 84 of 2004 s. 82.]*

**111. Opinion of another psychiatrist may be requested**

- (1) This section applies where a person being given psychiatric treatment under section 109 is dissatisfied with the treatment.
- (2) The person may —
- (a) request that an opinion as to whether the treatment should be given be obtained from a psychiatrist who has not previously considered the matter; or
  - (b) request the Chief Psychiatrist to arrange for the opinion of a psychiatrist to be obtained as to whether the treatment should be given.
- (3) A psychiatrist may give an opinion for the purposes of subsection (1) after the psychiatrist and the person have been in communication with one another by audio-visual means and without having been in one another's physical presence.

**112. Further remedy where person dissatisfied**

- (1) If —
- (a) an opinion obtained under section 111 indicates that the psychiatric treatment should be modified or discontinued; and
  - (b) the person concerned continues to be dissatisfied with the treatment,

the Chief Psychiatrist is required, on becoming aware of the person's continued dissatisfaction, to take action under subsection (2).

- (2) The Chief Psychiatrist is to —
  - (a) transfer responsibility for treating the person from the treating psychiatrist to another psychiatrist; or
  - (b) refer the matter to the Mental Health Review Board.
- (3) If the matter is so referred the Board may —
  - (a) transfer responsibility for treating the person from the treating psychiatrist to another psychiatrist; or
  - (b) exercise any of its other powers under this Act in respect of the person.
- (4) This section does not limit the exercise of the powers conferred on the Chief Psychiatrist by section 12.

### **Division 7 — Emergency psychiatric treatment**

#### **113. Term used in this Division**

- (1) In this Division —

***emergency psychiatric treatment*** means psychiatric treatment that it is necessary to give to a person —

  - (a) to save the person's life; or
  - (b) to prevent the person from behaving in a way that can be expected to result in serious physical harm to the person or any other person.
- (2) Psychosurgery is not permissible as an emergency psychiatric treatment.

#### **114. Consent or approval dispensed with**

Treatment that is emergency psychiatric treatment may be given without any consent or approval that would be required if it were not emergency psychiatric treatment.

**115. Duties of person giving emergency treatment**

A person who under section 114 gives treatment without any consent or approval that would have been required had the treatment not been emergency psychiatric treatment, is to —

- (a) ensure that a record is made of the treatment including —
  - (i) particulars of the treatment;
  - (ii) the time and place at which, and the circumstances in which, the treatment was given; and
  - (iii) the names of the person given treatment and the persons involved in giving the treatment;and
- (b) send to the Mental Health Review Board a report of the giving of the treatment including the information that is required by paragraph (a) to be recorded.

**Division 8 — Seclusion of patients**

**116. Term used in this Division**

In this Division —

**seclusion** means sole confinement in a room that it is not within the control of the person confined to leave.

**117. Seclusion only allowed at authorised hospital**

A person is not to cause a patient at a hospital, other than an authorised hospital, to be kept in seclusion.

Penalty: \$5 000 or imprisonment for one year.

**118. Seclusion must be authorised**

A person is not to cause a patient at an authorised hospital to be kept in seclusion at any time, whether it is day or night, except —

- (a) as authorised in accordance with this Division by a medical practitioner or, in an emergency, a senior mental health practitioner; and
- (b) within the period for which authorisation is given.

Penalty: \$1 000.

**119. Giving of authorisation**

- (1) A person is not to give authorisation to keep a patient in seclusion unless it is necessary for the protection, safety, or well-being of —

- (a) the patient; or
- (b) another person with whom the patient might come in contact if not kept in seclusion.

Penalty: \$1 000.

- (2) Authorisation to keep a patient in seclusion is to be in writing and is to include particulars of the period for which the authorisation is given and anything else prescribed by the regulations.

- (3) A senior mental health practitioner who in an emergency authorises a patient to be kept in seclusion is to notify a medical practitioner as soon as is practicable, and the medical practitioner may vary or revoke the authorisation.

Penalty: \$1 000.

- (4) Records of each authorisation to keep a patient in seclusion are required to be kept as prescribed by the regulations.

**120. Special duties where patient kept in seclusion**

Where a patient is kept in seclusion the treating psychiatrist is to ensure that —

- (a) appropriate provision is made for the basic needs of the patient, including bedding, clothing, food, drink, and toilet facilities;
- (b) the patient is observed by a mental health practitioner at regular intervals, as prescribed by the regulations;
- (c) the patient is regularly monitored by a psychiatrist or another medical practitioner; and
- (d) a report of the patient being kept in seclusion is made as soon as is practicable to the Mental Health Review Board.

**Division 9 — Mechanical bodily restraint**

**121. Term used in this Division**

In this Division —

***mechanical bodily restraint***, in relation to a person, means restraint preventing the free movement of the person's body or a limb by mechanical means, other than by the use of a medical or surgical appliance for the proper treatment of physical disease or injury.

**122. Mechanical bodily restraint must be authorised**

A person is not to cause mechanical bodily restraint to be used on a patient except —

- (a) as authorised in accordance with this Division by a medical practitioner or, in an emergency, a senior mental health practitioner; and
- (b) within the period for which authorisation is given.

Penalty: \$1 000.

**123. Giving of authorisation**

- (1) A person is not to give authorisation to use mechanical bodily restraint on a patient unless it is necessary for —
- (a) the medical treatment of the patient;
  - (b) the protection, safety, or well-being of —
    - (i) the patient; or
    - (ii) another person with whom the patient might come in contact if the restraint is not used; or
  - (c) preventing the patient from persistently destroying property.

Penalty: \$1 000.

- (2) Authorisation to use mechanical bodily restraint on a patient is to be in writing and is to include particulars of the period for which the authorisation is given and anything else prescribed by the regulations.
- (3) A senior mental health practitioner who, in an emergency, authorises the use of mechanical bodily restraint on a patient is to notify a medical practitioner as soon as is practicable, and the medical practitioner may vary or revoke the authorisation.
- Penalty: \$1 000.
- (4) Records of each authorisation to use mechanical bodily restraint on a patient are to be kept as prescribed by the regulations.

**124. Use of restraint to be reported to Board**

The treating psychiatrist is to ensure that a report of the use of mechanical bodily restraint is made as soon as is practicable to the Mental Health Review Board.

## **Part 6 — Mental Health Review Board**

### **Division 1 — Establishment and administration**

#### **Subdivision 1 — Establishment**

#### **125. Establishment of Mental Health Review Board**

- (1) A board called the Mental Health Review Board is established.
- (2) The Board is to have a seal.

#### **126. Members of Board**

- (1) The Governor on the recommendation of the Minister is to appoint —
  - (a) a President; and
  - (b) other members,of the Board.
- (2) The membership of the Board is to comprise the number of persons that the Minister thinks is appropriate, but is to include —
  - (a) at least one psychiatrist;
  - (b) at least one lawyer ; and
  - (c) at least one person who is neither a medical practitioner nor a lawyer.

*[Section 126 amended by No. 21 of 2008 s. 680(3).]*

#### **127. Panel for psychosurgery matters**

- (1) For the purposes of section 130 the Governor on the recommendation of the Minister —
  - (a) is to appoint a panel of persons who have experience and qualifications in neurosurgery; and

- (b) may from time to time add or remove persons to or from the panel.
- (2) The appointments and additions to the panel are to be made from a list of names submitted, as required by the Minister, by the Royal Australasian College of Surgeons.
- (3) While acting as an ad hoc member under section 130 a member of the panel is to be taken to be a member of the Board.

**128. Certain provisions concerning members**

Schedule 1 has effect with respect to the terms of office of, and remuneration and allowances of, members of the Board.

**Subdivision 2 — How Board to be constituted**

**129. Constitution of Board, general functions**

- (1) This section applies to the constitution of the Board when it is dealing with any matter other than a matter relating to psychosurgery under Division 4 of Part 5.
- (2) For the purpose of dealing with any particular matter, the Board is to be constituted by 3 members of the Board specified for that matter by the President.
- (3) The President may delegate to the Registrar his or her powers under subsection (2).
- (4) The 3 members specified may include the President.
- (5) The 3 members specified are to include —
  - (a) a person who is lawyer;
  - (b) a person who is a psychiatrist or, if subsection (6) allows it, a medical practitioner who is not a psychiatrist; and
  - (c) a person who is neither a lawyer nor a medical practitioner.



- (6) If a member who is a psychiatrist is not readily available but another member who is a medical practitioner is available, that other member may be included instead of the psychiatrist if the proceedings do not involve anything that requires a clinical judgment to be made about a patient's treatment.

*[Section 129 amended by No. 21 of 2008 s. 680(4).]*

**130. Constitution of Board, psychosurgical matters**

- (1) This section applies to the constitution of the Board when it is dealing with any matter relating to psychosurgery under Division 4 of Part 5.
- (2) For the purpose of dealing with any particular matter, the Board is to be constituted by 5 members of the Board specified for that matter by the President.
- (3) The 5 members specified are to comprise —
- (a) 4 members of the Board; and
  - (b) a person chosen as an ad hoc member from the panel established under section 127.
- (4) The members specified under subsection (3)(a) —
- (a) may include the President; and
  - (b) are to include —
    - (i) a person who is a lawyer;
    - (ii) 2 persons who are psychiatrists; and
    - (iii) a person who is neither a lawyer nor a medical practitioner.

*[Section 130 amended by No. 21 of 2008 s. 680(5).]*

**131. Concurrent sittings**

The Board constituted to deal with a particular matter may perform the functions of the Board in respect of the matter despite the fact that the Board differently constituted is at the

same time performing the functions of the Board in respect of another matter.

### **Subdivision 3 — Procedure**

#### **132. Meetings**

- (1) At a meeting of the members constituting the Board —
  - (a) all members are to be present to constitute a quorum;
  - (b) the President is to preside if present and otherwise the lawyer is to preside;
  - (c) the person presiding is to determine any question as to the admissibility of evidence, or any question of law or procedure, and if the person presiding is not the lawyer, the question is to be decided in accordance with the advice of the lawyer;
  - (d) subject to paragraph (c), a question arising is decided by the votes of at least —
    - (i) 2 of the members, where section 129 applies; and
    - (ii) 3 of the members, where section 130 applies.
- (2) Subject to this Act, the Board is to determine its own procedure.  
*[Section 132 amended by No. 21 of 2008 s. 680(6).]*

#### **133. Telephone and video meetings**

- (1) Despite anything in section 132 or Schedule 2, a communication by telephone or audio-visual means may be a proceeding of the Board if the participants are all capable of communicating with each other instantaneously at all times during the proceeding.
- (2) Each of the participants is to be regarded as present at the proceeding.
- (3) In this section —  
***the participants*** means —
  - (a) the persons constituting the Board; and

- (b) where applicable, any person who is required or allowed to attend before the Board and willingly participates in a communication under this section.

**134. Resolution may be passed without meeting**

A resolution in writing signed by each of the persons constituting the Board or assented to by each of them by letter, telegram or facsimile transmission is as valid and effectual as if it had been passed at a meeting of the Board.

**135. Proceedings before Board**

Schedule 2 has effect with respect to proceedings before the Board.

**136. Public access to Board's records**

The Registrar is to prepare and make available for public scrutiny a copy of the Board's records that has been edited so as to remove anything that might identify a person who comes within paragraph (e), (f) or (g) of clause 13(1) of Schedule 2.

**Division 2 — Reviews and enquiries**

**137. Matters to be considered upon review**

In making a determination upon a review, the Board is to have regard primarily to the psychiatric condition of the person concerned and is to consider the medical and psychiatric history and the social circumstances of the person.

**138. Initial review**

- (1) After the making of —
  - (a) an order for a person to be admitted to, and detained in, an authorised hospital as an involuntary patient; or
  - (b) a community treatment order,

*(the initial order)* the Board is to carry out a review of whether or not the order should continue to have effect.

- (2) The review is to be carried out as soon as is practicable after the initial order is made, and in any event not later than 8 weeks after that time.
- (3) Subsection (1) only applies if the person has been continuously an involuntary patient since the initial order was made.
- (4) Subsection (1) does not apply where an order of the kind mentioned in that subsection is made while a person is an involuntary patient if —
  - (a) a review under this section was previously carried out in respect of the person; and
  - (b) the person has been continuously an involuntary patient since the previous review.

**139. Periodic reviews**

- (1) Not later than 6 months after a review in respect of a person has been carried out under section 138 or this section, the Board is to carry out a further review of whether or not the order should continue to have effect.
- (2) Subsection (1) only applies if the person has been continuously an involuntary patient since the last review was carried out.

**140. Determination of whether person has been continuously an involuntary patient**

In determining for the purposes of section 138 or 139 whether a person has been continuously an involuntary patient, if a person becomes the subject of an order of the kind mentioned in section 138(1) within 7 days after ceasing to be the subject of an earlier such order the second order is to be considered to have immediately followed the first.

**141. Time of review may be extended in certain cases**

- (1) If, within 28 days before the time by which the Board is required by section 138 or 139 to carry out a review, the Board has made a relevant determination, the Board may extend the time by which the review is required by that section to be carried out until 28 days after the determination was made.
- (2) In subsection (1) —  
*relevant determination* means a determination the making of which involved a consideration of substantially the same issues as would be raised by the review.

**142. Application for review by Mental Health Review Board**

- (1) An application may be made to the Board, in writing, for the review of —
  - (a) whether a person should continue to be an involuntary patient;
  - (b) whether a person should continue to be detained in an authorised hospital as an involuntary patient;
  - (c) whether a person who is detained in an authorised hospital as an involuntary patient should have been, or should be, transferred to another authorised hospital;
  - (d) whether —
    - (i) the responsibility for supervising the carrying out of a community treatment order; or
    - (ii) the responsibility for ensuring that a patient receives the treatment outlined in a community treatment order,should have been, or should be, transferred; or
  - (e) any other decision made in relation to a person who is an involuntary patient, other than a decision under this Part.

- (2) An application may be made by the patient concerned, an official visitor, or any other person who the Board is satisfied has a genuine concern for the patient.
- (3) An application may be made at any time except within 28 days after the Board has made a determination the making of which involved a consideration of substantially the same issue as would be raised by the proposed application.

**143. Order may be suspended pending review**

Where an application is made for a review or the Board carries out a review of its own motion the Board may —

- (a) suspend the operation of any relevant order; or
- (b) restrain the doing of anything, or anything further, under any relevant order,

until the application has been determined, or the review concluded.

**144. Review by Board of its own motion**

The Board may, at any time, carry out a review of the case of any involuntary patient if it considers it appropriate to do so because of any report or complaint it receives or for any other reason.

**145. Powers on carrying out review**

- (1) Subject to this Act, the Board may determine any matter coming before it for consideration and may make such order in respect of a matter as it thinks appropriate.
- (2) Without limiting subsection (1) the Board may —
  - (a) order that the person is no longer an involuntary patient;
  - (b) order that a community treatment order be made in respect of the person, giving such directions, if any, as it thinks fit in relation to the terms of the order; or

- (c) if the person is the subject of a community treatment order, vary the order, and give such directions in relation to the order as it thinks fit.

**146. Complaints**

- (1) The Board is to enquire into any complaint made to it concerning —
  - (a) any failure to recognize the rights given by this Act to an involuntary patient; or
  - (b) any other matter to do with the administration of this Act.
- (2) The Board may, either generally or as otherwise provided in the delegation, delegate its functions under subsection (1) to a member of the Board.
- (3) Subsection (2) does not limit the power of the Board to delegate its functions under subsection (1) to the Registrar.

**147. Enquiries directed by Minister**

The Board is to enquire into any matter to do with the administration of this Act as directed by the Minister.

**148. Reports to Minister**

The Board is to report to the Minister on the results of an enquiry that it is directed by the Minister to carry out, and may report to the Minister on any other matter that it thinks should be considered by the Minister.

**Division 2A — Applications to State Administrative Tribunal**

*[Heading inserted by No. 55 of 2004 s. 739.]*

**148A. Application for review**

- (1) A person in respect of whom the Board makes a decision or order who is dissatisfied with the decision or order may, without

payment of any fee, apply to the State Administrative Tribunal for a review of the decision or order.

- (2) Any other person who, in the opinion of the State Administrative Tribunal, has a sufficient interest in the matter may, with the leave of the Tribunal and without payment of any fee, appeal to the Tribunal against the decision or order.

*[Section 148A inserted by No. 55 of 2004 s. 739.]*

**148B. Constitution of State Administrative Tribunal, generally**

- (1) Except as provided in section 148C, for the purpose of exercising jurisdiction conferred under section 148A the State Administrative Tribunal is to include —
- (a) a person who is a legally qualified member of the Tribunal;
  - (b) a person who is a psychiatrist or, if subsection (2) allows it, a medical practitioner who is not a psychiatrist; and
  - (c) a person who is neither a legally qualified member nor a medical practitioner.
- (2) If a person who is a psychiatrist is not readily available but a medical practitioner is available, that other person may be included instead of the psychiatrist if the proceedings do not involve anything that requires a clinical judgment to be made about a patient's treatment.

*[Section 148B inserted by No. 55 of 2004 s. 739.]*

**148C. Constitution of State Administrative Tribunal, psychosurgical matters**

For the purpose of exercising its jurisdiction under section 148A on an application for review of a decision or order under Part 5 Division 4, the State Administrative Tribunal is to include —

- (a) a person who is a legally qualified member;
- (b) a person who has experience and qualifications in neurosurgery and who was appointed to the State Administrative Tribunal after consultation by the



Minister administering the *State Administrative Tribunal Act 2004* with the Minister administering the *Health Act 1911* after that Minister has consulted with the Royal Australasian College of Surgeons;

- (c) 2 persons who are psychiatrists; and
- (d) a person who is neither a legally qualified member nor a medical practitioner.

*[Section 148C inserted by No. 55 of 2004 s. 739.]*

**148D. Proceeding before State Administrative Tribunal**

Schedule 2A has effect with respect to a proceeding before the State Administrative Tribunal when exercising jurisdiction conferred by section 148A.

*[Section 148D inserted by No. 55 of 2004 s. 739.]*

**148E. Application for determination of question of law**

Where a question of law arises in proceedings before the Board, the Board may apply to the State Administrative Tribunal for determination of the question.

*[Section 148E inserted by No. 55 of 2004 s. 739.]*

**Division 3 — Appeal from State Administrative Tribunal**

*[Heading amended by No. 55 of 2004 s. 740.]*

**149. Appeal**

- (1) A person in respect of whom the State Administrative Tribunal makes a decision or order who is dissatisfied with the decision or order may without leave, appeal under section 105 of the *State Administrative Tribunal Act 2004* against the decision or order.
- (2) Any other person who, in the opinion of the Supreme Court, has a sufficient interest in a matter in respect of which the State Administrative Tribunal has made a decision or order may, with

the leave of the Court, appeal under section 105 of the *State Administrative Tribunal Act 2004* against the decision or order.

- (3) An appeal or application for leave to appeal under subsection (1) or (2) is to be made in accordance with the rules of court.

*[Section 149 amended by No. 55 of 2004 s. 741.]*

**150. Grounds of appeal**

The grounds on which an appeal may be made against a decision or order of the State Administrative Tribunal in the exercise of its jurisdiction under this Act are —

- (a) that the State Administrative Tribunal —
- (i) made an error of law or of fact, or of both law and fact;
  - (ii) acted without jurisdiction or in excess of its jurisdiction,
- or did both of those things; or
- (b) that there is any other sufficient reason for hearing an appeal against the decision or order.

*[Section 150 amended by No. 55 of 2004 s. 742.]*

**151. Time for appeal**

An application for leave to appeal or an appeal is to be made or brought within one month after the making of the decision or order concerned but the State Administrative Tribunal or the Court may, if it is satisfied that it is just and reasonable in the circumstances to do so, extend the period within which the appeal or application may be made or brought.

*[Section 151 amended by No. 55 of 2004 s. 743.]*

**152. Person to whom order relates to be legally represented**

On an appeal by a person in respect of whom the State Administrative Tribunal has made a decision or order, the appellant is to be represented by a legal practitioner.

*[Section 152 amended by No. 55 of 2004 s. 744.]*

*[153-155. Deleted by No. 55 of 2004 s. 745.]*

## **Part 7 — Protection of patients' rights**

### **Division 1 — Patients' rights generally**

#### **156. Explanation of rights to be given**

- (1) Whenever —
  - (a) a person is admitted to an authorised hospital for psychiatric treatment, whatever the person's status under this Act;
  - (b) an order is made for a person to be detained at an authorised hospital as an involuntary patient;
  - (c) a person who is detained is given leave of absence; or
  - (d) a community treatment order is made in respect of a person,

the person is to be given an explanation as described in the regulations concerning the rights and entitlements of the person.

- (2) The explanation is to be given both orally and in writing in the language in which the person to whom it is given is used to communicating.
- (3) Where the person to whom the explanation is to be given is used to communicating in a form other than orally or in writing, as the case may be, the explanation is to be given in the form in which the person is used to communicating that, as nearly as is practicable, corresponds to the oral or written form.

#### **157. Copy of explanation to be given to another person**

- (1) A person to whom an explanation is given is to be asked to specify a relative, guardian, friend, or other person to whom a copy of the explanation is to be given, and a copy of the explanation is to be given to the person specified.
- (2) If no person is so specified or the person specified cannot be found, a copy of the explanation is to be given to such other

person, if any, as appears to have or be assuming responsibility for the care of the person.

**158. Responsibility for giving explanation etc.**

- (1) The person responsible for ensuring that sections 156 and 157 are complied with —
  - (a) in relation to a person who is a patient at a hospital, is the treating psychiatrist;
  - (b) in relation to a person who is the subject of a community treatment order, is the supervising psychiatrist; and
  - (c) in relation to a mentally impaired accused who is mentally ill and is detained at a place that is not an authorised hospital, the person in charge of that place.
- (2) The person so responsible is to ensure that, whenever a person is given an explanation under subsection (1), a record of it is made in the case notes of the person to whom the explanation is given.

*[Section 158 amended by No. 84 of 2004 s. 82.]*

**159. Affected person to be given copy of order**

- (1) A psychiatrist who makes —
  - (a) an order for the detention of a person under section 37(1)(b), 39(1), 43(2)(a), 49(3)(a), 50 or 70(1);
  - (b) an order for the apprehension of a person under section 41;
  - (c) a community treatment order;
  - (d) an order varying or revoking a community treatment order; or
  - (e) an order that a person is no longer an involuntary patient,

is to give a copy of the order to the person concerned.

- (2) A senior mental health practitioner who makes an order for the detention of a person under section 30(3) is to give a copy of the order to the person.
- (3) A person who makes an order for the apprehension of a person under section 34 is to give a copy of the order to the person.

**160. Access to personal records**

- (1) In this Part —  
*relevant document*, in relation to a patient or former patient, means any document that is in the possession of, or under the control of —
  - (a) the person in charge of a hospital; or
  - (b) any person employed in the department, that relates to that patient or former patient.
- (2) A person who is or has been —
  - (a) a mentally impaired accused detained in an authorised hospital; or
  - (b) an involuntary patient, whether or not detained in an authorised hospital,has the right to inspect and be given an accurate reproduction of any relevant document.
- (3) Nothing in this section limits —
  - (a) section 159; or
  - (b) a right that a person may have under any other law to inspect or be given a reproduction of a document.

*[Section 160 amended by No. 84 of 2004 s. 82.]*

**161. Exceptions to section 160**

- (1) Section 160 does not apply if the person having possession or control of a relevant document is of the opinion that disclosure

of the information in the document to the patient or former patient would —

- (a) have a substantial adverse effect on the health or safety of the patient, the former patient or any other person;
  - (b) reveal personal information about an individual, whether living or dead, not including the patient or former patient; or
  - (c) reveal information of a confidential nature obtained in confidence.
- (2) Subsection (1)(b) does not apply where the individual has consented to the disclosure.
- (3) In the circumstances described in subsection (1) the patient or former patient may nominate a suitably qualified person to exercise the right given by section 160, and the person nominated is to be permitted to exercise the right to inspect, and be given a reproduction of, the document accordingly.
- (4) Section 160 does not apply to records relating to a person who is or has been a mentally impaired accused that came into existence under or for the purposes of the *Prisons Act 1981*.

*[Section 161 amended by No. 84 of 2004 s. 82.]*

**162. Offence of ill-treatment**

A person having any responsibility towards a person as a patient who ill-treats or wilfully neglects the patient commits an offence.

Penalty: \$4 000 or imprisonment for 1 year.

### **Division 2 — Further rights of in-patients**

#### **163. Term used in this Division**

In this Division, unless the contrary intention appears —

**patient** means a person who is admitted as a patient to an authorised hospital, whatever the person's status under this Act.

#### **164. Patient to be afforded interview**

- (1) A patient has the right to an interview with a psychiatrist at the hospital.
- (2) The patient has the right to an interview with, and to be examined by, a psychiatrist who is not for the time being the treating psychiatrist.
- (3) The treating psychiatrist is to arrange for the patient to have any interview or examination to which the patient is entitled as soon as practicable after it is requested in writing or orally by the patient.
- (4) The patient's right to an examination under this section is satisfied if a psychiatrist makes an audio-visual examination, that is by the psychiatrist and the patient being in communication with one another by audio-visual means and without being in one another's physical presence.

#### **165. Personal possessions**

- (1) Subject to subsection (2), the treating psychiatrist is to ensure that a patient —
  - (a) is, so far as reasonably practicable, given the facilities to store articles of personal use, wear or ornament at the hospital; and
  - (b) is allowed to use such articles.



- (2) Subsection (1) does not apply to any article which in the opinion of the treating psychiatrist it would not be appropriate to use or store at the hospital.
- (3) Where any article belonging to a patient has been left at an authorised hospital for more than 6 months after that person ceased to be a patient, the person in charge of the hospital may dispose of it by sale or otherwise but only if—
  - (a) at least one month's notice of the intention to do so has been given to the person; and
  - (b) he or she has not claimed the article.

**166. Letters of patients and other postal articles**

- (1) A patient has the right to correspond by post or otherwise with persons outside the hospital without interference or restriction by a psychiatrist or any other person employed in the department.
- (2) Every letter or other postal article which a patient entrusts for posting to a person employed at the hospital who is authorised to receive it is to be sent forward by that person for posting without being opened.
- (3) Every letter or other postal article addressed to a patient and coming into the possession of any member of the staff of the hospital is to be delivered to that patient, as soon as is reasonably practicable, without being opened.
- (4) A person is not to detain or open any letter or postal article contrary to this section without reasonable excuse.  
Penalty: \$500.

**167. Access to telephone**

The treating psychiatrist is to ensure that a patient has the opportunity, in reasonable privacy, to make and receive telephone calls, so far as is reasonably practicable.

**168. Visitors**

The treating psychiatrist is to ensure that a patient has the opportunity to receive visitors of the patient's choosing in reasonable privacy.

**169. Restriction or denial of entitlement**

- (1) A psychiatrist may order that any right of a particular patient under section 166, 167, or 168 be restricted or denied if the psychiatrist considers it to be in the interest of the patient to do so.
- (2) An order under this section is to be reviewed by a psychiatrist each day that it continues in effect, and on any such review may be varied or revoked.
- (3) The order lapses at the end of a day on which it has not been reviewed.
- (4) A record of the order and each review of it is to be made in the case notes of the patient that are kept at the hospital.

**170. Application to Board**

- (1) This section applies only to —
  - (a) an involuntary patient; and
  - (b) a mentally impaired accused who is a patient.
- (2) An application may be made in writing to the Mental Health Review Board for a review of an order under section 169(1).
- (3) The application may be made by the patient or any other person who in the opinion of the Board has a proper interest in the matter.
- (4) On application being made the Board may confirm, cancel or vary the order.

*[Section 170 amended by No. 84 of 2004 s. 82.]*

**171.      Restriction or denial of right to be reported on review**

Any restriction or denial of a right that has not been considered by the Board on an application under section 170 is to be reported to the Board on the next review carried out by it in respect of the patient.

## **Part 8 — Community support services**

### **172. Terms used in this Part**

In this Part —

***community support services*** means one or more of the following types of services provided for persons suffering from mental illness and its effects —

- (a) crisis services;
- (b) hostels or other residential services;
- (c) community assistance or rehabilitation services;
- (d) family support services;
- (e) advocacy services;
- (f) any other training, educational, recreational or therapeutic services;

***funding and services agreement*** means an agreement entered into under section 174.

### **173. Power of CEO to allocate funds**

- (1) The CEO may, out of money appropriated by Parliament, allocate funds to a person or body for the provision of community support services.
- (2) Funds may be allocated to be used for such purposes and subject to such conditions as the CEO considers appropriate.

*[Section 173 amended by No. 28 of 2006 s. 275.]*

### **174. Funding and services agreements**

- (1) The CEO may, on behalf of the State, for the purpose of allocating funds under section 173, enter into a funding and services agreement with a person or body for the provision of community support services.

- (2) A funding and services agreement —
  - (a) remains in force for such period as is specified in the agreement but is subject to review at such intervals (if any) as are specified in the agreement; and
  - (b) is binding on the State and the person or body.
- (3) A funding and services agreement may contain such provisions as the CEO considers appropriate in any particular case.
- (4) Without limiting subsection (3), a funding and services agreement may include provisions relating to any or all of the following matters —
  - (a) the purpose for which and the conditions subject to which the funds may be used;
  - (b) the objectives that the person or body should seek to achieve;
  - (c) the types of services to be provided and the persons for whom they are to be provided;
  - (d) the facilities and amenities to be provided;
  - (e) the appointment, dismissal, qualifications and number of staff;
  - (f) maximum fees and charges that may be fixed for the provision of services;
  - (g) the form of accounting records to be kept and the information required to be included in financial reports to be provided to the CEO;
  - (h) records to be kept relating to the provision of services and persons to whom services are provided.

*[Section 174 amended by No. 28 of 2006 s. 275.]*

## **Part 9 — Council of Official Visitors**

### **Division 1 — Administrative and procedural provisions**

#### **175. Terms used in this Part**

In this Part —

*affected person* means —

- (a) an involuntary patient;
- (b) a mentally impaired accused who is in an authorised hospital;
- (c) a person who is socially dependent because of mental illness and who resides, and is cared for or treated, at a private psychiatric hostel; or
- (d) any other person who is in an institution prescribed for the purposes of this section by the regulations;

*executive officer* means the person referred to in section 182;

*panel* means a panel appointed under section 187;

*private psychiatric hostel* means private premises in which 3 or more persons who —

- (a) are socially dependent because of mental illness; and
- (b) are not members of the family of the proprietor of the premises,

reside and are treated or cared for.

*[Section 175 amended by No. 10 of 1998 s. 48; No. 84 of 2004 s. 82.]*

#### **176. Establishment of Council of Official Visitors**

A Council of Official Visitors, the members of which are to be known as official visitors, is established.

**177. Members of Council of Official Visitors**

- (1) The Minister may appoint —
  - (a) a person to be the Head of the Council of Official Visitors; and
  - (b) such number of persons as may seem appropriate to be the other official visitors.
- (2) The official visitors —
  - (a) are to be appointed from amongst the general community; and
  - (b) are not required to have any particular experience or qualifications.
- (3) However in appointing a person to be an official visitor, the Minister is to have regard to the usefulness of any experience or qualifications that the person may have.

**178. Disqualification**

- (1) A person who is employed by, or has a disqualifying interest in, an association or organization that treats or cares for affected persons may be an official visitor but is not to exercise any function as an official visitor in relation to an affected person who is being treated or cared for through that association or organization.
- (2) Whether or not a person has a disqualifying interest in an association or organization is to be determined under Schedule 3.

**179. Term of office**

- (1) Subject to this section, a person appointed to be an official visitor holds office for such term, not longer than 3 years, as is specified in the instrument of appointment and, upon the expiration of the term, is eligible for reappointment.

- (2) The Minister may remove an official visitor from office on the grounds of —
  - (a) mental or physical incapacity to carry out satisfactorily the duties of a member;
  - (b) neglect of duty; or
  - (c) misconduct.
- (3) An official visitor may at any time resign from office by notice in writing delivered to the Minister.

**180. Remuneration and allowances**

- (1) Official visitors are, subject to subsection (2), entitled to such remuneration and allowances in respect of the performance of their functions under this Act as the Minister from time to time determines on the recommendation of the Minister for Public Sector Management.
- (2) Subsection (1) does not apply to a person employed in the Public Sector as defined in the *Public Sector Management Act 1994*.

**181. Meetings**

At its meetings, the Council of Official Visitors is to determine its own procedure.

**182. Executive officer and other staff**

- (1) A person appointed under Part 3 of the *Public Sector Management Act 1994* is to be the executive officer of the Council of Official Visitors.
- (2) Such other persons appointed under Part 3 of the *Public Sector Management Act 1994* as are required are to be made available to the Council of Official Visitors and the executive officer to assist in the administration of this Part.



**183. Minutes to be kept**

The executive officer of the Council of Official Visitors is to cause to be made, and keep, accurate minutes of proceedings at meetings of the Council.

**184. Public access to Council's records**

The executive officer is to prepare and make available for public scrutiny a copy of the records of the Council of Official Visitors that has been edited so as to remove anything that would reveal anyone's identity.

**185. Delegation**

The Council of Official Visitors may, by a signed instrument of delegation, delegate to —

- (a) the Head of the Council;
- (b) the executive officer; or
- (c) any other person referred to in section 182,

either generally or as otherwise provided in the instrument, any of its functions other than the power of delegation given by this section.

**Division 2 — Functions**

**186. Functions of the Council of Official Visitors**

It is a function of the Council of Official Visitors —

- (a) to ensure that each authorised hospital is visited at least once in each month by an official visitor or panel;
- (b) to ensure that, at any time that the Minister so directs, a place where any affected person is detained, cared for, or treated under this Act is visited by an official visitor or panel, in accordance with that direction;

- (c) to ensure that affected persons are visited by an official visitor or panel under this Part as soon as practicable after a visit is requested; and
- (d) to report to the Minister as required by this Part.

**187. Panels**

The Council of Official Visitors may appoint 2 or more persons, at least one of whom is an official visitor, to be a panel for the purposes of this Part.

**188. Functions of an official visitor**

It is a function of an official visitor —

- (a) to ensure that affected persons have been informed of their rights;
- (b) to ensure that the rights of affected persons are observed;
- (c) to inspect places where affected persons are detained, cared for, or treated under this Act and ensure that they are kept in a condition that is safe and otherwise suitable;
- (d) to be accessible to hear complaints concerning affected persons made by those persons, their guardians or their relatives;
- (e) to enquire into and seek to resolve complaints concerning affected persons made by those persons, their guardians or their relatives;
- (f) if it would be appropriate for any other person or body to further enquire into or deal with any matter, to refer the matter to that person or body; and
- (g) to assist with the making and presentation of an application or appeal under this Act in respect of an affected person or, where authorised by this Act to do so, to make any such application.

**189. Request for visit**

- (1) An affected person, or any person on behalf of an affected person, may —
  - (a) request the person who is in charge of a place where the affected person is detained, cared for, or treated under this Act to arrange for the affected person to be visited by an official visitor or panel; or
  - (b) contact the executive officer directly to request that the affected person be visited by an official visitor or panel.
- (2) A person to whom a request is made under subsection (1)(a) is to notify the executive officer of the request as soon as is practicable.

**190. Powers of an official visitor**

- (1) The powers given by this section do not apply in relation to a mentally impaired person who is detained in a prison.
- (2) An official visitor or a panel may, whether or not notice has been given, visit a place where any affected person is detained, cared for, or treated.
- (3) The visit may be at any time and for as long as the official visitor or panel sees fit.
- (4) In the course of the visit the official visitor or any person on the panel, as the case requires, may —
  - (a) inspect any part of the place;
  - (b) see any affected person at the place who has not declined to be seen;
  - (c) make enquiries relating to the admission, detention, care, treatment, or control, of affected persons;
  - (d) subject to subsection (5), inspect —
    - (i) any medical record or other document or any thing relating to an affected person; or

- (ii) any other record or document required by this Act to be kept at the place.
- (5) An affected person has —
  - (a) the right to decline to be seen by an official visitor or any person on the panel; and
  - (b) the right to deny an official visitor or any person on the panel access to the person's medical records.
- (6) A person having any official capacity at the place visited is to afford any assistance that may be requested for the purpose of exercising a power under this section, and answer any enquiry that may be made under this section by the official visitor or a person on the panel.

**191. Offences**

A person must not —

- (a) fail without reasonable excuse (proof of which lies upon that person) to answer any enquiry made under section 190;
- (b) in answer to any enquiry made under section 190, give any answer or other information knowing it to be false or misleading in a material particular;
- (c) fail without reasonable excuse (proof of which lies upon that person) to give any assistance as required under section 190(6); or
- (d) wilfully insult a person carrying out a function under section 190, or obstruct the carrying out of that function.

Penalty: \$2 000.

**192. Reports**

- (1) An official visitor or a person on a panel who considers that a matter should be considered by the Minister or the Chief Psychiatrist may make a report concerning the matter to the Minister or the Chief Psychiatrist as the case may require.

- (2) An official visitor or a person on a panel, if requested by the Minister to do so, is to make a report to the Minister, in accordance with the request, concerning any matter specified in the request.
- (3) As soon as practicable after the end of a financial year, the Head of the Council of Official Visitors is to make to the Minister a report on the activities of official visitors during that year.
- (4) The Minister is to cause a copy of the report to be laid before each House of Parliament.

## **Part 10 — Miscellaneous**

### **Division 1 — Restrictions on authority of practitioners**

#### **193. Terms used in section 194**

In section 194 —

***power to which this Division applies*** means —

- (a) a referral for examination;
- (b) the making, variation or revocation of an order;
- (c) a transfer or grant of leave; or
- (d) the exercise of any other power in respect of a person, under this Act;

***prescribed financial market*** has the meaning given by section 9 of the *Corporations Act 2001* of the Commonwealth;

***related person***, in relation to a practitioner, means —

- (a) a relative of the practitioner;
- (b) a company not listed on a prescribed financial market in Australia in respect of any share in which the practitioner or the spouse, de facto partner or any child of the practitioner has a relevant interest;
- (c) a company listed on a prescribed financial market in Australia in which the aggregate of the interests of the practitioner and his or her spouse, de facto partner and children amounts to a substantial shareholding; and
- (d) the trustee of a trust in which the practitioner or his or her spouse, de facto partner or any child —
  - (i) is entitled to any share or interest whether vested or contingent; or
  - (ii) in the case of a discretionary trust, may benefit;

***relevant interest***, in respect of a share, has the meaning given by section 9 of the *Corporations Act 2001* of the Commonwealth;

**substantial shareholding** means “substantial holding” within the meaning of section 9 of the *Corporations Act 2001* of the Commonwealth.

*[Section 193 amended by No. 10 of 2001 s. 128; No. 21 of 2003 s. 17; No. 28 of 2003 s. 137.]*

**194. When practitioner not to act**

A psychiatrist, any other medical practitioner, or an authorised mental health practitioner is not to exercise a power to which this Division applies in respect of a person if —

- (a) the practitioner is a relative, guardian, partner, principal or assistant of the person;
- (b) it would involve an examination, detention, or treatment at, or release, transfer, or leave from —
  - (i) a private hospital the licence for which is held by the practitioner or a related person; or
  - (ii) a public hospital of whose Board the practitioner is a member.

**Division 2 — Police powers**

**195. Taking mentally ill person into protective custody**

- (1) A police officer may apprehend a person if the officer suspects on reasonable grounds that the person —
  - (a) has a mental illness; and
  - (b) needs to be apprehended to —
    - (i) protect the health or safety of the person or any other person; or
    - (ii) prevent serious damage to property.
- (2) If a police officer apprehends a person under subsection (1), the officer, as soon as is practicable, is to arrange for the person to be examined by a medical practitioner or authorised mental health practitioner for the purposes of section 29.

- (3) After the examination the person is to be released unless he or she is referred under section 29 for examination by a psychiatrist.

**196. Police officer may have arrested person examined**

- (1) Where a police officer —
- (a) has arrested a person for an offence; and
  - (b) suspects on reasonable grounds that the person has a mental illness that needs immediate treatment,
- the officer, as soon as is practicable, is to arrange for the person to be examined by a medical practitioner or authorised mental health practitioner for the purposes of section 29.
- (2) If the person is ordered to be detained in an authorised hospital as an involuntary patient, section 55 applies when that detention ceases.
- (3) This section does not prevent a police officer from charging a person with an offence.

**197. Further powers of police when apprehending**

A police officer exercising the powers in section 34, 71 or 195 may —

- (a) for the purpose of apprehending a person, enter any premises where the person is suspected on reasonable grounds to be;
- (b) search the person apprehended; and
- (c) seize anything found in the possession of, or near, the person when the person is apprehended that the police officer believes he or she is entitled to seize under section 198.



**198. What may be seized under section 197**

A police officer who is exercising the powers referred to in section 197 is entitled to seize anything —

- (a) that is likely to be used by the person in a way that would —
  - (i) prejudice the health or safety of that person or any other person; or
  - (ii) cause damage to any property;

or

- (b) that the police officer believes is likely to materially assist in determining any question that is likely to arise for determination under this Act following the apprehension of the person.

**199. Disposal of things seized**

Any thing seized —

- (a) may be held by any official for so long as is necessary, according to the purpose for which it was seized; and
- (b) subject to paragraph (a), is to be returned to the person from whom it was seized or otherwise dealt with according to law.

**200. Use of reasonable force**

A police officer may use such force as may be necessary for the purposes of —

- (a) apprehending a person under this Act; or
- (b) doing anything authorised by this Division.

### **Division 3 — Capacity to vote**

#### **201. Determination of capacity to vote**

- (1) When a psychiatrist makes —
- (a) an order under section 43(2)(a), 49(3)(a), 50 or 70(1); or
  - (b) a community treatment order,

in respect of a person who is enrolled as an elector under the *Electoral Act 1907*, the psychiatrist is to determine whether the person is capable of making judgments for the purpose of complying with the provisions of that Act relating to compulsory voting.

- (2) A psychiatrist may at any other time determine that a person who is an involuntary patient is not capable as mentioned in subsection (1).
- (3) A psychiatrist may at any time while a person is an involuntary patient cancel a determination under subsection (1) or (2).
- (4) If a psychiatrist —
- (a) determines that a person is not capable as mentioned in subsection (1); or
  - (b) cancels a determination,

he or she, as soon as is practicable, is to give notice in writing of that fact to the Chief Psychiatrist.

- (5) The notice is to show particulars of the person's name, address, age and occupation.

#### **202. Chief Psychiatrist to notify Electoral Commissioner**

- (1) The Chief Psychiatrist is to report to the Electoral Commissioner for the purposes of section 51AA of the *Electoral Act 1907* every —
- (a) determination under section 201;
  - (b) cancellation of a determination under section 201; and

- (c) order under this Act by which a person to whom a determination relates is no longer an involuntary patient.
- (2) The Chief Psychiatrist is to make the report as soon as is practicable after the relevant information has come to his or her notice.

**203. Application to Board**

- (1) An application may be made in writing to the Mental Health Review Board for a review of a determination under section 201.
- (2) The application may be made by the patient or any other person whom the Board considers to have a proper interest in the matter.
- (3) On application being made the Board may confirm or cancel the determination.
- (4) The Registrar is to report to the Electoral Commissioner for the purposes of section 51AA of the *Electoral Act 1907* every cancellation by the Board of a determination under section 201.

**Division 4 — Records and information**

**204. Records**

- (1) The person in charge of an authorised hospital is to cause records to be kept in respect of each patient admitted to the hospital.
- (2) The person who is in charge of a place at which an involuntary patient or a mentally impaired accused is given any psychiatric treatment is to cause records to be kept in respect of the treatment given to the patient.
- (3) The records in respect of a person are to include —
  - (a) the name, address, and date of birth of the person;

- (b) the nature of any illness or handicap, whether mental or otherwise, from which the person suffers;
  - (c) full particulars of all treatment administered to the person, and of the authority for that treatment, including details of any order under which the treatment was given;
  - (d) if the person dies, the date of, and cause of, death; and
  - (e) such other information as the regulations may require.
- (4) The regulations may prescribe the form of, and any other matters relating to the keeping of, records required to be kept under this section.

*[Section 204 amended by No. 84 of 2004 s. 82.]*

**205. Access to certain information about patient**

- (1) A person may ask the Chief Psychiatrist to inform the person whether a particular person has been admitted to, or is detained in, an authorised hospital.
- (2) If the Chief Psychiatrist thinks that the inquirer has a proper interest in the matter, the Chief Psychiatrist is to give the required information to him or her, including particulars, where applicable, of the date of admission and the date of the person's discharge, release or death.

**206. Confidentiality**

- (1) A person must not directly or indirectly divulge any personal information obtained by reason of any function that person has, or at any time had, in the administration of this Act or the *Mental Health Act 1962*.  
Penalty: \$2 000.
- (2) Subsection (1) does not apply to the divulging of information —
  - (a) in the course of duty;
  - (b) under this Act or another law;

- (c) for the purposes of the investigation of any suspected offence or the conduct of proceedings against any person for an offence; or
  - (d) with the consent of the person to whom the information relates, or each of them if there is more than one.
- (3) Subsection (1) does not apply to the divulging of statistical or other information that could not reasonably be expected to lead to the identification of any person to whom it relates.

*[Section 206 amended by No. 50 of 2003 s. 80(2).]*

### **Division 5 — Inquiries**

#### **207. Minister may appoint person to inquire**

The Minister may appoint a person to inquire into, and report to the Minister on, any matter connected with the provision of any care, treatment, or other service, whether under this Act or otherwise, for any person who has a mental illness.

#### **208. Powers of person conducting inquiry**

- (1) For the purposes of an inquiry the person appointed may —
- (a) enter and inspect any place and have access to and inspect any document at the place;
  - (b) by summons require —
    - (i) the attendance of any person at a time and place specified in the summons;
    - (ii) the production, when attending, of any document or thing;
  - (c) inspect any document or thing produced and retain it for such reasonable period as the person thinks fit, and make copies of the document or any of its contents;
  - (d) require any person to swear to truly answer all questions relating to the matter under inquiry that are put by the

person carrying out the inquiry (who may for that purpose administer any oath or affirmation); and

- (e) require any person to answer any relevant question.
- (2) A person is not excused from swearing, from answering any question, or from producing any document, as required under this section on the ground that the answer to a question or the contents of a document might tend to incriminate the person or render the person liable to a penalty.
- (3) However, the answer or the fact that the document or the thing was produced is not admissible in evidence against the person in any civil or criminal proceedings other than proceedings for perjury or for an offence under this Act arising out of the false or misleading nature of the answer.

**209. How inquiry to be conducted**

In carrying out an inquiry the person appointed —

- (a) is to act according to equity, good conscience, and the substantial merits of the case without regard to technicalities and legal forms; and
- (b) is not bound by the rules of evidence but, subject to the rules of natural justice, may be informed on any matter in such manner as the person thinks fit.

**210. Offences in relation to inquiry**

A person must not —

- (a) having been served with a summons under section 208 to attend at a time and place, fails without reasonable excuse (proof of which lies upon the person) to attend in obedience to the summons;
- (b) having been served with a summons under section 208 to produce any document, fail without reasonable excuse (proof of which lies upon the person) to comply with the summons;

- (c) fail without reasonable excuse (proof of which lies upon the person) to swear, or to answer any question, when required under section 208 to do so;
- (d) refuses to allow the person carrying out the inquiry to enter and inspect any place or have access to or inspect any document or thing at the place;
- (e) give to the person carrying out the inquiry any answer or other information knowing it to be false or misleading in a material particular; or
- (f) wilfully insult the person carrying out the inquiry, or interrupt or obstruct the inquiry.

Penalty: \$2 000.

### **Division 6 — General**

**211. Offence of obstructing the performance of functions**

A person must not obstruct another in the performance by that other person of a function under this Act.

Penalty: \$2 000.

**212. Amendment of certain documents**

- (1) A referral or order suffers from a formal defect for the purposes of this section if it contains —
  - (a) a clerical error or an error arising from any accidental omission; or
  - (b) an evident material error in the description of any person.
- (2) Where a referral or order under this Act suffers from any formal defect, the performance of any function under this Act on the basis of the referral or order is not affected but the person performing the function may require the person who made the referral or order to rectify it.

- (3) If the referral or order is not rectified as required, nothing that has been done in reliance on it is affected.
- (4) However, if the person to whom the referral or order related was or has become an involuntary patient, the person who required the rectification may order that, with effect from such time as is specified, the person is no longer an involuntary patient.
- (5) After it has been ordered under subsection (4) that a person is no longer an involuntary patient, even though the order has not yet come into effect, a further referral or order may be made under this Act in respect of the person as if the person had already ceased to be an involuntary patient.

**213.    Protection from liability**

- (1) An action in tort does not lie against a person for an act done in good faith and without negligence in the performance or purported performance of a function under this Act.
- (2) An action in tort does not lie against a member of —
  - (a) the Council of Official Visitors; or
  - (b) the Board,for an act done by the Council or the Board in good faith in the performance or purported performance of its functions.
- (3) The protection given by this section applies even though an act done in the performance or purported performance of a function under this Act may have been capable of being done whether or not this Act had been enacted.
- (4) This section does not relieve the Crown from any liability that it might have for an act done by a person against whom this section provides that an action does not lie.
- (5) In this section references to *an act done* include an omission.



**214. Regulations**

- (1) 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.
- (2) Without limiting subsection (1), regulations may be made prescribing matters concerning the management of authorised hospitals about which guidelines may be issued by the Minister and prescribing the manner in which such guidelines may be issued.

**215. Review**

- (1) The Minister is to carry out a review of the operation and effectiveness of this Act as soon as practicable after the expiration of 5 years from its commencement, and in the course of that review the Minister is to consider and have regard to —
  - (a) the effectiveness of the operations of the Board and the Council of Official Visitors;
  - (b) the need for the continuation of the functions of the Board and the Council of Official Visitors; and
  - (c) such other matters as appear to be relevant to the operation and effectiveness of this Act.
- (2) The Minister is to prepare a report based on the review and, as soon as is practicable after the report is prepared, cause it to be laid before each House of Parliament.

**Schedule 1 — Provisions concerning members of Board**

[Section 128]

**1. Term of office**

- (1) Subject to this clause, a person appointed to be a member of the Board holds office for such term, not longer than 3 years, as is specified in the instrument of appointment and, upon the expiration of the term, is eligible for reappointment.
- (2) The Governor may remove a member from office on the grounds of —
  - (a) mental or physical incapacity to carry out satisfactorily the duties of a member;
  - (b) neglect of duty;
  - (c) misconduct; or
  - (d) the person —
    - (i) ceasing to have any status on the basis of which the person was appointed as a member; or
    - (ii) attaining any status when the person was appointed on the basis of not having such status.
- (3) A member may at any time resign from office by notice in writing delivered to the Minister.
- (4) This clause does not apply to an ad hoc member appointed under section 130(3)(b).

**2. Remuneration and allowances**

- (1) Subject to the *Salaries and Allowances Act 1975*, a member of the Board is entitled to such remuneration and allowances in respect of the performance of his or her functions as the Minister from time to time determines in his or her case.
- (2) A determination is only to be made on the recommendation of the Minister for Public Sector Management.
- (3) Subsection (1) does not apply to a person employed in the Public Sector as defined in the *Public Sector Management Act 1994*.

## **Schedule 2 — Provisions concerning proceedings before Board**

[Sections 133, 135, 136]

### **1. Notice of hearing**

- (1) The Board is to cause to be given to a person who is a party to proceedings reasonable notice of the time and place at which it intends to conduct those proceedings.
- (2) If a person to whom notice has been given under subclause (1) does not attend at the time and place fixed by the notice, the Board may conduct the proceedings in his or her absence.

### **2. Right to be heard**

The Board is to give each party to proceedings a reasonable opportunity to call or give evidence, to examine or cross-examine witnesses, and to make submissions.

### **3. Representation**

- (1) A party to proceedings before the Board —
  - (a) may appear personally unless the Board, being of the opinion that the personal appearance of a person would be detrimental to the health of the person, orders that the person be represented; or
  - (b) may be represented in those proceedings by counsel or, with the leave of the Board, by any other person.
- (2) The Board may arrange for a person to be represented in proceedings before it if the person wishes the Board to do so.
- (3) A person who is not a legal practitioner must not demand or receive any fee or reward for representing a party to proceedings before the Board.

Penalty: \$1 000.

*[Clause 3 amended by No. 65 of 2003 s. 51(3); No. 21 of 2008 s. 680(7).]*

**cl. 4**

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**4. Power to compel attendance etc.**

- (1) The Board may —
  - (a) by summons signed on behalf of the Board by the Registrar, require —
    - (i) the attendance before the Board of any person;
    - (ii) the production before the Board of any document;
  - (b) inspect any document produced before it, and retain it for such reasonable period as it thinks fit, and make copies of the document or any of its contents;
  - (c) require any person to swear to truly answer all questions relating to a matter being enquired into by the Board that are put by or before the Board; and
  - (d) require any person appearing before the Board (whether or not the person has been summoned to appear) to answer any relevant question put by a member of the Board or by any other person appearing before the Board.
- (2) For the purposes of subclause (1) a member of the Board or a public service officer under the *Public Sector Management Act 1994* assisting the Board in the performance of its functions may administer any oath or affirmation.

**5. No privilege against self-incrimination**

- (1) A person is not excused from swearing, from answering any question, or from producing any document, as required under clause 4 on the ground that the answer to a question or the contents of a document might tend to incriminate the person or render the person liable to a penalty.
- (2) However, the answer or the fact that the document was produced is not admissible in evidence against the person in any civil or criminal proceedings other than proceedings for perjury or for an offence under this Act arising out of the false or misleading nature of the answer.

**6. Evidence or findings from other proceedings**

In the course of any proceedings the Board may —

- (a) receive in evidence any transcript of evidence in proceedings before a court or other person or body acting judicially and draw any conclusion of fact from the evidence as it thinks fit; and
- (b) adopt, as in its discretion it thinks fit, any finding, decision, or judgment of a court or other person or body acting judicially that is relevant to the proceedings before the Board.

**7. Board to avoid technicalities**

The Board is to act according to equity, good conscience, and the substantial merits of the case without regard to technicalities and legal forms.

**8. Board not bound by rules of evidence**

The Board is not bound by the rules of evidence but may inform itself on any matter in such manner as it thinks fit.

**9. Vexatious proceedings**

Where proceedings before the Board are instituted frivolously, vexatiously or for an improper purpose, the Board may —

- (a) dismiss the proceedings; and
- (b) order the party who instituted the proceedings to pay to any other party a pecuniary sum by way of compensation for any consequential embarrassment, inconvenience or expense suffered or incurred.

**10. Each party to bear own costs**

Each party to proceedings before the Board is to bear the party's own costs.

**cl. 11**

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**11. Offences**

A person must not —

- (a) having been served with a summons to attend before the Board, fail without reasonable excuse (proof of which lies upon the person) to attend in obedience to the summons;
- (b) having been served with a summons to produce before the Board any document, fail without reasonable excuse (proof of which lies upon the person) to comply with the summons;
- (c) fail without reasonable excuse (proof of which lies upon the person) to swear, or to answer any question, when required to do so by the Board;
- (d) give before the Board any answer or other information knowing it to be false or misleading in a material particular; or
- (e) misbehave before the Board, wilfully insult the Board or a member or interrupt the proceedings of the Board.

Penalty: \$2 000.

**12. Closed hearings**

- (1) A hearing before the Board is not open to the public unless the Board orders that it is open to the public.
- (2) The Board may permit specified persons to be, or preclude specified persons (which may include witnesses) from being, present at a hearing.
- (3) In this clause a reference to a hearing includes a reference to a part of a hearing.

**13. Suppression of publication**

- (1) A person is not to publish by any means —
  - (a) any account of any proceedings or part of proceedings before the Board;
  - (b) any evidence given before the Board;
  - (c) the contents of any document produced to the Board; or

- (d) any other information relating to proceedings before the Board,
- that might identify —
- (e) a person who is a party to the proceedings;
  - (f) a person who is related to, or associated with, a party to the proceedings or is, alleged to be, in any other way concerned in the matter to which the proceedings relate; or
  - (g) a witness in the proceedings.
- (2) Except as permitted by regulations a person is not to publish by any means (other than by the display of a notice in the premises of the Board), a list of proceedings to be dealt with by the Board identified by reference to the names of the parties to those proceedings.
- (3) Subclauses (1) and (2) do not apply to —
- (a) the communication to persons concerned in proceedings in any court or tribunal of any transcript of evidence or other document for use in connection with those proceedings;
  - (b) the communication of any transcript of evidence or any other document to a body that is responsible for disciplining members of the legal or medical profession or to persons concerned in proceedings before such a body;
  - (c) the communication to a body that grants assistance by way of legal aid of any transcript of evidence or any other document for the purpose of facilitating the making of a decision as to whether such assistance should be granted or continued in any particular case; or
  - (d) the publishing of a publication genuinely intended primarily for the use of members of any profession, being —
    - (i) a separate volume or part of a series of law reports; or
    - (ii) any other publication of a technical character.
- (4) Without limiting subclauses (1) and (2) the Board may in any particular case order that —
- (a) any evidence given before it;
  - (b) the contents of any document produced to it; or
  - (c) any other information relating to proceedings before it,

**cl. 14**

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must not be published, or must not be published except in the manner or to persons specified by the Board.

- (5) A person who contravenes subclause (1) or (2) or an order made under subclause (4) commits an offence and is liable to a fine of \$2 000.

*[Clause 13 amended by No. 50 of 2003 s. 80(3).]*

**14. Record of proceedings**

The Registrar is to cause a recording to be made and kept of all proceedings before the Board in a form that is suitable for enabling a transcript of the proceedings to be prepared if required.

**15. Reasons to be given**

- (1) A party to proceedings before the Board may, within 14 days after the Board has made a decision or an order in those proceedings, request the Board to give to the party reasons in writing for the decision or order.
- (2) The Board is to comply with any such request.
- (3) The reasons are to be expressed in such a manner as to facilitate those reasons being understood by each party.
- (4) Where a party who is to be given reasons in writing is used to communicating in a form other than in writing, they are to be given in the form in which the person is used to communicating that, as nearly as practicable, corresponds to the written form.

**16. Effect to be given to decision or order**

A person who fails to give effect to a decision or an order of the Board according to its tenor commits an offence and is liable to a fine of \$2 000.

*[Clause 16 amended by No. 50 of 2003 s. 80(3).]*



## **Schedule 2A — Provisions concerning a proceeding before the State Administrative Tribunal**

[Section 148D]

*[Heading inserted by No. 55 of 2004 s. 746.]*

### **1. Representation**

- (1) A party to a proceeding before the State Administrative Tribunal may appear personally unless the State Administrative Tribunal, being of the opinion that the personal appearance of a person would be detrimental to the health of the person, orders that the person be represented.
- (2) The State Administrative Tribunal may arrange for a person to be represented in proceedings before it if the person wishes the State Administrative Tribunal to do so.

*[Clause 1 inserted by No. 55 of 2004 s. 746.]*

### **2. Closed hearings**

- (1) A hearing before the State Administrative Tribunal is not open to the public unless the State Administrative Tribunal orders that it is open to the public.
- (2) The State Administrative Tribunal may permit specified persons to be, or preclude specified persons (which may include witnesses) from being, present at a hearing.
- (3) In this clause a reference to a hearing includes a reference to a part of a hearing.

*[Clause 2 inserted by No. 55 of 2004 s. 746.]*

### **3. Suppression of publication**

- (1) A person is not to publish by any means —
  - (a) any account of any proceeding or part of a proceeding before the State Administrative Tribunal commenced under this Act;
  - (b) any evidence given before the State Administrative Tribunal in a proceeding commenced under this Act;

**cl. 3**

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- (c) the contents of any document produced to the State Administrative Tribunal in a proceeding commenced under this Act; or
  - (d) any other information relating to a proceeding before the State Administrative Tribunal commenced under this Act,  
that might identify —
    - (e) a person who is a party to the proceeding;
    - (f) a person who is related to, or associated with, a party to the proceeding or is, alleged to be, in any other way concerned in the matter to which the proceeding relates; or
    - (g) a witness in the proceeding.
- (2) Except as permitted by regulations a person is not to publish by any means (other than by the display of a notice in the premises of the State Administrative Tribunal), a list of proceedings to be dealt with by the State Administrative Tribunal identified by reference to the names of the parties to those proceedings.
- (3) Subclauses (1) and (2) do not apply to —
- (a) the communication to persons concerned in proceedings in any court or tribunal of any transcript of evidence or other document for use in connection with those proceedings;
  - (b) the communication of any transcript of evidence or any other document to a body that is responsible for disciplining members of the legal or medical profession or to persons concerned in proceedings before such a body;
  - (c) the communication to a body that grants assistance by way of legal aid of any transcript of evidence or any other document for the purpose of facilitating the making of a decision as to whether such assistance should be granted or continued in any particular case; or
  - (d) the publishing of a publication genuinely intended primarily for the use of members of any profession, being —
    - (i) a separate volume or part of a series of law reports; or
    - (ii) any other publication of a technical character.

- (4) Without limiting subclauses (1) and (2) the State Administrative Tribunal may in any particular case order that —
- (a) any evidence given before it;
  - (b) the contents of any document produced to it; or
  - (c) any other information relating to a proceeding before it,
- must not be published, or must not be published except in the manner or to persons specified by the State Administrative Tribunal.
- (5) A person who contravenes subclause (1) or (2) commits an offence and is liable to a fine of \$5 000.

*[Clause 3 inserted by No. 55 of 2004 s. 746.]*

**Schedule 3 — When an official visitor has a disqualifying interest**

[Section 178]

**1. Financial interests**

An official visitor has a disqualifying interest in an association or organization if either —

- (a) the official visitor; or
- (b) a person with whom the official visitor is closely associated,

has a financial interest in the association or organization, other than a financial interest of a prescribed kind.

**2. Closely associated persons**

For the purposes of this Schedule a person is closely associated with an official visitor if the person —

- (a) is in partnership with the official visitor;
- (b) is an employer of the official visitor;
- (c) is a beneficiary under a trust, or an object of a discretionary trust, of which the official visitor is a trustee;
- (d) is a body corporate of which the official visitor is a director, secretary or executive officer;
- (e) is a body corporate in which the official visitor holds shares having a total nominal value exceeding —
  - (i) the prescribed amount; or
  - (ii) the prescribed percentage of the total nominal value of the issued share capital of the body corporate;
- (f) is the spouse, de facto partner or child of the official visitor; or
- (g) has a relationship specified in any of paragraphs (a) to (e) in respect of the official visitor's spouse or de facto partner.

*[Clause 2 amended by No. 28 of 2003 s. 138.]*

## Notes

- <sup>1</sup> This is a compilation of the *Mental Health Act 1996* and includes the amendments made by the other written laws referred to in the following table <sup>1a</sup>. The table also contains information about any reprint.

## Compilation table

Short title	Number and year	Assent	Commencement
<i>Mental Health Act 1996</i> <sup>2</sup>	68 of 1996	13 Nov 1996	13 Nov 1997 (see s. 2(2))
<i>Statutes (Repeals and Minor Amendments) Act (No. 2) 1998</i> s. 48	10 of 1998	30 Apr 1998	30 Apr 1998 (see s. 2(1))
<i>Corporations (Consequential Amendments) Act 2001</i> Pt. 38	10 of 2001	28 Jun 2001	15 Jul 2001 (see s. 2 and <i>Gazette</i> 29 Jun 2001 p. 3257 and <i>Cwlth Gazette</i> 13 Jul 2001 No. S285)
<i>Corporations (Consequential Amendments) Act (No. 3) 2003</i> Pt. 9 <sup>3</sup>	21 of 2003	23 Apr 2003	11 Mar 2002 (see s. 2 and <i>Cwlth Gazette</i> 24 Oct 2001 No. GN42)
<i>Acts Amendment (Equality of Status) Act 2003</i> Pt. 42	28 of 2003	22 May 2003	1 Jul 2003 (see s. 2 and <i>Gazette</i> 30 Jun 2003 p. 2579)
<i>Sentencing Legislation Amendment and Repeal Act 2003</i> s. 80	50 of 2003	9 Jul 2003	15 May 2004 (see s. 2 and <i>Gazette</i> 14 May 2004 p. 1445)
<i>Acts Amendment and Repeal (Courts and Legal Practice) Act 2003</i> s. 51	65 of 2003	4 Dec 2003	1 Jan 2004 (see s. 2 and <i>Gazette</i> 30 Dec 2003 p. 5722)
<b>Reprint 1: The <i>Mental Health Act 1996</i> as at 6 Aug 2004</b> (includes amendments listed above)			
<i>State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004</i> Pt. 2 Div. 81 <sup>4</sup>	55 of 2004	24 Nov 2004	1 Jan 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7130)
<i>Criminal Procedure and Appeals (Consequential and Other Provisions) Act 2004</i> s. 82	84 of 2004	16 Dec 2004	2 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7129 (correction in <i>Gazette</i> 7 Jan 2005 p. 53))
<i>Psychologists Act 2005</i>	28 of 2005	12 Dec 2005	4 May 2007 (see s. 2 and

Short title	Number and year	Assent	Commencement
s. 108			<i>Gazette</i> 4 May 2007 p. 1963)
<i>Occupational Therapists Act 2005</i> s. 109	42 of 2005	19 Dec 2005	1 Aug 2007 (see s. 2 and <i>Gazette</i> 31 Jul 2007 p. 3789)
<i>Machinery of Government (Miscellaneous Amendments) Act 2006</i> Pt. 9 Div. 9 <sup>5</sup>	28 of 2006	26 Jun 2006	1 Jul 2006 (see s. 2 and <i>Gazette</i> 27 Jun 2006 p. 2347)
<i>Nurses and Midwives Act 2006</i> s. 114	50 of 2006	6 Oct 2006	19 Sep 2007 (see s. 2 and <i>Gazette</i> 18 Sep 2007 p. 4711)
<b>Reprint 2: The Mental Health Act 1996 as at 12 Jan 2007</b> (includes amendments listed above except those in the <i>Occupational Therapists Act 2005</i> and the <i>Nurses and Midwives Act 2006</i> )			
<i>Legal Profession Act 2008</i> s. 680	21 of 2008	27 May 2008	1 Mar 2009 (see s. 2(b) and <i>Gazette</i> 27 Feb 2009 p. 511)
<i>Medical Practitioners Act 2008</i> s. 162	22 of 2008	27 May 2008	1 Dec 2008 (see s. 2 and <i>Gazette</i> 25 Nov 2008 p. 4989)
<a href="#"><u>Health Practitioner Regulation National Law (WA) Act 2010</u></a> s. 109-111 and 112(1)	<a href="#"><u>35 of 2010</u></a>	<a href="#"><u>30 Aug 2010</u></a>	<a href="#"><u>18 Oct 2010</u></a> (see s. 2(b) and <i>Gazette</i> 1 Oct 2010 p. 5075-6)

<sup>1a</sup> On the date as at which this compilation was prepared, provisions referred to in the following table had not come into operation and were therefore not included in this compilation. For the text of the provisions see the endnotes referred to in the table.

**Provisions that have not come into operation**

Short title	Number and year	Assent	Commencement
<i>Health Practitioner Regulation National Law (WA) Act 2010</i> Pt. 5 Div. 34 s. 112(2) <sup>6</sup>	35 of 2010	30 Aug 2010	<del>s. 109-111 and 112(1); 18 Oct 2010 (see s. 2(b) and <i>Gazette</i> 1 Oct 2010 p. 5075)</del> s. 112(2); to be proclaimed (see s. 2(b))
<i>Public Sector Reform Act 2010</i> s. 89 <sup>7</sup>	39 of 2010	1 Oct 2010	To be proclaimed (see s. 2(b))

<sup>2</sup> The *Mental Health (Consequential Provisions) Act 1996* Pt. 12 Div. 2 (s. 53-72 inclusive) reads as follows:

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**Division 2 — Transitional**

**53. Interpretation**

In this Division —

*commencement* means the commencement of the *Mental Health Act 1996*;

*new Act* means the *Mental Health Act 1996*;

*repealed Act* means the *Mental Health Act 1962*.

**54. Interpretation Act 1984 not affected**

The provisions of this Division do not affect the application of the *Interpretation Act 1984* to and in relation to the repeal effected by section 51.

**55. Investigations under section 7**

Any investigation under section 7 of the repealed Act —

- (a) begun by the Minister; or
- (b) which a person has been appointed by the Minister to conduct,

before the commencement may continue and be completed as if the repealed Act had not been repealed.

**56. Authorised hospitals**

A building, place or hospital or part of a building, place or hospital that is immediately before the commencement an approved hospital under section 19(3) of the repealed Act is to be taken to be an authorised hospital under the new Act.

**57. Licences for private psychiatric hostels**

An approval and a licence under Part IIIA of the repealed Act that is in force immediately before the commencement in respect of a private psychiatric hostel —

- (a) is to be taken to be an approval and a licence required by Part IIIB of the *Hospitals and Health Services Act 1927*; and
- (b) after the commencement that Part applies to the approval and the licence as if they had been given or issued under that Part.

**58. Register of psychiatrists**

- (1) The register of psychiatrists in existence under section 89 of the repealed Act immediately before the commencement is to be treated as the register required by section 17 of the new Act.
- (2) Subsection (1) does not limit the Medical Board's powers to add names to and remove names from the register under section 17 of the new Act.

**59. Referrals under section 28(1)**

- (1) A referral which immediately before the commencement has effect under section 28(1) of the repealed Act may be acted upon as if it were a referral under section 29(2)(a) of the new Act.
- (2) The time limit of 14 days under section 28(1) of the repealed Act between the examination of the person and reception into an authorised hospital continues to apply for the purposes of the new Act.

**60. Persons under observation, s. 28(3) and 34(1)**

- (1) A person who immediately before the commencement —
  - (a) is in an approved hospital for observation under section 28(3) or 34(1) of the repealed Act; but
  - (b) has not been admitted,is to be regarded as a person received into an authorised hospital under section 36 of the new Act.
- (2) Despite section 36 of the new Act, the person may be detained for the 72 hour period allowed under section 28(3) or 34(1) of the repealed Act.

**61. Orders under section 29**

- (1) If immediately before the commencement —
  - (a) an order has been made under section 29 of the repealed Act; but
  - (b) the person has not been received into an approved hospital,the order may be carried out despite the repeal of the repealed Act.
- (2) Where subsection (1) applies the person is to be received into an authorised hospital under section 36 of the new Act as if there had been a referral under section 29(2)(a) of the new Act.
- (3) Section 37A of the repealed Act, despite its repeal, continues to apply to an order referred to in subsection (1) and for that purpose



the reference to the Director in section 37A(2) is to be read as a reference to the Chief Psychiatrist.

**62. Orders under section 30(1)**

- (1) If immediately before the commencement —
  - (a) an order has been made under section 30(1) of the repealed Act; but
  - (b) the person has not been examined by a medical practitioner,the order is to be carried out as soon as is practicable despite the repeal of the repealed Act.
- (2) When the person has been examined —
  - (a) section 32 of the repealed Act does not apply; and
  - (b) the person may only be received into an authorised hospital in accordance with Division 1 of Part 3 of the new Act.
- (3) Subject to subsection (2)(b), the person is to be released following the examination.

**63. Persons in custody under section 30(2)**

- (1) If immediately before the commencement a person —
  - (a) has been apprehended under subsection (2) of section 30 of the repealed Act; but
  - (b) the steps provided for by that subsection have not been completed,those steps are to be completed as soon as is practicable despite the repeal of the repealed Act.
- (2) However, on examination by a medical practitioner under section 30(3) of the repealed Act —
  - (a) section 32 of the repealed Act does not apply; and
  - (b) the person may only be received into an authorised hospital in accordance with Division 1 of Part 3 of the new Act.
- (3) Subject to subsection (2)(b), the person is to be released following the examination.

**64. Warrants under section 31(2)**

- (1) If immediately before the commencement —
  - (a) a warrant has been issued under subsection (2) of section 31 of the repealed Act; but

- (b) the steps provided for by that subsection have not been completed,

those steps are to be completed as soon as is practicable despite the repeal of the repealed Act.

- (2) However, on the execution of the warrant —
  - (a) sections 31(3) and 32 of the repealed Act do not apply; and
  - (b) the person may only be received into an authorised hospital in accordance with Division 1 of Part 3 of the new Act.

**65. Persons on remand for examination**

If immediately before the commencement a person is remanded in custody under an order made under section 36 of the repealed Act, then on the commencement —

- (a) that order continues to have effect as if the repealed Act had not been repealed; and
- (b) when the person under that section is returned to his or her former custody, the *Criminal Law (Mentally Impaired Defendants) Act 1996* applies if necessary.

**66. Patients detained, other than security patients**

- (1) A person who —
  - (a) was admitted to an approved hospital under section 28(4) or 34(2) of the repealed Act; and
  - (b) immediately before the commencement is detained in an approved hospital under section 38(2) of the repealed Act,

is to be regarded as a person detained in an authorised hospital as an involuntary patient by force of an order under section 43(2)(a) of the new Act.

- (2) The Mental Health Review Board is to review the case of each person to whom subsection (1) applies, and who is still detained, not later than —
  - (a) the day on which he or she could have been automatically discharged under section 39(1) of the repealed Act;
  - (b) the day on which the patient's status would have come to an end under section 39(2) of the repealed Act; or
  - (c) the 28th day after the commencement,

whichever is the latest.

- (3) The review is to be carried out under Division 2 of Part 6 of the new Act, and after that review periodic reviews are to be carried out under section 139 of that Act.
- (4) For the purposes of this section the person in charge of an authorised hospital is to give notice in writing to the Registrar of —
  - (a) the names of all patients to whom subsection (1) applies; and
  - (b) particulars of the relevant days under subsection (2).
- (5) A notice under subsection (4) is to be given not later than the 28th day after the commencement.

**67. Leave of absence**

A grant of leave of absence in force under section 42 of the repealed Act immediately before the commencement is to be regarded as leave of absence granted under section 59 of the new Act.

**68. Absence without leave**

If immediately before the commencement a person is absent without leave in terms of section 42(4) of the repealed Act the person is to be regarded as being absent without leave in terms of section 57 of the new Act.

**69. Patients discharged to after-care**

- (1) If immediately before the commencement a person is under section 43 or 45 of the repealed Act a patient discharged to after-care, the period of after-care continues under the repealed Act as if it had not been repealed.
- (2) The Chief Psychiatrist is to ensure that each person to whom subsection (1) applies is examined by a psychiatrist not later than —
  - (a) the day on which he or she could have been automatically discharged under section 39(1) of the repealed Act;
  - (b) the day on which the patient's period of after-care would have come to an end under section 43 or 45 of the repealed Act; or
  - (c) the 14th day after the commencement,whichever is the latest.

- (3) A psychiatrist who examines a person under subsection (2) is to determine, having regard to section 26 of the new Act, whether the person —
  - (a) should be an involuntary patient under the new Act; or
  - (b) should be discharged from status as a patient.
- (4) If the psychiatrist determines that subsection (3)(a) applies, he or she is to make an order under section 43(2)(b) of the new Act.
- (5) If the psychiatrist determines in writing that subclause (3)(b) applies the person is by that determination discharged from any status as a patient.

**70. Security patients**

- (1) If immediately before the commencement a person is in an approved hospital because of —
  - (a) a direction made under section 47(1) of the repealed Act; or
  - (b) an order made by the Governor under section 48 of the repealed Act,on the commencement the person is to be taken —
  - (c) to be a mentally impaired defendant under Part 5 of the *Criminal Law (Mentally Impaired Defendants) Act 1996*; and
  - (d) to be in that hospital because of a decision of the Mentally Impaired Defendants Review Board under that Act,and Part 5 of that Act applies accordingly.
- (2) If immediately before the commencement a person, under an order made by the Governor under section 48 of the repealed Act, is liberated subject to any terms and conditions, on the commencement —
  - (a) the person is to be taken to be a mentally impaired defendant (as defined in the *Criminal Law (Mentally Impaired Defendants) Act 1996*) who has been released on conditions by the Governor under Part 5 of that Act; and
  - (b) Part 5 of that Act applies accordingly.

**71. Application to Court**

- (1) If an application under section 55 of the repealed Act has been made but not disposed of before the commencement, the

application may be completed after the commencement as if that section had not been repealed.

- (2) In determining any such application the Court may make any order relevant to the operation of the new Act that it thinks fit.

**72. Transitional regulations**

- (1) If there is no sufficient provision in this Part for dealing with a matter that needs to be dealt with for the purpose of the transition from the repealed Act to —
- (a) the new Act; or
  - (b) the *Hospitals and Health Services Act 1927* as amended by this Act,

regulations may prescribe all matters that are required or necessary or convenient to be prescribed for dealing with the matter.

- (2) Regulations under subsection (1) may provide that specific provisions of the new Act or of subsidiary legislation made under the new Act —
- (a) do not apply; or
  - (b) apply with or without specified modifications,

to or in relation to any matter or thing.

- (3) Regulations under subsection (1) may have effect before the day on which they are published in the *Gazette*.
- (4) To the extent that a regulation under subsection (1) has effect before the day of its publication in the *Gazette*, it does not —
- (a) affect in a manner prejudicial to any person (other than the State), the rights of that person existing before the day of its publication; or
  - (b) impose liabilities on any person (other than the State) in respect of anything done or omitted to be done before the day of its publication.

”.

<sup>3</sup> The *Corporations (Consequential Amendments) Act (No. 3) 2003* s. 2-4 read as follows:

“

**2. Commencement**

- (1) If this Act receives the Royal Assent before the day on which Schedule 1 to the Financial Services Reform Act comes into operation, this Act comes into operation at the same time as that Schedule comes into operation.

- (2) If this Act receives the Royal Assent on or after the day on which Schedule 1 to the Financial Services Reform Act comes into operation, this Act is deemed to have come into operation at the same time as that Schedule comes into operation.

**3. Interpretation**

In this Part —

**Financial Services Reform Act** means the *Financial Services Reform Act 2001* of the Commonwealth;

**FSR commencement time** means the time when Schedule 1 to the Financial Services Reform Act comes into operation;

**statutory rule** means a regulation, rule or by-law.

**4. Validation**

- (1) This section applies if this Act comes into operation under section 2(2).
- (2) Anything done or omitted to have been done after the FSR commencement time and before this Act receives the Royal Assent that could have been done if this Act had received the Royal Assent before the FSR commencement time is taken to be as valid and lawful, and to always have been as valid and lawful, as it would have been if this Act had received the Royal Assent before the FSR commencement time.
- (3) Anything done or omitted to have been done by a person after the FSR commencement time and before this Act received the Royal Assent that would have been valid and lawful if the Financial Services Reform Act had not commenced, is taken to be valid and lawful.
- (4) Anything done or omitted to have been done after the FSR commencement time and before this Act receives the Royal Assent —
- (a) that could only have been validly and lawfully done or omitted because this Act received the Royal Assent after the FSR commencement time; and
  - (b) that could not have been validly and lawfully done or omitted if this Act had received the Royal Assent before the FSR commencement time,
- is taken not to be valid, and to never have been valid.

<sup>4</sup> The *State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004* Pt. 5, the *State Administrative Tribunal Act 2004* s. 167 and 169,

and the *State Administrative Tribunal Regulations 2004* r. 28 and 42 deal with certain transitional issues some of which may be relevant for this Act.

<sup>5</sup> The *Machinery of Government (Miscellaneous Amendments) Act 2006* Pt. 9 Div. 13 reads as follows:

“

**Division 13 — Transitional provisions**

**289. Commissioner of Health**

- (1) A thing done or omitted to be done by, to or in relation to, the Commissioner of Health before commencement under, or for the purposes of, an enactment has the same effect after commencement, to the extent that it has any force or significance after commencement, as if it had been done or omitted by, to or in relation to, the CEO.
- (2) In this section —  
*CEO* has the meaning given by section 3 of the *Health Legislation Administration Act 1984* as in force after commencement;  
*commencement* means the time at which this Division comes into operation;  
*Commissioner of Health* means the Commissioner of Health referred to in section 6(1)(a) of the *Health Legislation Administration Act 1984* as in force before commencement.

”

<sup>6</sup> On the date as at which this compilation was prepared, the *Health Practitioner Regulation National Law (WA) Act 2010* Pt. 5 Div. 34 s. 112(2) had not come into operation. It reads as follows:

~~**Division 34 — Mental Health Act 1996 amended**~~

~~**109. — Act amended**~~

~~— This Division amends the *Mental Health Act 1996*.~~

~~**110. — Section 3 amended**~~

~~(1) — In section 3 delete the definitions of:~~

~~*medical practitioner*~~

~~*psychiatrist*~~

~~*psychologist*~~

~~(2) — In section 3 insert in alphabetical order:~~

- ~~— *medical practitioner* means a person registered under the *Health Practitioner Regulation National Law (Western Australia)* in the medical profession;~~
- ~~— *psychiatrist* means a person whose name is contained in the register of specialist psychiatrists kept by the Medical Board of Australia under the *Health Practitioner Regulation National Law (Western Australia)* section 223;~~
- ~~— *psychologist* means a person registered under the *Health Practitioner Regulation National Law (Western Australia)* in the psychology profession;~~

**111. ~~Section 17 deleted~~**

~~— Delete section 17.~~

**112. Section 19 amended**

~~(1) Delete section 19(1)(b) and “or” after it and insert:~~

~~(b) a person —~~

~~(i) registered under the *Health Practitioner Regulation National Law (Western Australia)* in the nursing and midwifery profession; or~~

~~(ii) registered as an occupational therapist under the *Occupational Therapists Act 2005*;~~

~~— or~~

(2) Delete section 19(1)(b) and “or” after it and insert:

(b) a person —

(i) registered under the *Health Practitioner Regulation National Law (Western Australia)* in the nursing and midwifery profession; or

(ii) registered under the *Health Practitioner Regulation National Law (Western Australia)* in the occupational therapy profession;

or

<sup>7</sup> On the date as at which this compilation was prepared, the *Public Sector Reform Act 2010* s. 89 had not come into operation. It reads as follows:



**89. Various references to “Minister for Public Sector Management” amended**

- (1) This section amends the Acts listed in the Table.
- (2) In the provisions listed in the Table delete “Minister for Public Sector Management” and insert:

Public Sector Commissioner

**Table**

<i>Mental Health Act 1996</i>	s. 180(1), Sch. 1 cl. 2(2)
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